

Nevada Supreme Court

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



April 22, 2016, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING NOTICE AND AGENDA

Name of Organization:

**Supreme Court Commission to Study the Creation and Administration of Guardianships
In Nevada's Courts**

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

Place of Meeting:

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

AGENDA

- I. Call to Order
 - a. Call of Roll and Determination of Quorum
 - b. Approval of Meeting Summary from April 1, 2016 (for possible action)(pages 5-18)
- 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. Attorney Fees (*John Smith and Homa Woodrum*) (pages 20 – 37)
- IV. Discussion on Subject Matter Recommendations (General Policy Questions 22-29) (for possible action) (pages 39-40)

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

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

- V. Review Bill of Rights (for possible action) (*pages 42 -44*)
 - a. Legal Aid of Southern Nevada -Draft

- VI. Terminology/Definitions (for possible action)
 - a. Medical Language (*Kim Rowe and Elyse Tyrell*)
 - b. Respondent, Ward (*Stephanie Heying*) (*pages 46 – 50*)

- VII. Updates
 - a. Minor Guardianship Subcommittee (*Judge Walker*)
 - b. AB 325 – Private Professional Guardians Licensure (*Kim Spoon and Susan Hoy*)
 - c. Legal Aid Center of Southern Nevada (*Christine Miller*)
 - d. Data/IT Subcommittee (*Hans Jessup*)
 - e. Guardianship Filing Fees (*Stephanie Heying*) (*page 52*)

- VIII. Other Business
 - a. Nomination of Guardianship – Power of Attorney Statutes (*Rana Goodman and Julie Arnold*)

- IX. Future Meeting Dates
 - a. May 20, 2016 – All Day In-Person Meeting, Moot Court UNLV Campus

- X. Adjournment

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

MEETING SUMMARY

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING SUMMARY

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

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

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

Place of Meeting:

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

Members Present:

Chief Justice James W. Hardesty, chair
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge Egan Walker
Assemblyman Michael Sprinkle
Assemblyman Glenn Trowbridge
Trudy Andrews
Julie Arnold
Debra Bookout
Rana Goodman
Susan Hoy
Sally Ramm

Kim Rowe
Terri Russell
Christine Smith
David Spitzer
Kim Spoon
Susan Sweikert
Elyse Tyrell

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 Creation and Administration of Guardianships (Commission) to order at 1 p.m. A quorum was present.

b. Approval of Meeting Summary from February 26, 2016, meeting.

The February 26, 2016 meeting summary was unanimously approved with one edit. Ms. Sally Ramm stated she was not in attendance at the February 26th meeting; an edit would need to be made to the summary to reflect that she was not present.

II. Public Comment

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

III. Update

The press release from Attorney General Adam Laxalt, Clark County Sheriff Joe Lombardo, and Clark County District Attorney Steve Wolfson, announcing the joint investigative and prosecution team for guardianship cases, was distributed to members via email. Justice Hardesty has been working with the Attorney General since the Commission unanimously voted to send a letter to law enforcement to encourage increasing their approach in dealing with investigations concerning the subject matter of guardianship and elder exploitation. The Attorney General's Office coordination of this effort is being extended statewide to the district attorney's offices around the state.

Justice Hardesty and Ms. Stephanie Heying have begun to draft the outline for the Commission's formal report. Justice Hardesty invited Commission members to send suggestions/information/recommendations to him and Ms. Heying that fit into areas that the Commission has voted on or will be voting on or specific changes to statutes or rules that members would like included in the final report no later than April 30. The goal is to have a draft report that covers all of the actions on the major policy questions and then some specific recommendations within those policy questions for the Commission to look at and spend some material time with at the May 20 meeting.

Justice Hardesty asked Mr. Kim Rowe and Ms. Elyse Tyrell to address the reconciliation of medical language with language currently used in the statute. Justice Hardesty would provide Mr. Rowe and Ms. Tyrell the contact information for a few physicians to have them weigh-in on this discussion.

Justice Hardesty said the Commission should decide on terminology referring to the person who is the subject of a guardianship. Nevada statute currently refers to this person as the Ward. This would be a topic on the April 22 agenda. Members were asked to think about what term should be used so

recommendations could be made at the April 22 meeting. Justice Hardesty said one of the better suggestions he has seen from the materials is the term Respondent, but he is open to suggestions. The April 22 agenda would include a discussion about the Bill of Rights. The Bill of Rights drafts would be distributed to the Commission prior to the April 22 meeting for their review. The Commission would vet the contents of the Bill of Rights at the April 22 meeting for those persons who might be subject to guardianship.

IV. Presentation

a. Eighth Judicial District's Data Collection Process

Judge Dianne Steel, Mr. Mike Doan, and Mr. Riley Wilson provided an overview of the data collection process for guardianship cases in the Eighth Judicial District Court (Court).

Judge Steel provided background information on the Court's case management system (CMS). Guardianship cases were transferred from the old CMS (Blackstone) to the new CMS (Odyssey) beginning in 2007. Guardianship cases were originally entered into the CMS as one case type, guardianship, with no distinction between adult or minor guardianship cases. The current CMS allows the Court to break the case types out separately. Current active caseloads span from 1980 to current date. In 2014, the Court began to review guardianship data and programs. Historically, the calendars in adult guardianship cases in Clark County had been heard on Wednesdays between 9 a.m. and noon. The cases were handled through a two-tier system with a master hearing the case and then the judge approving the case following the findings made by the master. There are a lot of moving parts in each case.

Judge Steel became the Guardianship Judge in June 2015. Judge Steel was looking at 8700 open and active cases when she became the Guardianship Judge. The Court immediately put a team together to review the guardianship caseload. The clerk's office is involved so they can be sure they are identifying the cases properly and that items are being filed correctly. The IT Department is involved and has reviewed how the CMS can be set up to ensure the Court is collecting the information needed to be able to see what is going on in each case. The Court has hired a compliance officer and has put a team together to develop a process to identify which cases are in and which cases are out of compliance. The Judicial Department is working as a team to collect data and assist in tracking caseloads and areas where other information is required and/or needed.

Mr. Doan said the Court began creating a guardianship compliance report in 2014. The report provides the Court the ability to review the caseload. The Court showed a caseload of roughly 8500 cases in 2014. That number climbed to roughly 8700 cases by 2015. In July of 2015, the Court began case management and review. The Court created spreadsheets, which break out each case and have hyperlinks to documents. The spreadsheet shows what is in compliance, what is out of compliance, what the case type is, and the status of the case. There are 15 different case types so each evaluator has to be sure they have captured the essence of each order that has been filed in the case, which means each person had to read all the orders in the case to determine if anything was missing. The Court, with the assistance of the Senior Judges Program, reviewed the 8700 case to determine if the cases should remain open, if there was anything outstanding, and if the case should be closed.

Justice Hardesty asked Mr. Doan to interpret the percentages shown under the headings entitled Guardian Compliance Report. Mr. Doan explained the Court knew the percentages could not be accurate. This was the Court's first attempt in 2014, based on the events in the case and the documents that were filed, to try to get the logic and determine the percentages. The percentage shown for annual accountings was 3.62%. The Court knew 3.62% was

low, so they looked at the CMS configuration and identified the events were not being recorded properly in the CMS e.g., the person filing the documents identified the documents incorrectly and/or the clerk's office had identified the documents incorrectly for the CMS. Justice Hardesty wanted to clarify that the slide is not suggesting that the facts are in 8500 cases there were only accountings in 3.62% of the cases. Judge Steel responded no that is not what the Court is saying. The computer had not been using the appropriate logic and people entering the reports were not properly titling the reports to get the right event entered. Justice Hardesty noted he does not want there to be a misinterpretation of the status of the files even though the computer might have offered some odd statistics, those statistics do not represent the facts. Judge Steel and Mr. Doan said that is correct.

Once the cases were scrubbed, the Court began to set hearings, noticing people to update the status of the case. In order to do this without a tremendous burden on court resources was to automate the system. The Court was able to automate the notices from the CMS and envelopes were mailed. The initial backlog included roughly 1800 cases. Minor guardianship cases were separated from the adult guardianship cases. Some minors had already emancipated so the Court was able to close those case files. The Court began to organize the cases that were identified as being out of compliance and sent out orders to show cause. Many of the people that came to court did not know they were required to provide an annual report so this was an educational process. Guardians should be trained and educated so they are aware what is required of them as guardians. The Courts subsequent letters were invitations to see how the Court could help them get back in compliance.

The Nevada Supreme Court has provided judicial resources through the Senior Judge Program. A senior judge has been coming to the Court to hear between 80 – 150 cases every Friday. The judge reviews whether the guardian is in compliance, whether they have responded when required, whether the Court has correct addresses, etc. This has helped the Court bring their numbers down.

The Court has also started an in-house dashboard reporting system. Everyone involved in the guardianship cases receives a custom report (between 107-120 pages) each morning. The report identifies which cases are in and out of compliance. The report breaks down every case that is open, active or adjudicated. Currently, the court has 390 open and adjudicated cases that include an annual report which are down to 3,100.

The Court is still reviewing their caseload to identify if some cases should be closed so some of the percentages shown in the PowerPoint are not accurate because the case might have closed but that has not been reflected in the CMS yet. Therefore, a certain number of cases would show they have not received an annual report but they are not out of compliance because the case should be closed so an annual report would not be required. As the Court continues through this review, it continues to see improvements in the percentage of cases in compliance.

Mr. Riley Wilson, compliance officer, reviews all the petitions filed to see if there is an issue and if the case needs to be escalated. The Court began tracking escalations in adult guardianship case in May 2015. Mr. Wilson noted the escalations could include someone calling in and saying I want to make a complaint about this or it might be something that is needed for the Ward. The escalation does not only include complaints. Mr. Wilson also makes referrals to the Legal Aid Center of Southern Nevada if it looks like the Ward might need an attorney immediately.

The Court adjudicated over 5,000 cases, automated over 3,800 notices that were sent out, and have held over 4,500 hearings. The Court averages 66 new guardianship case filings a month. The caseload in 2014, showed 8,333 open and 195 reopened cases for a total of 8,525 cases. The current caseload is now 2,378 adjudicated, 1,084 adjudicated

with an annual hearing required, 282 reopened, and 132 open cases. Case types break down to 3,031 guardianships of person and the estate, 658 person only, 160 estate only, and 27 sub-type to be determined. There were 2,279 cases with attorney representation, and 1,597 were pro se. The Court reviewed Wards represented by attorneys and found 3,282 Wards did not have attorney representation and 594 had attorney representation. The Court is working to improve the representation of attorney for the Ward. Justice Hardesty asked if the Court had attempted to determine the percentage of the 3,800 cases where the Ward is indigent and those who are not indigent. The Court has not been tracking this because the CMS does not have that capacity at this time. Additionally, the Court would not be able to identify whether a person was indigent until they receive the first inventory.

Future efforts the Court is working on include the implementation of the "My Minnesota Conservatorship" aka CAP software, the implementation of automated real-time notifications and mailings, and the National Standards for Guardianship Reporting. The Court has come a long way in the last year to make things better and has listened to the community members. The Administration has put in additional time to improve the system and is working hard to clean-up the case files and make this a positive experience for all involved.

V. Discussion on Subject Matter Recommendations (General Policy Questions 14, 16 – 30)

The Commission reviewed the remaining General Policy Questions.

Question 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?

Justice Hardesty said question 12 ask if the Commission favors the concept of a "limited guardianship." The term "limited guardianship" is being used generally as a guardianship that is narrower in focus as opposed to ALL of the decision making for a Ward. Does the Commission favor the utilization of "limited guardianships" in circumstances where the individual's needs could be handled through least restrictive means, similar to what Texas is currently doing? Justice Hardesty noted Mr. Hank Cavallera had information in a prior meeting, which included a brief history on the use of "limited guardianships" in Washoe County.

Discussion

Ms. Elyse Tyrell provided examples where a "limited guardianship" is used:

- Long-term care planning – Helping family's complete court ordered asset divisions so the institutionalized spouse could ultimately qualify for Medicaid assistance. Under federal and state statutes, there must be a court order division, which is done through the family court system. Once the court order division is completed, an affidavit asking the court to terminate the guardianship would be filed.
- Special Needs Trust – A person is already a recipient of benefits or could be a recipient of benefits and has turned 18 and owns some assets or a family member has passed away leaving them some assets. The assets might not be significant enough to take care of them in the long-term but a Special Needs Trust could be set up and used to supplement the person's care. Federal law requires a Special Needs Trust be created by a court order or guardian. A petition might be filed asking for a Special Limited Guardianship for the purpose of creating the Special Needs Trust and getting it funded and then a petition would be filed to terminate the case when that is completed.

Judge Egan Walker carries Judge Frances Doherty's proxy today and Judge Doherty strongly supports the concept of least restrictive alternatives for guardians. The Second Judicial District does utilize limited guardianships. The statute does not contemplate the term "limited guardianship" there is a special guardianship. The court has imposed "limited guardianships" by judicial creation in Washoe County with some frequency.

The Commission discussed the concern of the use of a "limited guardianship" in cases where the person subject to the guardianship has a progressive disease e.g., Alzheimer's disease. The progressive disease can change quickly causing the guardian and person subject to the guardianship to have to come back to court to expand the limited guardianship. This could create additional costs to guardians, the person subject to the guardianship, and stretch court resources further.

Justice Hardesty said based on the Commission's prior votes on questions 13 and 15 and its discussion regarding the approach in Texas, there is a dynamic shift in the way guardianships are approached. When a petition for guardianship is filed, we do not begin by saying is this person in need of a guardian and then we appoint a guardian. The judge is required to identify or isolate specific needs for which the guardianship is being sought, make findings that there are no other alternatives, and then only appoint a guardian for the specific needs subject to the petition. The guardianship might require a full guardianship due to the capacity or incapacity of the person who is the subject of the petition. The process should begin with the judges asking the questions – How broad does this guardianship need to be? What is the real purpose we are trying to address?

Mr. Kim Rowe agrees with the concept noting there has been general recognition that the use of a "limited guardianship" is appropriate in some cases. Mr. Cavallera's concern and the concern Ms. Kim Spoon pointed out is that this needs to be vetted very carefully on the front-end. There are cases where a person's capacity changes quickly or sequentially over time and they continue to come back to court every few months to change the limited guardianship. There is a cost to that and limited resources are being used to extend the limited guardianship.

Justice Hardesty said to the extent that the Commission is considering narrowing the scope of the guardianships there needs to be language in statute recognizing this. The current statute does not include this language, which is a critical component of this recommendation.

Assemblyman Trowbridge supports the "limited guardianship" concept. He suggested there might be a need for language in the statute that delineates the judge's discretion in the determination of "limited guardianships." Careful vetting is too vague. Assemblyman Trowbridge stated judges should have access to the appropriate level of persons in this area i.e., general practitioner, physician, psychologist, who could provide the court with the information required to determine whether a "limited guardianship" is appropriate.

Judge Porter favors this concept. Most of the people she sees are severely incapacitated and do need a general guardian. Judge Porter would like to see some laws that provide judges information to narrow the guardianships.

This is a detail-oriented area and the Commission needs to be sure this is applied consistently throughout the state and that judges have the same materials and tools to work with. Justice Hardesty pointed out the purpose of this policy discussion is to present this information to the Nevada Supreme Court, which would be subject to uniform rules that govern every judicial district in Nevada. If the Commission adopts person-centered planning as a policy approach, where access to guardianships is only for the areas in which the subject of the guardianship has specific needs, then the statute would need to provide the judge the discretion to use the "limited guardianship" as a way of accomplishing this. It was noted Nevada Revised Statute (NRS) 159.0801 does address special guardian of person with limited capacity, which provide this discretion. The Commission might need to redefine "special guardian." It is

critical for the judge to make specific findings as to the nature of the incapacity, governing the extent and scope of the subject of the matter of guardianship. NRS 159.0801 was designed for those very special need areas so its use is limited. In making the dynamic shift, you change the scope, and the first inquiry is not a general guardianship but the question – What is the nature of the incapacity? Once that has been identified, the scope of the guardianship is defined around the capacity.

The Commission discussed the concept of person-centered and least restrictive means and the concern that the courts do not have enough resources to allow them to make this determination. In Clark County, only 15% of the cases have an attorney for the Ward. The remaining petitions are prepared by the proposed guardian, many of whom have been told by a doctor that they need a guardianship. The court has information on a physician's certificate that may say dementia or Parkinson's but the doctor does not come to court to testify. Courts would need additional resources to implement this concept.

The Commission should be recommending that the judge ask more questions before a guardian is appointed. It must be compelled and in addition to requiring the appointment of lawyers in every case, this process begins with the judge's assessment rather than a conclusory petition.

The current statutory standard requires clear and convincing evidence. In addition to practical implications the courts might face, there is an additional practical implication some of the medical providers might have concerns about e.g., how much information is too much information from a privacy standpoint. Providers are often walking a fine line when filling out the physician certificates. Mr. Rowe suggested a specific court order to augment the physician's certificate process that says the court is telling you it is permissible to attach the notes of your consult. There is a need for something that protects the physicians so they are willing to provide additional medical information. Washoe County is working on using a uniform petition that ask very clear questions about whether least restrictive alternatives have been explored. If so, what were they, if not, why would the alternatives not work. It is important to have uniform forms that everyone is familiar with and the judges are comfortable with and know where to look to find information to decide if a narrower or more appropriate guardianship should occur.

The Commission discussed the confidentiality of these files. There might be HIPAA or other statutes that govern the protection against the disclosure of the information included in the physician's statement as well as the disclosure of a person's social security number and other personal identifying information. Ms. Julie Arnold suggested filing the physician's statement and any other personal identifying information in the confidential section of the case file so that this information was not a public record. Anyone who is properly entitled to notice would have access to this information, including the basis for which the petition is being sought. Mr. Rowe noted his office references Administrative Docket 410 - Presumptively Confidential Documents when attaching medical records. Medical records are filed separately so the public does not have access to those confidential records.

The Commission has discussed 3-4 different subjects within this topic. Justice Hardesty said without getting into the specifics of how the statute would be modified, is it consistent with the approach the Commission has taken that "limited guardianship" would be used as a starting point, not as the exception when making these findings and determinations.

Judge Steel moved, without getting into the specifics of how the statute would be modified, question 12 is consistent with the approach the Commission has taken in its recommendation to use limited guardianships as a starting point, not as the exception when making these findings and determinations. Ms. Tyrell seconded the motion.

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

The Commission discussed the nature of the affidavit i.e., the nature of the supporting information that is being supplied. Commission members agreed that the clear and convincing standard is the appropriate standard. More data or specific information needs to be included within that context, whether it is supplied as part of the petition or as a confidential attachment, there needs to be a greater level of evidence for the judge to be able to make the decision. This item would be referred to as question 12A.

Ms. Christine Smith moved to support the concept, which would require greater evidence for the judge to make the determination of exactly what the incapacity is and how that is documented and supported. Ms. Hoy seconded the motion.

Discussion

The Commission discussed how to protect physicians so that they are comfortable providing information given the privacy issues. The most concrete way would be to have a specific court order that any disclosure made is part of the court order. Justice Hardesty asked Mr. Rowe and Ms. Tyrell to discuss this issue as a part of their earlier assignment to find out from physicians how this could be augmented to address their concerns.

Justice Hardesty stated the threshold question is does the Commission agree, as a matter of best practice, that the appropriate level of evidence should be a requirement and supplied to the judge to meet the clear and convincing standard to appoint a guardian. Judge Steel asked if this applies to the final decision of the judge or for a temporary decision.

The Commission discussed temporary guardianships. A 10-day temporary guardianship is reasonable cause. It is a lower and different standard. Judge Walker suggested the Commission consider that the documentation in support of the petition i.e., the physician's certificate (exhibit 1) be given a higher level of protection by statutory process or court rule and to require that it is more robust. Justice Hardesty stated his point is in the judge's exercise of discretion a heightened level of evidence should be required, even in a temporary guardianship. The temporary guardianship statute starts out with reasonable cause but the standard to extend the temporary guardianship beyond the 7 days is clear and convincing.

Mr. David Spitzer noted that a petitioner and the court have subpoena power, and if doctors are not doing what they are supposed to do in presenting evidence then the last resort could be a subpoena. Even if there is, what is considered an adequate capacity evaluation, statement, or affidavit from the doctor in some cases it is still hearsay. If there is a contested hearing, this might not be admitted on its face and there should be a right of cross-examination. Ultimately, in terms of requiring a judge to make a finding that the evidence is clear and convincing there simply has to be information that is more detailed and it has to be in some form that ultimately would be subjected to cross-examination to contest the hearing.

Assemblyman Michael Sprinkle agreed strongly with what Judge Walker stated and if the Commission is looking at any kind of statutory changes for discretion with judges this higher level has to exist as far as he is concerned as a legislator. The fact that there is a concern about private information being out there then the Commission needs to get that protection put in this as well.

Justice Hardesty stated the motion only pertains to adult guardianships. A working group is drafting a separate set of minor guardianship statutes so the Commission would defer the application of this on minor guardianships until it has the draft.

Ms. Christine Smith moved to support the concept, which would require greater evidence for the judge to make the determination of exactly what the incapacity is and how that is documented and supported as it pertains to adult guardianships. Ms. Hoy seconded the motion.

Ms. Heying took a roll call vote. Yeas 19, Nays 0, Abstain 1, Excused/Absent 6.

The details would include the process of how you get the evidence to the judge and assure the confidentiality protections of the respondent or proposed ward. In addition, identify how to get the resources to those who are in need of those services but cannot supply them.

Question 14: Does the Commission wish to make recommendations concerning the use, timing, scope, process and participants in mediation in guardianship proceedings?

Discussion

Justice Hardesty stated there had been discussion regarding the use, timing, and scope of mediation in guardianship proceedings. Judge Doherty had provided a presentation to the Commission regarding the successful use of mandatory mediation process in guardianship cases. The question posed to the Commission would be to recommend the use of mediation in guardianship proceedings and how the program would be implemented. Judge Steel stated there was no resource available to send individuals to mediation in Clark County; however, she does encourage the use of mediation. Judge Porter stated mediation had not been utilized in Elko County due to the lack of mediation resources. Justice Hardesty asked if the Commission would favor a mediation program to be established by the districts. Justice Hardesty clarified mediation would not be mandated but the Commission would favor the existence of the availability of mediation services to be implemented in the districts.

Judge Walker moved that the Commission vote in favor of promoting mediation where it would be available in districts in Nevada. Ms. Goodman seconded the motion. Assemblyman Glenn Trowbridge responded yea with the understanding that the referral to the mediator be at the discretion of the judge.

Ms. Heying took a roll call vote. Yea 19; Nay 0; Excused/Absent 7.

The Commission would progress on this issue and Justice Hardesty would reach out to Justice Cherry and the Senior Judges Program to see if those judges would be available for use in guardianship settlements.

Question 16: Does the Commission recommend rules adopted by the Supreme Court to evaluate Court supervision of guardianships including training, staffing, scheduling and caseload limits?

Discussion

Justice Hardesty stated the question was intended to provide direction to the Supreme Court that rules would be necessary in respect to each area to create uniformity as to how to evaluate Court supervision in each area.

Judge Walker moved that the Court recommend rules adopted by the Supreme Court to evaluate Court supervision of guardianships including training, staffing, scheduling and caseload limits. Judge Steel seconded the motion.

Ms. Heying took a roll call vote. Yea 19; Nay 0; Excused/Absent 7.

Question 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?

Question 18: Does the Commission favor the use of auditors independent of the Court system to evaluate financial records, fee request and other petitions/motions raising financial issues concerning the ward?

Discussion

Justice Hardesty stated question 17 is related to question 18, which proposed the use of auditors independent of the court system to evaluate financial records, fee requests, and other petitions/motions. Resources may make it difficult to select auditors and may make it difficult to make them independent of the court system, but they could operate as employees of the court system independent of the guardian judge. The Commission would discuss securing investigative and auditing services that could provide reports to the guardian judge that evaluates the need for guardianship as well as the petitions received by judges. The question presented to the Commission would be if the Commission would rely on EPS or some other entity independent of the court system to conduct investigations as needed in connection with the petitions. Ms. Sally Ramm stated EPS is a social services model and the office conducts investigations. The investigations are often presented to the guardianship courts. There are limitations, which include the primary goal to relieve the situation at the time using social services. The investigations are not as forensic as they would be if regular investigators were looking at facts of the case that may or may not be criminal or prosecutable. Their investigations are strictly social service investigations done by social workers. Elder Protective Services is financed through the Aging and Disabilities Services Division and serves people of all ages. Elder Protective Services, by law, are restricted to service people over 60 years of age and that would need to be changed. Ms. Ramm noted another change that would need to happen in order for EPS to take over investigations for the guardianship court would be an increase in personnel. Elder Protective Services currently had 33 licensed social workers doing investigations on elder abuse throughout the state and it had become difficult to retain staff in those positions. There may be other requirements needed for an investigator, which licensed social workers do not have. Because EPS is often used as a referring agency for guardianships, there may be a conflict of interest in EPS conducting investigations. Ms. Ramm stated EPS might not be the most appropriate entity for investigations of guardianships.

Justice Hardesty asked if the Commission would favor the use of investigators who might be employees of the court system but not of the guardianship judge, and independent auditors or accountants employed by the court system to evaluate financial records, fee requests, fee awards, etc. According to the presentation made by Clark County, annual reports are being read within about one day from the time they are provided; however, there were questions regarding whether the person reading the annual reports were capable of offering a meaningful evaluation of the reports. Justice Hardesty stated the court would need to gather expertise to help support its efforts in order to obtain investigators that could conduct investigations as necessary in connection with a proposed guardianship proceeding. Auditors or accountants may be able to provide experience in assessing the accuracy, viability, and

protocol of an accounting that had been presented. It would be crucial to have expertise attached to the reports. Judge Porter added it would be beneficial to have the court appoint the professionals at their discretion because the services would not be necessary for all cases and funding would be an issue to consider as well. Justice Hardesty stated having one-accountant review petitions, where needed, would create a shared service, which would be useful to all judges in the area, as well as investigators and other professionals. Mr. David Spitzer added the public guardian in Washoe County had undertaken investigations at the suggestion of the court. Before a public guardian is appointed a petition is filed, the court asks for information, the public guardian agrees to conduct an investigation over the course of about four weeks, and reports are then given to the court. Mr. Spitzer added if the Commission would move towards a model in which a Ward or Respondent is represented by an attorney it should be the responsibility of the attorney for the Respondent to vet the fee requests. If the Respondent's attorney did not have the expertise in order to provide recommendations to the court, having an accounting professional would be a useful resource to have in those cases. Justice Hardesty stated the use of auditors, investigators, or accountants would be a resource the court needs. Justice Hardesty stated it would be critical for the State of Nevada to recognize that if the courts are to assume the tasks, resources would be necessary in order to proceed the right way. Assemblyman Michael Sprinkle stated that making the investigations, including the audits, independent is necessary and would need to be a priority. Ms. Kim Spoon clarified that when investigations are discussed, the Commission is discussing investigating once the petition has been filed, not the initial investigations when a guardianship is referred to someone and the referral is investigated. Justice Hardesty clarified the investigations discussed under question 17/18 are investigations conducted after a permanent or temporary petition is filed. Justice Hardesty suggested the Commission call upon the State of Nevada and County Commission to supply to the court system investigators as necessary and auditors and accountants as necessary, to evaluate financial records, fee requests, and other petitions/motions and financial issues. Justice Hardesty shared Mr. Jay Raman's comments with the Commission.

Judge Steel moved to approve the use of investigators, as necessary, and auditors or accountant, as necessary, to evaluate financial records and fee requests. Ms. Trudy Andrews seconded the motion.

Additional Discussion

Mr. Spitzer confirmed the model would be similar to the court services model used in justice and district courts to monitor criminal defendants who are out on their own release, an individual separate from a specific judge but who would still work under the court system. Justice Hardesty added the individual would also provide a report to the judge and to the parties involved in a case.

Ms. Heying took a roll call vote. Yea 19; Nay 0; Excused/Absent 7.

Question 19: Does the Commission favor recommendations concerning the training, licensure or other matters pertaining to the practice of private professional guardians?

Discussion

Justice Hardesty stated question 19 has been addressed by the Legislature; a licensure component had been enacted pursuant to Assembly Bill 325. Ms. Spoon reported that she had attended the second licensure workshop this morning, and the first hearing in front of the Legislative Committee would take place the following week, followed by

the vote from the Legislative Committee. There was no date set for the vote but the Legislative Committee had projected completing their work by June 1, 2016.

Justice Hardesty suggested Commission members provide amendments to the existing licensure statutes and regulations for the Commission to discuss at the May meeting. The licensure process had been enacted and the question would be whether the Commission should recommend amendments to the statute or the regulations being considered.

Ms. Spoon expressed concern regarding Assembly Bill 325 on the subject of summary administrations no longer applying to private professional guardians. Ms. Spoon stated she would like the Commission to discuss possible amendments to Assembly Bill 325 for changes in the Legislature. Ms. Spoon stated that according to the language private professional guardians would not be able to petition for a summary administration and would be required to process an accounting each year for individuals, although there may not be funds to pay for an individual's attorneys, and for private professional guardians to go to court to do so. Private professional guardians would still need to account for the individual's income and how it is being used where no one else has to and they would need to pay for that as well as the attorneys. Assemblyman Sprinkle stated he would appreciate the opportunity to research the topic before commenting.

Justice Hardesty deferred question 19 until the May meeting and asked Commission members to provide additional edits or amendments to the Commission in May.

Question 20: Does the Commission wish to make recommendations concerning the use, timing, training, or caseloads of the Public Guardians?

Question 21: Does the Commission wish to make recommendations concerning the use and appointment of private professional guardians?

Discussion

Justice Hardesty stated the issue on the subject of the use, timing, training, or caseloads of the Public Guardians arose from concerns that there did not appear to be regulations in place that set training or caseload requirements for public guardians. Mr. Spitzer concurred there should be regulations in that regard or some definitions regarding what public guardians need to do. Washoe County had encountered some resistance to tasks such as filing petitions and to agreeing to take guardianships for individuals still capable of living in their own homes with the excuse that there are liability issues behind that. Mr. Spitzer agreed there would need to be discussion regarding what kind of cases the public guardian, if not mandated, should be encouraged to take. Ms. Sally Ramm added the counties all have different requirements, rules, and methods of operation in every public guardian's office, some of them are based on caseload and some have other basis. Ms. Ramm stated the barrier to this would be the counties would be the entity who would be in charge of the public guardians and the benefit would be to get standardized rules and processes in place throughout the state. Ms. Julie Arnold expressed concern regarding the placement of mandates. For example, if a mandate stated a caseworker could have no more than 25 Wards there may be more need than there are caseworkers, making it impossible for the public guardians to operate based on the current funding. Justice Hardesty stated National Standards for Best Practices has a caseload limit in place and therefore the limit should be

mandated. The Supreme Court established the Indigent Defense Commission under Administrative Docket 411 and the Indigent Defense Commission developed performance standards by which public defenders are expected to practice criminal law and at the same time established caseload standards. The caseload standards have been presented as a mandate because counties are required to provide public defenders. Judge Steel agreed the Commission should make recommendations regarding best practices and caseloads in order to serve the best interests of the Wards. Justice Hardesty stated a specific number for caseloads had not been discussed; however, as a policy question the Commission would need to vet questions 20 and 21. Justice Hardesty stated there would be an amendment added to question 20, which would state use and timing and training, or caseloads and selection. Ms. Ramm suggested adding the review of statutes for more consistency. Justice Hardesty asked for a motion combining questions 20 and 21 with the understanding that question 20 would include public guardian statutes. The Commission discussed adding a separate policy question stating the Commission would make recommendations concerning the training and appointment of guardians who are not public or private professionals. There would need to be similar requirements put in place that those individuals would need to satisfy before they are appointed. The Commission discussed adding the training and support would be available to individuals who are not public or private professionals. Ms. Hoy suggested the Commission should address training for families. Justice Hardesty suggested treating this as a separate question. Assemblyman Trowbridge expressed concern with fixed caseload requirements, noting a recommendation is ok but a mandate might not be. Ms. Spoon commented that once licensure goes through for private professional guardians in Nevada there would be four agencies to process licensing for the entire state.

Judge Walker moved that the Commission offer recommendations to the Supreme Court concerning the statutory framework for use, timing, training, and caseloads of public guardians and private professional guardians. Ms. Deborah Bookout seconded the motion.

Ms. Heying took a roll call vote. Yea 19; Nay 0; Excused/Absent 7.

Question 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?

Discussion

Justice Hardesty moved to question 30. Justice Hardesty noted an attachment in the materials provided examples of state legislation regarding personal rights in which the limitation on access by a guardian is regulated according to statutes. The Commission would discuss supporting the notion that the guardian could not isolate or restrict access to the Ward from family and friends. Restriction could require a court order, hearing, and vetting; a guardian would not be able to restrict a Ward without those requirements or court support. If the Commission made the decision to recommend question 30, Assemblyman Sprinkle, Assemblyman Trowbridge, and Senator Harris would be able to begin bill drafts. Assemblyman Sprinkle stated the legislation would not prevent the guardians from requesting restrictions; there are situations in which it may be appropriate to restrict certain family members from the Wards. The current issue in regards to restrictions arose from guardians restricting family without consent from the court. Assemblyman Sprinkle stated he would support the bill and was interested in discussion and feedback from the Commission. Ms. Goodman expressed concern regarding restriction and stated there should be good reasons for the guardian or the court to restrict family and friends from access to the Ward. There may be a situation where a Ward

may not want to see family or friends but change their mind quickly. Judge Steel stated if the guardian or court made the decision to restrict the family from having contact with the Ward, they would need to file within 48 hours with the court for ratification of conduct. There was discussion regarding facilities such as nursing homes who reach out to guardians asking them to restrict an individual due to a certain family member or friend not complying with rules or becoming violent. Justice Hardesty stated the bill would apply strictly to the relationship between the guardian and the family members; it would limit the guardian's ability to restrict access to family members or friends. In the event that family or friends became violent or trespassed law enforcement would need to intervene, it would not be the guardian's responsibility to act as mediators for the facilities. Ms. Spoon noted the bill did not cover the subject of supervised visits, which would not completely restrict access to the Ward but would help in situations in which a guardian may be faced with harm against a Ward or themselves. Justice Hardesty added that in emergent situations it would be appropriate for the guardian to contact law enforcement and may not require a temporary protection order. Assemblyman Sprinkle added that some proof of cause would need to be presented to the judge within 48 hours. Judge Walker stated presenting proof of cause in front of a judge would give a family an outlet to be heard and possibly act as recourse to regain access to the Ward. Assemblyman Sprinkle added the Commission could discuss specific language, which could be added into the bill. Assemblyman Sprinkle would be interested in hearing from the Commission in regards to concerns or additions to legislation in this area. Ms. Spoon stated if the Commission decided to add the 48-hour notice after the restrictions, a similar notice could be made for supervised visits. Justice Hardesty summarized the general concept. A guardian cannot restrict access to the Ward from family and friends without a court order. There would be an emergency opportunity in which restrictions could be made upon obtaining a court order within 48-hours to confirm the restriction, and the ability to secure supervised visitation as part of the court order review of the process.

Assemblyman Trowbridge moved the Commission favor a recommendation that a guardian could not restrict access to the Ward from family and friends without a court order. There would be an emergency opportunity in which restrictions could be made upon obtaining a court order within 48-hours to confirm the restriction, and the ability to secure supervised visitation as part of the court order review of the process. Judge Steel seconded the motion.

Ms. Heying took a roll call vote. Yea 19; Nay 0; Excused/Absent 7.

Justice Hardesty thanked the Commission for their time and attention.

VI. Future Meeting Dates

The next meeting will be held on April 22, 2016.

VII. Adjournment

The meeting was adjourned at 4:20 p.m.

ATTORNEY FEES

(JOHN SMITH'S PRESENTATION)

Attorney Fees in Guardianship Matters

John C. Smith, Esq., Reno, Nevada

1. *The “guardianship” process – a unique environment.*
 - *Social, medical and legal participants,*
 - *“Best interests” and “Least restrictive environment”,*
 - *A “front loaded” process (The Texas Model).*

2. *Attorney fee considerations:*
 - a. *Continual Transparency,*
 - b. *Written fee agreements,*
 - c. *Division of duties/fees,*
 - d. *The review and approval process.*
 - *NRPC 1.14, 2.1 and 1.5,*
 - *NRS 159.0485(3), 159.105, 159.183(1)(c),*
 - *“Brunzell Factors” (Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969)),*
 - e. *The “Arizona” Model.*

3. *Some suggestions.*

Retainer and Fee Indemnification Agreement Guardianship Matters

1. Parties. The parties to this agreement are John C. Smith (Attorney) and _____, hereafter referred to as "Applicant".

2. Client. It is agreed between Attorney and Applicant that whoever becomes the "petitioner" in a guardianship action shall for all purposes, legal and otherwise, be considered Attorney's only client in this matter. Applicant shall be treated as a party receiving all information required to be noticed by law, but shall not have the authority of a "client".

2. Subject Matter of Agreement. Applicant has requested, and attorney has agreed, to pursue a guardianship action, either involving Applicant as a petitioner and/or a third party as, and a proposed Ward named _____.

3. Charges. Applicant acknowledges that in pursuing the above mentioned guardianship action, the attorney and/or the attorney's employees are entitled to be compensated at the following rates: a) John C. Smith's rate is \$360.00 per hour; and b) Paralegal's rate is \$150.00 per hour. Both of these rates are "inclusive" meaning that no billing will occur for photocopy costs, postage, faxing, or long distance calls. The estimated fees and costs for this matter are \$3,500.00 to \$5,000.00, and will become the primary obligation of the Proposed Ward's estate once approved by the Court.

Charges include but are not limited to a) court appearances; b) conferences with the Client, petitioner or Interested Party; c) office conferences; d) legal research; e) review of file materials and documents sent or received; f) travel time; g) waiting time; h) preparation for and attending hearings and court conferences; and i) drafting of pleadings, correspondence and office memoranda. There is a minimum time charge of 10 minutes for time as to any item billed.

4. Indemnification. Applicant acknowledges that although the proposed Ward's estate will become primarily liable for attorney fees and costs incurred, the Court has the final determination of what amount will be approved for payment to Attorney. Accordingly, should the Court not approve the full amount of fees and costs requested for any reason other than a finding that such work was not performed or was performed in bad faith, Applicant shall be responsible to pay attorney the difference between the amount requested and the amount approved by the Court; such amount

to be a direct obligation of Applicant to Attorney and deducted from any amount held by attorney as and for a retainer for this purpose.

5. Cooperation. Applicant agrees to cooperate fully with the attorney in all matters during the term of this agreement, including providing the attorney all relevant information necessary to pursue the work described above. In the event the Applicant does not fully cooperate with the Attorney, the attorney reserves the right to withdraw from continuing with the guardianship matter in accordance with the applicable Rules of the Court.

6. Retainer. As a retainer to demonstrate Applicant's commitment to this matter, a retainer in the amount of \$_____.00 shall be paid to Attorney at the initiation of this matter. The retainer will be held in the Attorney's Trust Account and promptly refunded to Applicant should the Court approve, and Attorney receive, all of the fees and cost requested, otherwise, any difference will be deducted from the Applicant's retainer before any balance is refunded.

Once begun, as acknowledged by the execution of this Agreement, if this matter is discontinued, Attorney shall be granted payment of at least \$1,000.00 as a non-refundable amount of fees earned.

7. Outcome. The Applicant understands that the attorney cannot and does not promise or guarantee any specific result or outcome in this matter.

APPROVED AND ACCEPTED

APPROVED AND ACCEPTED

Date _____

Date _____

, Applicant

John C. Smith, Attorney

Client:

Matter:

Permanent Hearing: _____

Date Done 00-16	Services	N P W	D R	S I	F I	Done by	Time/ Hourly Rate	Amount
	Inform client of documentation to bring (Proposed Ward ID/Nickname, asset/liability info)	N	N	N	N		N/C	\$0
	Initial consultation (situation/history/desired outcome/unmet needs/guardianship alternatives /types/"most-suited"/likely costs/self-determination /least restrictive means/"Care Plans"/Medicaid /Spousal Resource Allocation/Fee Agreement)				N	Atty	: 360	\$
	Review Guardianship Questionnaire (Ward attend hearings?/Relative info-contact info-contacted?/ guardian qualified/ verify supporting information		N	N	N	Atty	: 360	\$
	Draft / Request / receive / review "Physicians Certificate"			N	N	Atty	: 360	\$
	Draft / Request / receive / review "Admonition", if needed	N	N	N	N	Atty	: 360	\$
	Determine and create "Master Notice List"; copy to file bottom left side; Exhibit Index created		N	N	N	Para	: 150	\$
	Determine / verify that statutory parties are notified of guardianship action		N	N	N	Atty	: 360	\$
	Complete "Pre-Petition Checklist"			N	N	Para	: 150	\$
	Draft Petition for guardianship & gather and review exhibits;	N				Atty	: 360	\$
N/C	Create master "pleading" and "order" forms		N	N	N	Para	N/C	\$
	Coordinate Client review /signing of Petition;	N	N		N	Atty	: 360	\$
	Prepare Guardian's Acknowledgment; meet with client to review and coordinate signature; file	N				Atty	: 360	\$
	Prepare Petition with supporting docs and file;	N				Para	: 150	\$
	Obtain Client + Ward confidential information and file into Court	N				Para	: 150	\$
	Call setting clerk and set hearing (:05) Prepare Citation, have issued (:35); prepare transmittal letters to Notice List (:30); Prepare certified mailing package; mail (:35);		N	N	N	Para	: 150/	\$

NPW =non-pleading work; DR=drafted; SI=signed; FI=filed; EM=e-mail; FX=fax ; N= n/a

PC=phone call; ATTY=attorney; PARA=paralegal ;; P= Pending

Date Done 00-16	Services	N	D	S	F	Done by	Time/ Hourly Rate	Amount
		P W	R	I	I			
N/C	Copy of Petition to Washoe Legal Services with request to participate		N	N	N	Para	N/C	\$0
N/C	Prepared request for approval of attorney fees; Notice of Hearing	x				Para	N/C	\$0
	Follow up on Ward + Guardian attending Permanent hearing		N	N	N	Para	: 150	\$
	Complete Pre-Court checklist and file review; prepare and file Proof of Service		N	N	N	Para	: 150	\$
	Send copy of draft Order to Court and Washoe Legal Services		N	N	N	Para	N/C	\$0
	Draft proposed Order appointing permanent guardian (:45); attending hearing (1:00)	N				Atty	: 360	\$
	Prepare Notice of Entry of Order appointing Permanent Guardian; file and send to Notice List	N				Para	: 150	\$
	Draft Letters of Permanent Guardianship; have issued; file into Court and obtain certified copies	N				Para	: 150	\$
	Follow up on posting of bond if required by Court		N	N	N	Para	: 150	\$
	Record Permanent Letters of Guardianship if real property involved		N	N	R	Para	: 150	\$
	Prepare letter to client regarding the required Inventory		N	N	N	Atty	: 150	\$
	Review information on finances and assets; prepare draft inventory and supporting exhibits	N		N	N	Para	: 150	\$
	Final review of Inventory draft		N	N	N	Atty	: 360	\$
	Coordinate client signature(s) on Inventory and file into Court	N				Para	: 150	\$
	Estimated time for miscellaneous phone calls to facilitate guardianship process by paralegal		N	N	N	Para	: 150	\$
	Estimated time for miscellaneous phone calls to facilitate guardianship process by attorney		N	N	N	Atty	: 360	\$

Total Estimated Fees for Services Rendered \$00+/-

Filing Fees and Costs

District Court filing fee for Petition..... \$ 274/\$527

Total Estimated Fees and Costs..... \$00+/-

NPW =non-pleading work; DR=drafted; SI=signed; FI=files; EM=e-mail; FX=fax ; N= n/a

PC=phone call; ATTY=attorney; PARA=paralegal ;; P= Pending

Nevada Rules of Professional Conduct (emphasis added)

Rule 1.14. Client With Diminished Capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 2.1. Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 1.5. Fees.

(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) The 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; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Second Judicial District Court Local Rules

Rule 35. Guardianships.

1. All guardianship petitions shall be verified.
2. All petitions for appointment of guardian of an incompetent or person of limited capacity shall:
 - (a) Set forth the written factual allegations of a licensed physician or other qualified evaluator to support a finding of incompetency or limited capacity of the proposed ward, or explain why such factual allegations cannot be made.
3. Immediately upon appointment, every guardian shall complete and file with the clerk's office, an Acknowledgment of Receipt of the Instructions to Guardian on the form published by the court.
4. A guardian shall advise the court in writing of any change of address of the guardian or of the ward within 30 days of any change.
 - (a) Within 30 days after moving out of state a guardian shall file a petition naming a co-guardian who is qualified to serve under NRS 159.059.
5. Any change or withdrawal of counsel shall be submitted to the court for approval, except where another licensed attorney is substituted in accordance with Rule 23. Counsel for a guardian cannot withdraw or substitute in the guardian as his or her own counsel (in proper person) without prior court order.
- 6. Attorney's and/or guardian's fees payable from a guardianship estate shall be approved by the court prior to payment, after application, notice and hearing.**
 - (a) Every application for fees shall state with specificity the information required by NRS 150.060(1)(a)-(e).**
 - (b) The notice of hearing shall contain the amount of attorney's and/or guardian's fees requested and shall be served in accordance with NRS 159.115.**
7. The reporting requirements of NRS 159.081, 159.085 and 159.177 shall be strictly enforced and may be filed on the reporting form published by the court.
8. All accounting shall contain a summary or recapitulation showing:
 - (a) The beginning balance of cash accounts (the figure from the inventory if it is a first accounting, or the ending balance of the prior accounting if it is a subsequent accounting);
 - (b) Itemization of disbursements including date, check number, payee, purpose and amount;
 - (c) A recapitulation showing beginning balance, plus receipts, less disbursements and the balance in the account; and
 - (d) A schedule of assets showing any gains on sales or other disposition of assets, with the remaining property on hand.
9. Proof of service of the Order of Appointment of Guardian in accordance with NRS 159.074 shall be filed with the court.

ATTORNEY FEES

(HOMA WOODRUM'S PRESENTATION)

A Primer for Considering Attorney's Fees in Nevada Guardianship Matters

(A Southern Nevada Practitioner Perspective – Hana S. Woodrum, Esq. – Woodrum Law LLC)

Part I: Access to Justice

Navigating Minor and Adult Guardianship

Compliance

- Rule compliance
 - NRCP – Nevada Rules of Civil Procedure
 - EDCR – Eighth District Court Rules
- Procedural compliance
 - Form
 - Timing & Notice
- Statutory compliance
 - Establishment & Maintenance
 - Inventory, Accounting Report

Uncontested Minor Guardianship

- Case in Point: Mr. and Mrs. Grand have two grandchildren, placed with them after Child Protective Services removed the children from their parents' care owing to drug dependency in the home. They've been caring for the children over the summer on their limited joint social security income and need to apply for assistance, enroll the children in school, and take them for check-ups. They need court orders and authority.
 - Step 1: Gather information & Obtain forms
 - Step 2: Complete and file forms & Obtain hearing date and service notice
 - Step 3: Appear, with ward(s) present and become guardian (Orders + Letters)
 - Step 4: Notice of Entry, Inventory (if applicable), & Annual reporting

Minor Guardianships are Person Centric

- Guardianship of the Person only is most likely
- Guardians often don't have means
- Wards often don't have estates
- Goals include applying for services, benefits, and school enrollment
- Objective measure of qualification (minor status)

Contested Minor Guardianships

- Subjective measures at play
 - "Best interests of the child" standard
 - Competing family members, interests
 - Case law trends regarding abandonment (In Re the Guardianship of N.M.)
 - Visitation
- Similar to custody disputes in complexity, regardless of estate existence/value
- "One Family, One Judge"
 - Hearing Master system
- Varied timelines and rules

Uncontested Adult Guardianship

- Case in Point: Dol is worried about her father, Dan. Dan was recently diagnosed with dementia and needs help paying bills and managing medication. The doctor's office won't communicate with Dol because Dan has no estate planning documents naming her power of attorney. Dol has no siblings, and Dan's wife passed away last year. She is going to have her dad go to adult day care while she is at work and live with him otherwise. Dan has always trusted his daughter and is happy to have her help out.
 - Step 1: Gather information & Obtain forms (including Certificate of Incapacity)
 - Step 2: Complete and file forms & Obtain hearing date and service notice
 - Optional: Attend Clark County Public Guardian Guardianship Course
 - Step 3: Appear, with ward present and become guardian (Orders + Letters)
 - Step 4: Notice of Entry, Inventory, & Annual accounting (if General Admin) and Report of guardian

Person and Estate Adult Guardianships

- Guardianship of the Person and Estate is most likely
- Guardians have varying means
- Wards have benefits, insurance, and personal affairs to get/keep in order
- Goals include applying for services, benefits, and planning for long term care
- Medically based measure of qualification (capacity)
 - Subjective element can necessitate second opinions, objection by the ward or others

Contested Adult Guardianships

- Nominations and Hierarchies
 - Statutory guidelines
- Notice (and Parties Entitled to Notice)
- Similar to divorce disputes regarding asset investigation
- Similar to custody disputes regarding visitation, control of care, rights
- Judge-centered system since June 2015
- Ongoing needs while trial/discovery pends
- Ward representation
- Estate Planning Components

Most Court Proceedings Involve Plaintiffs and Defendants...

...Guardianship isn't limited to a Plaintiff/Defendant dynamic. There are parties in interest, stakeholders, and interested parties involved.
There can be guardians ad litem, wards objecting to guardianship, allegations of malfeasance, and more...

Beyond Establishment Disputes

- Blocked Accounts
- Bonded Guardians
- Medicaid, VA, SSA, & Insurance
- Temporary (Emergency) Guardianships
- Special (Limited) Guardianships
- Litigating Ward Claims
- Recovery Actions
- Exploitation, Abuse, and Neglect
 - Civil or Criminal
- Compliance
- Fraud in Obtaining and Administering Guardianship

Part II: Evaluating Attorney's Fees

Service Input, Valuation, & Impact

Service Inputs

- Time and Service
 - Pro Bono Work
 - Unpaid Work
- Licensure
 - Expertise/Study
 - Continuing education
- Overheads
 - Offices & Staff
 - Expenses
 - Day to Day (Insurance, Management, etc.)
 - Trial/Discovery Outlays

Service Valuation

- Components of Attorney Attention and Time
 - Experience
 - Education
 - Guidance
 - Ethics
 - Resources
 - Comfort & Communication
 - Knowledge
- Avoiding Litigation
 - ADR, Mediation, and "Outside the Box" Thinking

Service Impacts

- Bearing Guardianship Costs
 - Ward
 - Civil/Gideon
 - Public
 - Retainer Agreements (Private Counsel)
 - Courts
 - Guardian
 - Fee Structures
- How do benefits inure?
 - Individual Wards
 - Public

Responsibility for Fees

In referencing an older version of the guardianship statutes, the Nevada Supreme Court has stated:

A guardian who employs counsel in behalf of the ward's estate is personally obligated to pay for counsel's services. The attorney-client relationship is between the guardian and counsel. It is not between the ward and counsel. The attorney's fees on expenses incurred by the guardian in the performance of her duties for which she is personally liable. In *re Boyd's Guardianship*, 37 N.M. 83, 18 P.2d 658, the expense is authorized by statute (NRS 159.570) and the guardian will, in turn, be entitled to a credit therefor in her accounting if the services of counsel were necessary and the charges reasonable.

Sarman v. Goldwater, Taber & Hill, 80 Nev. 536, 539, 396 P.2d 847, 848 (1964) (emphasis added) (Rejected on other grounds by *Argentina Consol. Min. Co. v. Jolley Uriga With Woodbury & Standish*, 123 Nev. 527, 536, 216 P.3d 779, 785 (2007))

Fee Shifting

- Some statutory provision for others to bear attorney's fees
- Prevailing guardian in a dispute often has attorney's fees paid from ward assets
- Not clearly settled
 - Offers of Judgment
- Double Damages

Procedural Components to Consider

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> ○ Petition for Establishment <ul style="list-style-type: none"> ○ Certificate of Incapacity ○ Citation and Notice <ul style="list-style-type: none"> ○ Publication of Notice ○ Court Appearance <ul style="list-style-type: none"> ○ Admonishment ○ Record ○ Orders and Letters <ul style="list-style-type: none"> ○ Notice of Entry, Appeals Period ○ Blocked Accounts &/or Bonding | <ul style="list-style-type: none"> ○ Acknowledgement ○ Inventory ○ Real Property Sales <ul style="list-style-type: none"> ○ Permission ○ Confirmation/Return ○ Annual Report ○ Annual Accounting <ul style="list-style-type: none"> ○ Objections ○ Termination |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

8-10 Hours to Establish

The average **uncontested single minor guardianship** takes 8-10 hours of attorney and staff time. This goes from intake through drafting documentation, meeting with client(s), preparing for court, attendance at court, and preparation of compliance documentation afterwards. It also includes client education.

10-15 Hours to Establish

The average **uncontested adult guardianship** takes 10-15 hours of attorney and staff time. This goes from intake through drafting documentation, meeting with client(s), preparing for court, and attendance at court. It can sometimes include the inventory but does not include the first annual requirements or client education time.

Actual Cases Compared

The Guardianship of H.T.

- Guardianship Established: 3/4/15
- Attorney hours: 69 as of 4/14/16
- Summary Guardianship Admin
- Expenses: \$167.46
- No Family
- Guardian: Clark County Public Guardian

The Guardianship of W.R.

- Guardianship Established: 3/31/15
- Attorney hours: 8470 as of 4/14/16
- General Guardianship Admin
 - Exploitation/Recovery Issues
 - Trial/Settlement Included Fee Recovery
- Expenses: \$4,794.40
 - Expert Witness/Depositions
- Extended Family
- Guardians: Family Members

Part III: Reasonableness

Or, "It Depends"

The Brunzell Factors

- the **qualities of the advocate**: his ability, his training, education, experience, professional standing and skill;
- the **character of the work to be done**: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
- the **work actually performed** by the lawyer: the skill, time and attention given to the work; and
- **the result**: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 at 350 (1969)

Fiduciary Obligation of the Guardian...

For example, any guardian of an estate shall, per NRS 159.083:

1. Protect, preserve, manage and dispose of the estate of the ward according to law and for the best interests of the ward.
2. Apply the estate of the ward for the proper care, maintenance, education and support of the ward and any person to whom the ward owes a legal duty of support, having due regard for other income or property available to support the ward or any person to whom the ward owes a legal duty of support.
3. Have such other authority and perform such other duties as are provided by law.

...Balanced Against Estate's Ability to Pay

NRS 159.183 provides:

... In evaluating the ability of a ward to pay such compensation and expenses, the court may consider:

- (a) The nature, extent and liquidity of the ward's assets;
- (b) The disposable net income of the ward;
- (c) Any foreseeable expenses; and
- (d) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.

Going Forward

- Vexatious litigants
- Resources for self-represented parties
 - Self-Help Forms
 - Non-profits
- Procedural safeguards
- New technology to lower costs
- Ward representation
- Remedies to protect wards
- Inviting more talent into the guardianship arena

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?

BILL OF RIGHTS DRAFT



Submitted by: Barbara E. Buckley, Esq.

Date: November 23, 2015

Bill of Rights for Individuals Facing Guardianship

The State of Nevada recognizes the following rights of individuals 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;
- (5) The Right to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- (6) The Right to receive timely 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;
- (9) The Right to complain or raise concerns regarding the guardian or guardianship to the court, 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;

- (10) The Right to have a copy of 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, or guardian ad litem appointed by the court to investigate a complaint received by the court from the respondent or any person about the guardianship;
- (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 self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object 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 determines that certain communication or visitation causes 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 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 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, phone number, and purpose of the State of Nevada Division of Aging Ombudsman, 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 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.
- (c) This section does not supersede or abrogate other remedies existing in law.

TERMINOLOGY

TERMINOLOGY USED FOR PROPOSED WARD, RESPONDENT, WARD, PROTECTED PERSON

Nevada			
	Proposed Ward	“Proposed ward” means any person for whom proceedings for the appointment of a guardian have been initiated in this State or, if the context so requires, for whom similar proceedings have been initiated in another state.	Nevada Revised Statute 159.025 (Added to NRS by 1969, 412; A 2009, 1644)
	Ward	“Ward” means any person for whom a guardian has been appointed.	NRS 159.027 (Added to NRS by 1969, 412)
Alaska	Protected Person	A person for whom the court has appointed a conservator because the person cannot manage their money or property due to a disability, advanced age or illness.	http://www.courts.alaska.gov/shc/guardian-conservator/glossary.htm
	Respondent	In a guardianship case, the respondent is the person who is alleged to be incapacitated and in need of a guardian. In a conservatorship case, the respondent is the person who is alleged to need a conservator to help manage money or property.	Note: After a guardian is appointed, the “respondent” is called a “ward.” Note: After a conservator is appointed, the “respondent” is called a “protected person.”
	Ward	A ward is a person for whom the court appoints a guardian.	
Arizona	Protected Person	Means a minor or any other person for whom a conservator has been appointed or any other protective order has been made.	
	Protected proceeding	Means a proceeding under the provisions of section 14-5401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.	

	Ward	Means a person for whom a guardian has been appointed. "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.	
Iowa	Respondent	The individual person for whom a conservatorship or guardianship is sought.	
	Protected Person	An order appointing a conservator under Iowa's conservatorship law (not to be confused with civil or criminal protective orders and no contact orders from domestic abuse, adult and child abuse, and victim protection.)	New term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
	Ward	The individual person for whom a guardian or conservator has been appointed to handle personal or financial matters.	(or protected person – new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Jurisdiction Act)
Colorado	Protected Person	Term used to describe someone who is subject to a conservatorship and has a conservator appointed to help them.	
	Respondent	A person who has been named in a court case, and was served legal documents that were started and given to the Court by another person, known as the "petitioner." If the Respondent wishes to have a say in the case he or she must file or give a response to the Court.	
	Ward	Term used to describe someone who is subject to a guardianship and has a guardian appointed to help them.	
Florida	Ward	Means a person for whom a guardian has been appointed.	
	Alleged Incapacitated Person or Person at Risk	Individual for whom a guardianship proceeding has been initiated.	
Minnesota	Protected Person	Means a minor or other individual for whom a conservator has been appointed or other protective order has been made.	
	Respondent	Means an individual for whom the appointment of a guardian or conservator or other protective order is sought.	
	Ward	Means an individual for whom a guardian has been appointed.	
Montana	Protected Person	Means a minor or other person from whom a conservator has been appointed or other protective order has been made.	
	Protective	Means a proceeding under the provisions of 72-5-409 to determine that a	

	Proceeding	person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.	
	Ward	Means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.	
New Hampshire	Proposed Ward	The "proposed ward" is the person for whom a guardianship is sought. Once the guardianship has been ordered by the court, the person becomes the "ward."	
New Mexico	Protected Person	An adult for whom a protective order has been issued.	
	Protective Order	An order appointing a conservator or other order related to the management of an adult's property.	
	Protective Proceeding	A judicial proceeding in which a protective order is sought or has been issued.	
	Respondent	An adult for whom a protective order or the appointment of guardian is sought.	
Oregon	Respondent	A person for whom a protective order is sought.	
	Protective Order	A court order to protect the person or estate of a respondent or protected person.	
	Protective Proceeding	Any proceeding governed by ORS Chapter 125. Generally, this includes guardianships, conservatorships, temporary guardianships and conservatorships, but can also include other actions, including direct court action in the person's affairs.	
	Protected Person	A person for whom a protective order has been issued.	
Texas	Proposed Ward	A person alleged to be incapacitated in a guardianship proceeding.	
	Ward	An incapacitated person who has been placed in the care, custody, and supervision of a guardian.	

Utah	Protected Person	Means a person for whom a conservator has been appointed. A “minor protected person” means a minor for whom a conservator has been appointed because of minority.	Title 75 Chapter 1 Part 2 Section 201
	Protective Proceeding	Means a proceeding described in Section 75-5-401	
	Ward	Means a person for whom a guardian has been appointed. A “minor ward” is a minor for whom a guardian has been appointed solely because of minority.	
Washington	Protected Person	Means an adult for whom a protective order has been issued.	
	Protective Order	Means an order adopting a guardian of the estate or other order related to the management of an adult’s property, including an order issued by a court in another state appointing a conservator.	
	Protective Proceeding	Means a judicial proceeding in which a protective order is sought or has been issued.	
	Alleged Incapacitated Person (AIP)	Prior to the establishment of a guardian, the proposed protected person is called the “Alleged Incapacitated Person”	
	Adjudicated Incapacitated Person (IP)	If the Court makes a determination that the AIP is incapacitated and in need of a guardianship, the AIP may be referred to as an adjudicated Incapacitated Person or IP.	
	Respondent	Means an adult for whom a protective order or the appointment of a guardian of the person is sought.	
West Virginia	Protected Person	<p>An adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity:</p> <p>(A) To meet the essential requirements for his or her health care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or</p> <p>(B) To manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.</p>	<p>A finding that the individual displays poor judgment alone is not sufficient evidence that the individual is a protected person within the meaning of this subsection.</p> <p>“Protected person” also means a person whom a court has determined is a missing person.</p>

NGA Ethics and Standards for Guardians	Ward	A person for whom a guardian has been appointed, Synonyms include Conservatee, disabled person, protected person, and incapacitated person	
-----------------------------------------------	-------------	--------------------------------------------------------------------------------------------------------------------------------------------	--

GUARDIANSHIP FILING FEES

Commission to Study the Administration of Guardianships in Nevada's Courts
 April 22, 2016, Agenda and Meeting Materials

Guardianship Filing Fees Collected FY 15/16					
Court	Estate Value \$2500 - \$20000 Filing Fees Collected 15/16	Estate Value \$20,001 - \$199,999 Filing Fees Collected 15/16	Estate Value \$200,000+ Filing Fees Collected 15/16	Total Amount in Filing Fees Collected All Estates FY 15/16	Notes
First Judicial District (Carson City)	\$0	\$838.50	\$4,792.50	\$5,631.00	Fees Collected FY 14/15
First Judicial District (Storey County)	\$0	\$0	\$0	\$0	
Second Judicial District (Washoe County)	2nd Judicial does not have a code for this amount. Anything under \$20,000.00 is no charge.	29 @ \$274.50 = \$7,960.50	18 @ \$527.50 = \$9,495.00	\$17,455.50	
Third Judicial District (Lyon County)	\$642	\$1,038	\$1,025	\$2,705	
Fourth Judicial District (Elko County)	\$0	\$0	\$0	\$0	They are working on getting estate values of \$2500-\$20000 added to their case management system.
Fifth Judicial District (Esmeralda County)	\$261.00	\$1,377.00	\$965.00	\$2,603.00	
Fifth Judicial District (Nye County)	\$321.00	\$1,038.00	\$0	\$1,359.00	They do not get too many guardianships. This amount is from 7/1/15 to 3/29/16. The County has an appointed Public Guardian who is their Health and Human Services Director and they do not charge her a filing fee.
Sixth Judicial District (Humboldt County)	\$241.00	\$294.50	\$0	\$535.50	The majority of the guardianships do not have filing fees. They are either public administrator types or grandparents seeking guardianship over grandchildren.
Seventh Judicial District (Eureka County)					
Seventh Judicial District (Lincoln County)	\$1,247.50	\$0.00	\$0	\$1,247.50	
Seventh Judicial District (White Pine County)	\$170.50	\$0.00	\$0.00	\$170.50	
Eighth Judicial District (Clark County)	\$0/0	\$56,387.50/\$35,822.50	\$24,548.00/18,054.00	\$80,935.50/53,876.50	
Ninth Judicial District (Douglas County)	\$195.50	\$294.50	\$544.50	\$1,034.50	
Tenth Judicial District (Churchill County)	\$0	\$580.50	\$512.50	\$1,093.00	
Eleventh Judicial Distict (Lander County)					
Eleventh Judicial District (Mineral County)					
Eleventh Judicial District (Pershing County)					

OTHER INFORMATION/RESOURCES

HIPAA Information from Julie Arnold

At the last commission meeting there was some concern about releasing medical information regarding proposed Wards and providing protection to the physician for making the disclosure. In a conversation with an attorney who practices in this field on a regular basis, the following was pointed out to me.

[45 CFR §164.512 -](#)

j) Standard: Uses and disclosures to avert a serious threat to health or safety

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)

(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat

Here's the language from the Physician's Certificate:

I certify that this adult patient is unable to respond (check all that apply; at least one must be provided):

- To a substantial and immediate risk of physical harm
- To an immediate need for medical attention
- To a substantial and immediate risk of financial loss

It appears that once the physician checks the first or second box, the information clearly falls within the permitted disclosures

Informational

Judge Porter,

This is a story from the National Guardian Associations newsletter. I thought you might like to read the article. This is why those of us who have been guardians for years stay guardians. Because, otherwise the stress, the paperwork mess we deal with every day, the State and Federal rules of assistance, the exploitation and abuse that doesn't get addressed and the lack of respect for the elderly would definitely take its toll on us. This is why we love our job because of outcomes like this that results in the smiles on the faces of those we take care of and once in a while their families too. Kathy

Hi All,

I want to share with you something that made me realize why I do what I do. In early August I was appointed as Rogers Guardian for a homeless man (we'll call him Bart) who was at Massachusetts General. He was there because he had a cancerous growth on the left side of his head and he needed an operation. Sitting in a meeting with no less than eleven doctors, I was told Bart needed the operation but he would not consent to one. He gave a false name and would not tell anyone his Social Security Number or date of birth. During the meeting, I made it known that I really needed to know who he actually was and asked if there a way of getting his fingerprints. The court finally granted me permission to authorize the operation (two trips to court for the hospital's attorney). The day before the operation the clinical social worker called and said through careful questioning, Bart made a slip and she was able to locate his family (and real name). The family thought that Bart had died over 18 years ago. I received a call from his brother in New Jersey (very emotional) and he said he would come up after the operation. He met with Bart, who does also have schizophrenia, and, to quote a nurse, "there wasn't a dry eye on the floor." Bart has been transferred to another Boston hospital for continuing care for both the cancer and mental conditions. I met with his brother recently in Boston and, needless to say, that was emotional also. He had family photos of Bart when he was younger and he said he never thought he would see him again. His parting words to me was that we made his family whole again after 18 years. My final word to him was that I felt like I just made a 50 foot putt. So I guess I'll stay in the guardian/conservatorship field for a while longer. Who knows, I may get a hole in one!

Charlie Lynch, Guardian / Conservator

Editor's Note: When asked for permission to print this letter, Charlie shared the following update. As a footnote, Bart is doing fine and has completed all his radiation treatments. We are transferring him to a home run by the Pine Street Inn group and are hoping he stays put. Since September, I have become his permanent conservator also. Upon my looking into his past and information supplied by the family it seems that Bart had not collected any Social Security checks since 1995 (228 months). So this is an ongoing saga which I will keep you informed about.

Kathleen L. Jones, NCG
Elko County Public Guardian
P.O. Box 927
Elko, Nevada 89803
Phone: 775-748-0203
Fax: 775-738-5984

