Nevada Supreme Court

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

May 20, 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

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

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: May 20, 2016, 11 a.m. to 5:00 p.m.

Place of Meeting:

LAS VEGAS
University of Nevada, Las Vegas
William S. Boyd School of Law
Thomas and Mack Moot Court
4605 S. Maryland Parkway, Las Vegas

AGENDA

I. Call to Order
   a. Call of Roll and Determination of Quorum
   b. Approval of Meeting Summary from April 22, 2016 (*pages 5-18*) (for possible action)

II. Public Comment
*Because of time considerations, the period for public comment for persons who spoke at previous meetings **will be limited to 1 minute** and speakers who have not spoken at previous meetings **will be limited to 3 minutes**. Speakers are urged to avoid repetition of comments made by previous speakers.*

III. Presentation
   a. Florida Auditing Program (*Sharon Bock and Anthony Palmieri*)
   b. Secretary of State Lock Box (*Gail Anderson*)
      i. Update on SB 262 (*Justice Hardesty*)

IV. Discussion on Subject Matter Recommendations (General Policy Questions 22-29) (*pages 20-42*) (for possible action)

V. Review Bill of Rights (*pages 44-47*) (for possible action)

VI. Terminology/Definitions (for possible action)
   a. Medical Language(*pages 49-50*) (*Kim Rowe and Elyse Tyrell*)
   b. Alternatives to Ward (*page 52*) (*Stephanie Heying*)

VII. Minor Guardianship Statute(for possible action) (*pages 54 – 67*)(*Judge Walker, Judge Voy, and Judge Porter*)

VIII. Data/IT Subcommittee Recommendations (*pages 69-71*) (for possible action) (*Hans Jessup*)

IX. Updates (for possible action)
   a. NRCP Rule 60(b) (*Justice Hardesty*)
   b. AB 325 – Private Professional Guardians Licensure (*Kim Spoon and Susan Hoy*)
   c. Guardianship Filing Fees (*Justice Hardesty*)
   d. Legal Aid Center of Southern Nevada (*Christine Miller*)
   e. Conservatorship Accountability Project (*Riley Wilson*)

X. Other Business

XI. Future Meeting Dates
   a. Tuesday, June 21, 2016, 1:00 p.m.

XII. 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.

MEETING SUMMARY

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MEETING SUMMARY

Prepared by Stephanie Heying and Raquel Espinoza
Administrative Office of the Courts

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

Date and Time of Meeting: April 22, 2016, 1:00 p.m. to 4:30 p.m.
Place of Meeting:

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

Members Present:

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge Egan Walker
Senator Harris
Assemblyman Michael Sprinkle
Assemblyman Glenn Trowbridge
Trudy Andrews
Debra Bookout (Barbara Buckley Proxy)
Kathleen Buchanan (Jeff Wells Proxy)
Rana Goodman
Susan Hoy
Sally Ramm
Kim Rowe
Terri Russell
Christine Smith
David Spitzer
Kim Spoon
Susan Sweikert

AOC Staff

Raquel Espinoza
Stephanie Heying
Hans Jessup

I. Call to Order

a. Call of Roll and Determination of Quorum

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

b. Approval of Meeting Summary from April 1, 2016, meeting

The April 1, 2016, meeting summary was unanimously approved.

II. Public Comment

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

III. Update

Justice Hardesty took agenda items out of order and began with agenda item VII – Updates.

a. Minor Guardianship Subcommittee

Judge Egan Walker stated the workgroup is pulling out statutes from chapter 159 and drafting a parallel section for minors. The workgroup received the first draft last week and will meet to confer and re-draft some of the language. This matter would be on the May 20 agenda. Judge Walker added he supports the Bill of Rights proposed by Commissioner Buckley for adults and suggested considering a Bill of Rights for minors as well.

b. AB 325 – Private Professional Guardians Licensure

A workshop was held on April 8, 2016. There was some disagreement regarding some of the language the Commissioner had presented to the Legislative Counsel Bureau (LCB). The LCB thought that the current language already encompassed some of the proposed language. Commissioner Burns put it on the record that indeed, it did mean the same thing that they thought needed to be in there. A hearing was held the following week and LCB adopted the language that was presented and discussed at the workshop. Another hearing will be scheduled in June before the Legislative Committee. Once approved the licensures for private professional guardians should begin.

The Commission discussed the concern that fewer private professional guardians are expressing interest in continuing in the business. Nevada is not losing prospective Wards, but Nevada is losing people who would be serving those prospective Wards. Justice Hardesty asked Ms. Kim Spoon and Ms. Susan Hoy to prepare a memo for the Commission for the May 20 meeting. The memo will address two subjects:

1. Are there any areas within Assembly Bill 325 that should be reevaluated or reconsidered by the legislature that the Commission should discuss, and

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

c. Legal Aid Center of Southern Nevada

Ms. Christine Miller provided an update on Guardianship Advocacy Program at the Legal Aid Center of Southern Nevada (LACSN). The Program has 30 cases and continues to receive referrals from a variety of sources including the courts, Elder Protective Services (EPS), Las Vegas Metropolitan Police Department (LVMPD), as well as direct requests for assistance from people who are currently under a guardianship. Ms. Miller stated there is no doubt that their clients are benefiting from having their voice represented in court as well as their legal interests protected and served by counsel. Ms. Miller provided an example of one of their cases where they were able to give the Ward a voice in court, and the Ward is now living with a family member of their choosing. Ms. Miller raised the issue relating to non-testamentary trusts involving beneficiaries who are also Wards. Clients do not know how much they have in assets or how trust money is being spent down, if it is at all. In a worst-case scenario, Ms. Miller discovered that trust's assets had been depleted and the client had no idea how or what the funds were used for. It is important for this Commission, in terms of legislative changes, to require trust accountings are filed in a guardianship case. If we are looking for transparency, if we want to account for a person's complete assets, we need to know not only what their monthly budget is, but also what the regular annual accounting is.

d. Data/IT and Guardianship Filing Fees

Updates from the Data/IT Subcommittee and Guardianship fees would be addressed at the May 20 meeting.

IV. Terminology/Definitions

a. Medical Language

Mr. Kim Rowe stated the legal and medical community use different language when referring to a person who may be subject to a guardianship. The legal community tends to refer to people as *incompetent*. Incompetent is a judicial determination that is made by a judge, it is not a medical term. The medical term used in a guardianship proceeding is *capacity*. Nevada's statute defines *incompetent* but it does not define *capacity*. The term *capacity* does appear in NRS 159.044 (3) where it discusses what a physician's certificate should include, in the concept of if a physician, which identifies the limitations of *capacity* of the proposed adult. The concept is already in the statute but it has not been brought through. Mr. Rowe stated the American Bar Association (ABA) Commission on Law and Aging put together a summary of how the different states have dealt with this issue as well as some of the national standards. Mr. Rowe noted Nevada adopted the Uniform Guardianship Act in 2009 that deals with multijurisdictional guardianships and how we transfer from state to state. What the concept of that Act deals with is *incapacitated* persons. The Mr. Rowe and Ms. Elyse Tyrell would be proposing some simple legislative changes; removing incompetency from the statutes and incorporate the concept of incapacitation. This would allow the Commission to take the concept of *incapacity* and have it move through the statutes in a manner in which physicians who are dealing with it can understand it. There is a definition of *incapacitated* persons built into the statute, telling the court what is being talked about and is consistent with what other states are doing across the country. Whether the Commission would decide to use the term Ward or Respondent, the term-incapacitated person would be a better term to use because it recognizes the different levels of *capacity* that a court is required to work their way through.

Nevada already deals with limited capacities and having special guardianships where areas can be identified in which individuals may still have some of their rights honored in a less restrictive manner. If the Commission would move to a different definition, rather than incompetent, the state would be in line with what is happening nationally and solve the terminology issue where often times, physicians and courts are confused about what is going on. Written recommendations would be provided to the Commission at the May 20 meeting.

Judge Porter, Judge Doherty, and Judge Steel were asked to provide their views in assessing the least restrictive means test that has been discussed with the Commission's model and shaping guardianships around the specific capacity limitation.

Judge Doherty stated the term *incompetency* has not been used in literature for the last 6 -10 years. Current literature from the National Center for State Courts (NCSC) and from the Probate Code Recommended Standards is *capacity* or *incapacitated* and for Ward, the substitution is *Respondent* or *Person Subject to Guardianship*. The court is already using these terms and it would not be a significant paradigm shift for stakeholders. It gives the court the ability to gauge capacity when addressing alternatives and least restrictive environment. The term *incompetency* is a very black or white term; you are either *competent* or *incompetent*. *Capacity* is more of a spectrum. Judge Steel concurred in that assessment. If you are *incompetent*, you are on a real far spectrum of *incapacitated*. Judge Porter stated prefers the term *incapacity.* The definition of *incompetent* in 159.019 is bothersome. *Incompetent* under that statute is defined as an adult person who by reason of mental illness, mental deficiency, disease, weakness of mind, or any other cause is unable without assistance properly to manage and take care of himself or herself or his or her property. That phrase "without assistance" makes the statute so broad that it captures many people that may not need a guardian. Narrowing that definition would be very helpful.

Mr. Rowe stated the definition for *incapacity* under the Act is longer and does have problematic language. In summary the definition from the original Act in 1997 states, "…lacks ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance." There are better definitions in the ABA study, which talks about functionality and cognitive approaches, consistent with *capacity*. There are other statutes that could be drawn from for better definitions than the Act. The concept would be to focus on cognitive abilities rather than disability, which is the direction the Commission would need to move towards in order to get to a more least restrictive approach. Justice Hardesty asked Mr. Rowe to continue narrowing the definition to the cognitive and functionality issues, which may also be of assistance to the medical community. It would be easier for physicians to address those types of issues, an affidavit or certification of the court, rather than other concepts.

Mr. Rowe spoke to Dr. Steven Phillips from the Sanford Center for Aging. Dr. Phillips Phillips is a board certified geriatric physician and was involved in the creation of the physician's certificate from the beginning. Dr. Phillips is interested in going a step further and providing education to the State Board of Medicine with physicians who practice in this area to make sure everyone is on the same page, once the Commission has formulated its work. The individuals completing the certificates would be educated to understand what the courts are looking for so that the courts get a more meaningful product from the physicians. Dr. Phillips currently holds trainings within his office on how to complete the certificates however, if there were a way to approach the medical community it would be beneficial to the judges that are struggling. Justice Hardesty stated it might be a good time for members of the Bar

and medical community to hold a joint, continuing legal education session. Justice Hardesty agreed that narrowing the definition would be essential in recommendations the Commission would make.

b. Alternative Terms used for Ward

Judge Doherty stated the term *Ward* is not found in current literature and is not found in the vernacular of the Second Judicial Court by the primary participants. The Court uses the term *Person Subject to Guardianship*, if a guardianship has been entered; prior to entering a guardianship the term *Respondent* is used. Judge Doherty suggested the Commission stop using historically antique, aged, and irrelevant words to what is really being discussed. Judge Doherty said if the Commission fails to take the opportunity to eliminate the term *Ward* from state statutes we may seem less progressive than we are because we are changing the use of that term as the Commission speaks today.

Terms proposed:

- 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 Nominee

Ms. Sally Ramm stated the term *Respondent* appears to be a legal term. There are many people coming into the guardianship court without a legal background and the term *Respondent* would not mean anything to them. Ms. Ramm suggested using the terms *Person Facing Guardianship* or *Person Subject to Guardianship.* Those terms place the person first and the term *Protected* may come across as demeaning as in referencing a child.

Judge Steel stated the term *Ward* may seem out dated but it does have a collective meaning throughout the ages. Departing from the term *Ward* altogether may not be a good idea if the Commission chooses to do so for change sake. In regards to the terms *Proposed Ward* and *Proposed Person Facing Guardianship*, Judge Steel suggested using a more upbeat word such as *Candidate* or *Nominated*.

Justice Hardesty asked the Commission to reference the chart included in the materials. Many states have shifted to using the term *Protected Person* or *Protection Proceeding*, consistent with the National Guardianship Guidelines. Ms. Spoon observed the chart represented 15 states. Many had taken on the term *Protected Person* but 11 of the 15 represented states were still using the term *Ward*. It does not seem as though the majority of the represented states are moving away from the term *Ward*, even though they used *Protected Person* or other language in other aspects of a conservatorship, it would seem that the term *Ward* is still being used. Judge Doherty added the Sanford Center was in support of eliminating the word *Incompetent* and the term *Ward* was highly disfavored. Courts are often times one

of the last entities to paradigm shift and society takes the lead. Recent literature will not be found with application of the use of the term *Ward* and the term will not be found in the National Probate Courts Standards.

Chief Judge Michael Gibbons stated there was an analogy to children that are in the system under Chapter 432(B) that is called dependency court; the children are referred to dependent children. A "dependent child" could be referred to as a *Ward* of the state or an abused and neglected child, yet the term dependent is neutral. Chief Judge Gibbons stated the Commission should change the term *Ward* and come up with a more neutral term.

Justice Hardesty asked the Commission to deliberate terminology further. The subject would be added to the agenda for the May 20 meeting to resolve recommendations on this matter. Justice Hardesty asked that the Commission members send literature, writings, and suggestions to Ms. Heying regarding the changes and the terms for consideration of the Commission.

V. Presentation

a. Attorney Fees

Mr. John Smith and Ms. Homa Woodrum provided presentations on attorney fees. In addition, Mr. Hank Cavallera had provided a letter and amendments to the statute addressing fees.

Mr. John Smith began his presentation by stating in order to consider the factors of reasonableness, in terms of guardianship fees, guardianships should be viewed as a unique process, particularly in the law. Guardianship is an interdisciplinary practice involving social, medical, and legal professionals. It almost exclusively involves people he termed "other centered." Meaning people whose values, work ethics, and vocational endeavors are geared towards the needs of others.

Mr. Smith provided a mission statement about guardianship:

> The guardianship should be a compassionate process that requires predictable accountability and focuses on the most appropriate financial and personal care solutions at the beginning of the process with built-in safeguards to ensure the best interest of the Ward are primary while using the least restrictive means to achieve this.

Most of the guardianships Mr. Smith is involved in and the actions of other professionals are consistent with the mission statement. What is also derived from this viewpoint is the conclusion that guardianship is a front-loaded process. Mr. Smith's primary efforts at the initiation of the guardianship are to determine if a guardianship is necessary, and if there are other possible solutions. The bulk of the work of the entire guardianship petition should be concluded before a petition is filed. Interested parties, judges, and other professionals need as much information at the filing of the petition as they can possibly receive. They need information in the form of a preliminary cost of care budget and any relevant information in addition to the statutory minimum. It will take effort, communication, planning, and strategy to work things out on the front-end. This is appropriate because a guardianship is like forming a new business and that business needs to demonstrate that it can be successful and attain its objectives with the resources it has been given and the challenges that are identified.

Considering the Texas Model and paradigm of guardianships, the next question is how guardian and attorney fees should be considered for review and approval. There are already ample guidelines and structures in place in Nevada Revised Statute Chapter 159, the Nevada Professional Code of Conduct, the Brunzell case factors, and local district court rules that allow the proper review and adjudication of the reasonableness of fees by the judge. Mr. Smith noted the judge is best suited to make the decision in these matters. That is not to say there should not be input by parties, the guardian, and other stakeholders, but the final decision should rest with the judge.

Mr. Smith posed the following recommendations:

- Written fee agreements – It is imperative that there be a requirement for written fee agreements at the beginning of any guardianship action by an attorney. This promotes transparency, allowing a person to know what they are committing themselves to at the front-end.
- Require the breakdown of fees/duties in the detailed proposal; what the attorney did and what their staff did.

The video connection between Carson City and Las Vegas was lost for three minutes.

> While staff worked on getting the video reconnected Justice Hardesty said the recommendations Mr. Smith was making would dramatically change how attorney fees are addressed in the future – mandating written fee agreements approved by the court. Agreements that divide duties and establish an approval process consistent with the Rules of Professional Conduct and Brunzell factors would be a change from what has been done before based on prior testimony. Justice Hardesty noted Mr. Smith's attachments include a sample fee agreement as well as a breakdown of fees that should be charged for functions performed in guardianship cases. This is specific, rather than fees being generated by some difficult process of describing and identifying the work we now have fees based on a function. The function is spelled out and in guardianships can be specifically identified. Mr. Smith is not just recommending this he is doing this and it makes a difference in the amount of fees that you receive in a guardianship proceeding. It makes it easier for a judge to assess those fees when reviewing fee request. The fees are now being compared to a written agreement and the functions that have been performed.

The video connection was reestablished.

Mr. Smith was asked if he would have any objections to having the written fee agreement approved by the Court. Mr. Smith did not have an objection. Mr. Smith noted the fee agreement is more than a mere contract quantifying the dance. The fee agreement is part of the tools an attorney should be using to explain the engagement of the entire process. Mr. Smith often has a relative contact him first and then he ends up working with a private professional guardian and you get into the issue of who is the client and who is controlling this. Mr. Smith includes language in his agreement that tries to address this so that the person that initially comes to him stays involved and they understand their role in this process.

Justice Hardesty asked Mr. Smith to comment on the review of the approval process. Mr. Smith said he does not lack guidance, rules, or structure in how to charge fees in these matters. Mr. Smith should be able to take any request, place them against the guide, rules, structure and see if they match up. If they do not match up the fees should be

disallowed. Mr. Smith said the Brunzell factors determine what charges should be and how he might explain those charges to a client. Mr. Smith looks at those factors with a view of if he should ever have to defend the fees how do they square with these guidelines. He finds the Brunzell factors to be helpful in explaining the considerations that go into reasonableness of fees to his clients.

Discussion

Ms. Buckley suggested the focus should start with the recognition that this is the person facing the guardianship's money. They built their nest egg. There have been arguments falsely created to enhance the billing. Ms. Buckley said while you do not want fees so low that no one will perform the work you do not want to exceed the rate that is available for that work in the community. Ms. Buckley said the standard has to be different from the Brunzell standard and we have to start with that fundamental premise. The billing should be commensurate with the task that needs to be done and disallowed in any case where the guardian has failed to do their duties, ignored the needs of the person under guardianship, exploited them, or overbilled them.

Mr. Jay Raman echoed Ms. Buckley's comments. Mr. Raman was concerned with the recommendation that the judge, as an elected official, should be the one determining the attorney fees. Mr. Raman suggested a universal fee schedule. Mr. Raman said if the Commission could conclude what is reasonable, then the discretion would be taken out of the hands of the judges and then we are really looking at the work that has been done. Mr. Raman asked Mr. Smith if he is referring to attorneys who represent guardians or attorneys who are assisting in some other facet of the guardianship. Mr. Smith responded it would be attorneys assisting guardians but it could also potentially apply to attorneys who have been assigned to the Wards. Mr. Smith stated guardianship proceedings are nowhere close to the same process as probate, which has predictable defined steps and actions. In a guardianship, you are dealing with a living person. In 500 cases over the last 10 years, Mr. Smith has never seen two cases the same.

The Commission discussed what is meant by front-loading and when the court would weigh-in on the fee arrangement if the work were done prior to coming to court. Mr. Smith explained in this area, the fee application is not made until well after the petition is filed and not heard until the permanency hearing. His point regarding front-loading is he cannot wait to see if something is going to be approved and he does not want to be limited by these are the most fees we can get. In his view, the front-loading of the guardianship process is when you expend 80% or more of your efforts to try to get this right the first time.

There was a discussion about the inherent conflict between any of the professionals of the Ward, including the judge, related to the fee structure. The biggest challenge for a judge is to try to decide if the fees are reasonable and necessary. Many times the judge is deciding this after hundreds of hours of work have already been applied and the fee request comes in at an amount that exceeds or consumes the value of the Ward's estate. If this had been requested on the front-end, the judge might not have authorized the fees. There needs to be some front-end direction on which estates are appropriate to access any fees, and a limit on what those fees might be, similar to probate where there is a percentage of the estate charged for fees and that is the limit.

Justice Hardesty stated one area in which the Commission could offer meaningful input and recommendations is to require the front-end include the plan for the payment of professionals who are going to be reasonably necessary to implement the plan. This would include attorneys. In criminal cases, the indigent criminal defense attorney must

secure approval from the court in order to hire firearm experts, DNA experts, etc. Those fees are capped and are consistent with what is known to be specific charges. The parties should know enough at the beginning to identify what is reasonably necessary for attorney fees in each case. When a judge is confronted with a case, the case plan for the Ward should be agreed upon in the beginning. The case plan should address the scope, nature, and amount that are going to be allocated for professional fees.

Judge Doherty noted it makes sense in cases where there is agreement, as those fees are generally the same across the board. Fees rapidly increase in contested cases and when the court has pushed back, the reactions have been significant and the response hostile. The National Center for State Court (NCSC) recommended the Second Judicial District have a fee schedule for attorneys and guardians. Not to mandate those fees, but to provide guidance to everyone who enters the system. When contested cases occur and alternative dispute resolutions (ADR) cannot resolve the case the Ward's estate is being spent on very litigious matters. Sometimes the cases settle quicker when relatives become aware that they may be assessed the fees. The National Probate Court Standards recommend that either the Administrative Office of the Courts or jurisdictions set guidelines of schedules. The Commission had reviewed other state's fee schedules at a prior meeting. If the public were provided that notice, counsel would come into this area with notice and could gauge their costs and work.

The other area the court struggles with is pre-filing activity of the petitioning guardian and the attorney. Who should pay for that? Should the person facing the guardianship pay for all the investigation? Judge Doherty said she continues to cite national standards and those entities have suggested the courts recommend schedules for attorneys and guardians. Brunzell is great but it does not fit every component of this work.

Justice Hardesty asked Commission members for their thoughts on a fee schedule being adopted by the Supreme Court that judges must follow and any deviation requires special findings.

Suggestions:

- Fee schedules should be determined by local rule in each jurisdiction. What is reasonable in one county may not be reasonable in another. The Commission should also make sure the fees are not too low, discouraging experienced attorneys and guardians from taking these cases.
- In addition to a fee schedule, there could be a statutory cap limiting the attorney fees to a percentage of the estate, similar to what is done in probate cases. A mechanism for extraordinary fees or circumstances could be added requiring the court to approve of those fees.
- Review the Arizona Model
- Business practice concept and anticipated budget. The medical profession has usual and customary fees. The recommendations could adopt a usual and customary fee schedule that would incorporate the proposed budget, which is a guideline for expenditures. There could be exceptions, if action required in a specific case is complicated and requires more work than what is usual and customary, a provision could be included that would authorize those exceptions.
- Loser pay rule. When family members are fighting over who should be guardian they should be doing this at their own expense, not at the expense of the Ward and the Ward's estate. Justice Hardesty added this is an area where there could be significant reforms, changing the way these issues are perceived.

- Have the plan of care presented early on with a budget. This would provide an opportunity to do a case assessment. If there is X amount of dollars in the estate do we want to be spending the money on home health care or other needs of the Ward, not on attorneys.
- Create a legal presumption. That it is presumed that fees would not be allowed from the estate if… and then list the some factors where the fees would not be allowed.

The Commission discussed early case conferences in family law. During the early case conferences, many issues are addressed and if one side wants the other to pay fees they have to file a motion documenting what they expect will happen in this litigation. The party provides information on the type of research, investigation, etc. that might occur, develops a plan, and says how much money they need. Judge Doherty stated she is not concerned about the quickness in which the court responds to the issues; her concern is the highly contested cases that involve higher sums of dollars. The cases are case managed quickly and the court advises who may be liable for the fees early on if they see interfamilial disputes. Judge Doherty does not think the family court cases are transferable because the court does see the cases soon and has those discussions earlier already.

The Commission discussed a fee shifting provision in contested cases. Judge Doherty noted that is exercised at the court's discretion and spoilers in the case do pay for their intrusion, if it can be detected. The shift of the winner takes all or the loser pays all is a little too defined for her comfort level. On the other hand, a recommended schedule of fees is what the court needs to manage, control, and exhibit that level of knowledge to the participants early on. The court does not allow for bulk billing in guardianship cases and standardized bulk billing in trustee or guardian billings needs to be eliminated. Every person needs to be accountable for every minute spent on a guardianship case. Other gray areas include whom the guardian bills the trustee fees to. Are the fees billed to the trust and does the court have to approve it? The stakeholders in the Second Judicial District are grappling with this now.

Justice Hardesty asked staff to develop a couple schedules from other states on their fees and how they approach the fees along the lines of what has been suggested today. The Commission should review approaches on how fee requests are going to be reviewed and at what stage of the proceeding. The Commission discussed the need for a cap based upon the size of the estate, similar to the Arizona Model. Once that is exhausted there are no more fees, there is no more money available. This should include accountant, realtors, stockbrokers, etc. and their fees. The whole area requires a cap on professional fees before they are incurred. The Commission recognized guardianship cases are different from probate.

Ms. Hoy and Ms. Spoon provided an overview of how they address these issues with the attorneys they hire. Ms. Hoy explained private professional guardians (PPGs) are required to have legal counsel for their errors and omission liability insurance. Private professional guardians cannot do anything that would be viewed as acting in a legal capacity, which requires putting the Ward in a position where their estate becomes subject to attorney fees. The Ward's needs have to be met first. Ms. Hoy agreed with Ms. Buckley on many points and she has been looking for this guidance. Ms. Hoy said the guardian's role is to the Ward so when the guardian becomes a part of the litigation and the guardian's fees start escalating, those fees need to really be looked at because it is not the guardian's role to become part of the litigation. It is the guardian's role to look out for the Ward while the other parties fight it out. Ms. Hoy said when the Commission looks at fee structures, guidance, and legal presumptions it needs to think about the contested matters as well. The guardianship fees should not be driven up by contested matters.

Ms. Spoon said PPGs do everything they can to have a contested hearing not escalate to a contested hearing. Ms. Spoon has not been to a contested hearing in 8 – 10 years because they have been successful in working through the issues prior to the contested hearing. It is important that the attorneys involved in these cases understand the nuances of guardianship cases and are educated in how guardianship works. Ms. Spoon has seen issues in the past when attorneys who are not familiar with guardianship cases are hired by families. Ms. Spoon's office has been brought in on some contentious family situations and she has found it helpful to bring the issue in front of a judge in a timely manner. Ms. Spoon said when a Ward's funds go below $10,000, the PPGs normally stop taking fees and so do the attorneys who work for the PPGs. They keep the case even though the Ward does not have funds to pay them or the attorneys. Ms. Spoon noted the PPGs and attorneys are often not given credit for taking cases for years without payment. Justice Hardesty added if private or public guardians engage in legal work they are engaging in unlawful practice and could be subjected to prosecution. Therefore, the public, private, or family guardian has to have an attorney to perform certain tasks.

In lieu of time, Ms. Woodrum provided her presentation without the use of her PowerPoint, which was included in the meeting materials. Ms. Woodrum said she does not receive payment in 50% of her cases, which is also a consideration in the private sphere. When a client pays, Ms. Woodrum requires proof that the funds to pay the retainer fee are not coming from anything that belongs to the Ward's estate. The law looks at reasonableness and the ability of the estate to bear those fees.

Ms. Woodrum provided examples of two cases. The first case the attorney billed 6.9 hours for one year of work and the other, an exploitation case; almost 90 hours were billed in a year. Ms. Woodrum suggested the Commission consider the concept of fee shifting. Ms. Woodrum stated there is a reasonableness standard included in current law and there are the circumstances where you have to balance what has been spent against the estate but it is not a direct correlation to the value of the estate because guardianship is person centric. It is about the individual, their care, their future. There are overheads. There are insurance requirements. The statute provides for bonding and insurance.

Ms. Woodrum suggested the Brunzell factors could be used to the extent that they are going to validate the attorney fees. The guardian should be receiving a bill from the attorney every month and if they see something that is not appropriate, they need to communicate that with the attorney. Ms. Woodrum said her office creates separate numbers that are associated with the establishment and maintenance of the guardianship case. Separating the two allows an attorney to show the court that these are the two sets of fees. The most powerful thing that can be done is to get representation for Wards and guidelines for representation to be paid so you get the best possible counsel for these individuals and continue the efforts of self-help assistance. Justice Hardesty said Ms. Woodrum made a good point. There is a difference between fees for the administration of the guardianship and fees incurred in context of disputes. How the Commission looks at and approaches those fees might be a good dividing line.

Mr. Jay Raman raised a scenario in which $7500 was due for attorney fees but the Wards estate did not have the money to pay those fees. The attorney requested a lien on the Ward's home and the lien was granted. Mr. Raman asked Ms. Woodrum if she has seen this happen. Ms. Woodrum responded she had not seen an attorney request a lien to be added to a Ward's home for attorney fees. Ms. Woodrum said she and others have been advocating for an extension of Nevada Rules of Civil Procedure (NRCP) Rule 60, which would reconsider those types of orders. There is

older Nevada case law, related to a minor guardianship, where the court ruled that the claim about the order was stayed until the individual had capacity or representation. In that case, Ms. Woodrum's argument would be we could find a remedy in that situation if we carved out a dynamic, where you could reopen some of those decisions. Not just for failure of notice but for lack of reasonableness and make the grounds that they have representation, and that someone is watching. Ms. Woodrum would recommend this.

Justice Hardesty said this has come up before and suggested deviating from the attorney fee discussion to address the question of NRCP Rule 60, as a means of reopening certain prior decisions that have been made by a court. Justice Hardesty did not know what position judges around the state had taken regarding whether Rule 60(b) applies to those circumstances. It is something that could be clarified immediately, especially if there are cases pending where people are trying to reopen prior orders because the order was entered at least according to the allegation that it was fraudulent. It would be worthwhile if the Commission made a recommendation to the Court on the questions, surrounding this area of civil relief be examined immediately. This does not involve the legislature; this simply has to do with existing court orders that might be subject to some defalcation. At least that would be the allegation in the case.

Judge Porter responded she has never had this issue come up but moved to have the Nevada Supreme Court consider the application of NRCP Rule 60 (b) to Guardianship cases.

Discussion

Judge Doherty has not had a Rule 60 (b) motion in guardianship court. She would immediately consider it applicable and perhaps it needs to be clarified that those Rules are applicable. Judge Doherty said while the Commission is on the topic, it should also consider clarifying whether the Rules of Evidence apply, especially in contested guardianship hearings. In their research, the challenge of conducting contested hearings is the argument of whether the Rules of Evidence apply or whether a physician needs to be available for cross-examination. This is a constant point of discussion. The court reviewed national appellate court cases and almost all appellate court cases where this issue has arisen found that the Rules of Evidence do apply. Judge Doherty added there are four or five states that have put the provisions in their statutes that the Rules of Evidence apply in guardianship hearings, such that the right to cross-examination exists in a contested case.

Judge Porter accepted the amendment to her motion to extend this to the Rules of Evidence. Judge Walker seconded the motion.

Ms. Spoon stated she could not vote on the motion because she was not familiar with the Rules that were being discussed. Justice Hardesty explained the Nevada Rules of Civil Procedure were enacted by the Nevada Supreme Court, and is a set of rules by which all civil actions are governed. The Rules spell out procedures for dealing with depositions, procedures by which most motions are processed and opposed. Rule 60 deals with post orders, post motions made after an order has been entered in which a party wants to contend that the order was either a product of mistake or inadvertence or on a broader spectrum, a fraud upon the court or just general fraud. The previous order can be revisited if that is the case. Justice Hardesty offered a hypothetical scenario – someone submits, in the context of a fee application, an application seeking compensation for 27-hours for one day. If there were no objections those fee request could be approved. The motion practice in Rule 60(b) would allow the person who is

aggrieved to ask the court to revisit that order because it was based upon a mistake, inadvertence, or upon a fraud upon the court. There could be a reasonable argument that this was a typographical error or there was some fraud upon the court. That is one of a number of examples where the Rule would have application. The question that Justice Hardesty raised to the Commission is, should the Supreme Court clarify the application of that Rule so people who want to go before the district court on a Rule 60(b) motion would be able to if the Supreme Court agreed it applied.

Justice Hardesty said as to the Rules of Evidence, the Nevada Legislature has enacted a series of statutes that spell out evidentiary hearing rules. The Rules govern best evidence, hearsay, etc. Evidence that is presented to a court that is not in conformance with the Rules of that evidence should be rejected by the court and not considered in its fact-finding determinations. There had been a question about whether evidentiary rules apply in family law cases and in guardianship cases. Hearsay is also particularly important especially in guardianship and other areas where someone is telling the judge someone out of court is saying something and it goes to the truth of the matter as asserted. The point of the motion is to clarify that these Rules, that govern every other civil action in district court, would apply equally to guardianships.

Mr. David Spitzer added a note of caution stating they have encountered the hearsay objection to the physician's certificate for a petition for guardianship filed by the public guardian and their attorney, the district attorney's office. The public guardian and district attorney's office will not pay the doctor to come to court and many times doctors do not want to or will not come to court. There needs to be a balance in terms of a chilling effect that the rigid application of the guardianship situation of the Rules might take place. The public guardian in Washoe County, at least in part based on this consideration, has quit filing petitions. Justice Hardesty acknowledged the potential problem but thinks the issue should be addressed in the context of the Rule itself. The overall question is whether the Rules apply.

Justice Hardesty said he was not sure if he had adequately addressed Ms. Spoon's question and if there were additional questions on the motion. Ms. Spoon said his explanation helped but tailing on what Mr. Spitzer said they were always under the understanding that evidentiary hearings, contested hearings, were a mini trial and you had to have doctors there; that this is where everything takes place. That if it was contested the evidentiary rules apply but not necessarily if there was no contested… Justice Hardesty clarified this for Ms. Spoon. Like any rule, it can be waived. Rules of Evidence can be waived. If you are having a hearing and have the physician's certificate and there is no objection then the hearsay objection has been waived and it is admissible. It is only when there is an objection made under an applicable Rule then the judge rules on whether it should be admitted or excluded. In uncontested, undisputed cases where there is no objection, the hearsay objection is waived and the certificate or some other document is submitted.

Judge Doherty thinks this is a great example of past practice and current practice. The recognition is because the statute specifically contemplates the physician's certificate being attached to the petition. There is grayness in the understanding as to what the point of that physician's certificate is. Is it to continue through our path of the entire case as the evidence and support, or in a contested hearing does the respondent have both the ability to raise the Rules of Evidence and the ability to raise the constitutional process objections? Without clarification that the Rules of Evidence apply in a contested hearing, it is a gray area for the guardianship courts. It is subject to quite a bit of

argument. It seems quite clear to Judge Doherty that the statute requires the physician's certificate as a prerequisite to the filing, to put individuals who might be interested on notice, including the respondent. In addition to the petition notice with the allegations but the actual medical evidence is attached at the onset to allow the individual to contemplate whether to object, concur, or partially object. Once an objection is raised the Rules of Evidence are applied from her point of view, but that is not a consensus and it would be very beneficial and consistent with most appellate court rulings that we clarify that the Rules of Evidence apply.

Judge Walker echoed the comments of Judge Porter and Judge Doherty for some guidance in this area. Another example is in minor guardianship cases. Judge Walker appoints guardian ad litems (GAL). Chapter 159 contemplates the GAL offering the report, a written report often, and the question always becomes what do you do with it. A GAL report often has many levels of hearsay. Judge Walker would prefer operating by the Rules of Evidence.

Judge Porter moved that the Supreme Court consider the application of NRCP Rule 60 (b) and Rules of Evidence to Guardianship cases. Judge Walker seconded the motion.

Ms. Heying took a roll call vote. Yeas 19, Nays 0, Abstained 4, Absent/Excused 3

VI. General Policy Questions

This item would be deferred to the May 20 meeting. The discussions in today's meeting did address questions 21, 22, and 23. The Commission was asked to review the remaining policy questions and be prepared to discuss and vote on those questions at the May 20 meeting.

VII. Bill of Rights

This item would be deferred to the May 20 meeting. Chief Judge Gibbons suggested Commissioners provide Ms. Buckley comments/edits prior to the May 20 meeting. Justice Hardesty said he hoped to have the Commission approve the Bill of Rights and have the Legislature include it in statute as a basis for interpreting guidelines. Judge Steel suggested adding consequences if the Bill of Rights are violated. The court has the right to remove a guardian and has contempt powers but there needs to clear guidelines on what the court's punitive capacity is in regards to violating the Bill of Rights. Justice Hardesty stated that is an enforcement issue.

VIII. Next Meeting Date

The next meeting will be held on May 20 at the University of Nevada, Las Vegas Law School, Moot Court. The meeting will be held from 11 a.m. to 5 p.m. The Commission will hold another meeting in June to finalize its report to the Court.

IX. Adjournment

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

GENERAL POLICY QUESTIONS

General policy questions:

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

20. Does the Commission wish to make recommendations concerning the use, timing, training, or caseloads of the Public Guardians?
21. Does the Commission wish to make recommendations concerning the use and appointment of private professional guardians?
22. Does the Commission wish to make recommendations concerning the fee structure to compensate guardians and others they hire?
23. Does the Commission wish to make recommendations concerning the process, notice and findings required for the approval of fees to guardians and others they hire?
24. Does the Commission wish to make recommendations concerning the process and timing for filing and evaluating an inventory for the ward?
25. Does the Commission wish to make recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward's estate?
26. Does the Commission wish to make any recommendations in the use of bonds and the allocation of costs for bonds in guardianship appointments?
27. Does the Commission wish to make recommendations concerning the management/administration of the wards estate including the process and notice requirements to sell estate assets?
28. Does the Commission wish to make recommendations concerning the data used to manage guardianship cases?
29. Does the Commission wish to make recommendations concerning the use of forms in guardianship proceedings?
30. Does the Commission wish to make recommendations limiting a guardian's authority to isolate or restrict access to a ward from family and friends?

MEMORANDUM

To: Chief Justice James W. Hardesty

From: Debra Bookout

Date: August 3, 2015

Re: Guardianship Fees in other States

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

Nevada NRS 159.183

1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed:

   (a) **Reasonable compensation** for the guardian's services;

   (b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and

   (c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services **must be based upon similar services performed for persons who are not under a legal disability**. In determining whether compensation is reasonable, the court may consider:

   (a) The nature of the guardianship;

   (b) The **type, duration and complexity of the services required**; and

   (c) Any other relevant factors.

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

A. When a guardian, a conservator, an attorney or a guardian ad litem who intends to seek compensation from the estate of a ward or protected person first appears in the proceeding, that person must give written notice of the basis of the compensation by filing a statement with the court and providing a copy of the statement to all persons entitled to notice pursuant to §§ 14-5309 and 14-5405. **The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.**

. . .

C. Compensation paid from an estate to a guardian, conservator, attorney or guardian ad litem **must be reasonable and necessary**. To determine the reasonableness and necessity of compensation, the court must consider the best interest of the ward or protected person. The following factors may be considered to the extent applicable:

1. Whether the services provided any benefit or attempted to advance the best interest of the ward or protected person.
2. The **usual and customary fees charged in the relevant professional community for the services**.
3. The size and composition of the estate.
4. The extent that the services were provided in a reasonable, efficient and cost-effective manner.
5. Whether there was appropriate and prudent delegation to others.
6. Any other factors bearing on the reasonableness of fees.

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

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

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

a. All fee petitions shall comply with Rule 33 of the Arizona Rules of Probate Procedure.

b. All hourly billing shall be in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour. **No "value billing" for services rendered is permitted, rather than the actual time expended**.

c. **"Block billing" is not permitted**. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.

d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.

e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned among each client.

f. Billable time does not include:

(1) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs; and

(2) Internal business activities of the Professional, including clerical or secretarial support to the Professional.

g. The **hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed**, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:

(1) An attorney may only bill an attorney rate when performing services that require an attorney; a paralegal rate when performing paralegal services; a fiduciary rate when performing fiduciary services; and shall not charge when performing secretarial or clerical services, for example and

(2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example. …

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

a. The **usual and customary fees or market rates charged in the relevant professional community for such services**. Pursuant to Rule 10.1, Arizona Rules of Probate Procedure, market rates for goods and services are a proper and ongoing consideration for the court in Title 14 proceedings.

. . .

c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The **common fiduciary services** are:

(1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;

(2) Routine shopping: six (6) hours per month if the ward is at home, and two (2) hours per month if the ward is in a facility, at a commensurate rate for such services;

(3) One routine personal visit per month by the fiduciary to the ward or protected person;

(4) Preparation of conservator's account and budget: five (5) hours per year;

(5) Preparation of annual guardianship report: two (2) hours per year; and

(6) Marshalling of assets and preparation of initial inventory: eighty (80) hours.

d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause;

e. Each fiduciary and guardian ad litem shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.

f. The total amount of all annual expenditures, including reasonable professional fees, may not deplete the Estate during the anticipated lifespan of the ward or protected person, until and unless the conservator has disclosed that the conservatorship has an alternative objective, such as planned transition to public assistance or asset recovery, as set forth in the disclosure required by Rule 30.3 of the Arizona Rules of Probate Procedure.

g. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order;

h. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;

i. Whether an appointment in a particular matter precluded other employment;

j. The **character of the work to be done**, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;

k. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside regular business hours, potential danger (for example: hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;

l. The **work actually performed, including the time actually expended, and the attention and skill-level required for each task**, including whether a different person could have rendered better, faster, or less expensive service;

m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;

n. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate;

o. The **fees customarily charged and time customarily expended for performing like services** in the community;

p. The degree of financial or professional risk and responsibility assumed; and

q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional

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Washington § 11.92.180.

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

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

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

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the **time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform** the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the **fee customarily charged in the locality for similar legal services**;

(4) amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent; and

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

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

. . .

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

. . .

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

. . .

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

(I) The value of a benefit to the estate, respondent, ward, or protected person;

(II) The number of parties involved in addressing the issue;

(III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and

(IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

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

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

(a) The **time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform** the service properly;

(b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;

(c) (I) The **compensation customarily charged in the community for similar services** with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for

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

(II) As used in this subsection (3), unless the context otherwise requires, "community" means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.

(d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;

(e) Whether and to what extent any litigation has taken place and the results of such litigation;

(f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;

(g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;

(h) The adequacy of any detailed billing statements upon which the compensation is based;

(i) Whether the fiduciary has charged variable **rates that reflect comparable payment standards in the community for like services**;

(j) The **expertise, special skills, reputation, and ability of the person performing the services** and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;

(k) The terms of a governing instrument;

(l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

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

California § 2623. Compensation And Expenses Of Guardian Or Conservator

(a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:

(1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the **court determines is just and reasonable**).

(2) Such compensation for services rendered by the guardian or conservator as the **court determines is just and reasonable**. . . .

§ 2640. Petition by guardian or conservator of estate

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

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

. . .

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

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

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

(a) Standards for determining just and reasonable compensation

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

(1) The size and nature of the conservatee's or ward's estate;

(2) The benefit to the conservatee or ward, or his or her estate, of the conservator's or guardian's services;

(3) The necessity for the services performed;

(4) The conservatee's or ward's anticipated future needs and income;

(5) The **time spent** by the conservator or guardian in the performance of services;

(6) **Whether the services performed were routine or required more than ordinary skill** or judgment;

(7) **Any unusual skill, expertise, or experience brought to the performance** of services;

(8) The conservator's or guardian's estimate of the value of the services performed; and

(9) The **compensation customarily allowed by the court in the community** where the court is located for the management of conservatorships or guardianships of similar size and complexity.

(b) No single factor determinative

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

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

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

Ohio Sup R 73. Guardian's compensation

(A) Setting of compensation

Guardian's compensation shall be set by local rule.

(B) Itemization of expenses

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

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

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

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

(2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease).

(3) $2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period.

(4) 1% of distribution of personal property corpus at conclusion of the guardianship.

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

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

(1) *Income/Expenditure Fee.* Excluding income from rental real estate, four percent (4%) of the first $10,000 of income received, plus three percent (3%) of the balance in excess of $10,000, and four percent (4%) of the first $10,000 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such $10,000. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, “income” shall mean the sum of income as defined in Section 1340.03 O.R.C., plus pension benefits, plus net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.

(2) *Principal Fee.* $3.00 per thousand for first $200,000 of fair market value, and $2.00 per thousand on the balance of the corpus, unless otherwise ordered.

(3) *Principal Distribution Fee.* $3.00 per thousand for the first $200,000 of fair market value of corpus distributed upon the termination of the

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

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

> In guardianship case where the ward has been declared indigent by the court, compensation for the attorneys appointed as guardians shall be computed as follows: Fifty dollars ($50.00) per hour compensation for in-court services rendered by the attorney/guardian; Forty dollars ($40.00) per hour compensation for out-of-court services rendered by the attorney/guardian.
>
> Attorney/guardians shall receive a maximum of Five Hundred Dollars ($500.00) in compensation in such cases in the first one-year period computed from the date of appointment to the date of the application for fees and a maximum of Three Hundred Dollars ($300.00) each year thereafter, unless extraordinary fees have been separately applied for and approved by the court.

Texas § 1155.002. Compensation for Certain Guardians of the Person

(a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The **court may set the compensation in an amount not to exceed five percent of the ward's gross income**.

(b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

§ 1155.003. Compensation for Guardian of the Estate

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

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

Florida § 744.108. Guardian and attorney fees and expenses

(1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a **reasonable fee for services** rendered and reimbursement for costs incurred on behalf of the ward.

(2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria:

(a) The **time and labor** required;

(b) The **novelty and difficulty of the questions involved and the skill required to perform** the services properly;

(c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;

(d) The **fee customarily charged in the locality for similar services**;

(e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;

(f) The results obtained;

(g) The time limits imposed by the circumstances;

(h) The nature and length of the relationship with the incapacitated person; and

(i) The experience, reputation, diligence, and ability of the person performing the service. …

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

The Workgroup proposed the following experienced based fees:

1. Professional guardians with 0-5 years are entitled to bill at a rate of $40.00 per hour.

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

3. Professional guardians with 10 or more years of experienced are entitled to bill at a rate of $70.00 per hour.

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

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

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

Links to Guardian and Attorney Fees and Schedules

Link to NCSC Center for Elders and the Court – Monitoring – Fees and Schedules

Includes links to the Superior Court of California, County of San Francisco, Uniform Local Rules of Court (Rule 14), Texas's Travis County Probate Court's Standards for Court Approval of Attorney Fee Applications, Arizona's approach, and recommendations from the Third National Guardianship Summit (2011):

http://www.eldersandcourts.org/Guardianship/Guardianship-Monitoring/Fees-and-Services.aspx

Links to Florida's Guardian Fees:

http://www.jud6.org/GeneralPublic/GuardianshipForms/GuardianFeePointers6thJud.pdf

http://www.fljud13.org/Portals/0/Forms/pdfs/ejc/fee%20packet-guidelines.pdf

http://www.theledger.com/article/20130203/NEWS/130209876

LEGISLATION SUMMARY

Prepared by

Erica F. Wood, Esq.
Assistant Director
Commission on Law and Aging
American Bar Association
1050 Connecticut Avenue, #400
Washington DC 20036
erica.wood@americanbar.org
(202)662-8693 Phone

Excerpt from Legislation Summary on fees for guardians and attorneys.

V. Fees for Guardians and Attorneys

Payment of attorney fees, as well as court fees and costs, is a significant factor in bringing a guardianship proceeding. Moreover, guardian fees can be substantial, and fee disputes have been frequent.

- *Maryland SB 216* concerns payment of guardian and attorney fees through deductions of the income of a Medicaid beneficiary who has a guardian. The bill specifies that the deduction is $50 per month.

- *Texas HB 1438* provides that court costs including costs of a guardian ad litem, attorney, court visitor, mental health professional and interpreter can now be paid out of a management trust if the court determines it is in the person's best interest.

- *Texas SB 1369* requires courts to submit compensation information on appointments of attorneys, guardians ad litem, guardians, mediators and competency evaluators to the Office of Court Administration.

- *Florida HB 5:*
  - Prohibits a court from authorizing payment of the emergency temporary guardian's fees and attorney fees until the final report is filed at the conclusion of the emergency guardianship.
  - Provides that the court may make a finding in the absence of expert testimony as to the reasonableness of fees requested by a guardian or attorney.

- Addresses fees of the examining committee. If the guardianship petition is dismissed or denied, the committee fees are paid as "expert witness" fees. If the petitioner filed a petition in bad faith and the state has paid the examining committee members, the petitioner must reimburse the state.

- *Ohio Supreme Court Rules.* The new Ohio Rules include several provisions relating to fees:
  - Guardians who receives fees other than through the guardianship must report this to the probate court.
  - Guardians may not receive incentives or compensation from any direct service provider serving the individual.
  - Guardians must itemize all services and expenses relating to the guardianship.
  - Guardians serving ten or more individuals must submit to the court an annual fee schedule that differentiates guardianship fees from legal or other direct service fees.

NRS 159.105 Payment of claims of guardian, claims arising from contracts of guardian and claims for attorney's fees; report of claims and payment.

1. Other than claims for attorney's fees that are subject to the provisions of subsection 3, a guardian of the estate may pay from the guardianship estate the following claims without complying with the provisions of this section and NRS 159.107 and 159.109:

(a) The guardian's claims against the ward or the estate; and

(b) Any claims accruing after the appointment of the guardian which arise from contracts entered into by the guardian on behalf of the ward.

2. The guardian shall report all claims and the payment of claims made pursuant to subsection 1 in the account that the guardian makes and files in the guardianship proceeding following each payment.

3. Claims for attorney's fees which are associated with the commencement and administration of the guardianship of the estate:

(a) May be made at the time of the appointment of the guardian of the estate or any time thereafter; and

(b) May not be paid from the guardianship estate unless the payment is made in compliance with the provisions of this section and NRS 159.107 and 159.109.

(Added to NRS by 1969, 420; A 2003, 1789)

NRS 159.107 Presentment and verification of claims. Except as provided in NRS 159.105, all claims against the ward, the guardianship estate or the guardian of the estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount of the claim, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on behalf of the claimant, who has personal knowledge of the fact. The affidavit shall state that within the knowledge of the affiant the amount claimed is justly due, no payments have been made thereon which are not credited and there is no counterclaim thereto, except as stated in the affidavit. If such claim is founded on a written instrument, the original or a copy thereof with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case the fact of its loss or destruction shall be stated in the claim.

(Added to NRS by 1969, 421)

NRS 159.109 Examination and allowance or rejection of claims by guardian.

1. A guardian of the estate shall examine each claim presented to the guardian for payment. If the guardian is satisfied that the claim is appropriate and just, the guardian shall:

(a) Endorse upon the claim the words "examined and allowed" and the date;

(b) Officially subscribe the notation; and

(c) Pay the claim from the guardianship estate.

2. If the guardian is not satisfied that the claim is just, the guardian shall:

(a) Endorse upon the claim the words "examined and rejected" and the date;

(b) Officially subscribe the notation; and

(c) Not later than 60 days after the date the claim was presented to the guardian, notify the claimant by personal service or by mailing a notice by registered or certified mail that the claim was rejected.

(Added to NRS by 1969, 421; A 2003, 1790)

NRS 159.111 Recourse of claimant when claim rejected or not acted upon.

1. If, not later than 60 days after the date the claim was presented to the guardian, a rejected claim is returned to the claimant or the guardian of the estate fails to approve or reject and return a claim, the claimant, before the claim is barred by the statute of limitations, may:

(a) File a petition for approval of the rejected claim in the guardianship proceeding for summary determination by the court; or

(b) Commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity and any judgment or decree obtained must be satisfied only from property of the ward.

2. If a claimant files a request for approval of a rejected claim or a like claim in the guardianship proceeding for summary determination, the claimant shall serve notice that he or she has filed such a request on the guardian.

3. Not later than 20 days after the date of service, the guardian may serve notice of objection to summary determination on the claimant. If the guardian serves the claimant with notice and files a copy of the notice with the court, the court shall not enter a summary determination and the claimant may commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity as provided in subsection 1.

4. If the guardian fails to serve the claimant with notice of objection to summary determination or file a copy of the notice with the court, the court shall:

(a) Hear the matter and determine the claim or like claim in a summary manner; and

(b) Enter an order allowing or rejecting the claim, either in whole or in part. No appeal may be taken from the order.

(Added to NRS by 1969, 421; A 2003, 1790)

BILL OF RIGHTS DRAFT

LEGAL AID CENTER 1958
of Southern Nevada

Submitted by: Barbara E. Buckley, Esq.
Date: May 10, 2016

Bill of Rights for Individuals Facing Or Under A Guardianship

The State of Nevada recognizes the following rights of individuals (respondents) facing or under a guardianship:

(1) The Right to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the respondent with the eventual goal, if possible, of self-sufficiency;

(2) The Right to be treated with respect, consideration, and recognition of the respondent's dignity and individuality;

(3) The Right to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(4) The Right to have their current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions ~~given consideration;~~be implemented unless not reasonably possible;

(5) The Right to participate in the development of a distribution plan for ~~financial self-determination for~~ all public benefits after essential living expenses and health needs are met and to have ~~access to~~ a reasonable monthly personal allowance or to have access to funds as outlined in a court approved budget;

(6) The Right to receive timely~~y~~, effective, and appropriate health care and medical treatment that does not violate the respondent 's rights granted by the constitution and laws of this state and the United States;

(7) The Right to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(8) The Right to control the respondent's personal environment based on the respondent's preferences and to never be moved ~~for the guardian's personal convenience;~~except if it is in the respondent's best interest;

(9) The Right to ~~-~~ speak or raise concerns, either orally or in writing, ~~complain or raise concerns~~ regarding the guardian or guardianship to the court, licensing authority, or any other entity with authority, regarding any matter, including living arrangements, health care, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(10) The Right to have a copy of all court orders ~~the guardianship order~~ and letters of guardianship and contact information for the court that issued the order and letters;

(11) The Right to receive notice in the respondent's native language, or preferred mode of communication, and in a manner accessible to the respondent, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the respondent's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) The Right to have a court investigator, attorney, advocate or guardian ad litem, if not already approved, appointed by the court to investigate a complaint received by the court from the respondent or any related or involved person about the guardianship if the court determines that such an appointment is warranted;

(13) The Right to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the respondent's choice in the most integrated setting;

(14) The Right to participate in the development of a plan for the ~~self-determination in the~~ substantial maintenance, disposition, and management of assets, including real and personal property after essential living expenses and health needs are met, and to ~~including the right to~~ receive notice and have an opportunity to comment and/or object, orally or in writing, about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) The Right to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) The Right to unimpeded, private, and uncensored communication and visitation with persons of the respondent's choice, except ~~that~~ if ~~the guardian~~ the court determines that certain communication or visitation has caused or is likely to cause~~s~~ ~~substantial~~ harm to the respondent~~:~~

~~(A)~~ the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the respondent from ~~substantial~~ harm. ~~;~~ ~~and~~

~~(B) the respondent may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);~~

(17) The Right to petition the court and to have an attorney ~~retain counsel of the respondent's choice to~~ represent the respondent's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter;

(18) The Right to vote in a public election, marry, and operate a motor vehicle, ~~retain a license to operate a motor vehicle,~~ unless restricted by the court;

(19) The Right to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) The Right to be informed of the name, address, and phone number~~, and purpose~~ of the State of Nevada ~~Division of~~ Aging and Disability Services Division Ombudsman, ~~Ombudsman~~, or its designee or successor, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) The Right to be informed of the name, address, phone number, and purpose of an independent living center, ~~an area agency on aging,~~ an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) The Right to be informed of the name, address, phone number, and purpose of the Division of Financial Institutions and the procedure for filing a complaint against a licensed guardian;

(23) The Right to contact the ~~Department of Family and Protective Services~~Aging and Disability Services Division, ~~-~~Elder Protective Services Unit, to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; ~~and~~

(24) The Right to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the respondent's native language, or preferred mode of communication, and in a manner accessible to the respondent;~~.~~

(25) The Right to ~~not have their estate overbilled or overcharged, including paying high fees for ministerial tasks.~~have all services provided by a guardian at a reasonable rate of compensation and to have a court review requests for payment to avoid excessive or unnecessary fees, or redundant or double billing, and avoid payment of professional fees for ministerial acts;

(26) The right to receive a report on all assets held by any trust;

~~(c)~~(27) The right to receive detailed accountings of all expenditures and fees associated with charges to a respondent's assets, both individually and to any attorney appointed to respondent; and

(28) The right to have family, interested parties, or medical providers speak or raise concerns, either orally or in writing, to the court about issues affecting the respondent, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section.

(2~~8~~9) This section does not supersede or abrogate other remedies existing in law.

REMEDIES:

If a guardian violates the rights contained in this section, 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.

COMMENTS:

1. A number of individuals suggested using "respondent" or "protected person". When the Commission ultimately votes on a suggested approach, the language in this document should be made consistent.
2. NRS 159.177 should be amended to make it clear that accountings must be served on the respondent and their attorney. Trust documents should also be filed to ensure that the respondent is receiving the benefit of their money.
3. On the "Remedies" section, Assemblyman Mike Sprinkle has requested the Research Division of the Legislative Counsel Bureau survey other states for other suggestions.
4. The rights in #16 might also be spelled out in a statute that might include the ability of a guardian, in an emergency, to restrict visits pending a court review. Those procedures seem a bit too detailed to be in the bill of rights.

MEMO

Revision of Chapter 159 to incorporate concept of "Incapacitated Person"

MEMORANDUM

Date: May 10, 2016

To: The Honorable James William Hardesty
Justice of the Nevada Supreme Court

Members of the Supreme Court Commission
to Study the Creation and Administration of Guardianships

From: Kim G. Rowe and Elyse Tyrell

Re: Revision of Chapter 159 to incorporate concept of “Incapacitated Person”

As previously discussed in several Commission meetings, Chapter 159 of the Nevada Revised Statutes dealing with guardianships currently utilizes the concept of an “incompetent person” rather than the concept of an “incapacitated person” in determining if a person should be subject to guardianship. A review of the guardianship laws from other states indicates at the present time a significant majority of states utilize the concept of incapacitation rather than incompetence for describing a person in need of guardianship. Use of the term incapacitated person is also consistent with the terminology used by medical professionals who are opining with respect to individuals potentially subject to guardianship. Additionally, NRS 159.022 currently contains a definition of the term “limited capacity” to described individuals who are capable of making some but not all decisions concerning the care and management of their property. Shifting the focus of Chapter 159 from the use of term incompetent to incapacitated person more closely aligns with the current utilization of the concept of limited capacity to describe persons who are appropriate for a special limited guardianship.

The revisions necessary to Chapter 159 to incorporate the concept of incapacitated person as opposed to incompetent person are straight forward. First, the definition of “incompetent” contained in NRS 159.019 should be eliminated and the term “incapacitated person” inserted in its place. The term “incapacitated person” is defined in various ways in other states statutes. Most definitions appear to be derivative of the definition found in the original version of the Uniform Guardianship And Protective Proceedings Act (“UGPPA”) which focuses on the persons cognitive functioning rather than a disabling condition. The UGPPA definition, with minor modification, can be utilized. The proposed definition would read as follows:

> "Incapacitated person means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individuals lacks the ability to meet essential requirements for physical health, safety, or self care without appropriate assistance."

Currently Chapter 159 of the Nevada Revised Statutes contains eighteen references to the term incompetent including the definition found in NRS 159.019. Those references can easily be revised to reference incapacity or incapacitation without requiring wholesale modifications to the remainder of the Chapter.

TERMINOLOGY

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).

MINOR GUARDIANSHIP STATUTE

DRAFT

Guardianship statutes specific to minors – *proposed* Chapter 159A

Applicability of chapter:

-In addition to the provisions of Chapter 159, this chapter applies to any guardianship proceeding where the ward is a minor. If any provision of Chapter 159 is found to conflict with a provision in this chapter, the provisions in this chapter shall control.

159A.001 (Similar to NRS 159.023) – **"Minor" defined.** "Minor" means any person who is:

1. Less than 18 years of age; or
2. Less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years pursuant to NRS 159A.020.

159A.002 – Suitability of parent

1. A parent of a minor child is unsuitable to care for their child if either:
   (a) They are unable to provide for any or all of the basic needs of their child. Basic needs include:
      (i) Food
      (ii) Clothing
      (iii) Shelter
      (iv) Medical Needs
      (v) Basic education.
   (b) Due to action, or inaction, they pose a significant safety risk of either physical or emotional danger to their child.
2. When determining whether a parent is unable to provide for the basic needs of their child, the Court shall consider any special needs of the child.

159A.003 (Similar to NRS 159.044) – **Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed ward.**

1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.
2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:
   (a) The name and address of the petitioner.
   (b) The name, date of birth and current address of the proposed ward.
   (c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:
      (1) A social security number;
      (2) A birth certificate;

(3) A valid driver's license number;
(4) A valid identification card number; or
(5) A valid passport number.

➥ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) The date on which the proposed ward will attain the age of majority and:

(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and

(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.

(f) The names and addresses of the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;
(2) A valid driver's license number;
(3) A valid identification card number; or
(4) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.

(j) A summary of the reasons why a guardian is needed and ~~recent~~ any available documentation demonstrating the need for a guardianship, including any custodial orders or other court information regarding the custodial status of the proposed ward.

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) If the petitioner is not the parent(s) of the proposed ward, a declaration explaining the relationship of the petitioner to the proposed ward or to the proposed ward's parent(s), if any, and the interest, if any, of the petitioner in the appointment.

(o) If the guardianship is sought as the result of an investigation of a report of abuse or neglect of the proposed ward, whether the referral was from a law enforcement agency or a state or county agency.

(p) Whether the proposed ward or the proposed guardian is a party to any pending criminal or civil litigation.
(q) Whether the guardianship is sought for the purpose of initiating litigation.
(r) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

159A.004 – **Appointment of Investigator** (NRS 159.046 outlines appointment of investigators)

1. Upon filing of the petition, or any time thereafter, the court may order that an investigation into the suitability of a proposed guardian(s) to provide for the basic needs of the ward: food, clothing, shelter, medical needs, and basic education. The court may order an investigation to locate relatives of the proposed ward within the second degree of consanguinity.
2. The court may order that any such investigation, pursuant to paragraph 1, be performed by the appropriate State and/or County agency charged with the authority to conduct investigations into the abuse and neglect of children.

159A.005 (Similar to NRS 159.048) – **Contents of citation.** The citation issued pursuant to NRS 159.047 must state that:

1. A guardian may be appointed for the proposed ward;
2. Proposed ward's rights may be affected, ~~as specified in the petition~~ as well as the rights of the current legal custodian;
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 as a Guardian Ad Litem.

159A.006 (Similar to NRS 159.0483) – **Attorney and/or Guardian Ad Litem for minor ward or proposed minor ward.** A minor ward or proposed minor ward who is the subject of proceedings held pursuant to this chapter may be represented by an attorney and/or Guardian Ad Litem at all stages of the proceedings. If the minor ward or proposed minor ward is represented by an attorney and/or Guardian Ad Litem, the attorney and/or Guardian Ad Litem has the same authority and rights as an attorney representing a party to the proceedings.

159A.007 (Similar to NRS 159.049) – **Appointment without issuance of citation.** The court may, without issuing a citation, appoint a guardian for the proposed ward if the petitioner is a parent who has sole legal and physical custody of the proposed ward as evidenced by a valid court order or birth certificate and who is seeking the appointment of a guardian for the minor child of the parent. If the proposed ward is 14 years of age or older:

1. The petition must be accompanied by the written consent of the minor to the appointment of the guardian; or
2. The minor must consent to the appointment of the guardian in open court.

159A.008 (Similar to NRS 159.052) – **Temporary guardian for minor ward who is in need of immediate medical attention: petition for appointment; conditions; required notice; extension; limited powers**

1. A petitioner may request that the court appoint a temporary guardian for a ward who is a minor ~~who is unable to respond to a substantial and immediate risk of physical~~

~~harm~~ in need of immediate medical attention which he/she cannot obtain without the appointment of a temporary guardian. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward needs immediate medical attention and, without the appointment of a temporary guardian, cannot obtain that immediate medical attention. Such documentation must include a copy of the birth certificate, or other reliable documentation, verifying the age of the proposed ward.

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is in need of immediate medical attention that he/she cannot obtain without the appointment of a temporary guardian; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. After the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not feasible or was not required pursuant to subparagraph (2) or (3) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity, and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, if the court finds by clear and convincing evidence that the proposed ward continues to be in need of immediate medical attention which he/she cannot obtain without the continued appointment of a temporary guardian, the court may extend the temporary guardianship until a general or special guardian is appointed, pursuant to subsection 8.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods~~, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.~~

159A.009 (Similar to NRS 159.052) – **Temporary guardian for minor ward who is not in need of immediate medical attention; petition for appointment; conditions; required notice; extension**

1. A petitioner may request that the court appointment a temporary guardian for the person and/or estate of a minor ward by filing a verified petition.

2. The petition shall state facts which establish good cause for appointment of the temporary guardian. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person and/or estate of the minor. Such petition must include facts which show that:

(a) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 by telephone or in writing before the filing of the petition;

(b) The proposed ward would be exposed to an immediate risk of physical, emotional, or financial harm if the petitioner were to provide notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(c) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

3. A petition seeking the temporary appointment of a guardian on an ex parte basis shall be accompanied by an affidavit explaining the emergency that requires a guardian to be appointed before a hearing.

4. If the parent(s) of the ward have not had care, custody and control of the minor for the 6 months preceding the petition, a presumption shall apply that temporary guardianship of the minor's person is in the best interest of the minor.

5. After the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

6. If, before the appointment of a temporary guardian, the court determined that advance notice was not feasible or was not required pursuant to paragraph (b) or (c) of subsection 2, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity,

and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

7. Not later than 10 court days after the ex parte appointment of a temporary guardian, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 8, if the court finds by clear and convincing evidence that the proposed ward continues to be in need of a temporary guardian, the court may extend the temporary guardianship until a general or special guardian is appointed, pursuant to subsection 9.

8. The court may not extend a temporary guardianship pursuant to subsection 7 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

9. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, unless extraordinary circumstances necessitate a longer period for the temporary guardianship.

10. If for any reason a vacancy occurs in the office of permanent guardian, the court, on a petition filed for temporary guardianship, may appoint a temporary guardian to exercise the powers of guardian until a new permanent guardian is appointed.

159A.010 (Similar to NRS 159.061) – **Preference for parent of minor; other considerations in determining qualifications and suitability of guardian; appointment of public guardian or private fiduciary.**

1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. The appointment of a parent as guardian for the minor must not conflict with a valid order for custody of the minor. In determining whether the parents of a minor, or either parent, or any other person who seeks appointment as guardian for the minor is qualified and suitable, the court shall consider, if applicable and without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents, parent or other person to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents, parent or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS;

(d) Whether the parents, parent or other person has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult; and

(e) Whether the parents, parent or other person has been convicted in this State or any other jurisdiction of a felony.

(f) Whether the minor has not been in the care, custody, and control of the parent for the 6 months preceding the filing of the petition, in which case a rebuttable presumption arises that the parent is not suitable.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve.

3. In determining whether to appoint a guardian of the person and/or estate of a minor, and who should be appointed, the Court must always act within the best interests of the minor child.

4. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

(a) Any nomination of a guardian for the minor contained in a will or other written instrument executed by a parent of the minor.

(b) Any request made by the minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the minor.

(c) The relationship by blood or adoption of the proposed guardian to the minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

(1) Parent.

(2) Adult sibling.

(3) Grandparent.

(4) Uncle or aunt.

(d) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(e) Any recommendation made by:

(1) An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or

(2) A guardian ad litem or court appointed special advocate who represents the minor.

(f) Any request for the appointment of any other interested person that the court deems appropriate.

5. As used in this section, "agency which provides child welfare services" has the meaning ascribed to it NRS 432B.030.

159A.011 (Similar to NRS 159.0755) – **Disposition of estate having value not exceeding by more than $10,000 aggregate amount of unpaid expenses of and claims against estate.** If, at the time of the appointment of the guardian or thereafter, the estate of a ward consists of personal property having a value not exceeding by more than $10,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay those expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the proceeding proper receipts or other evidence satisfactory to the court showing the delivery, and the guardian is released from his or her trust and the bond of the guardian is exonerated.

159A.012 (Similar to NRS 159.076) – **Summary administration.**

1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the ward's property does not exceed $10,000.

2. If the court grants a summary administration, the court may:

(a) Authorize the guardian of the estate or special guardian who is authorized to manage the ward's property to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in NRS 159.117, and hold the investment and all interest, issues, dividends and profits for the benefit of the ward. The court may dispense with annual accountings and all other proceedings required by this chapter.

(b) Terminate the guardianship of the estate and direct the guardian to deliver the ward's property to the custodial parent or parents, guardian or custodian of the minor to hold, invest or use as the court may order.

3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.

4. If, at any time, the net value of the estate of the ward exceeds $10,000:

(a) The guardian shall file an amended inventory and accounting with the court;

(b) The guardian shall file annual accountings; and

(c) The court may require the guardian to post a bond.

159A.013 (Similar to NRS 159.079) - **General functions of guardian of person; establishment or change of ward's residence by guardian.**

1. Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the ward, and has the authority and, subject to subsection 2, shall perform the duties necessary for the proper care, maintenance, education and support of the ward, including, without limitation, the following:

(a) Supplying the ward with food, clothing, shelter and all incidental necessaries, including locating an appropriate residence for the ward.

(b) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the ward.

(c) Seeing that the ward is properly trained and educated and that the ward has the opportunity to learn a trade, occupation or profession.

2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the ward. A guardian of the person may be required to incur expenses on behalf of the ward if the estate of the ward is insufficient to reimburse the guardian.

3. A guardian of the person is the ward's personal representative for purposes of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations. The guardian of the person has authority to obtain information from any government agency, medical provider, business, creditor or third party who may have information pertaining to the ward's health care or health insurance.

4. Except as otherwise provided in subsection 6, a guardian of the person may establish and change the residence of the ward at any place within this State without the permission of

the court. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the ward and which is financially feasible.

5. Except as otherwise provided in subsection 6, a guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the ward to a location outside of this State. The guardian must show that the placement outside of this State is in the best interest of the ward or that there is no appropriate residence available for the ward in this State. The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to NRS 159A.020 or the jurisdiction of the guardianship is transferred to the other state. In any event, the guardian must file a petition for guardianship within the state of the ward's residence within 6 months of the relocation.

6. A guardian of the person must file a petition with the court requesting authorization to move a ward to or place a ward in a secured residential long-term care facility.

7. This section does not relieve a parent or other person of any duty required by law to provide for the care, support and maintenance of any dependent.

159A.014 (Similar to NRS 159.085) – **Inventory, supplemental inventory and appraisal of property of ward.**

1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the ward which comes to the possession or knowledge of the guardian.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to NRS 159A.020.

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

(a) All of the estate of the ward which has come into the possession of the guardian;

(b) All of the money that belongs to the ward; and

(c) All of the just claims of the ward against the guardian.

4. Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

(b) Include the property in the next accounting.

5. The court may order which of the two methods described in subsection 4 the guardian shall follow.

6. The court may order all or any part of the property of the ward appraised as provided in NRS 159.0865 and 159.305.

7. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

(b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

159A.015 (Similar to NRS 159.089) **– Possession of and title to property of ward; guardian to secure certain documents.**

1. A guardian of the estate shall take possession of:

(a) All of the property of substantial value of the ward;

(b) Rents, income, issues and profits from the property, whether accruing before or after the appointment of the guardian; and

(c) The proceeds from the sale, mortgage, lease or other disposition of the property.

2. The guardian may permit the ward to have possession and control of the personal property and funds as are appropriate to the needs and capacities of the ward.

3. The title to all property to which the ward may have a beneficiary interest therein.

4. A guardian shall secure originals, when available, or copies of any:

(a) Revocable or irrevocable trust in which the ward has a vested interest as a beneficiary; and

(b) Writing evidencing a present or future vested interest in any real or intangible property.

159A.016 (Similar to NRS 159.093) **– Collecting obligations due to or for ward.**

1. A guardian of the estate:

(a) Shall demand all debts and other choses in action due to the ward; and

(b) With prior approval of the court, may sue for and receive all debts and other choses in action due to the ward.

2. A guardian of the estate, with prior approval of the court by order, may compound or compromise any debt or other chose in action due to the ward and give a release and discharge to the debtor or other obligor.

3. A guardian of the person:

(a) Shall report to the court the entry of any child support order for the support of the minor ward, or the approval of any public assistance for the minor ward, within 30 days of the entry of a child support order or approval for public assistance. A copy of the child support order or document approving public assistance shall be filed with the notice filed with the court.

(b) If an order for child support is in effect for the support of the minor ward, upon entry of an order for permanent guardianship, that child support shall be immediately assigned to the guardian for the support of the minor ward.

159A.017 (Similar to NRS 159.125) **– Gifts from estate of ward; expenditures for relatives of ward.**

A guardian of the estate, with prior approval of the court by order, may, from the estate of the ward which is not necessary for the proper care, maintenance, education and support of the ward, make reasonable gifts directly, or into a trust, on behalf of the ward.

159A.018 (Similar to NRS 159.185) **– Conditions for removal**

1. The court may remove a guardian if the court determines that:

(a) The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;

(b) The guardian is no longer qualified to act as a guardian pursuant to section 1 of this act [Chapter 437, Laws of Nevada 2015and] or NRS 159A.010;

(c) The guardian has filed for bankruptcy within the previous 5 years;

(d) The guardian of the estate has mismanaged the estate of the ward;

(e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

(1) The negligence resulted in injury to the ward or the estate of the ward; or

(2) There was a substantial likelihood that the negligence would result in injury to the ward or the estate of the ward;

(f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;

(g) The best interests of the ward will be served by the appointment of another person as guardian; or

(h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595.

2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

159A.019 (Similar to NRS 159.186) **– Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor.**

1. Notwithstanding any other provision of law, except as otherwise provided in subsection 3, the court shall not remove the guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the minor.

2. For the purposes of this section in determining the best interests of the minor, the court shall consider, without limitation:

(a) The ability of the present guardian to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(b) The safety of the home in which the minor is residing;

(c) The length of time that the minor has been in the care of the present guardian;

(d) The current well-being of the minor, including whether the minor is prospering in the environment being provided by the present guardian;

(e) The emotional bond existing between the present guardian and the minor;

(f) If the person petitioning the court to replace the present guardian was previously removed from the care, custody or guardianship of the minor:

(1) The level of participation before the petition was filed by the petitioner in the welfare of the minor; and

(2) If applicable, whether the petitioner has received instruction in parenting, participated in a program of rehabilitation or undergone counseling for any problem or conduct

that the court, in appointing the present guardian, considered as an indication of the previous unfitness of the petitioner; and

(g) The mental and physical health of the present guardian.

3. The court may remove the guardian of a minor or appoint another person as guardian if the guardian files a petition to resign his or her position as guardian.

159A.020 (Similar to NRS 159.191) **– Termination of guardianship of person, estate or person and estate; procedure upon death of ward.**

1. A guardianship of the person and/or estate is terminated:

(a) By the death of the ward;

(b) Upon the ward's change of domicile to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile;

(c) Upon order of the court, if the court determines that the guardianship no longer is necessary; or

(1) On the date on which the ward reaches 18 years of age; or

(2) On the date on which the ward graduates from high school or becomes 19 years of age, whichever occurs sooner, if:

(I) The ward will be older than 18 years of age upon graduation from high school; and

(II) The ward and the guardian consent to continue the guardianship and the consent is filed with the court at least 14 days before the date on which the ward will become 18 years of age.

2. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.

3. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the ward of the death of the ward within 30 days after the death.

4. Immediately upon the death of the ward or emancipation of a minor:

(a) The guardian of the estate shall have no authority to act for the ward except to wind up the affairs of the guardianship pursuant to NRS 159.193, and to distribute the property of the ward as provided in NRS 159.195 and 159.197; and

(b) No person has standing to file a petition pursuant to NRS 159.078.

(c) A final accounting must be prepared, filed, served and set for hearing as required by NRS 159.177, 159.179, and 159.181.

(d) If a minor ward is incompetent, as defined by NRS 159.019, a Petition may be filed to transition the case from a Minor Guardianship to an Adult Guardianship for the ward. The Petition must comply with all of the requirements of NRS 159.044 and must be noticed and served in accordance with NRS 159.047 and 159.048.

159A.021 (Similar to NRS 159.205) **– Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination.**

1. Except as otherwise provided in this section or NRS 127.045, a parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child.

2. The appointment of a short-term guardianship is effective for a minor who is 14 years of age or older only if the minor provides written consent to the guardianship.

3. The appointment of a short-term guardian does not affect the rights of the other parent of the minor.

4. A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent:

(a) Whose parental rights have not been terminated;

(b) Whose whereabouts are known; and

(c) Who is willing and able to make and carry out daily child care decisions concerning the minor,

➥ unless the other parent of the minor child provides written consent to the appointment.

5. The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:

(a) The date on which the guardian is appointed;

(b) The name of the parent who appointed the guardian, the name of the minor child for whom the guardian is appointed and the name of the person who is appointed as the guardian; and

(c) The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian. The parent and guardian are not required to sign and acknowledge the instrument in the presence of the other.

6. The short-term guardian appointed pursuant to this section serves as guardian of the minor for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

7. Only one written instrument appointing a short-term guardian for the minor child may be effective at any given time.

8. The appointment of a short-term guardian pursuant to this section:

(a) May be terminated by an instrument in writing signed by either parent if that parent has not been deprived of the legal custody of the minor.

(b) Is terminated by any order of a court of competent jurisdiction that appoints a guardian.

159A.022 (Similar to NRS 159.215) **- Guardian of person of minor child of member of Armed Forces.**

1. A member of the Armed Forces of the United States, a reserve component thereof or the National Guard may, by written instrument and without the approval of a court, appoint any competent adult residing in this State as the guardian of the person of a minor child who is a dependent of that member. The instrument must be:

(a) Executed by both parents if living, not divorced and having legal custody of the child, otherwise by the parent having legal custody; and

(b) Acknowledged in the same manner as a deed.

➥ If both parents do not execute the instrument, the executing parent shall send by certified mail, return receipt requested, to the other parent at his or her last known address, a copy of the instrument and a notice of the provisions of subsection 3.

2. The instrument must contain a provision setting forth the:

(a) Branch of the Armed Forces;

(b) Unit of current assignment;

(c) Current rank or grade; and

(d) Social security number or service number,
➥of the parent who is the member.

3. The appointment of a guardian pursuant to this section:

(a) May be terminated by a written instrument signed by either parent of the child if that parent has not been deprived of his or her parental rights to the child; and

(b) Is terminated by any order of a court.

159A.023 – Parental petition for termination

1. If a parent of a minor ward petitions the Court prior to the ward's emancipation for the termination of a guardianship of their child, the parent has the burden of proof to show by clear and convincing evidence that:

(a) There has been a material change of circumstances since the time the guardianship was created. As part of the change of circumstances, the parent must show that they have restored themselves to suitability as defined by NRS 159A.002, and

(b) The welfare of the child would be substantially enhanced by the termination of the guardianship and placement of the ward with the parent.

2. If the parent consented to the guardianship when it was created, the parent is only required to prove that they have restored themselves to suitability.

GUARDIANSHIP DATA AND TECHNOLOGY COMMITTEE REPORT AND RECOMMENDATIONS

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

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.

Draft Court Rule Regarding NRS 159.057

NRS 159.057 allows a single petition to be filed for two or more wards under certain circumstances. This is due in part to facilitate reduced costs for filing fees and recognizing the similar circumstances often necessitating a guardianship. NRS 159.057 also requires guardians to maintain separate records for each ward. The maintaining of separate records is necessitated by the separate needs, decisions, and subsequent circumstances for each ward. Accordingly, while NRS 159.057 allows a single petition to be filed, a separate case shall be created and maintained for each individual ward, so that subsequent pleadings for each ward are filed and maintained in their respective case.

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):
☐ A Minor ☐ 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
☐ Social Security Number	☐ Social Security Number	☐ Social Security Number
☐ Taxpayer Identification Number	☐ Taxpayer Identification Number	☐ Taxpayer Identification Number
☐ Valid Passport Number	☐ Valid Passport Number	☐ Valid Passport Number
☐ Valid Driver's License Number	☐ Valid Driver's License Number	☐ Valid Driver's License Number
☐ Valid Indentifcation Card Number	☐ Valid Indentifcation Card Number	☐ Valid Indentifcation Card Number

III. Please fill out the information requested for Guardianship

A. Placement of Adult Subject to Guardianship Proceedings

☐ Group Home ☐ Skilled Nursing Home
☐ Secured Facility ☐ Out of State
☐ Guardian ☐ Family/Friends
☐ Host Family ☐ Independently
☐ Support Adult Residence ☐ Other:_____

B. Specify the Type of Guardianship:

☐ Person ☐ Person and Estate
☐ Estate ☐ Limited

C. Specify the Current County/State in which the Guardian(s) reside:

☐ _____ County, Nevada
☐ Other State: _____

D. Specify the Type of Guardian(s):

☐ **Spouse** ☐ **Private:** ***License Number*** **:** _____
☐ **Other Relative** ☐ **Other:** _____
☐ **Public Guardian**

E. Gender and Age

☐ **Male** **Date of Birth:**_____
☐ **Female** **Date of Majority:**_____

F. Estimated Estate Value: ☐ $0 to $2,500 ☐ $2,501 to $20,000 ☐ $20,001-$200,000 ☐ $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