Nevada Supreme Court
Permanent Guardianship Commission

September 23, 2019, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
DEPUTY DIRECTOR
Information Technology

MEETING NOTICE AND AGENDA
Name of Organization:
Supreme Court Permanent Guardianship Commission

Date and Time of Meeting: September 23, 2019, 3:00 p.m. to 5:00 p.m.
VIDEOCONFERENCE (Carson City, Las Vegas)

Place of Meeting:

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

AGENDA

1. Call to Order

- **a.** Call of Roll and Determination of Quorum.
- **b.** Approval of Meeting Summaries of July 30, 2018, September 14, 2018, and November 2, 2018. *See attachments. These were previously circulated to all Commission members for their review.*
- **c.** Opening Remarks.

2. Public Comment

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

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

- **a.** Washoe County statistical reports by Sabrina Sweet and Mallory Nelson. *See attachment.*
- **b.** Clark County statistical report by Riley Wilson. *See attachment.*

4. Report from Kate McCloskey, Guardianship Compliance Manager.

- **a.** Update on County Survey of Recording Fees Collected. *See attachment.*
- **b.** Updated Guardianship Compliance Office Status Report. *See attachment.*
- **c.** Guardianship Training Module available on Guardianship Compliance Office website. *See attachment.*

5. 2019 Legislative Session Update.

- **a.** SB20--AN ACT relating to guardianships; enacting certain provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; authorizing the filing of a petition for an expedited hearing to transfer a proposed protected person from a health care facility to another health care facility that provides a less restrictive level of care in certain circumstances; revising various provisions relating to guardianships; increasing the additional fee charged by county recorders to allocate additional money for legal representation for protected persons, proposed protected persons, protected minors and proposed protected minors in guardianship proceedings; authorizing a portion of such a fee to be used to pay for certain assistance to protected minors and proposed protected minors in guardianship proceedings; and providing other matters properly relating thereto. *See attachment.*
- **b.** AB480--AN ACT relating to written agreements; enacting provisions governing supported decision-making agreements; and providing other matters properly relating thereto. *See attachment.*
- **c.** General Discussion - Minor Guardianship Statutes: Update from Sabrina Sweet re possible uniform procedures to transfer minor guardianship into Nevada from other states. *See attachment.*
- **d.** General Discussion - Update from Jennifer Rains regarding Assisted Outpatient Treatment (AOT).

6. Update-Public Hearing for Guardianship Rules Approved by Commission 11-2-18.

- **a.** Supplement to First Interim Report of the Guardianship Commission (filed 1/2/19) *See attachment.*
- **b.** Update from Elizabeth Brickfield, Dania Reid, and John Michaelson re Noticing rule in light of amendments to NRCP 6 (Computing and Extending Time; Time for Motion Papers). *See attachment.*
- **c.** General Discussion - Possible Creation of rule for statewide fee guidelines for guardianship cases. Shelly Register. *See attachment.*

7. Update-Public Hearing for Guardianship Mediation Manual Approved by Commission 11/2/18.

a. Second Supplement to First Interim Report of the Guardianship Commission (filed _____) *See attachment.*

b. Draft Mediation Forms for Consideration by the Commission. *See attachment.*

8. Discussion of Future Topics and Meeting Dates.

9. Public Comment.

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

10. Adjournment.

AGENDA ITEM 1(b)

July 30, 2018, Meeting Summary

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

MEETING SUMMARY
PERMANENT GUARDIANSHIP COMMISSION
Summary Prepared by Sharon Coates, PP, CLP

Date and Time of Meeting: July 30, 2018, 9:35 a.m. to 2:15 p.m.

Place of meeting: Videoconference (Carson City, Las Vegas)

Members Present:
Justice James Hardesty
Judge Gloria Sturman
Karen Kelly
Debra Amens
Elizabeth Brickfield
Lynn Hughes
John Michaelson
Jennifer Richards
Mary Bryant
Lynda Hascheff
Judge Vincent Ochoa
Judge Egan Walker
Shelly Register
Jim Berchtold
Henry Cavallera
Judge Gloria Sturman
Jennifer Salem
Dania Reid
Homa Woodrum

Guests/Public:
Cassandra Jones
Kim Perondi
Lenora Mueller
Scott Anderson
Ann Barringer
Sabrina Sweet
Sonia Jones
Mallory Nelson
LaChasity Carroll
Timothy Andrews
Barbara Buckley
Riley Wilson
Gail Anderson

AOC Staff:
Robin Sweet
Kate McCloskey
Rhonda Lethcoe
Donna Kingman-Silva
Edith Murillo
Hans Jessup

Supreme Court Staff:
Sharon Coates

I. **Call to Order**: Justice Hardesty called the meeting to order at 9:35 a.m.

   a. **Call of Roll and Determination of Quorum**: Role was taken and a quorum was present.

   b. **Approval of Meeting Summaries:** Justice Hardesty asked if there were any objections or edits to the April 25, 2018, meeting summary. No objections or edits were made and the minutes were approved with Homa Woodrum and Judge Sturman abstaining as they were not present at the meeting. Justice Hardesty asked if there were any objections or edits to the May 16, 2018, meeting summary. No objections or edits were made and the minutes were approved.

c. Opening Remarks: Justice Hardesty welcomed everybody and briefly outlined how the meeting would proceed.

II. **Public Comment**: There was no public comment, other than a statement made by attorney, Cassandra Jones in section VIII below.

III. **Updated Statistical Report, as of June 30, 2018, from 2nd & 8th Judicial District Court Compliance Officers.** The report from the 2nd Judicial District Court can be found beginning at page 38 of the July 30, 2018, agenda and meeting materials located on the Guardianship Commission's website. Ms. Nelson reported that effective June 25, 2018, the 2nd Judicial District Court began tracking Bond/Blocked Accounts and Contested Hearings as part of its automatic Milestones Program. They will also be able to track if a Bond/Blocked Account was waived and the reasons why. Below are some comments made regarding the report:

- The number of minor guardianships continue to increase sharply each year and may be reflective of the economy and child welfare system.
- With a few exceptions, like high conflict matters, almost all parties are directed to mediation; the statistics do not reflect the cases where the parties attempted mediation prior to the first hearing.
- All attorney appointments for adult guardianship cases in Washoe County are referred to Washoe Legal Services.
- There does not seem to be a procedure in place for protected persons or family members to have a private attorney appointed or use their own attorney after the initial attorney appointment; changes may need to be made to that statute; Ms. Register offered to provide copies of briefings and other information on particular cases that reflect this problem; Justice Hardesty would like to hear from attorneys and judges handling those matters because the judge should be able to adjudicate them.
- 46% of the guardianship cases in Washoe County are for persons under the age of 39; could substance abuse be driving this statistic?; Ms. Nelson advised that she does not really have a definitive answer to that question, but historically they have received a lot of referrals from the school districts for special education students just prior to their turning 18.
- Justice Hardesty would like for the Commission to explore the reasons why there are so many young people in guardianships and try to come up with solutions; Ms. Nelson and Mr. Wilson were asked to investigate the possibility of tracking the reasons outlined in the guardianship petitions.
- Judge Sturman advised that she and other judges in Clark County are having discussions about the number of cases in which families mistakenly think that a guardianship is the best way to force a family member to take their meds. If these people are on the streets and get picked up by Metro, they can be taken in and treated through a treatment program; a diversion program may be an answer.

Mr. Wilson discussed the report for the 8th Judicial District Court, which can be found beginning at page 2 of the July 30, 2018, supplemental meeting materials located on the Guardianship Commission's website. Below are some comments made regarding the report:

- At this time, the IT department is still trying to implement a way of tracking Blocked/Bond Accounts and Contested Hearings and will continue to do so until they are able to supply that information for the Commission.
- The majority of the appointments of counsel are going to the Legal Aid Center of Southern Nevada.
- Justice Hardesty requested that Ms. Nelson and Mr. Wilson reach out to their local legal aid groups to compare numbers on attorney appointments to make sure they agree.
- Ms. Buckley, Director of the Legal Center of Southern Nevada, reported they are currently accepting appointment on every new guardianship petition and problematic case appointed to them by any source; they currently represent about 3,000 children or 85% of those in the child welfare system; their goal is to reach 100% by January 1, 2019; their next task to tackle is to come up with a plan to provide counsel for minor guardianships cases.

Update on 2nd Judicial District Court's case initiation policy involving substitute guardians. The policy that was previously in place requiring initiation of a new case for the appointment of a successor guardian was rescinded effective May 4, 2018. The case number will remain the same.

Update from Judge Gloria Sturman on whether cases filed under the Patient's Bill of Rights Statute would be heard in general jurisdiction or family court. Judge Sturman's report can be found in the meeting materials beginning at page 78, which also discusses cases that would be filed under the Uniform Determination of Death Act when there is a disagreement between a family and a medical facility with respect to removing a person from life support. Judge Sturman recommends that these cases are better suited for guardianship court. After further discussion, Justice Hardesty requested that the Rules Subcommittee draft a rule that would direct these matters to the guardianship judges.

IV. **Status Report from Kate McCloskey, Guardianship Compliance Manager.** Ms. McCloskey's report can be found beginning at page 81 of the July 30, 2018, agenda and meeting materials located on the Guardianship Commission's website. Ms. McCloskey introduced Sonia Jones and LaChasity Carroll, who were hired as a Forensic Financial Specialist and an Investigator, respectively, in the Las Vegas Guardianship Compliance office. Ms. Jones has a background in bank examination and fraud and Ms. Carroll comes from Elder Protective Services. A lengthy discussion was held regarding research that Justice Hardesty has asked the Guardianship Compliance office to conduct regarding the recording fees as they relate to counsel for protected persons and investigators. The purpose of the research is to pin down what the Legislature authorized, determine what counties are collecting the fees and if they are being distributed properly.

V. **Administrative Docket 507 – General discussion and update on Commission's First Interim Report, filed May 30, 2018, and July 18, 2018, Public Hearing.** A copy of the report can be found beginning at page 85 of the July 30, 2018, agenda and meeting materials located on the Guardianship Commission's website. The Supreme Court is in the process of preparing an order to approve the guardianship rules and forms. The goal is to have the order approved shortly after August 3, 2018, with an October 1, 2018, effective date. Justice Hardesty acknowledged and thanked Stephanie McDonald for her service to the forms subcommittee.

VI. **Rules set forth in August 2, 2017, ADKT 507 Order which still need to be addressed.** This information can be found beginning on page 97 of the July 30 agenda and meeting materials located on the Guardianship Commission's website.

Status Report from Rules Subcommittee Co-Chairs John Michaelson and Dania Reid. Ms. Reid and Mr. Michaelson gave a lengthy report regarding the rules the subcommittee is working on. Mr. Michaelson discussed the issues surrounding the problems that are being encountered when trying to file presumptively confidential documents. Justice Hardesty advised that he would like the rules subcommittee to vet this issue. Justice Hardesty informed the rules subcommittee to let him know if they determine that a particular issue requires legislative action. There are legislators who are very motivated and highly interested in this topic and want to be supportive of recommendations brought from this Commission. However, they don't want to have to make legislation if it can be handled by rules.

VII. **General Discussion re Possible Amendments of 2017 Legislation.** The documentation for this portion of the agenda can be found beginning at page 100 of the July 30, 2018, agenda and meeting materials located on the Guardianship Commission's website. Justice Hardesty announced that in preparation for this discussion, he asked Ms. McCloskey to do some research on the increased recording fees that fund legal services for protected persons (SB 433), investigations into minor guardianships (SB 433), and legal services for children who have been abused and neglected (SB 305) to find out how much the counties have collected and how those funds are being used. He also asked Washoe Legal Services and the Legal Center of Southern Nevada to inquire into the status of the provisions for appointment of counsel in all of the counties.

Justice Hardesty invited the Commission members to identify areas of previous legislation and new statutes that they want to look at for possible amendments. After a lengthy discussion the Commission members came up with the following list of areas for possible amendments:

- Additional funds necessary to appoint counsel in minor guardianship cases
- Supported Decision Making
- Create statutory framework for guardianship succession or standby guardian
- Temporary suspension of powers of attorney (POA) during period of limited guardianship
- Does removal of guardian restore protected person's capacity?
- NRS 162A.220 requires physician certification before a person can execute POA if they are in a hospital, an assisted living facility, or facility for skilled nursing; suggestion made to expand it to include revoking POA
- Grounds for court to consider before terminating or temporarily suspending POA
- Clarification of Physician's Certification
- Update Notice of Intent to Move/Change of Location procedures
- Change of Residence protocols
- Guidelines for disposition of personal property and first right of refusal
- Define role of Guardian ad Litem (GAL) including differences between GAL and guardian's role and differences between GAL and counsel for protected person
- Reasonable standard for opposing guardianship
- Waiver of Service—allow court discretion to waive service on protected person after initial case filed and served on protected person or after guardian has been appointed

- Breach of Privacy regarding confidential records by interested parties to non-interested parties
- Require EPS to notify the court if an investigation has been opened regarding possible abuse of a protected person
- Expand existing guidelines for judges to issue temporary guardianships
- Expand citation and notice statute

Commission members were given assignments to research and report the information during the September 14 meeting. The list will be discussed and further refined at that time. Justice Hardesty requested that the Rules Subcommittee try to get as many rules finalized and submitted to the Commission as possible prior to the September meeting.

VIII. **General Discussion re Concerns of Secretary of State's Office**[1] Chief Deputy Scott Anderson of the Secretary of State's office requested permission from Justice Hardesty to attend the meeting to discuss several issues with the Commission in anticipation of addressing them through legislation in 2019. Mr. Anderson thanked Justice Hardesty and the Commission for allowing him and his staff to attend the meeting and introduced Kim Perondi, Deputy Secretary of State; Lenora Mueller, Notary Administrator; and Gail Anderson, Deputy Secretary of State.

First Issue: The current Request to Nominate Guardian form only allows a person to name a primary and an alternate guardian over their person or estate. Ms. Anderson explained that people who want to name co-guardians are either submitting their paperwork with handwritten notes saying "co" or supplying an additional piece of paper with the co-guardian's name. The Secretary of State's office does accept them for filing, but would like to confirm that this procedure is acceptable. Ms. Anderson further advised that the implementation of the Lockbox program has gone smoothly and that there have been 1,130 active nomination of guardian registrants enrolled since January 1, 2018. Below are some of the questions, concerns, or issues of the Commission members related to this topic:

- Currently, access to the information on the Lockbox is limited to the courts, the registrants, and law enforcement; it might be beneficial to add Elder Protective Services (EPS) to that list; sometimes individuals are unable to communicate who they may have nominated; if EPS is unable to determine who the nominee may be, they must petition the court for access to the lockbox.
- The public guardian is petitioned in by numerous entities and individuals and one of the questions that always arises is if there is information regarding the protected person's wishes in the Lockbox, but that they are unable to get that information.
- Can a person who nominates a guardian through their powers of attorney file it with the Lockbox program? Ms. Anderson advised that the form to nominate a guardian is mandated by statute, so they would not be able to accept a power of attorney for filing.

Second Issue: Mr. Anderson advised there is a concern regarding the Certificate of Acknowledgment of Notary Public on the Nomination of Guardian form. The language in NRS 159.0753 conflicts with the uniform law of notarial acts. He explained that the phrase "I declare under penalty of perjury that the persons whose names are subscribed to this instrument appear to be of sound mind and under no duress, fraud or undue influence" comes

[1] This topic was added to the agenda during the meeting.

dangerously close to a notary swearing to and notarizing their own statement, which is a violation of notary law in Nevada. Mr. Anderson suggests that this statement be removed from the certificate provided. He further advised that many notaries are refusing to notarize these documents because of that statement. There were no objections by any of the Commission members to removing the language from the form. One of the Commission members did bring up the topic of electronic notaries, stating that Nevada is one of only three states in the country to offer this service. How can a notary in a distant location, via some sort of internet connection, possibly certify that the person is voluntarily signing the document on camera when off camera there could be somebody forcing them to sign it. Mr. Anderson responded that they are in the process of completing the regulations surrounding remote notarization and that the issue of undue influence beyond the camera is a concern nationally. There are safeguards in place as far as the knowledge base, authentication, and other means of authentication of the person that is signing the document electronically that they are looking at. Justice Hardesty stated that the Commission does not have any BDRs available to it and asked that if the Secretary of State's office include the change regarding the Acknowledgement of Notary Public in its legislative packet, the Commission would be supportive.

Third Issue: Mr. Anderson advised that they have a couple of concerns regarding the appointment of a registered agent for non-resident guardians. In the 2015 and 2017 sessions, the Legislature created this filing and then aligned it in chapter 77. The process is working and to date there are 134 of them on file. What was left out of the legislation was the maintenance of those filings. Some of the issues are as follows:

- If a guardian changes or the ward passes, there is no update or maintenance to those records. There is no mechanism in place to do an annual filing of registered agent.
- A unique identifier for each matter is issued and filed under the ward's name as well as the guardian's name.
- If the Secretary of State's office receives a filing because of a change, they store it as a second (or duplicate) filing.
- The Secretary of State's records can only be corrected if there is a court order issued stating that the ward has died or there has been a change of that guardian.

Comments from the Commission members were as follows:

- Judge Sturman advised that if there is an out of state guardian, she will ask if they have a registered agent and who it is for the record. There is no procedure to verify that gets done. Ms. Perondi clarified that the filing is available on their public search page. When there is no maintenance to that record, it's going to show as an active file. If the protected person or the guardian has passed, the record won't change.
- Judge Walker advised that the Compliance Officers in the 2nd Judicial District Court have a checklist and are managing that issue. Judges have to be proactive in their communication to the Secretary of State with that information as well as when the protected person passes or if the guardian changes.
- Judge Sturman stated that she has had a few cases with Mr. Hughes and he has followed up to make sure that the filing with the Secretary of State is taken care of.
- Cassandra Jones made the following comment: "So my office just happens to be Registered Agent for three of those 134 filings and the process we use is when we

are appointed, we file the Registered Agent form—there is nothing after that. It's not like a corporate situation where once a year you have to re-up. But we do take it upon ourselves to file proof of compliance with the court so the Secretary of State's office produces the file-stamped copy for us and we put that on record. But most of my clients, as the judge recognized, are out of state, are of limited means, and an annual filing fee would further complicate the expense here. It would be as simple as a dissolution or a change form that could be filed when we get discharge paperwork from a guardianship. I don't believe that it's appropriate to necessarily discharge the registered agent at the time of the protected person's death because the guardianship is not actually completed until the final accounting and the discharge. But I think those are akin to dissolution paperwork in the corporate side and that it's whether the reasonable fees option for families that have incurred extraordinary expenses in the guardianship process."

- This will need to be worked out by the Courts.

Mr. Anderson thanked Justice Hardesty and stated that his office is more than happy to assist the Commission where it can and that the Commission should feel free to reach out to him or any of the other representatives.

Public Comment: No public comment.

Adjournment-- Meeting adjourned at 2:15 p.m.

AGENDA ITEM 1(b)

September 14, 2018, Meeting Summary

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
DEPUTY DIRECTOR
Information Technology

MEETING SUMMARY
PERMANENT GUARDIANSHIP COMMISSION
Summary Prepared by Sharon Coates, PP, CLP

Date and Time of Meeting: September 14, 2018, 9:30 a.m. to 1:53 p.m.

Place of Meeting: VIDEOCONFERENCE (Carson City, Las Vegas)

Members Present:

Justice James Hardesty	Debra Amens	Jim Berchtold
Elizabeth Brickfield	Mary Bryant	Henry Cavallera
Lynda Hascheff	Lynn Hughes	Michael Keane
John Michaelson	Jennifer Rains	Shelly Register
Dania Reid	Jennifer Richards	Jennifer Salem
Judge Gloria Sturman	Judge Egan Walker	Homa Woodrum

AOC Staff:

Kathleen McCloskey	Robin Sweet

Supreme Court Staff:
Sharon Coates

Guests/Public:

Mallory Nelson	Sabrina Sweet	Riley Wilson
David Spitzer	James Conway	Tim Andrews
Nicole Thomas	Desiree DuCharme	Barbara Buckley

I. Call to Order: Justice Hardesty called the meeting to order at 9:29 a.m.
   a. Call of Roll and Determination of Quorum: Role was taken and a quorum was present.
   b. Approval of Meeting Summary from July 30, 2018. The July 30, 2018, summary was not available for the meeting. It will be submitted for approval at a later date.
   c. Opening Remarks: Justice Hardesty announced that because of the size of the agenda he will assume that the participants have taken the time to review the attachments and would like those who will be presenting, with a few exceptions, to hit only the highlights of their reports. This will allow time for the participants to get into the most important portion of

the agenda, which is to clarify and focus on what direction can be given to Robin Sweet and John McCormick as they work with the Legislative Counsel Bureau in development of the Bill Draft Request (BDR) that will be submitted to the Legislature. Justice Hardesty gave a brief summary of the BDR process and asked the Commission members to let him know if they learn of any specific bill proposals related to Guardianship. The Commission can vet the information and either relay its approval or make suggested refinements.

II. Public Comment: There was no public comment.

III. Report from 2nd & 8th Judicial District Court Compliance Officers. The reports can be found beginning at page 8 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website.

a. Can reasons for minor guardianship petitions be tracked? This information cannot be captured through the current case management system used by the 2nd Judicial District Court. If manual notations could be made, running a report on that data could expose confidential medical information to public records requests. This information cannot be captured through the current case management system used by the 8th Judicial District Court either. It was suggested that the judges who hear the cases should have a good sense of why guardianships are requested. The report listed several major reasons guardianships are requested. Minor guardianship cases have been increasing over the last few months in the 2nd Judicial District court. It is unknown what that means, but the numbers are increasing.

b. Can the appointment of counsel outcome measurement be adjusted to differentiate between legal aid, private attorneys, and court appointed attorneys other than legal aid? Private and legal aid attorneys can now be distinguished in the case management system through a specific party status designation. 8th Judicial District Court's IT department is working to try to provide this information for the November 2 meeting.

c. Confirmation that case statistics of guardianship courts and legal aid organizations match. All guardianship case statistics for the 2nd Judicial District Court have been compared with the data from Washoe Legal Services. This process uncovered only isolated minor discrepancies in the statistics. 8th Judicial District Court's IT department is working to try to provide this information for the November 2 meeting.

d. Can 8th Judicial District Court create and implement a follow-up procedure to confirm that out-of-state guardians have obtained a Nevada Resident Agent and registered with Nevada Secretary of State? Mr. Wilson reported that they are working on an analysis of the out-of-state guardian cases to verify if they have registered agents and take corrective action as necessary. Ms. Nelson reported that they do have a mechanism in their case management system where they can enter the registered agent information. Compliance difficulties arise when the guardian does not file the necessary paperwork with the NV Secretary of State's office. After further discussion, Justice Hardesty suggested that the courts require the

guardians to provide a copy of the document filed with the Secretary of State's office. Both courts will continue to work on being able to verify this information annually. Mr. Berchtold suggested revising the annual report form to include instructions for out-of-state guardians about filing the paperwork and providing verification to the courts.

e. General Discussion and update from Judge Gloria Sturman regarding Mental Health Diversion courts in New York and Ohio.

i. The Untapped Power of Assisted Outpatient Treatment (AOT) Laws. A copy of this PowerPoint presentation can be found beginning at page 31 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. ***[informational purposes only]***

ii. Judge Elinore Stormer, Summit County Probate Court. A copy of this PowerPoint presentation can be found beginning at page 62 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. ***[informational purposes only]***

Judge Sturman talked about the presentations she attended regarding the use of Advanced Outpatient Treatment Act (AOP) in other states, which seems to be successful. This may be a possible source of funding in Nevada for treatment of people with mental issues who are not yet in the criminal court system. Parents of adult children are coming into court asking for guardianship over their children so that the doctors will talk to them and as a way to try and force them into taking their medication. These people do not need guardianships, and have a right to refuse to take their medication. The problem in Nevada is that there are not enough hospital beds available and if they steer people out of guardianship into treatment, there will not be enough beds available for those who get arrested. Currently, the only system they have is if the person is on the street and gets arrested, they are taken to jail and put into an institutional setting for a period of time, after which they are released back onto the streets. A lengthy discussion was held. Some of the highlights are as follows:

- Mental health issues will be an important topic of the Nevada 2019 legislative session
- AOT is federally funded
- AOT is used in NRS 433A matters, which are state funded in Southern Nevada and by grant in Northern Nevada
- Washoe Behavioral Health Policy Board has submitted a BDR for the 2019 legislative session to support state funding for Northern Nevada
- In order to have more proactive options for AOT, the criteria would need to be broadened

- A large percentage of the people in Clark County jails have mental health issues, making them alternative mental health facilities
- AOT could provide treatment resources to support the families as well as guardians
- An AOT specialty docket for the courts could be a way to divert people whose families have not yet put them out on the streets
- Could be a way to avoid guardianship petitions for this population

Ms. Rains, Ms. Woodrum, Judge Sturman, and Ms. Hascheff will research and confer with each other to identify the different entities and individuals throughout the state and how they are dealing with this issue. They will report their findings to the Commission at the November 2 meeting so the Commission can discuss making a possible resolution for using AOT as a reasonable effort to use guardianship courts to assist in dealing with this issue.

f. General Discussion and update from Barbara Buckley, Esq. Executive Director-Legal Aid Center of Southern Nevada. Ms. Buckley's email and Statistics Report can be found beginning at page 92 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Legal Aid Center of Southern Nevada is expanding and recruiting attorneys. Their goal is to be able to represent children in minor guardianship cases once a funding mechanism is in place.

IV. Report from Kate McCloskey, Guardianship Compliance Manager. Ms. McCloskey's report can be found on page 11 of the September 14, 2018, Supplemental Meeting Materials located on the Guardianship Commission's website.

a. Preliminary results of survey of county recording fees used to fund counsel for protected persons and investigators for minor guardianships. Ms. McCloskey and the Commission members discussed her preliminary report at length.She is still waiting for all county recorders and treasurers to respond to the surveys. An updated report will be given at the November 2, 2018, meeting.

b. Meeting with Clark County Board of Commissioners regarding offering temporary assistance from State Compliance Office until they have investigators in place for minor guardianship cases. Ms. McCloskey advised that she and Robin Sweet did have a conversation with the Commissioners, but since they are now in the process of hiring the investigators, an MOU is no longer necessary.

c. Reports from Judges Vincent Ochoa and Egan Walker on how many investigators they estimate will need to be appointed in future minor guardianship cases. This report can be found on page 97 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. With the help of the State Guardianship Compliance Office, 2nd Judicial District Court is making progress reviewing old minor guardianship cases and tracking down the children. Presiding Judge Duckworth has consolidated the minor guardianship docket in Clark County from 20 judges to only Judge Ochoa and Judge

Potter. They have begun the process of reviewing old minor guardianship cases. They plan to use the investigators that are being hired (see agenda item IV(d) below) to go through the backlog and locate the children. Justice Hardesty would also like them to get assistance with this project from the State Guardianship Compliance office. Judge Sturman will relay that request to Judges Ochoa and Potter. Ms. McCloskey reported that since the State Guardianship Compliance office hired its Las Vegas investigators and auditors, Clark County District Court has been utilizing their services.

d. Update from Judge Sturman regarding Guardianship Investigators. Judge Sturman's report can be found beginning at page 99 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Clark County District Court secured three positions for Guardianship Compliance Investigators the week of September 3, 2018, which they expect to be able to fill by the end of this year. It is anticipated that they will use those positions as specified in the statute to do investigative and compliance work in the minor guardianship cases, however they also hope to use them to help out with some of the adult guardianship cases.

e. Washoe Legal Services Report – Funding & Contracts as of August 2018. This report can be found beginning at page 107 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Judge Walker commented that having Washoe Legal Services (WLS) and their attorneys at the table to make a priority of representation for protected persons is a critically important task. Every adult guardianship case has an attorney for a relatively modest cost to the County. Mr. Conway thanked Judge Walker and stated that the message he always tries to get across to the counties, especially the rural ones, is that WLS does not charge them 100% of the bill because they go out and find other funding sources. They have a grant from Aging & Disability Services for some of their adult guardianship cases, which frees up funds they can then use for minor guardianship cases. Justice Hardesty plans to ask all of the judges involved in the guardianship process to speak to the Legislature during the 2019 session to let them know how well the changes from the 2017 session are working.

V. Administrative Docket 507 – General Discussion and Update on Commission's First Interim Report, filed May 30, 2018. Copies of the orders approving statewide guardianship forms and rules can be found on the Guardianship Commission's website in the Orders folder under the Documents and Forms Quick Link.

VI. General Discussion re Possible revisions to NRAP to fast track certain guardianship issues.

a. Possible types: temporary guardianships, placement issues, sterilization and/or medical treatments under NRS 159.0805 & 159A.0805.

b. Review of NRAP 3E Child Custody Appeals as possible analogy/guide for guardianship section.

The Attachment for this section can be found beginning on page 119 of the September 14, 2018, agenda and meetings materials located on the Guardianship Commission's website. Justice Hardesty advised the Commission members that these types of requests are vetted by the Supreme Court and that he respects the idea and purpose of fast tracking some of these issues, however, it may not be feasible as the Court's caseload continues to increase. By the end of the year it is estimated that the total number of new cases filed will be about 3000. After further discussion, he suggested that Ms. Richards, Mr. Berchtold, and Ms. Woodrum confer and possibly refine the types of issues they perceive to be important enough to need prompt review. This will be deferred to the November 2 meeting.

VII. Status Report from Rules Subcommittee Co-Chairs John Michaelson and Dania Reid. Mr. Michaelson and Ms. Reid reported that the Rules Subcommittee has resumed working on new statewide rules. They have set an aggressive schedule to get as many rules as possible drafted and referred to the Guardianship Commission for consideration during the November 2 meeting.

VIII. Discussion re Possible Amendments of 2017 Legislation. The list of possible topics can be found beginning at page 128 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website.

a. Judicial Department Bill Draft Request (BDR). The Supreme Court's BDR can be found at page 133 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. The BDR has been submitted to the Legislature. The categories within the BDR were chosen from the list of topics developed by the Commission members during the July 30 meeting. The Commission members reviewed each category in order to give more specific information to the LCB.

Create a statutory framework for guardianship succession or a standby guardian: Ms. Richards referred to a statutory framework already used in Washington State, RCW 11.88.125--Standby limited guardian or limited guardian, which may be a good starting point. Judge Sturman commented that this is something that is desperately needed for parent/caretaker/guardians of adult protected persons. If they suddenly are unable to take care of the protected person, somebody needs to be available and ready to take over. Mr. Keane shared that he had a case in Washington State where this issue came up and believes that there is a form that can be used to name a substitute or fill-in guardian.

Update statutory provisions regarding notice of intent to move/change the location of a protected person to prevent loss of facility placement and ensure ability to pay (NRS 159.0807)

See agenda item VIII(b) below.

b. Redline of NRS 159.0807 Notice of Intent to Move/Change of Location procedures. See page 136-138 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website for the current Nevada statute and the suggested

revisions submitted by Ms. Kelly. Ms. DuCharme presented this revision on behalf of Ms. Kelly, explaining that the thought behind the revision is that the Public Guardian has so many cases where individuals are routinely hospitalized on a short term basis, which necessitates the filing of a notice with the court each time. They believe that this revision will lessen the burden on the courts if notice only has to be filed when the residence of the protected person permanently changes. Most individuals return to their home after a hospital visit.

Ms. Reid commented on some concerns she has with the proposed changes, which she will relay in more detail to Ms. Kelly.

- NRS 159.079 may need to be reviewed and possibly revised to conform with the changes to NRS 159.0807.
- Why was "secured" removed in reference to residential long-term care facility?
- The reason for adding section 4 (a)(b)&(c) in relation to giving notice when a protected person must be moved to a higher level of care. She can think of a number of circumstances where a protected person may need to be moved to a "similar" level of care where the move may cause just as much angst for those entitled to notice.
- Elimination of the ten-day notice

Ms. Reid feels that the revision is headed in the right direction to alleviate the burden on the courts and help solve the placement issues that have been caused by the ten-day notice.

Justice Hardesty asked that Ms. Kelly and Ms. DuCharme respond in writing to any specific issues that Ms. Reid relays to them so they can be discussed at the November 2 meeting.

A suggestion was made about possibly revising the process to having the guardian notify the parties of an "anticipated change" of residence without having to state where the residence will be. If it is known that the protected person needs to be transferred from a hospital to a skilled nursing facility, but the facility has not been defined, notice could be given to start the time period for objections to be filed and when a specific facility has been chosen, the protected person can be moved immediately and the parties noticed afterwards.

Other suggestions/comments:

- Add a reference to the court scheduling a hearing.
- Actual hearings on these filings are minimal, but can be contentious and time consuming.
- Often there is no objection to the notice, but the delay caused by the current notice procedure can cause loss of placements.

- Provisions should be made to give the protected person as much notice ahead of time as possible prior to a move. If they do not have a problem with the move, that information could be relayed to the parties.
- Parties need to be notified with an objection process in place, but as long as the protected person has an attorney, problems can be worked out ahead of time.

c. Redline of NRS 159.154 to create priority/right of refusal for family members when disposing of a protected person's property. See page 140 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website for the current Nevada statute and the suggested revisions submitted by Ms. Kelly. Ms. DuCharme briefly discussed the redline of NRS 159.154. There were no questions or comments.

d. Possible expansion of existing statutory guidelines regarding issuance of temporary guardianships. The information provided by Mr. Michaelson can be found beginning on page 2 of the September 14, 2018, Supplemental Meeting Materials located on the Guardianship Commission's website.

Mr. Michaelson discussed the memo he submitted regarding the extended three month process to petition for a temporary guardianship. 40% of his petitions have to be published and a large percentage of those are either homeless, isolated seniors who are estranged from their families, or do not have any family.

Judge Sturman suggested that Article V of the Uniform Guardianship Act, "Other Protective Arrangements," may be a possible way to address this issue. An elderly person, for example, may be perfectly competent, but is in a nursing home and physically unable to get to Medicaid on their own. They need someone to do this for them. Agents, referred to as Masters or Visitors are appointed temporarily to assist the protected person with that single issue and then the assignment self-terminates. These agents are trained to represent the interests of the person who needs the assistance. Justice Hardesty requested that Mr. Michaelson review Article V of the Uniform Guardianship Act and with Mr. Keane's input, prepare some suggested language that can be used to start building a new statute. A suggestion was made to have Health and Human Services support the Commission with this legislation because too many facilities will not accept a patient unless they are under guardianship.

Justice Hardesty suggested that rather than changing the temporary guardianship statute, a new section of NRS 159 might be created, which would be focused on a combination of protective arrangements for supported decision-making. Temporary guardianships bypass all of that.

Mr. Michaelson pointed out that many of the clients that he represents lack capacity and would not be able to enter into a supported decision-making arrangement.

A lengthy discussion was held concerning publication in guardianship matters. A summary is listed below:

- Is it a useful or realistic tool?
- Alternatives: shorten the time period, allow judges to waive on case by case basis, or waive publication in all cases unless ordered by court with a set timeframe
- Very expensive
- Waiver would not excuse affirmative obligation to find family members
- Heir Finders--there is a statutory construct for this
- As long as reasonable efforts are made to locate family, hospitals or attorneys should not be held liable
- Very difficult to prove defective service by publication.
- Waiving publication would need to be addressed by statutory modification

e. Proposed revision of NRS 159.179 regarding receipts and vouchers. Ms. Register's proposal can be found beginning at page 143 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Ms. Register briefly explained her reasons for suggesting this revision. Most of the time the courts are not really interested in seeing all of the receipts and vouchers under $250. She proposes that all guardians should be treated in the same manner as the public guardians and not be required to provide copies of receipts under $250 unless the Court or one of the parties makes a request. The Commission members briefly discussed the proposal. This portion of the statutory amendment will be submitted to the Legislature.

f. Update from Shelly Register regarding protected persons being allowed to change appointed counsel. All documents for this portion of the agenda will be provided to Commission members separately. Justice Hardesty deferred this matter until the November 2, 2018, meeting to give all of the parties time to review the documentation and respond appropriately.

g. Update from Shelly Register regarding waiver of service. Ms. Register's proposal can be found beginning at page 146 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Ms. Register briefly explained that her proposal is to have the protected person personally served with only the original guardianship petition. After the protected person has been appointed an attorney, that attorney could waive and accept service of any subsequent documentation on behalf of the protected person. The Commission members discussed the proposal. Oftentimes the protected persons do not comprehend the documents that are served on them and in some situations, where the person is suffering dementia or other similar illnesses, they can

become very agitated. Personal service can also be an unnecessary expense to the protected person's estate. This portion of the statutory amendment will be submitted to the Legislature.

h. General Discussion on Mediation training and possible creation of manual.
See attached:

1. Spectrum Institute White Paper to the U.S. Department of Justice. This document can be found beginning on page 150 of the September 14, 2018, agenda and meeting materials on the Guardianship Commission's website.
2. Alaska Court System Adult Guardianship/Conservatorship Mediation Pilot Project – Policies and Procedures. This document can be found beginning on page 237 of the September 14, 2018, agenda and meeting materials on the Guardianship Commission's website.
3. Rough Draft of Mediation Rules. This draft can be found beginning on page 290 of the September 14, 2018, agenda and meeting materials on the Guardianship Commission's website.
4. Draft List of Topics to be Included in Proposed Court Manual. This information can be found beginning on page 315 of the September 14, 2018, agenda and meeting materials on the Guardianship Commission's website
5. Sample Forms and Brochure (Alaska Court System). This documentation can be found beginning on page 319 of the September 14, 2018, agenda and meeting materials on the Guardianship Commission's website.

Mr. Cavallera explained the importance of using mediation in guardianship matters. The Spectrum Institute has conducted many national studies on guardianship procedures and he suggested that the Commissions members read their White Paper. One of the issues discussed in the paper is how the Americans with Disabilities Act applies to the courts, which are delegated with certain responsibilities in budget compliance to advocate attorneys and mediators. Mr. Cavallera suggested that the Commission develop a policies and procedures manual for mediation. The manual should require training and continuing education. Mr. Cavallera believes that the Alaska Manual is very close to what could be used in Nevada. After the manual is prepared a short court rule could be adopted defining mediation in guardianship matters and directing the parties to the manual on the court's website. The Commission members discussed this issue. Judge Sturman advised that they do not use mediation in Clark County, but they do refer the parties to senior judges when disputes need to be worked out. She said that has been very successful and is in favor of using mediators. The program could be run out of the ADR office. Ms. Richards stated that they use mediation as a tool in the 2nd Judicial District with good results. The only negative is the cost. Mr. Keane agreed stating that he has used mediation in adult guardianship a number of times and has found it very helpful. Judge Doherty automatically refers the

parties to mediation if there are issues that need to be resolved. If the mediation was not successful, the parties were in a better position when they did return to court to resolve the issues much quicker. Mr. Cavallera and Ms. Woodrum will prepare a redline version of the Alaska Manual and present it at the November 2 meeting along with a short rule. The rule will be discussed by the Rules Subcommittee at its October 24, 2018, meeting.

i. Suggested revision of NRS 159.081 Reports of the Guardian. This information can be found beginning on page 324 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Ms. Richards explained that NRS 159.081(c) uses the term "supportive living facility," which is not listed anywhere else in Nevada law. The term that is used by the regional centers is "supported living arrangement," which is defined in NRS 435.3315. The statute should be corrected so that guardians will not be required to include names of housemates in their reports to the court if the protected person is living in a supported living arrangement. Ms. Woodrum stated that if this is not corrected, guardians could potentially disclose private information of people who are not under a guardianship, which would be a HIPAA violation.

j. Minor Guardianship Statutes. Possible creation of uniform procedures to transfer minor guardianships into Nevada from other states.[1] This issue was carried over from the July 30, 2018, meeting. The Commission members briefly discussed the problems related with this issue. Justice Hardesty requested more information. Ms. Sabrina Sweet volunteered to do some research and provide it to the Commission members for further discussion at the November 2, 2018, meeting.

k. NRS 159.0145. Possible clarification of the difference between a citation and a notice. This issue was not discussed. [carry over from 7/30/18 meeting]

IX. General Discussion of Potential 2019 Legislative Amendments. [carry over from 7/30/18 meeting]

a. Consideration and Comparison of ABA proposed amendments to Uniform Guardianship Act. The ABA proposed amendments to the Uniform Guardianship Act can be found beginning on page 327 of the September 14, 2018, agenda and meeting materials located on the Guardianship Commission's website. Judge Sturman reported that this amendment was not on the ABA's August meeting agenda and therefore, has not been acted on yet. Refer back to agenda item VIII(d) above for possible uses of this amendment.

X. Public Comment: There was no public comment.

XI. Adjournment—meeting was adjourned at 1:53 p.m.

[1] There is nothing in the new minor guardianship statutes regarding transferring a minor guardianship into Nevada from another state. There are uniform procedures for transferring adults into Nevada but not for minors. Sabrina Sweet has indicated that guardians in Washoe County have to wait six months after establishing residency before they can petition the court for a new guardianship. After the NV guardianship is approved, then they have to go back and petition the other state to terminate. From discussion by the Forms Subcommittee on 3/13/18.

AGENDA ITEM 1(b)

November 2, 2018, Meeting Summary

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
DEPUTY DIRECTOR
Information Technology

MEETING SUMMARY
PERMANENT GUARDIANSHIP COMMISSION
Summary Prepared by Sharon Coates, PP, CLP

Date and Time of Meeting: November 2, 2018, 9:44 a.m. to 1:50 p.m.

Place of Meeting: VIDEOCONFERENCE (Carson City, Las Vegas, Elko)

Members Present:

Dania Reid	Homa Woodrum	Henry Cavallera
Jennifer Richards	Shelly Register	Debra Amens
Jennifer Rains	Justice James Hardesty	Lynn Hughes
Michael Keane	Lynda Hascheff	Karen Kelly
John Michaelson	Judge Vincent Ochoa	Jennifer Salem
Elizabeth Brickfield	Judge Gloria Sturman	

AOC Staff:

Kathleen McCloskey	Robin Sweet	Ronda Lethcoe
Mallory Nelson	Carrie Parker	James Conway
Timothy Andrews	Alan Pearson	

Supreme Court Staff:
Sharon Coates

Guests/Public:

Riley Wilson	Barbara Buckley	Lora Myles

1. *Call to Order*—Justice Hardesty called the meeting to order at 9:44 a.m.
    - Ms. Coates called roll; a quorum was present.
    - The summaries for the July 30, 2018, and September 14, 2018, meetings will be circulated to the Commission members by email within two weeks of the meeting. Justice Hardesty asked the Commission members to review them and advise Ms. Coates of any edits to be incorporated, otherwise they will be deemed approved and put on the agenda for the next meeting.

- Opening Remarks: Justice Hardesty welcomed everyone. Referencing the agenda and materials, Justice Hardesty commented that the period between the last meeting and this meeting had been very productive and thanked everyone for their efforts.

2. *Public Comment*—there was no public comment at the time this agenda item was called, however there was public comment made during the discussion of certain agenda items, which are referenced within those sections below.
3. *Reports from Second and Eighth Judicial District Court Compliance Officers*—The reports can be found beginning at pages 11 and 35 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website. Highlights from the Washoe County report are as follows:
    - Page 6—26 guardianship cases have been disposed of in favor of restoration of rights or least restrictive options.
    - Page 8—calendar days to initial hearing on temporary or extended guardianships. A glitch in the program only picked up one of the actual 6 to 7 cases for the past 12 months.
    - Page 12—tracking bond/blocked accounts and reasons for waiver, if applicable. The 626 cases where no data has been entered will decrease over the next few months as they are examined and missing information added.
    - Page 13—"Court Appointed Attorney – Not Defined" refers to new cases where all three WLS attorney names are automatically added in by the program. Once a notice of appearance has been filed, the reference is updated to remove the other two names.
    - Page 13—the investigator designation appointment refers to the Public Guardian and the Guardianship Compliance office.
    - Page 16—tracking of blocked trust/bonds. The graphs only reflect the milestones that have been attached to 52 cases. Manual examination of the records is in progress and milestones will be added as necessary.
    - Page 19—the age breakdown of protected persons under a guardianship. 35% of the caseload represents protected persons under the age of 30, which continues to concern the Court. Judge Doherty has had great success working with WCSD in formulating a supported decision making agreement to be utilized by the school district. As a child gets closer to their 18th birthday, parents are given options that will allow them to be supportive and present in future IEP meetings as opposed to forcing the child into a guardianship.

    Highlights from the Clark County report are as follows:
    - Page 2—adult protected persons represented by an attorney. The 64% with no attorney representation reflects 20 to 30 year old cases. Approximately one-half of the 7% represented by non-legal aid attorneys reflect attorneys who actually represent the guardian, not the protected person. The Court is in the process of manually reviewing those cases to remove them from the report.
    - Page 2—As of October 31, Legal Aid Center of Southern Nevada (LACSN) has been assigned to over a thousand cases. They are accepting all new cases, including any potential problem cases

and those that the judge wants somebody to review. Their goal is to visit every protected person in placement and offer them the opportunity to give their input.

- Judge Ochoa and Judge Potter are in the process of reviewing all minor guardianship cases to bring them into compliance. The project will take about a year, but the Commission should see noticeable progress in the next six months. It may be a good idea going forward to track how many investigators are appointed in minor cases and how many cases are referred to accounting compliance.
- Mr. Wilson's department is also reaching out to guardians by letter to inform them what documents need to be filed to bring them into compliance.
- The Court has received an unusual amount of minor guardianship cases lately in which parents have abandoned their children with neighbors who then file petitions for guardianship. The Court has been referring the cases to the State Guardianship Compliance Office to investigate the petitioners and locate the parents. The investigators are able to gather all of the facts so that the Court can decide whether to return the children to parents who may have had instability in their lives resulting from employment, housing, mental health, or drug issues. The investigator can provide new facts that the parties may not have been able to present to the court.

4. *Report from Kate McCloskey, Guardianship Compliance Manager*—the updated County Survey of Recording Fees Collected report can be found beginning at page 64 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website. Highlights of the report and discussion are as follows:
    - Justice Hardesty was previously unaware that all three legal aid services were being funded in Lyon County from this source or that VARN was representing guardianships.
    - The State of Nevada, Aging and Disability Services Division is providing grant funds to try to close the gap in the rural counties. Some of those funds have been provided to VARN, who has hired an attorney with the goal of being available to represent protected persons in rural counties where there is no other coverage.
    - It is Mr. Conway's understanding that Lyon County sends all the recorder fee revenue as well as any type of filing fee revenue earmarked for legal aid to the court, which then enters into contracts with individual legal aid entities. Washoe Legal Services (WLS) has a $70,000 contract for child advocacy services billed to Lyon County on a quarterly basis. All of the Guardianship work done by WLS is funded by grants. VARN and Nevada Legal Services (NLS) have some type of contract with Lyon County to receive portions of filing and recording fee revenue.
    - One of the challenges the survey has shown is that a number of the counties deposit the funds into an account which then gets transferred around making it difficult to track where the money is going. For example, Lincoln County sends legal fees for protected persons to the State of Nevada Division of Child and Family Services and when asked, the State Controller said the funds had gone to Victims of Domestic Violence and transition from foster care, which is not where the

statutes indicate the funds should be going to. Some counties as well as the State will need education on this subject.

- Churchill County is currently contracting with two private attorneys. It is Ms. Woodrum's understanding that the Churchill Public Guardian receives the funds and then determines which attorney to assign the case to. The county doesn't have a contract with any legal aid providers.
- Some District Court Judges have advised they are having issues related to getting access to the funds for investigators and legal services.
- It is Mr. Conway's understanding that NLS does not receive any recorder fee revenue and asked if that had been verified. Ms. McCloskey responded that they had not but could do so. Justice Hardesty pointed out that the report shows they receive funds in Douglas, Elko, and Storey. This will need to be tracked down because the money should not to be disbursed for purposes other than representation of protected persons.
- Ms. Buckley thanked Ms. McCloskey and Ms. Lethcoe for doing such a great investigative job. She pointed out that there were a couple errors on the Clark County side and offered to have Ms. Lethcoe work with Terry Bratton, CFO of LACSN to make sure Clark is accurately depicted. The funding they are receiving for the abused children side is $5, not $6. On the protected persons' side, the Senior Law Program is not receiving any guardianship funding that she is aware of.
- Clark and Washoe Counties already had the infrastructure built in for receipt of the $3 Recorder fee for child advocacy work to be given to legal aid. All the other counties are dealing with this process for the first time.
- It is unknown at this time who is providing representation for protected persons in the 11th Judicial District, which is Lander, Pershing, and Mineral Counties.
- **Public Comment—Lora Myles**: "Judge, your honor, I have several cases in the 11th district and it's a matter of trying to find an attorney who will go out there who doesn't have some sort of conflict of interest with the family members or the protected person. In two cases I recently had an attorney from Carson City willing to go to Mineral County. At this point in time they haven't done a contract with anyone. I do know that NLS is appointed in all Elko cases to represent protected persons. Lyon County has always split the funding between legal services based upon whether there is a contract and how many hours of legal services they provide to residents of Lyon County. So that's why Lyon County splits between the three legal services."
- Ms. Amens stated that the public defender is often the one who is appointed in Lander and possibly Pershing Counties. They don't have a lot of resources out there, which can lead to a greater potential for attorney conflicts.
- WLS has a contract attorney who covers child advocacy cases in Pershing and Humboldt, but not adult guardianship cases. If funded, WLS could cover the adult guardianship cases in Pershing, Humboldt, and Churchill Counties from its Reno office.
- Mr. Keane asked what the oversight is on the funds disbursed to private attorneys in the counties where legal aid services are not providing representation and what type of fee arrangement they

have. Response: The report would suggest that outside of the urban counties and possibly Elko and Douglas, oversight is problematic, which is the reason for this exercise. It's not the best use of scarce dollars to plug them into private counsel rates when the services can be provided by legal aid organizations at a much reduced cost. Either through a lack of understanding or some other reason, judges and county administrators may not appreciate or understand the statutory purpose of this funding source, which is a serious concern. This is an area that needs to be cleaned up so that a proper accounting can be reported to the Legislature. The Guardianship Compliance office will be the responsible entity to investigate these funds and make sure they are properly spent.

- Ms. Buckley shared that LACSN has multiple layers of oversight and all funding received from the county is restricted in the books by their CFO. As a practical matter, they hire staff attorneys and have a case management system where all attorney time is logged. The directing attorney trains, oversees, and reviews every case file from beginning to end, allowing them to provide representation to a large amount of people in the most efficient cost manner possible. LACSN is a non-profit organization governed by a board of directors, overseen by the Access to Justice Commission, and subject to audit.
- Mr. Conway advised that every year WLS prepares a functional expense allocation report, which shows all revenue sources received throughout the year and how it's allocated to demonstrate that those funds were spent consistent to the restrictions placed upon them. WLS keeps its books open for inspection.

5. *Report from Rules Subcommittee-Submission of Additional Proposed Rules*—the rules submitted for consideration can be found beginning at page 73 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website.

Following a brief discussion, Justice Hardesty asked if there were any questions concerning Rules 9, 10, 14, 23, and 24. In regard to the last sentence of Rule 9, section a, Mr. Keane advised he does not have a problem with the rule, but believes that there may be a conflict with Nevada Rules of Civil Procedure (NRCP) 6 regarding day counts. Justice Hardesty advised that any rules passed by the Commission and submitted to the Supreme Court that contain day notices will be brought into conformance with the NRCP. Ms. Woodrum advised that Rule 14 passed out of the subcommittee by a narrow vote.

Mr. Hughes made a motion, seconded by Ms. Brickfield to adopt Rules 9, 10, 23, and 24 as presented. There was no further discussion. Justice Hardesty asked for all in those in favor to say aye followed by a request for all those opposed to say no. The following rules were passed unanimously:

Rule 9—Noticing
Rule 10—Attorney Fee Petitions and Payments
Rule 23—Status Hearings after Establishment of Guardianship

Rule 24—Operating Accounts and Bonds

Justice Hardesty referred the Commission to Rule 11. Following a brief discussion, Justice Hardesty asked if there was any questions concerning Rule 11. Ms. Richardson asked for confirmation that the current draft still contained language regarding what rate could be charged and how many hours would be authorized so that a Guardian ad Litem would not be given carte blanche to go out and perform an unlimited amount of work and possibly encumber the estate with a high bill. Justice Hardesty confirmed that language is in the last sentence of paragraph 9.

> Mr. Hughes made a motion and Mr. Cavallera seconded to adopt Rule 11 as presented. There was no further discussion. Justice Hardesty asked for all those in favor to say aye followed by a request for all those opposed to say no.
>
> Rule 11—Guardian Ad Litem for Protected Person or Proposed Protected Person passed unanimously.

Justice Hardesty referred the Commission to Rule 12 and asked Mr. Michaelson to confirm if the redline version distributed the day before addressed the concerns of Mr. Berchtold and Mr. Keane. Mr. Keane clarified that the correct version, which he and Mr. Berchtold collaborated on, is the one labeled "updated 10/31 with changes and comments from Jim Berchtold."

DISCUSSION OF RULE 12:

Mr. Berchtold explained that one of the recommendations of the first Guardianship Commission was a rule regarding the role and duties of counsel for protected persons, which is where the Subcommittee began. Through the process, Mr. Keane as well as other Subcommittee members came up with some great revisions, and the rule morphed into the version presented today. Ms. Richards commented that sections 4 and 5 appear to be duplicative. Mr. Keane explained that section 4 dictates the minimum standards of attorney representation of a protected person, whereas section 5 outlines the 'discretionary duties.' Mr. Conway suggested that sections 2 and 3 may also be duplicative and could possibly be combined into one section. A lengthy discussion followed pertaining to Nevada Rules of Professional Conduct (RPC) 1.14, which is cited in the draft. Justice Hardesty reminded everyone that the rules will be presented to the Supreme Court and there will be a public hearing and an opportunity for written comment.

> Ms. Richards made a motion and Mr. Cavallera seconded to adopt Rule 12 as presented. There was no further discussion. Justice Hardesty asked Ms. Coates to call the roll so that everybody would be on the record with respect to the motion.

The vote was 14 to 2 in favor of passing Rule 12—Attorney for Protected Person or Proposed Protected Person to the Supreme Court, with the one abstention.

Justice Hardesty referred the Commission to Rule 14—Termination of Guardianships for Non-Compliance.

DISCUSSION OF RULE 14:

- This rule is needed to alleviate the limbo protected persons are placed in when the court removes a guardian for failing to comply with various requirements, without making a determination for restoring capacity of the protected person.
- Aging & Disability Services Division is reviewing approximately 2000-3000 guardianship cases in which guardians were scrubbed in mass dismissals.
- Going forward, this rule will make sure the courts consider both sides of the equation when considering a termination of the guardian's letters.
- The courts have access to the State Guardianship Compliance Office to investigate adult guardianships and, if necessary, funds available to contract with investigators on minor guardianships for cases that have gone silent.
- The rule includes a provision that a public guardian will not be assigned until after an investigation is completed determining the location and circumstances of the protected person.
- Not all cases are the same, but generically speaking the court has the authority to terminate a guardianship if an investigation reveals that neither the guardian nor the protected person can be located. If they surface at a later point, the court can start over or reopen the case, but it does not have a duty under the ADA or any other Act to continue monitoring or supervising people they are unable to locate.
- Concerns were expressed that sections A and C of the rule might be interpreted to allow the court to terminate a guardianship and appoint a new guardian without a petition, citation, or other due process requirements.
- Conceptual amendments were suggested to preface section C with "upon notice" and to include the statutory references in sections A and C.

Justice Hardesty asked the Commission members how many would support the conceptual amendments by a show of hands. The vote was 9 to 3 in favor of the conceptual amendments to subsections A and C.

Further discussion was held concerning the amendments, use of investigators, the Guardianship Compliance office, as well as fiscal consequences. Justice Hardesty appreciates the concern about fiscal consequences, but at the end of the day knowing the location and status of protected persons is necessary.

Public Comment—Lora Myles: "We just had a case on point here in First Judicial District in which the judge sent out notices at least four times, had the former guardian served personally by the Sheriff's office, and the former guardian was still in non-compliance. So, the judge's clerk then called the public guardian and said in this case they are actually appointing the public guardian as investigator to locate where the ward is."

- That is one example of what the Guardianship Compliance office was created for.
- Ms. Reid shared that a number of the Public Guardians' cases started as investigations, which is actually a very good process. They received notice and an order from the court, which gave them the opportunity to investigate and then depending on the outcome of the investigation, there was a hearing. If the guardian was determined to be unfit to serve, the public guardian was then appointed.

After further discussion, Justice Hardesty called for a motion to approve Rule 14 with the conceptual amendments. Ms. Register so moved and Mr. Keane seconded. A roll call was taken and the vote was unanimous in favor of passing the rule up to the Supreme Court after amendment, with two abstentions.

Justice Hardesty requested that Mr. Michaelson and Mr. Keane make arrangements to submit the amendment of Rule 14, including its minor guardianship counterparts to Ms. Coates, who will then prepare a redline for circulation to the entire Commission. If there are any concerns regarding the amendment, they can be addressed through email responses.

6. *Continued Discussion re Possible Amendments of 2017 Legislation.*
6(a) Judicial Department Bill Draft Request--the BDR draft can be found on pages 104 and 105 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website. The remaining agenda items in this section, either relate to the BDR or offer additional subject matters, which could be a potential problem unless a sponsor can be found outside of what the BDR identifies.

Judge Sturman brought up a new issue regarding Advanced Practice Nurses (APNs). The courts are receiving too many Physician's Certificates signed by APNs, as most nursing homes have them rather than doctors on staff. During the 2017 session, many of the statues were amended to allow APNs to sign certain medical documents, i.e. end-of-life decisions. Delays are being caused in guardianship petitions when the physician certificates must be sent back for a physician's signature. Judge Sturman asked if there is a desire to amend the guardianship statutes to allow physician certificates to be signed by either APNs or physicians. Justice Hardesty asked for comment on this subject. Ms. Woodrum advised that this

topic was discussed and discarded by the previous guardianship commission because of the abuses in some of the prior cases that brought about the need for guardianship reform.

> **Public Comment—Lora Myles**: "This was discussed when we amended the statutes several years ago, I think it was in 2003. It was determined that because of the training of nurse practitioners and physician's assistants, they are not trained in diagnosing mental health issues and unless you have an APN who is specifically a psychiatric APN, they are not able to make that determination. Because guardianships are based on capacity of the individual, mental health is a huge factor and so that's when the Legislature, back then, decided that it would simply leave it at licensed physicians or psychiatrists."

After further discussion, Mr. Michaelson made a motion and Judge Sturman seconded to ask the Legislature to modify Chapter 159 to allow physician's certificates to be signed by an APN upon a showing to the court that the APN has adequate qualifications and experience. There was additional discussion. Justice Hardesty called for a vote by a show of hands. The vote was 10 to 6 against the motion. Motion failed.

6(b) Create a Statutory Framework for Guardianship/Succession or a Standby Guardian—the documentation for this matter can be found beginning at page 106 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website. Justice Hardesty stated that there was an interest in standby limited guardians or limited guardians and Washington's Revised Code 11.88.125 was submitted in support of that concept. Justice Hardesty asked if the Commission would like to create a similar framework for employing the use of a successor or standby guardian for possible inclusion in the BDR. Ms. Woodrum so moved and Ms. Richards seconded.

DISCUSSION ON THE MOTION:

- A concern was expressed that this proposal is directly contrary to NRS 159.0613, and would allow a guardian to supersede the statute by nominating or naming a person who could step into the role which may be inconsistent with the protected person's wishes, eliminating the rights of family members to step in, particularly in contested situations. Consideration should be taken as to whether the statute sufficiently provides for an order of succession. Maybe having the public guardian or someone else available to step in would solve the problem of what happens if the guardian dies or cannot fulfill their duties.
- The court should be able to evaluate who should be successor guardian at the appropriate time, not prospectively.
- Justice Hardesty expressed his concern about operating from a Washington Statute or any other state's statutes without having a specific proposal to vote on and suggested that the proponents

of this measure withdraw their motion at this time to give the Commission time to consider the concerns raised.

- Ms. Woodrum and Ms. Richards agreed. MOTION WITHDRAWN.

6(c) Redline of NRS 159.0807 Notice of Intent to Move/Change of Location Procedures—Justice Hardesty asked Ms. Kelly to comment on this subject. Ms. Kelly stated that she was not at the last meeting and had not able to connect with Ms. Reid until recently to discuss her concerns with the proposed revision. They will try to make some time after the meeting to discuss it and send a revision out shortly. Justice Hardesty advised that if they can make the changes within the next week or two, it can be included in the Supreme Court's BDR.

6(d) Redline of NRS 159.154 to Create Priority/Right of Refusal for Family Members When Disposing of a Protected Person's Property—no further discussion necessary.

6(e) Expansion of Existing Statutory Guidelines Regarding Issuance of Temporary Guardianships. A redline version of Article 5 of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) can be found beginning at page 113 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website.

DISCUSSION:

- Mr. Michaelson explained that Judge Sturman initially suggested this as a potential alternative to guardianship and that it reminds him of a probate set aside without administration. A petition is filed, the protected person is referred to as the respondent, a hearing is held, and the judge can issue an order authorizing certain discrete actions. Special masters can be appointed to make sure those actions are carried out. Some questions that came to mind were would a bank respect the order and what if the order didn't exactly track a contingency that might arise?
- Mr. Keane worked on this with Mr. Michaelson and likes the idea of having a remedy under guardianship where a judge can authorize access to a bank account or allow a residential placement. There could be two types of cases based on whether the respondent is competent or incompetent. If incompetent, due process rights must be given to the respondent before any decision-making authority is taken away. The case would come before a judge and an attorney would be appointed. There may be a need of a medical or some other showing of incompetency, but you still have to get over that procedural hurdle to protect the individual, but a full guardianship or even a temporary guardianship is not always needed. This would allow a judge to craft the remedy that was needed. If the party is competent, a substitute decision making agreement could provide an alternative in certain situations. Mr. Keane proposed that the Commission form a subcommittee to investigate this proposal and volunteered to be a member.

- Mr. Cavallera suggested that agents or administrators could be appointed instead of temporary guardians for specific matters. He referenced a paragraph on page 123 of the draft document that states: "(I) If necessary to protect the respondent from exploitation or in order to facilitate the respondent's receipt of benefits to pay for the cost of care, the court may appoint an [administrator] of the estate upon a finding that the respondent is of at least limited capacity." He urged the Commission members to study this and come up with a proposal at a later date to submit to the Legislature.
- Ms. Register said that there are cases where an individual doesn't object to a placement from the hospital into a group home, but because there may be a question of mental capacity, the facilities are not able to accept them, forcing the person into the guardianship system. There used to be voluntary guardianships for people who wanted and needed assistance. This proposal could be beneficial, but it might require more study.
- Judge Sturman explained that the reason she became interested in this is because of the number of people in Clark County who may not have functional family or any family nearby. The person may be mentally competent, but physically unable to take on the obligation of leaving their home or other residential facility to take care of financial matters. Just because they have difficulty getting around physically does not mean they should be labeled as incompetent. They have a limitation and only need temporary assistance.
- Ms. Woodrum talked about existing adult protective services which are fully funded with federal dollars and a BDR that has been submitted to the Legislature seeking statutory authority to offer wrap-around social services for those 18 years of age and up. Conceptually, adult protective services could be referred in, empowering the individual to get those benefits while preserving their rights, and assist them the same way that elder protective services does now. BDR 164 relates to using supported decision-making to specifically address the acceptance of alternatives to guardianships. A copy will be distributed to the Commission members.

Justice Hardesty stated this item will be moved forward and thanked John and everyone else who looked at this measure and offered comments and suggestions that will be helpful going forward.

6(f) Proposed revision of NRS 159.179 Regarding Receipts and Vouchers—No further discussion necessary.

6(g) Update from Shelly Register regarding Waiver of Service—No further discussion necessary.

6(h) Update from Shelly Register regarding Protected Persons Being Allowed to Change Appointed Counsel—Deferred from September agenda and deferred to the next meeting.

6(i) Minor Guardianship Statutes: Possible Creation of Uniform Procedures to Transfer Minor Guardianship into Nevada from Other States—The memo for this topic can be found beginning at page 156 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website. The memo was discussed as well as the possibility of referring the matter to the rules subcommittee to create a rule clarifying that the home state transfer question can be addressed by NRS 159 or the forms subcommittee to create a form. Mr. Berchtold agreed to discuss this with Stephanie McDonald and Sabrina Sweet and attempt to come up with a form.

6(j) Discussion on Mediation Training and Possible Creation of Manual—the documentation for this topic can be found beginning at page 171 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website.

Mr. Cavallera explained that the ADA requires a mediation project and after some research, he determined that the model Alaska system was the only existing manual that sets out everything and meets ADA mediation criteria. Some of the information included in the proposed manual is:

- Mediators must be trained.
- Counsel must be provided for the protected person.
- The protected person cannot be excluded from mediation.
- Mediation will not continue if the protected person is unable to participate due to lack of capacity. The exception to that would be a situation between family members that doesn't necessarily affect the protected person, but the advocate for the protected person must be given the opportunity to attend.
- A section about abuse, neglect, exploitation, and/or isolation protocol.
- A procedure if the parties have a complaint against the mediator.

Ms. Woodrum shared that she recently attended an ABA Law and Aging Conference, which presented data from Florida about its use of mediation in guardianships. Mediation should not be mandatory, especially in situations where the protected person has been abused, but it's worthwhile for Nevada to be on the forefront of offering mediation options. The data shows that mediation is preferable for issues related to family and individual dysfunction rather than having the court make rulings on non-legal issues. Ms. Richards stated she has participated in guardianship mediations and that mediation can be a powerful tool that should be available, as long as it's kept voluntary. The cost may not make it practical for everyone, but Ms. Richards urged the Commission to support it. Justice Hardesty asked the Commission members if they feel sufficiently informed to act on the matter today.

> Ms. Amens made a motion to endorse the manual as edited and Ms. Register seconded it. There was no further discussion. Justice Hardesty called for all those in favor to say aye and all those opposed to say no. The motion passed with one

opposition. Judge Sturman prefers that this be discussed with the ADR section of the Bar. Justice Hardesty said that the Court will make sure that it is presented to them with a request for comment. The rule will be added to the next meeting agenda for consideration.

6(k) Suggested revision of NRS 159.081 Reports of the Guardian—No further discussion necessary.

6(l) Proposed revision of NRS 159.0535, Attendance of Proposed Protected Person at Hearing—the proposed redline can be found beginning at page 275 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website.

- Ms. Richards explained that during the approval process of the Guardianship forms, she submitted written comments concerning the Admonishment of Rights form. After further discussion it actually became an issue with the wording of the statute. She has proposed a slight edit to the statute eliminating the need for the Admonishment of Rights form and recognizing that counsel for the protected person will now make those comments to the judge at the time of hearing.
- Mr. Keane commented that this seems to be taking out the procedural protection and asked where the canvassing of the protected person will happen. Ms. Richards responded that the attorney for the protected person will inform them of their rights and seek their response to the petition, which is their role. Mr. Keane suggested that it may be necessary to add a comment of these duties in Rule 12. After further discussion on that statement, Justice Hardesty advised that it would be premature to make a change to Rule 12 before knowing if the revised statute has been adopted.
- The draft also includes a revision that would allow the proposed protected person to appear by telephone.
- Referencing the section of the statute that says the protected person is required to attend a hearing, a suggestion was made to add "unless their appearance is waived through their attorney."
- The Commission members also discussed whether this revision would apply to minors and whether by definition a psychiatrist is a physician. Attorney representation and physician's certificates are not a requirement in minor guardianship cases, but there is a corresponding statute, 159A.0535. Justice Hardesty suggested that based on the comments that have been made, Ms. Richards may want to go back and rework the revision and include 159A.0535. If she can make the changes within the next week or two, then it can be included in the Supreme Court's BDR. If further modification is necessary, it can be addressed at the next Commission meeting.

7. *Report from Jennifer Rains regarding Assisted Outpatient Treatment (AOT) and Discussion of Possible Resolution to Prepare Letter to Governor and Legislature Urging Consideration of AOT*—the documentation for this item can be found beginning at page 278 of the November 2, 2018, agenda and meeting materials located on the Guardianship Commission's website.

Ms. Rains was previously tasked with gathering information regarding what is currently being done with AOT with the goal of looking for ways to address a specific need that might not require a guardianship. At the September meeting she had information that additional resources might be requested through a BDR out of the Washoe Regional Behavioral Health Policy Board. Since then, the Board decided to go with a different proposal related to crisis triage centers, which is also a valuable resource for vulnerable individuals and their families. Across the board there seems to be good results in appropriate circumstances, but there is lack of capacity, which is how it came to the Commission's attention. Almost all of the referrals in Clark County are coming from Rawson Neal, the inpatient psychiatric facility, and the rest are conditions of probation. They are being used to provide treatment services in a criminally involved population, which pretty much takes up their funded slots. Washoe County is funded by a SAMHSA (Substance Abuse and Mental Health Services) grant that's always on a little bit of shaky standing. The State has agreed to fund approximately 50 spots but again, those are pretty much full.

DISCUSSION:

- Chief Judge Linda Bell and Commissioner Yeager are 100% supportive of a specialty diversion program and would be willing to give a presentation to the Commission.
- Clark County has only 70 beds for referrals.
- Clark County currently has 2000 people in jail with no place to be referred to.
- There is limited capacity to absorb the community referrals let alone criminal justice referrals.
- Without a doubt there is a huge population who could benefit from oversight and high level case management.
- Access to resources is limited based on funding resources.
- Justice Hardesty thanked Ms. Rains for her report and advised that unfortunately this topic did not make the priority in the BDR, but possibly we can find a Legislator who might be willing to be a sponsor. Finding a home for a BDR is essential, and she will follow-up on that.
- Justice Hardesty asked Ms. Rains if she was able to get any information on a possible budget number for this program. Ms. Rains was unable to get that information before the meeting, but will follow-up on it. She believes that information would need to come from the State.
- Judge Sturman suggested that maybe the Commission could connect with the law enforcement community to contrast the cost of mental health treatment in a proper facility versus housing somebody in a jail. It has to be less.
- Justice Hardesty stated he knows that some of the Sheriffs around the state are concerned about this issue and is hopeful that the Legislature will establish a priority this session to make a systematic change to treating mental health patients rather than incarcerating them. That's a real need in our State.

8. *Public Comment*—there was no public comment.

9. *Adjournment*—Justice Hardesty announced that an email will be sent out to get a consensus on a date for the next meeting, which will be scheduled sometime after the first of the year. The meeting was adjourned at 1:50 p.m.

AGENDA ITEM 3

Reports from Second
and
Eighth Judicial District Court
Compliance Officers

AGENDA ITEM 3(a)

Washoe County Adult Guardianship Statistical Report
Prepared by Mallory Nelson

ADULT GUARDIANSHIP STATUS REPORT

TO: SUPREME COURT OF NEVADA
PERMANENT GUARDIANSHIP COMMISSION

FROM: MALLORY NELSON, ADULT GUARDIANSHIP CASE COMPLIANCE SPECIALIST, SECOND JUDICIAL DISTRICT COURT

SUBJECT: ADULT GUARDIANSHIP CASE STATUS REPORT

DATE: SEPTEMBER 13, 2019

This report is in response to a request for updated caseload information prior to the September 23, 2019 Guardianship Commission meeting. The Court's Technology Department generates the attached status report at the beginning of each month, which the Adult Guardianship Case Compliance Specialist reviews at least monthly. The Adult Guardianship department as a whole reviews such report during quarterly meetings. Whether assessed solely by the Adult Guardianship Case Compliance Specialist or the Adult Guardianship department staff, the status reports continue to direct corrective action and identify areas that may warrant improved case management processes by the Court. Similar to the Minor Guardianship status report, the report attached hereto is a snapshot of the caseload at the exact time such report was generated, and not necessarily reflective of all the work completed on a regular basis. The current important information related to the Second Judicial District Court Adult Guardianship caseload includes:

- There are 938 active adult guardianship cases, which includes cases pending disposition, and cases in which a permanent guardian has been appointed.
- The average time to disposition for the last 12 months is 62.49 days.
- Judge Egan Walker assumed the adult guardianship caseload in August 2018. Judge Walker's oversight continues a trend towards implementing less restrictive alternatives, where appropriate, before and after guardianship is granted. Notably, the Court terminated guardianship and restored competency in 32 cases over the past 12 months. In addition, appointment of counsel for protected persons has been robust.
- The Court regularly appoints the statewide Guardianship Compliance Office to locate parties who are unresponsive to court orders and audit estates where there are concerns of financial mismanagement.
- The Court conducted 43 "three year review hearings" on September 5, 2019. The benefits of this personal contact between the parties and the Court was immeasurable. The Court would not have otherwise gleaned important information regarding service gaps and met the protected persons subject to the Court's supervision. The Court is committed to consistently scheduling these review hearings on its regular docket going forward. Similarly, the Court will continue to regularly address delinquent filings through show cause hearings heard on the regular docket.
- Data review and clean up remains ongoing with respect to section 2.5 "Blocked Trust Account/Bond," and is on track for completion late October 2019.

Thank you, Commission members, for your interest in the Second Judicial District's reporting measurements for adult guardianships.

Second Judicial District Court

State of Nevada
Washoe County

August 2019

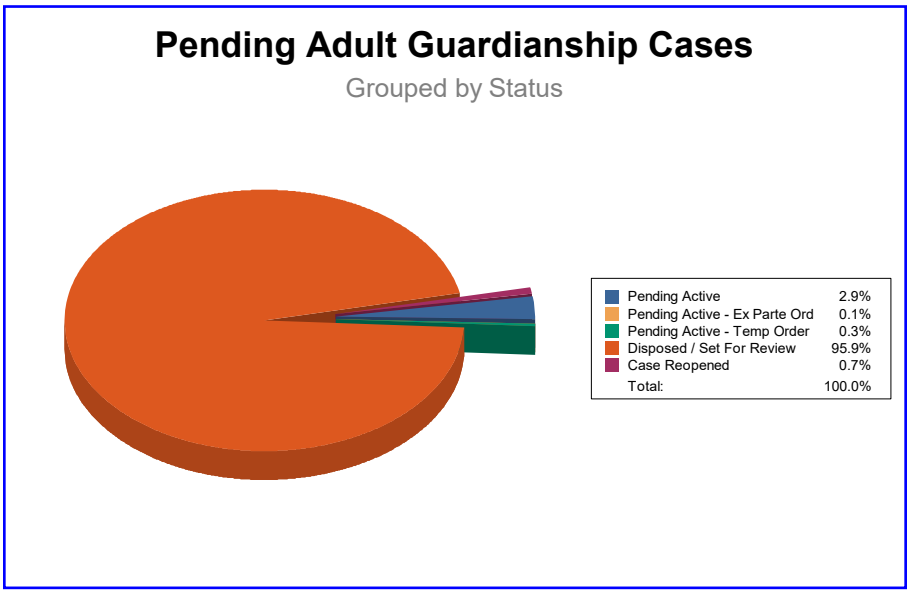
Honorable Egan Walker

Summary Monthly Adult Guardianship Case Status Report

Table of Contents

Caseload Reports
1.1 - Status of Pending Adult Guardianship Cases
Average Age of Case reflects time of initial petition to either time of disposition or current date.

	0 - 30 Days	31 - 60 Days	61 - 90 Days	91 - 180 Days	181 - 365 Days	Greater than 365 Days	Total
Pending Active	11	12	4	0	0	0	27
Pending Active - Ex Parte Ord	0	0	1	0	0	0	1
Pending Active - Temp Order	1	0	0	1	1	0	3
Disposed / Set For Review	181	481	125	91	16	6	900
Case Reopened	3	1	1	2	0	0	7
Total	196	494	131	94	17	6	938



Cases represented in the previous table and this graph contain cases with any initial filing date. Disposed cases are not listed here. Age of case is determined by the date the status was updated.

Pending - Active: A count of cases that, at the start of the reporting period, are awaiting disposition.

Pending Active - Ex Parte Order: A count of cases that have an ex parte order of guardianship filed and are awaiting further action.

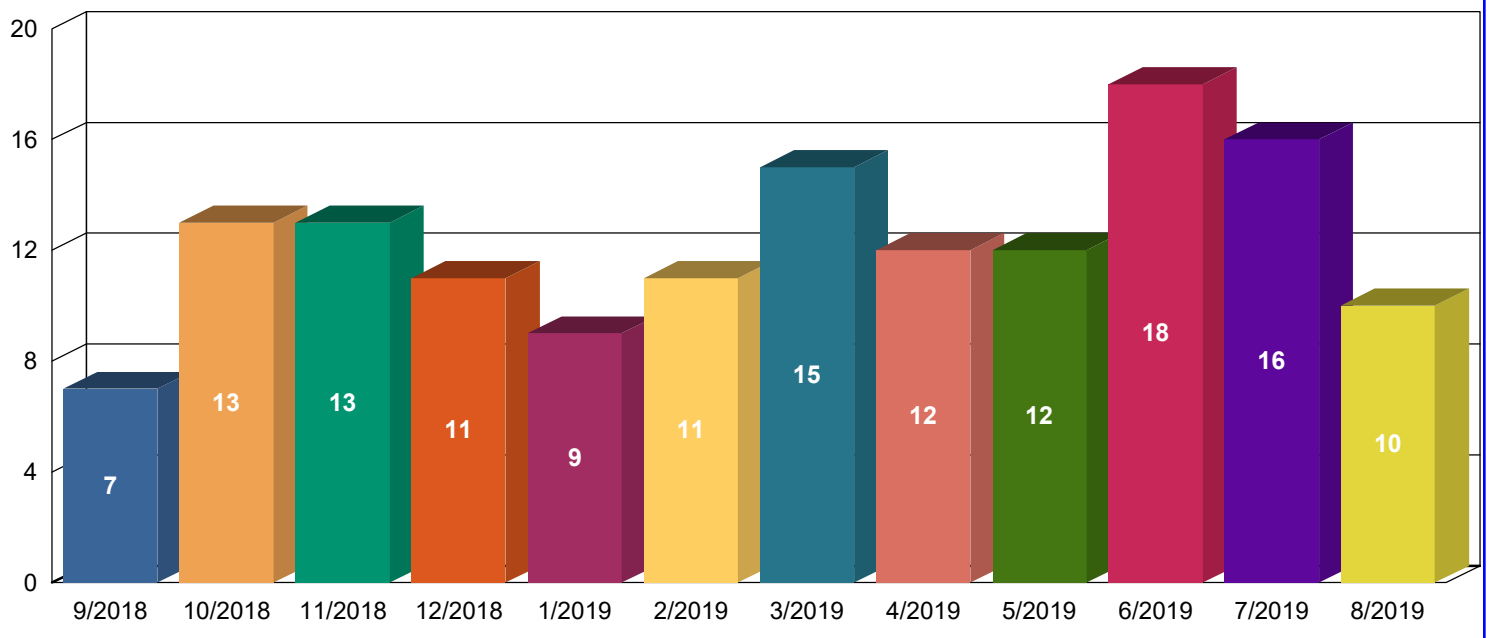
Pending Active - Temp Order: A count of cases that have an order of temporary guardianship filed and are awaiting disposition.

Disposed/Set for Review: A count of cases at the end of each month that, following an initial Entry of Judgment, are awaiting a regularly scheduled review involving a hearing before a judicial officer during the reporting period.

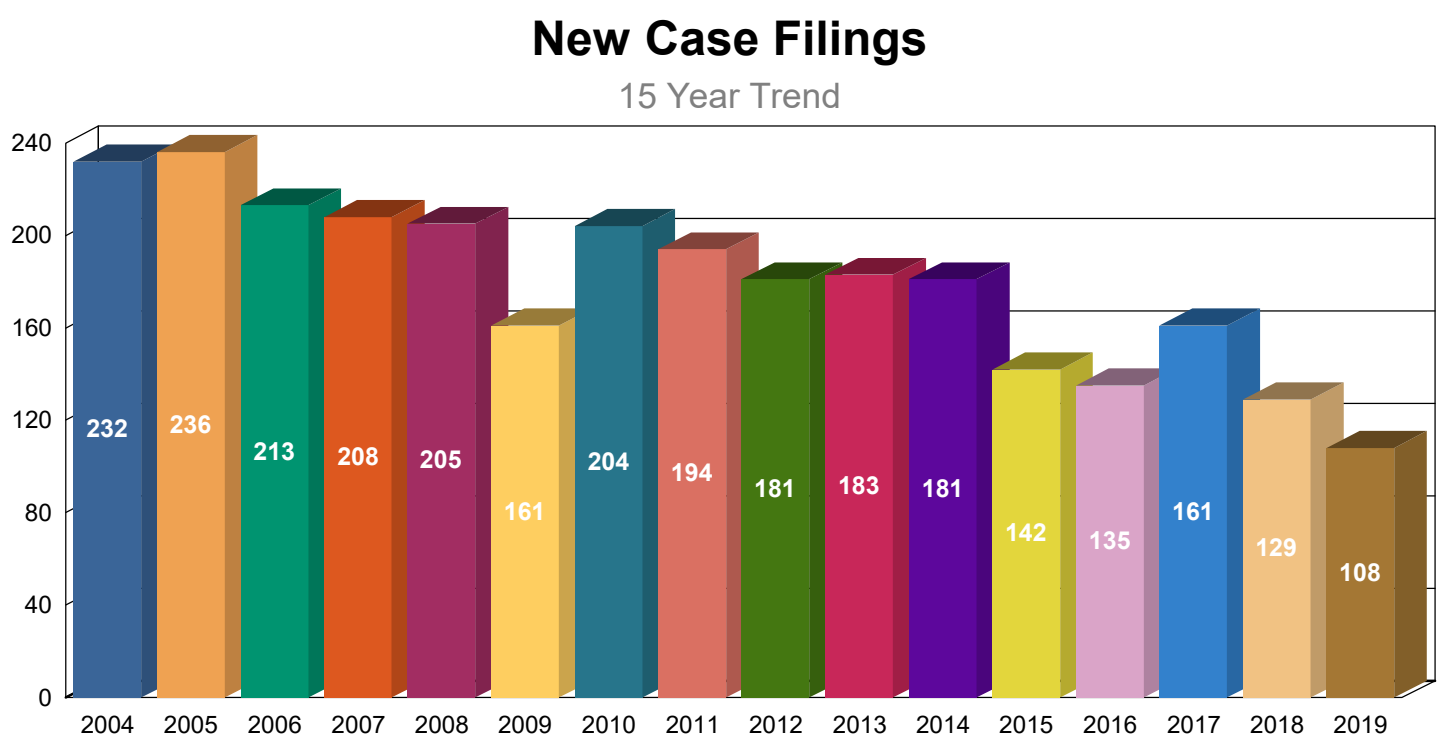
Reopened: A count of cases in which judgments have previously been entered but which have been restored to the courts pending caseload due to the existing filing of a request to modify or enforce existing judgments.

These days represent the time from petition to adjudication, at which point the cases stop aging. This group represents cases that are awaiting a regularly scheduled review (ex., annual report). These cases do not continue to age, and therefore, remain static in their respective age grouping.

Caseload Reports
1.2 - New Adult Guardianship Cases
New Adult Guardianship cases filed in the previous 12 months.



Caseload Reports
1.2.1 - New Adult Guardianship Cases
New Adult Guardianship cases filed in the previous 15 years.



Caseload Reports

1.3 - Types of Guardianships Ordered

The below table shows the number and types of guardianships ordered in the past 12 full months. Definitions regarding the statutory authority for types of guardianships are listed in Appendix A.

NPCS 3.3.2 Initial Screening

Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

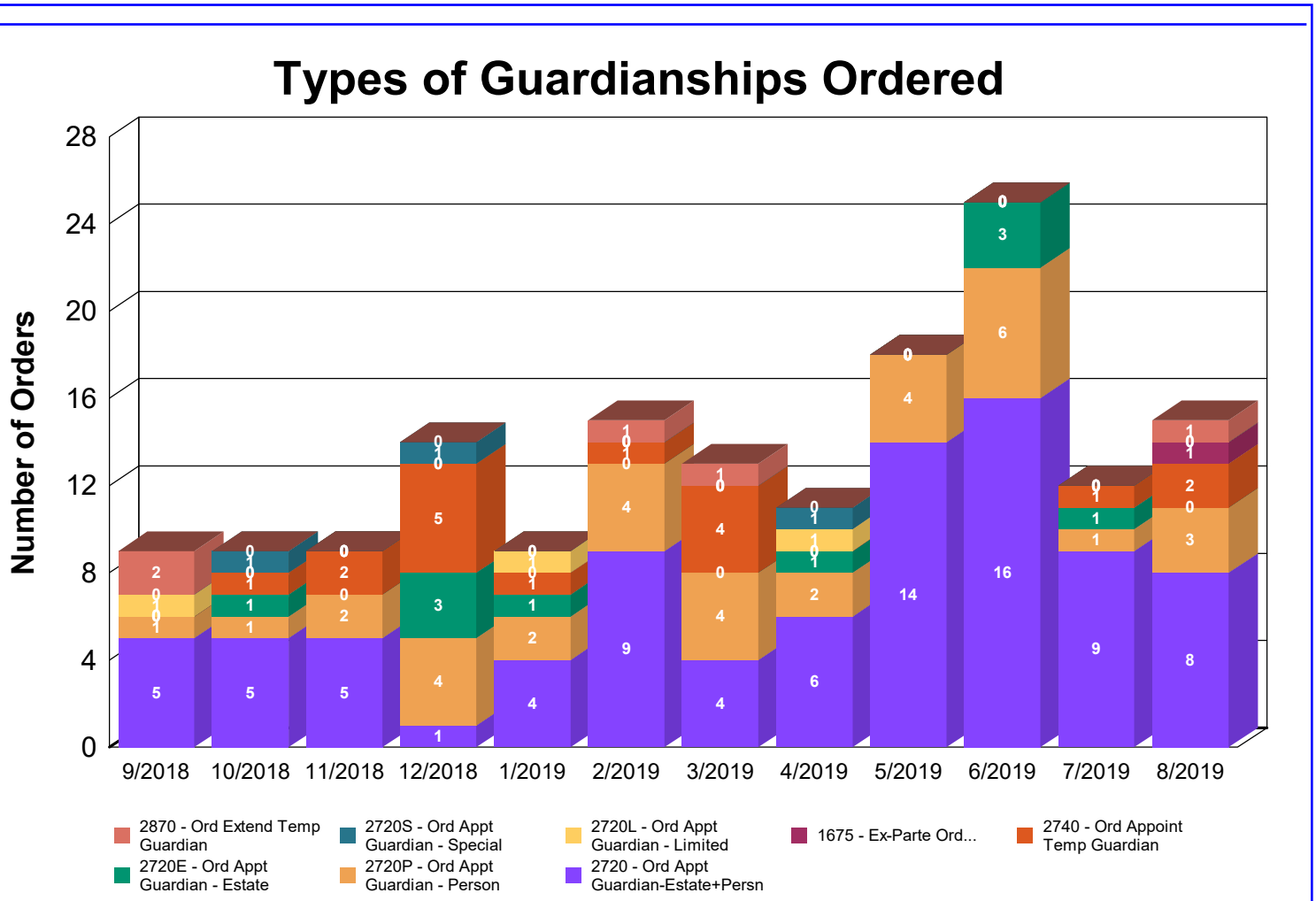
NPCS 3.3.10 Less Intrusive Alternatives

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

B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.

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

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	**Total**
2720 - Ord Appt Guardian-Estate+Persn	5	5	5	1	4	9	4	6	14	16	9	8	**86**
2720P - Ord Appt Guardian - Person	1	1	2	4	2	4	4	2	4	6	1	3	**34**
2720E - Ord Appt Guardian - Estate	0	1	0	3	1	0	0	1	0	3	1	0	**10**
2740 - Ord Appoint Temp Guardian	0	1	2	5	1	1	4	0	0	0	1	2	**17**
1675 - Ex-Parte Ord...	0	0	0	0	0	0	0	0	0	0	0	1	**1**
2720L - Ord Appt Guardian - Limited	1	0	0	0	1	0	0	1	0	0	0	0	**3**
2720S - Ord Appt Guardian - Special	0	1	0	1	0	0	0	1	0	0	0	0	**3**
2870 - Ord Extend Temp Guardian	2	0	0	0	0	1	1	0	0	0	0	1	**5**
Total	9	9	9	14	9	15	13	11	18	25	12	15	**159**



Caseload Reports

1.4 - Average Time to Disposition for Pending Active Cases - Last 12 Full Months

Cases initially filed since January 1, 2014

The table below shows cases disposed that were initially filed since January 1, 2014 (since new case management protocols were put in place). The average time to disposition for pending active cases may fluctuate significantly in a particular month depending upon various factors, which include whether a continuance is necessary due to notice deficiencies, objections to the guardianship, or where the parties did not set a hearing on the petition shortly after its filing.

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	**Total**
Average Number of Days	62.5	75.6	49.7	55.5	95.8	56.5	54.1	72.0	52.4	57.9	53.5	62.8	**62.49**

Caseload Reports

1.5 - Adult Guardianship Cases Disposed.

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

		9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Final Disposition	Guard: Death	4	26	8	15	17	21	16	23	11	17	12	13	**183**
	Guard: Restoration/Competency	2	3	3	3	2	2	3	4	2	3	2	3	**32**
	Order Term Guard or Final Actg	0	1	1	2	0	4	3	3	3	7	1	1	**26**
	Total	6	30	12	20	19	27	22	30	16	27	15	17	**241**
First Disposition	Bench N/J/T Judgment Reached	9	9	7	6	7	12	8	11	18	29	12	11	**139**
	Setld/Withdrn with Jud Conf/Hg	0	3	0	0	2	0	1	2	2	1	0	0	**11**
	Transferred	0	2	1	0	1	2	1	2	0	0	1	0	**10**
	Setld/Withdrn w/o Jud Conf/Hrg	0	1	0	0	0	1	0	1	1	1	3	1	**9**
	Voluntary Dismissal	0	1	1	0	2	0	0	1	0	1	1	1	**8**
	Other Manner of Disposition	0	0	2	1	1	0	1	0	1	0	0	0	**6**
	Voluntary Dismissals	0	0	1	2	0	0	0	0	0	0	0	0	**3**
	Involuntary Dismissal	0	0	0	0	0	0	0	0	0	1	0	0	**1**
	Stipulated Dismissal	0	0	0	0	0	0	0	1	0	0	0	0	**1**
	Total	9	16	12	9	13	15	11	18	22	33	17	13	**188**

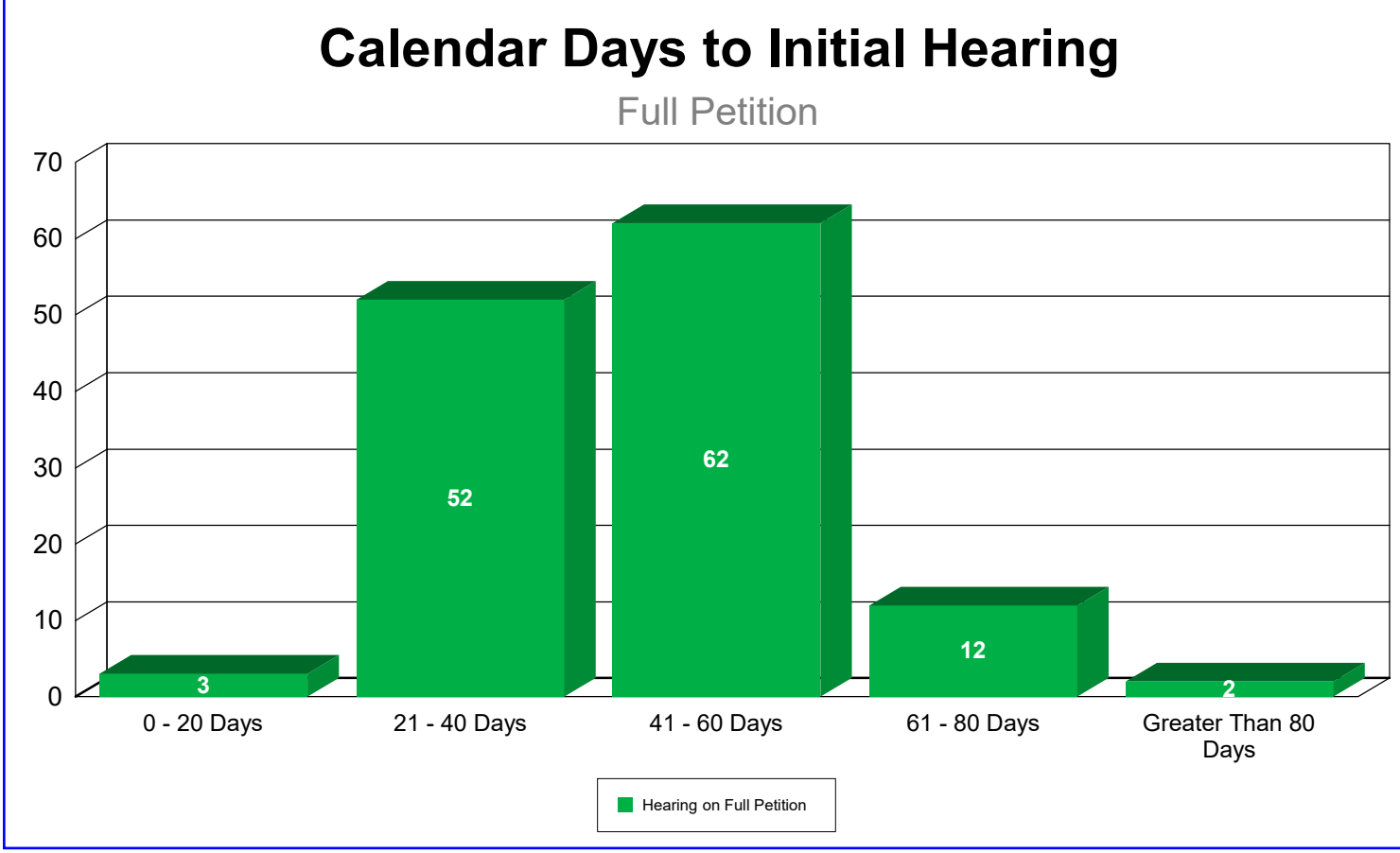
Additional Caseload Statistics
2.1 - Timeliness of First Hearing - Last 12 Full Months
2.1.1 - Hearing on Full Petition

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on a full petition.

NPCS 3.3.8 Hearing

A. Probate courts should promptly set a hearing for the earliest date possible.
B. Respondents should be present at the hearing and all other stages of the proceeding unless waived.
C. Probate courts should make reasonable accommodations to enable the respondent's attendance and participation at the hearing and all other stages o proceeding.
D. A waiver of a respondent's right to be present should be accepted only upon a showing of good cause.
E. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.
F. Probate courts may require the court visitor who prepared a report regarding the respondent to attend the hearing.
G. Probate courts should require the proposed guardian or conservator to attend the hearing.

		0 - 20 Days	21 - 40 Days	41 - 60 Days	61 - 80 Days	Greater Than 80 Days	Total
Hearing on Full Petition	Granted	1	28	38	7	1	75
	Continued	1	12	14	3	1	31
	Vacated	0	5	5	1	0	11
	Dismissed	0	4	3	1	0	8
	Denied	0	3	2	0	0	5
	Others	1	0	0	0	0	1
	Total	3	52	62	12	2	**131**



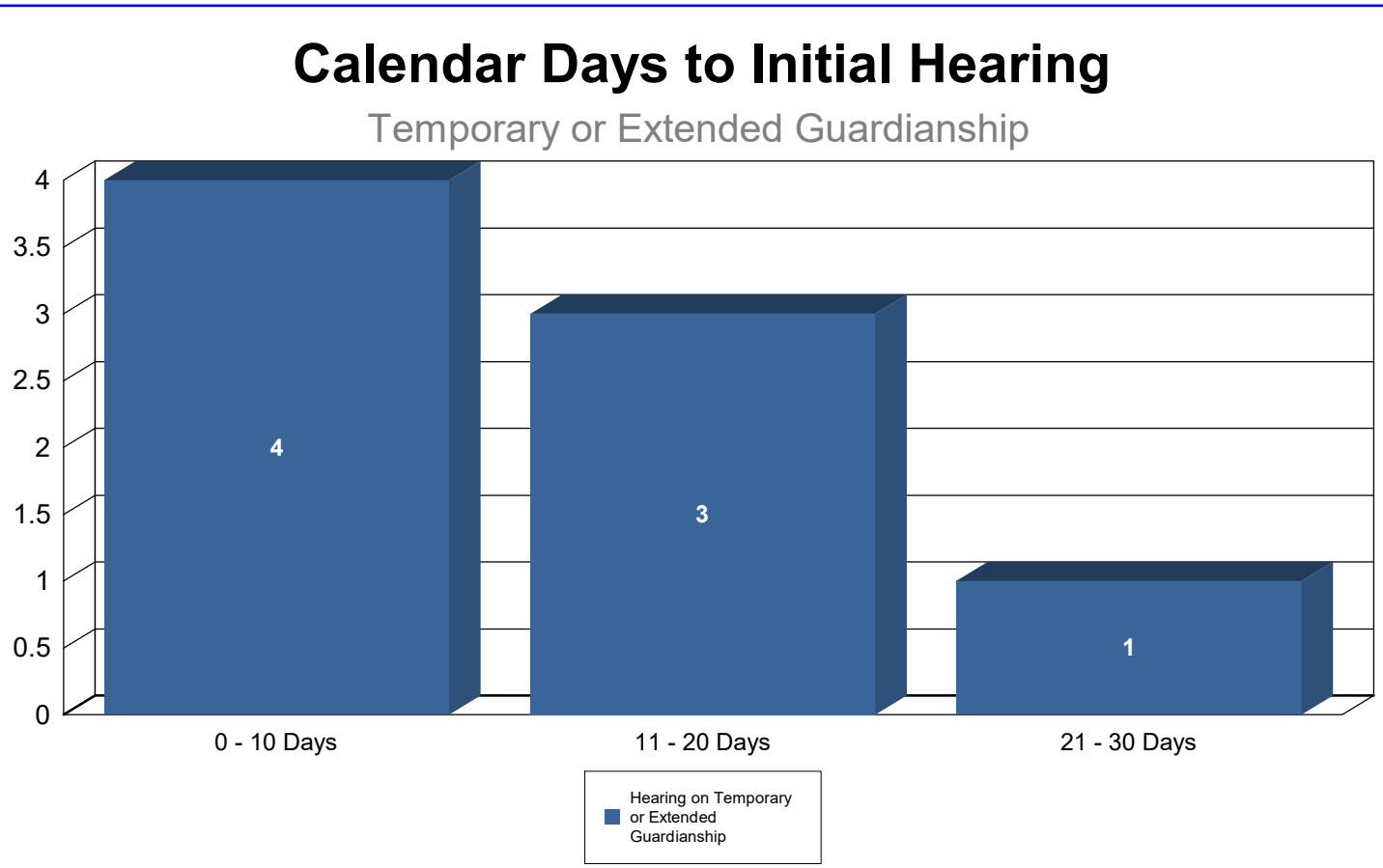
Additional Caseload Statistics
2.1 - Timeliness of First Hearing - Last 12 Full Months
2.1.2 - Hearing on Temporary or Extended Guardianship

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on temporary or extended guardianship.

NPCS 3.3.8 Hearing

A. Probate courts should promptly set a hearing for the earliest date possible.
B. Respondents should be present at the hearing and all other stages of the proceeding unless waived.
C. Probate courts should make reasonable accommodations to enable the respondent's attendance and participation at the hearing and all other stages o proceeding.
D. A waiver of a respondent's right to be present should be accepted only upon a showing of good cause.
E. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.
F. Probate courts may require the court visitor who prepared a report regarding the respondent to attend the hearing.
G. Probate courts should require the proposed guardian or conservator to attend the hearing.
H. Probate courts should make a complete record of the hearing.

		0 - 10 Days	11 - 20 Days	21 - 30 Days	Total
Hearing on Temporary or Extended Guardianship	Granted	2	3	1	6
	Denied	2	0	0	2
	Total	4	3	1	**8**



Additional Caseload Statistics
2.2 - Alternative Dispute Resolution: - Last 12 Full Months
2.2.1 - Scheduled Mediations

Cases are grouped based upon resolution type. Pending mediations, if available, are labled as 'Outcome Pending.'

NPCS 2.5.1 Referral to Alternative Dispute Resolution

Probate courts should refer appropriate cases to appropriate alternative dispute resolution services including mediation, family group conferencing, settlement conferences and arbitration.

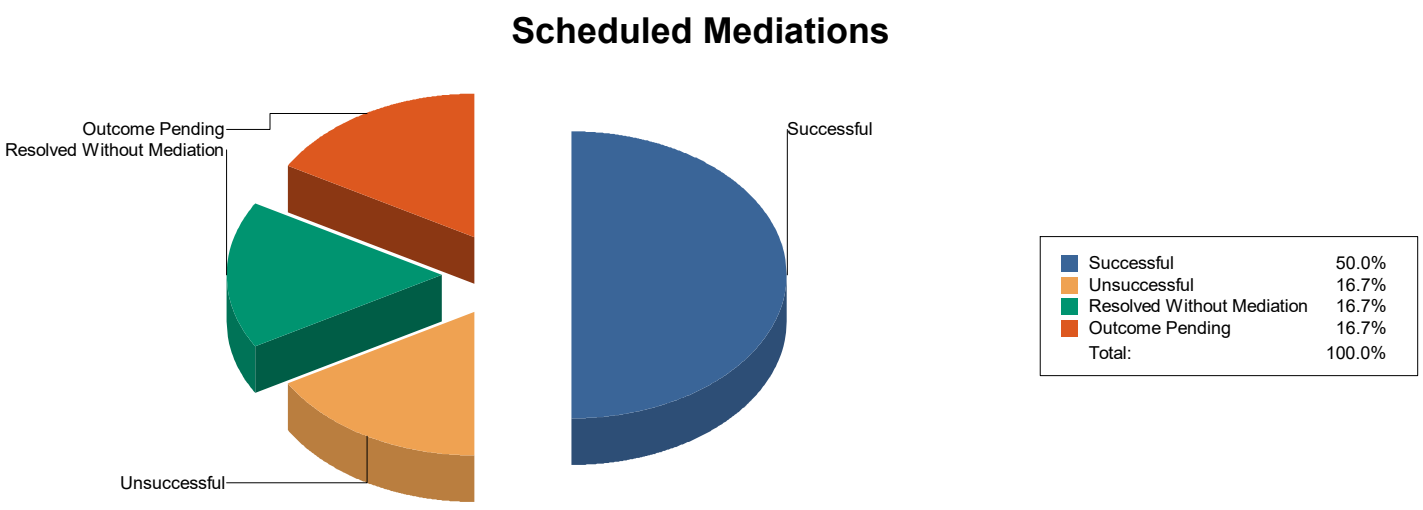
NPCS 3.3.2 Initial Screening

Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

NPCS 3.3.10 Less Intrusive Alternatives

A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.
B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.
C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	9/2018	10/2018	12/2018	1/2019	2/2019	5/2019	Total
Successful	1	0	1	0	1	0	**3**
Unsuccessful	0	0	0	1	0	0	**1**
Resolved Without Mediation	0	1	0	0	0	0	**1**
Outcome Pending	0	0	0	0	0	1	**1**
Total	**1**	**1**	**1**	**1**	**1**	**1**	**6**



Additional Caseload Statistics
2.2 - Alternative Dispute Resolution: - Last 12 Full Months
2.2.2 - Scheduled Settlement Conferences

Events are grouped based upon resolution type. Pending settlement conferences are labled as 'Outcome Pending.' Multiple events may occur on a single case. This new data element capture began July 1, 2015.

NPCS 2.5.1 Referral to Alternative Dispute Resolution

Probate courts should refer appropriate cases to appropriate alternative dispute resolution services including mediation, family group conferencing, settlement conferences and arbitration.

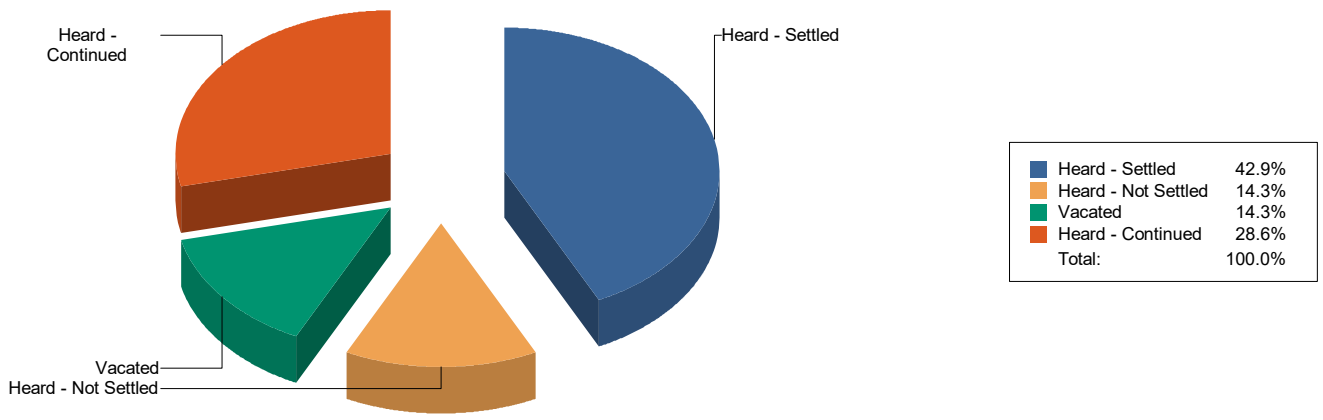
NPCS 3.3.2 Initial Screening

Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

NPCS 3.3.10 Less Intrusive Alternatives

A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.
B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.
C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	3/2019	4/2019	8/2019	Total
Heard - Settled	2	1	0	3
Heard - Not Settled	0	0	1	1
Vacated	0	1	0	1
Heard - Continued	2	0	0	2
Total	**4**	**2**	**1**	**7**



Additional Caseload Statistics
2.3 - Annual Reports and Inventories Filed

The below table shows the number of annual reports, accountings, inventories, and appraisement and record filings in the past 12 full months.

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	**Total**
Accounting	18	10	21	23	20	13	8	18	10	18	10	16	**185**
Annual Report of Guardian	57	72	87	72	69	49	43	64	45	71	66	59	**754**
Inventories	8	14	10	8	6	11	14	11	5	9	11	11	**118**
Total	83	96	118	103	95	73	65	93	60	98	87	86	**1,057**

Additional Caseload Statistics
2.4 - Guardianship Review Comparison

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

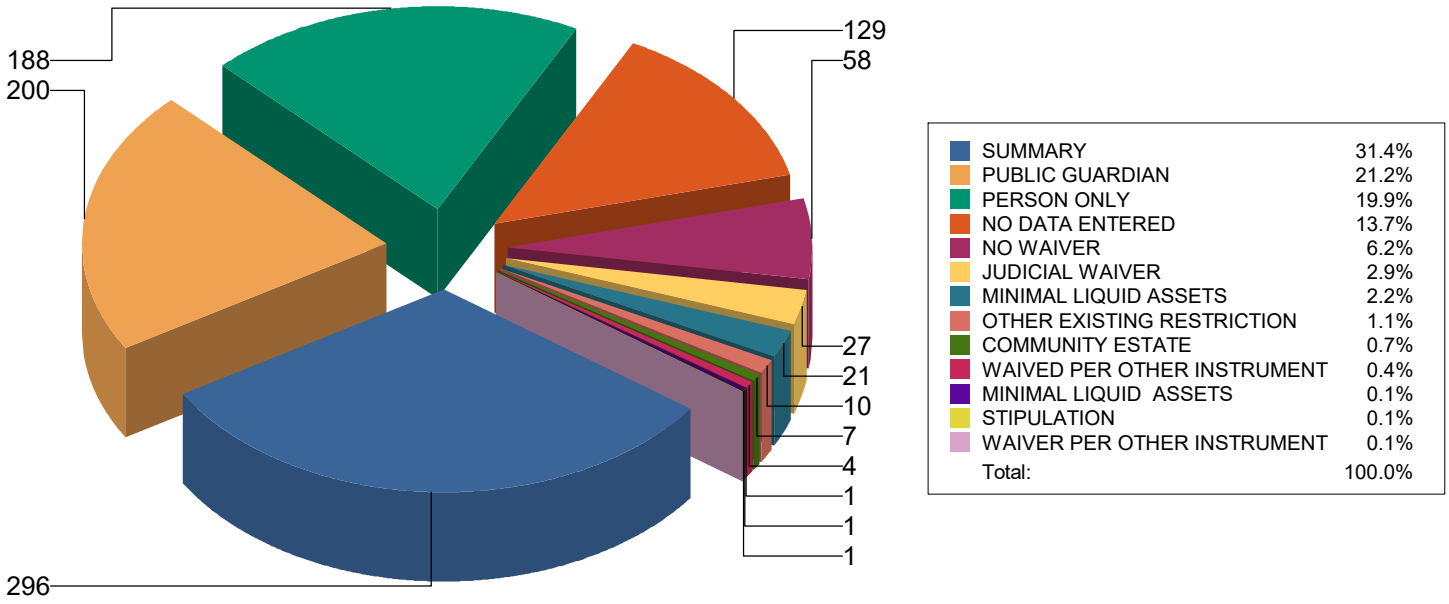
			Total
Guardianship - Estate Only	Non-Summary	$0 - $10,000	2
		$10,000 - $20,000	2
		$20,000 - $200,000	10
		$200,000 and up	3
		Total	**17**
	Summary	$0 - $10,000	4
		Total	**4**
		Total	**21**
Guardianship - Person & Estate	Non-Summary	$0 - $10,000	7
		$10,000 - $20,000	14
		$20,000 - $200,000	69
		$200,000 and up	70
		Total	**160**
	Summary	$0 - $10,000	455
		Total	**455**
		Total	**615**
Guardianship - Person Only		$0 - $10,000	272
		$200,000 and up	1
		Total	**273**
		Total	**273**
No Data Entered		Others	46
		Total	**46**
		Total	**46**

Approximate Combined Values of Estates: $187,143,737.00

Additional Caseload Statistics
2.5 - Blocked Trust Account / Bond Waiver Information

	Total
SUMMARY	296
PUBLIC GUARDIAN	200
PERSON ONLY	188
NO DATA ENTERED	129
NO WAIVER	58
JUDICIAL WAIVER	27
MINIMAL LIQUID ASSETS	21
OTHER EXISTING RESTRICTION	10
COMMUNITY ESTATE	7
WAIVED PER OTHER INSTRUMENT	4
MINIMAL LIQUID ASSETS	1
STIPULATION	1
WAIVER PER OTHER INSTRUMENT	1
Total	**943**

Waiver Reasons



Additional Caseload Statistics

2.6 - Appointment of Counsel - Last 12 Full Months

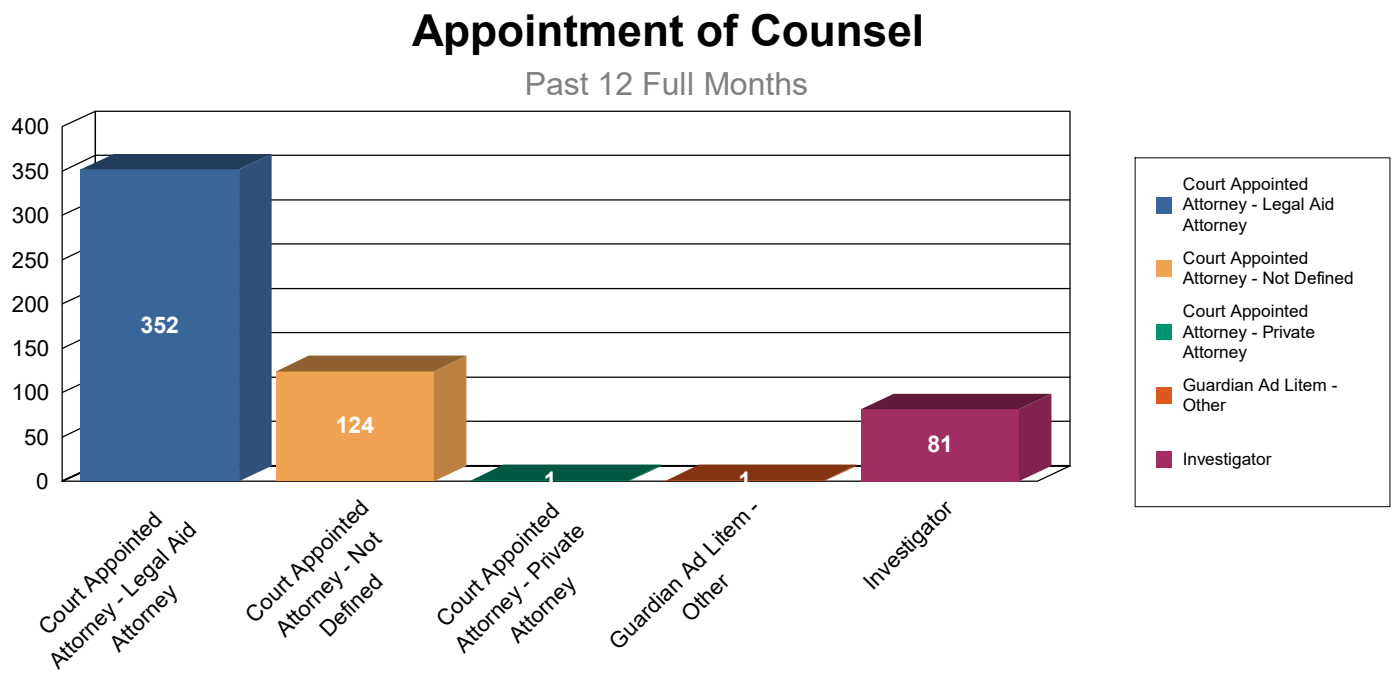
Court appointed counsel for the last 12 months, broken out by the party type. This new data element capture began September 1, 2015.

NPCS 3.3.5 Appointment of Counsel

A. Probate courts should appoint a lawyer to represent the respondent in a guardianship/conservatorship proceeding if:
(1) Requested by the respondent; or
(2) Recommended by the visitor; or
(3) The court determines that the respondent needs representation; or
(4) Otherwise required by law.

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

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Court Appointed Attorney - Legal Aid Attorney	23	36	20	32	19	31	36	28	30	30	30	37	**352**
Court Appointed Attorney - Not Defined	0	0	4	0	3	5	4	4	0	0	15	89	**124**
Court Appointed Attorney - Private Attorney	0	0	0	0	0	0	0	0	0	0	1	0	**1**
Guardian Ad Litem - Other	0	0	0	0	0	1	0	0	0	0	0	0	**1**
Investigator	2	3	10	10	7	12	15	10	4	2	3	3	**81**
Total	25	39	34	42	29	49	55	42	34	32	49	129	**559**



Total Appointments: 559

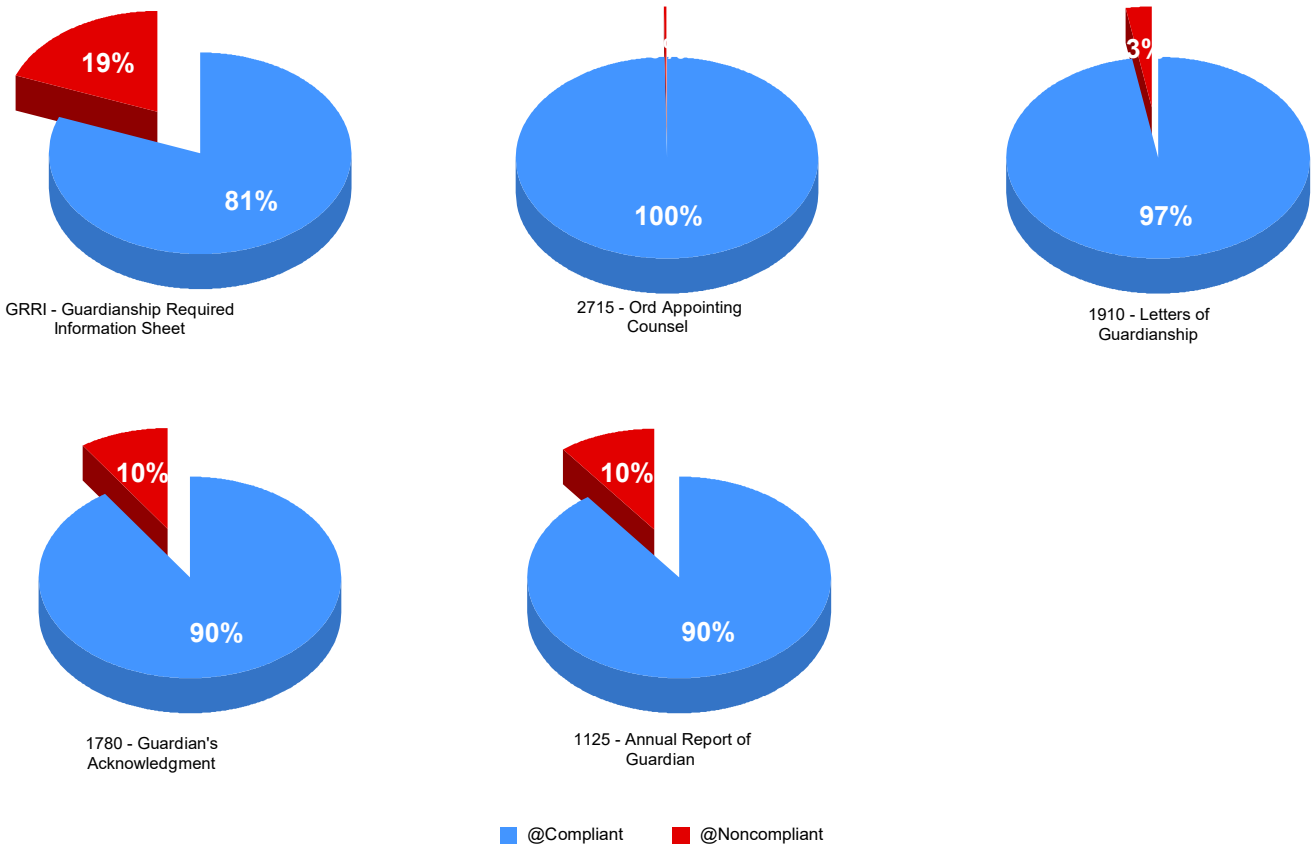
Please Note: The 'Investigator' category includes appointment of Washoe County Public Guardian and/or the State Guardianship Compliance Office on a case.

Compliance Reports
3.1 - Milestones for all Adult Guardianship Cases

Every adult guardianship case requires the filing of the following:

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

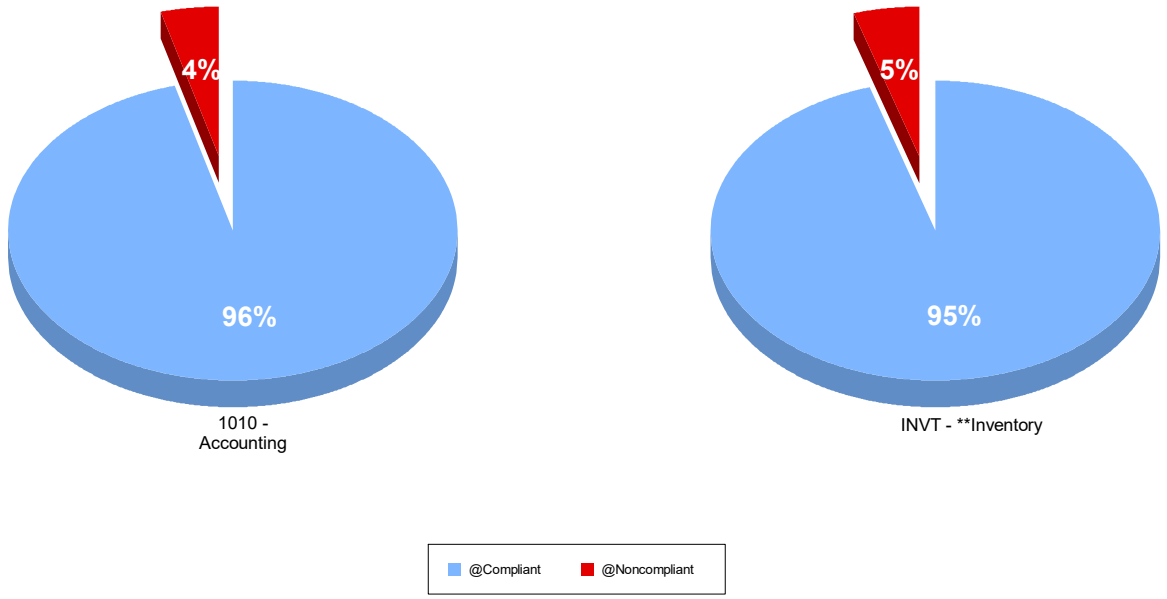
Compliance rate for **934** cases.



Compliance Reports
3.2 - Inventories and Annual Accountings

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

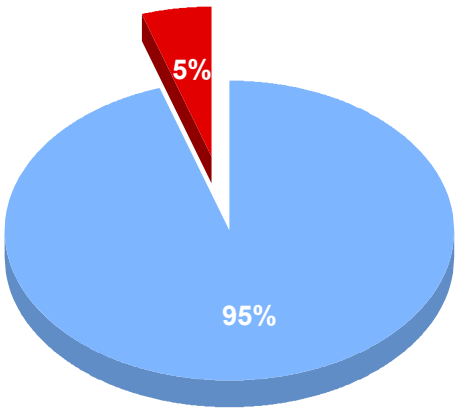
Compliance rate for **513** cases.



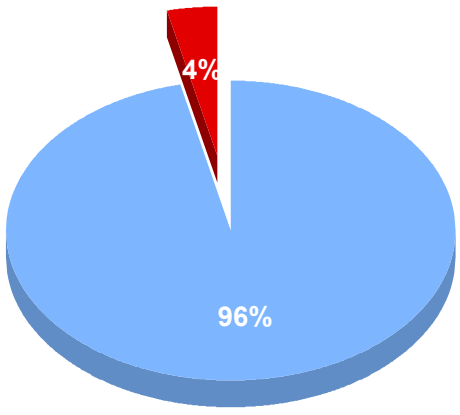
Compliance Reports
3.3 - Blocked Trust / Bonds

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

Compliance rate for **81** cases.



3710 - Proof Blocked Trust Account



4160 - Surety Bond - Civil

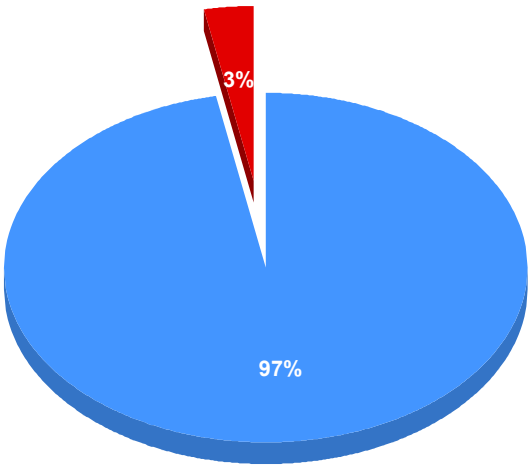
@Compliant @Noncompliant

Compliance Reports
3.4 - Certificate of Compliance

Must be filed after completion of guardianship training.

Compliance rate for 165 cases.

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

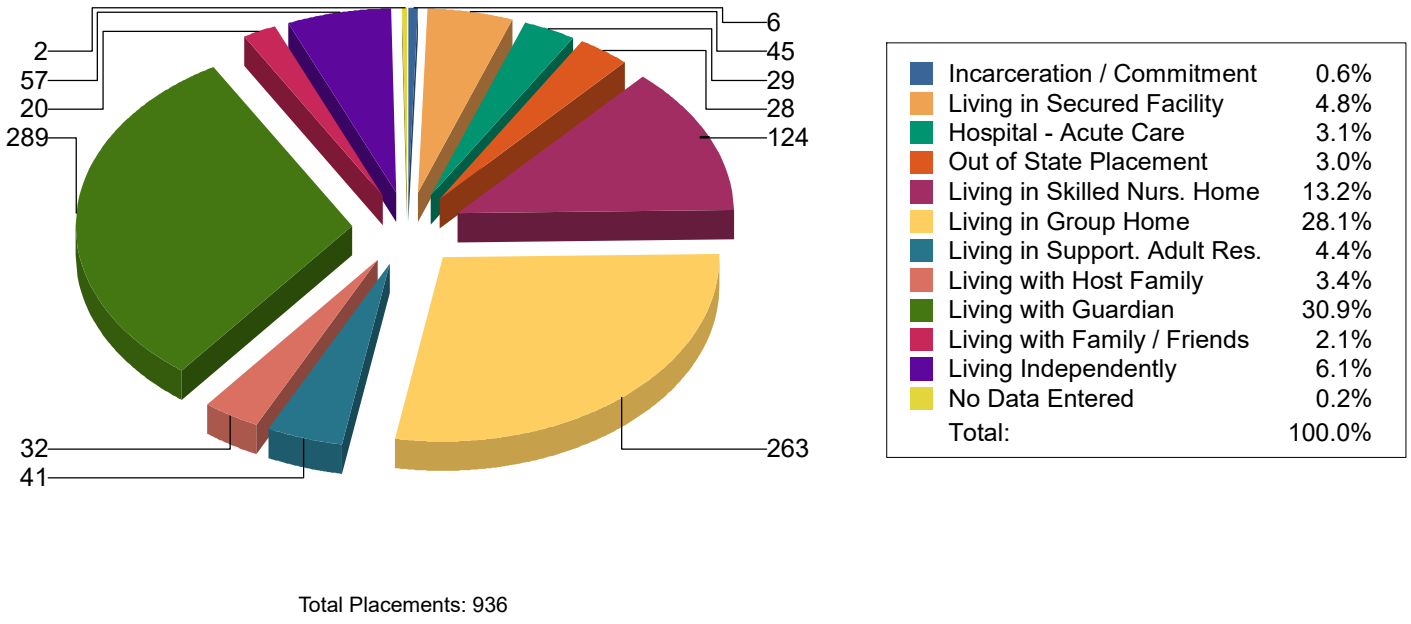


Demographics

4.1 - Placement

For all pending cases, the chart below shows the percentage breakdown of guardian types in Adult Guardianship cases.

Please note: 'No Data Entered' represents those cases that are pending active and awaiting a case disposition, where a placement has not yet been established. Definitions for placement and care are located on Appendix C.



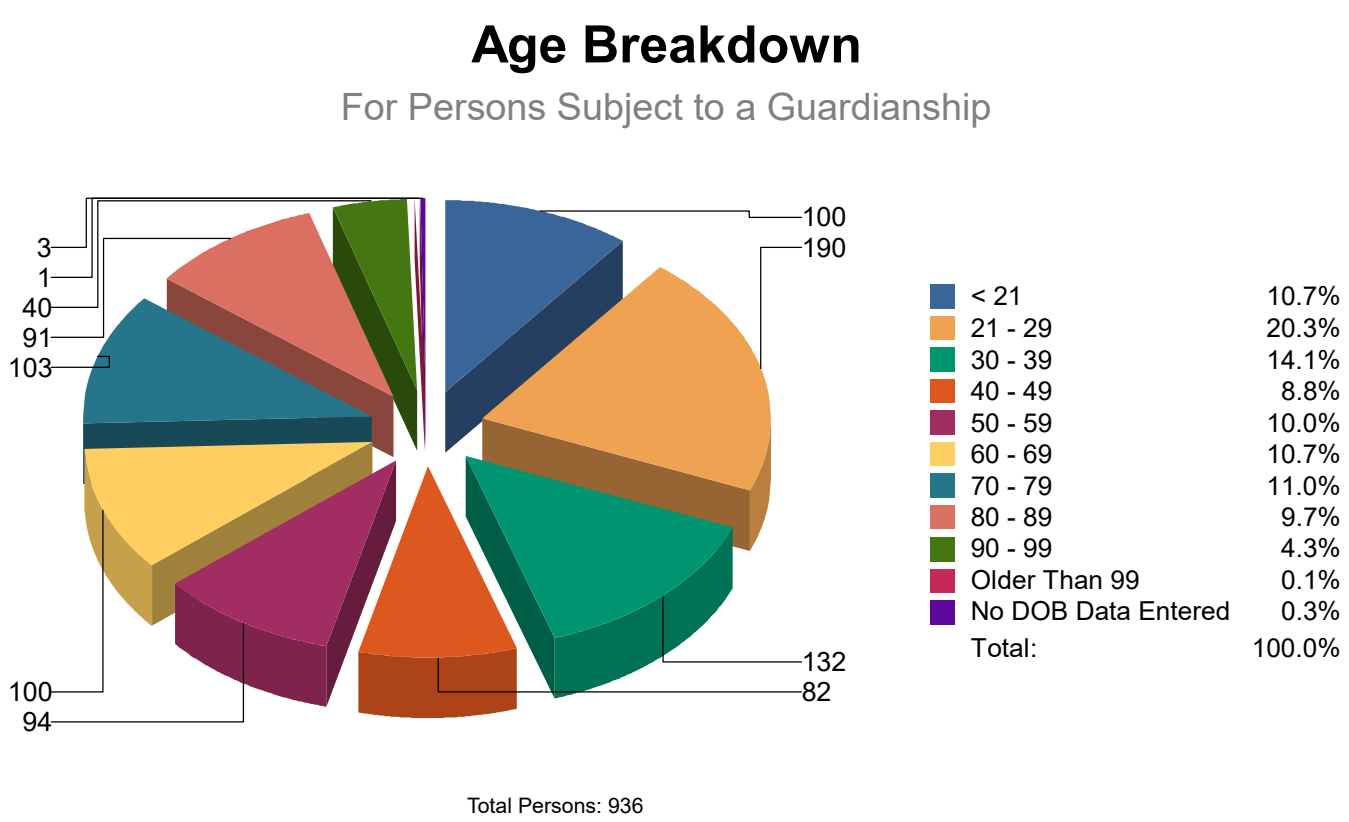
Total Placements: 936

Demographics

4.2 - Adult Subject to Guardianship - Age Breakdown

The table and chart below show the breakdown in age of persons subject to a guardianship in pending cases.

Please note: Previous to January 2014, this data was not captured. As data is added to the case management system, the percentage of 'No DOB Data Entered' will decrease.



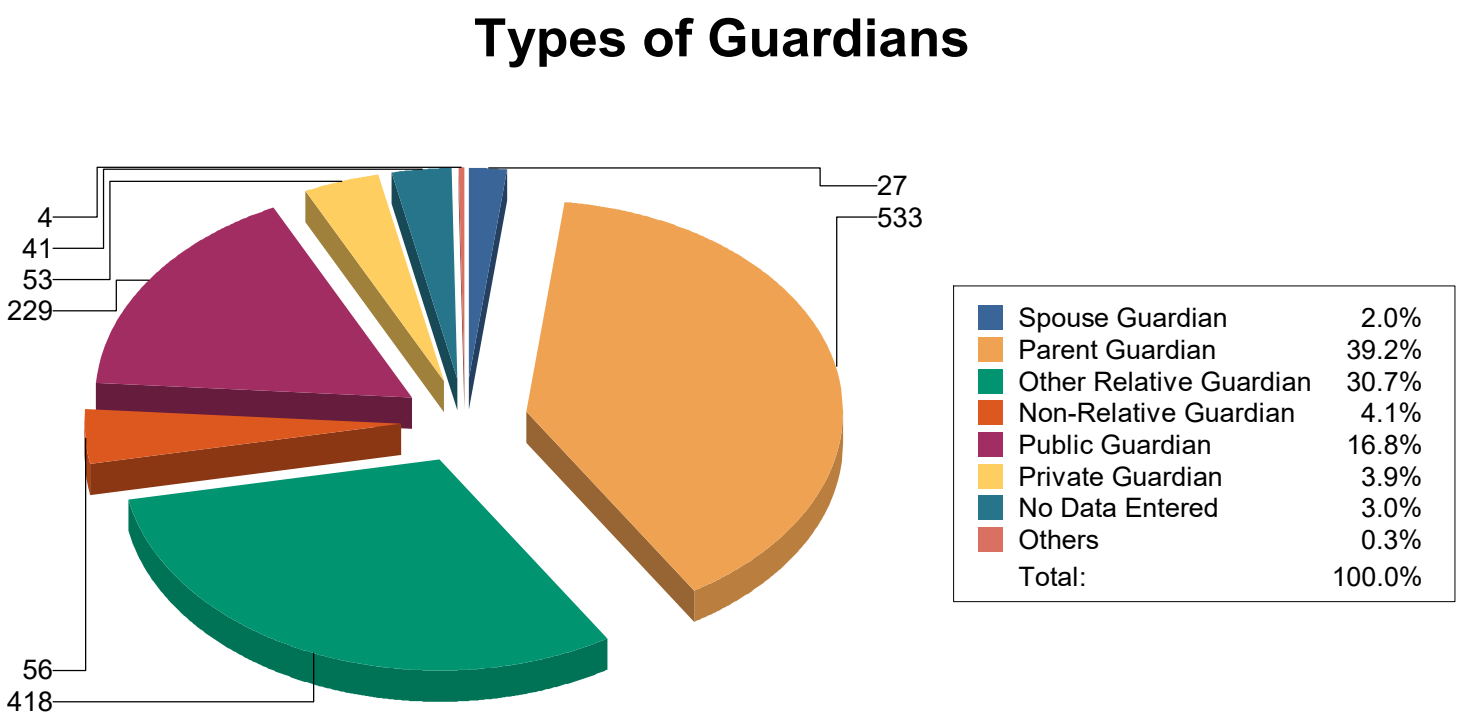
Total Persons: 936

Demographics

4.3 - Guardian Types

For all pending cases, the chart below shows the percentage breakdown of guardian types in Adult Guardianship cases.

Please note: Previous to January 2014, this data was not captured. As data is added to the case management system, the percentage of 'No Data Entered' will decrease.



Total Number of Guardians: 1,361

Please note: There may be more than one guardian for the same protected person in some cases.

Appendix A. Statutory Authority for types of Guardianships

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

1. Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors whose home state is this State
   This is a General Guardianship over the Person, Estate or both over a person found to be incompetent with all of the powers available under NRS 159 granted to the Guardian. However the Guardian must still petition the Court before taking action in relation to certain aspects of the Person and or Estate.
   a. Summary Administration of a Guardianship Estate (NRS 159.076)
      Ordinarily a Guardianship of Estate requires annual accountings to be heard on noticed hearing by the Court. However where it appears after payment of all claims and expenses of the guardianship that the value of the Ward's property does not exceed $10,000 the Court may dispense with annual accountings and all other proceedings required by this chapter. However the Guardian must notify the Court through an amended inventory should the net estate exceed $10,000 and file annual accountings from that point on.

2. Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment
   This is the same type of Guardianship as described at 1. However it is the physical proximity in state and the circumstantial requirement of appointment rather than residence which allows the Court to make an order. The powers granted are the same and subject to the same statutory requirements of permission before action is taken.

3. Guardians of the Estate for nonresident incompetents or non-resident minors who have property within this State
   This describes a guardianship concerned with property held in this state only.

4. Special Guardians (NRS 159.026, NRS 159.0801, NRS 159.0805)
   This is a guardianship over a person found to be a limited capacity as opposed to incompetency. The Court may dictate the powers granted to the Special Guardian and, save in emergency situations, must apply to the Court for instruction or approval before commencing any act relating to the person of limited capacity. The Special Guardian of the Person may also be granted powers to manage and dispose of the estate of the Ward.

5. Guardians ad litem
   Not applicable to this analysis.

6. Temporary Guardian of the Person and/ or Estate (NRS 159.0523/0525)
   The Court may grant a temporary guardianship over the Person, Estate or both. This may be granted on an ex parte basis but in such circumstances must be heard not later than 10 days after the date of appointment or the guardianship will expire. The Court may extend the guardianship for no longer than 5 months unless extraordinary circumstances are shown. The Court shall limit the powers of the Temporary Guardian to those necessary to respond to a substantial and immediate risk of physical harm or financial loss as is relevant.

Appendix B. USJR – Family Disposition Definitions

Non-Trial Dispositions: A major classification category for family-related case dispositions in which a case is disposed of by a dismissal, default, settlement, withdrawal, transfer, or other non-trial action.

Other Manner of Disposition: A subcategory of family-related non-trial case type dispositions including ones of unknown specificity or dispositions not attributable to one of the other defined family-related disposition categories.

Dismissed for Want of Prosecution: A subcategory of family-related non-trial dispositions involving cases dismissed by the court because the plaintiff, petitioner, or obligee has voluntarily ceased to pursue a case.

Involuntary (Statutory) Dismissal: A subcategory of family-related non-trial dispositions involving cases adjudicated by an order of dismissal being entered because the legal time statute has expired, with no other judgment or order being rendered for the case.

Default Judgment: A subcategory of family related non-trial dispositions involving cases in which the defendant(s) either chose not to or failed to respond to (i.e. answer) the plaintiff's allegations.

Settled/Withdrawn Without Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled out of court, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation without a conference or hearing with a judicial officer.

Settled/Withdrawn With Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation following a conference or hearing with a judicial officer.

Settled/Withdrawn by Alternative Dispute Resolution (ADR): A subcategory of family related non-trial dispositions involving cases that were referred by the court to programs such as mediation or arbitration and through those processes, were successfully settled and/or withdrawn from the court docket during the reporting period.

Transferred: A subcategory of family-related non-trial dispositions involving cases in which a judicial order transfers a case from one court to another jurisdiction. Transferred does not mean transferring the case from one judge or master to another judge or master within the same court.

Trial Dispositions: A major classification category for family-related case dispositions that involves a hearing and determination of issues of fact and law, in accordance with prescribed legal procedures, in order to reach a judgment in a case before a court.

Bench (Non-Jury) Trial: A subcategory of family related trial dispositions involving a trial in which there is no jury and a judicial officer determines both the issues of factand law in the case. For statistical purposes, a Bench trial is initiated when an opening statement is made, the first evidence is introduced, or the first witness sworn, whichever comes first, regardless of whether a judgment is reached.

Disposed After Trial Start: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case, but no judgment is reached, typically because the case settles during the trial.

Judgment Reached: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case and a judgment is rendered by the court/judicial officer.

Appendix C: LEVELS OF CARE/PLACEMENTS

Jail/Commitment Facility: Placement in a commitment facility pursuant to a civil protocol which occurs when a person is involuntarily admitted into an acute care, locked, psychiatric hospital for serious mental health impairments pursuant to the provisions of NRS 433A. Placement in a jail results when a person is arrested and incarcerated in a locked detention facility pending criminal disposition.

Locked/Secure Facility: Placement serving persons who are experiencing serious psychiatric disabilities and require a secure, safe and structured living environment in which they may benefit functionally from psychiatric rehabilitation services and progress to a less restrictive level of care. The facility providing long-term care is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian. This does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living. NRS 159.0255

Hospital-Acute Care: Placement in an acute care hospital of a person receiving brief 24-hour in-patient treatment and recovery care for a serious, health condition or trauma.

Out of State Placement: Placement of a resident of the State of Nevada in a location/facility out of Nevada's boundaries in order to meet placement needs or requirements.

Skilled Nursing Home: Placement of a person in a skilled nursing home receiving continuous 24-hour residential support for activities of daily living and nursing support for challenges associate with disabilities. Skilled nursing homes may also provide transitional rehabilitation and medical services for persons transitioning from hospitalization to a lesser restrictive living circumstance. NRS 449.0039.

Group Home: Placement of a person in a private home that furnishes food, shelter, assistance and limited supervision to a person with an intellectual disability or with a physical disability or a person who is aged or infirm. The term includes, without limitation, an assisted living facility. NRS 449.017.

Supportive Adult Residence: Placement maximizes elder or disabled persons independence while providing supplemental services as needed, i.e., medication management, meal preparation, transportation, apartment cleaning, general health care services, 24 hour monitoring. See also NRS449.017.

Host Family /Guardian/Family/Friend: Placement of a person in a family home that allows the living experience of a home setting with a non-relative, relative, guardian or friend who provides housing, meals and services designated in the person's care plan, such as transportation, medication reminders, companionship, socialization, and assistance with activities of daily living.

Independent Living: Placement of a person in their own home living with or without supportive services.

AGENDA ITEM 3(a)

Washoe County Minor Guardianship Statistical Report
Prepared by Sabrina Sweet

MINOR GUARDIANSHIP STATUS REPORT

TO: SUPREME COURT OF NEVADA
PERMANENT GUARDIANSHIP COMMISSION

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

SUBJECT: MINOR GUARDIANSHIP CASE STATUS REPORT

DATE: SEPTEMBER 13, 2019

Guardianship Compliance Officers were directed to submit updated status reports to the Guardianship Commission in preparation for the September 23, 2019 Guardianship Commission meeting. The attached status report is reviewed by the Minor Guardianship department monthly and is used to direct corrective action and develop ways to increase and improve case management by the Court. The status report is a snapshot of the caseload and not necessarily reflective of all the work completed on a regular basis. The current important information related to the Second Judicial District Court Minor Guardianship caseload includes:

- There are 1,201 protected minors involved in 1,042 cases.
- The average time to disposition for the last year is 54.8 days.
- In March 2019, the Court began contracting with a Private Investigator to complete an investigation prior to the hearing on petition in approximately 35% of new cases. The information submitted has been extremely helpful, particularly in regard to fact finding and location of relatives.
- Judge Tamatha Schreinert has been assigned the Minor Guardianship caseload in the Second Judicial District. Since being appointed, she has been extremely diligent in ensuring the Court and community stakeholders are providing consistent, timely, and appropriate services to this vulnerable population.
- In July 2019, the Court held a training session with contract Mediators to develop an agreement regarding an increased number of referrals, as well as expectations and process in mediations in minor guardianship cases.
- The Supreme Court Guardianship Compliance Office Investigators continue to be appointed to locate parties who are no longer in contact with the Court. In August 2019, the Court developed a contract with a second Private Investigator to help locate these parties. There are currently 136 minors whose locations are unknown. This is a reduction from 187 minors whose locations were unknown, when we began investigations in minor guardianship cases.
- Three year review hearings are scheduled regularly and the touch point has proven to be beneficial for the parties and the Court.
- Compliance dockets, including 35-40 hearings, are held monthly, at a minimum, to ensure parties are in compliance with statutory requirements.

Thank you, Commission members, for your interest in the status of Minor Guardianship cases in the Second Judicial District.

Second Judicial District Court

State of Nevada
Washoe County

August 2019

Summary Monthly Minor Guardianship
Case Status Report

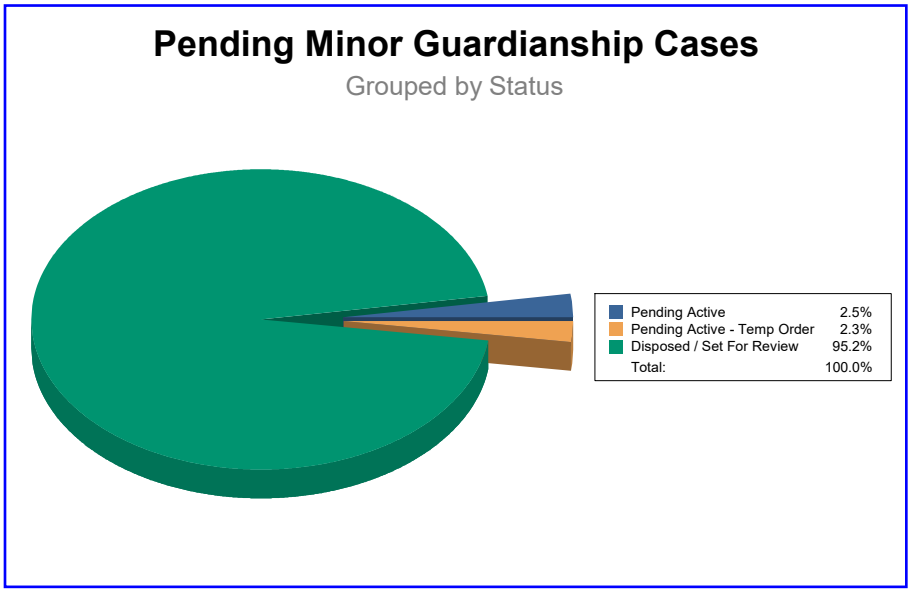
Table of Contents

Caseload Reports

1.1 - Status of Pending Minor Guardianship Cases

Average Age of Case reflects time of initial petition to either time of disposition or current date. Please note, the total number of cases does NOT reflect the actual number of children in the program. Please refer to the age breakout chart later in this document for the number of minors.

	0 - 30 Days	31 - 60 Days	61 - 90 Days	91 - 180 Days	181 - 365 Days	Greater than 365 Days	Total
Pending Active	18	7	0	1	0	0	26
Pending Active - Temp Order	3	14	2	4	1	0	24
Disposed / Set For Review	174	461	160	143	36	18	992
Total	195	482	162	148	37	18	1,042



Cases represented in the previous table and this graph contain cases with any initial filing date. Disposed cases are not listed here. Age of case is determined by the date the status was updated.

Pending - Active: A count of cases that, at the start of the reporting period, are awaiting disposition.

Pending Active - Ex Parte Order: A count of cases that have an ex parte order of guardianship filed and are awaiting further action.

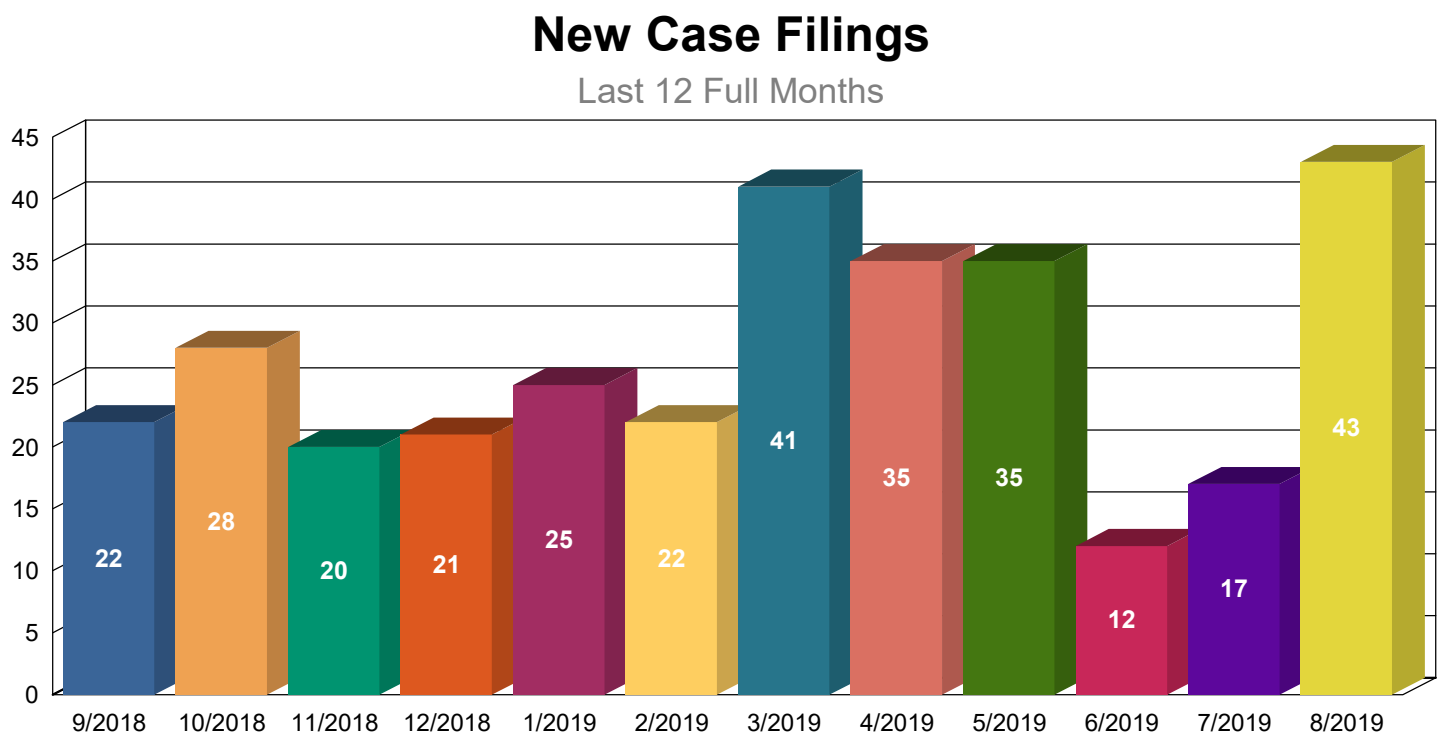
Pending Active - Temp Order: A count of cases that have an order of temporary guardianship filed and are awaiting disposition.

Disposed/Set for Review: A count of cases at the end of each month that, following an initial Entry of Judgment, are awaiting a regularly scheduled review involving a hearing before a judicial officer during the reporting period.

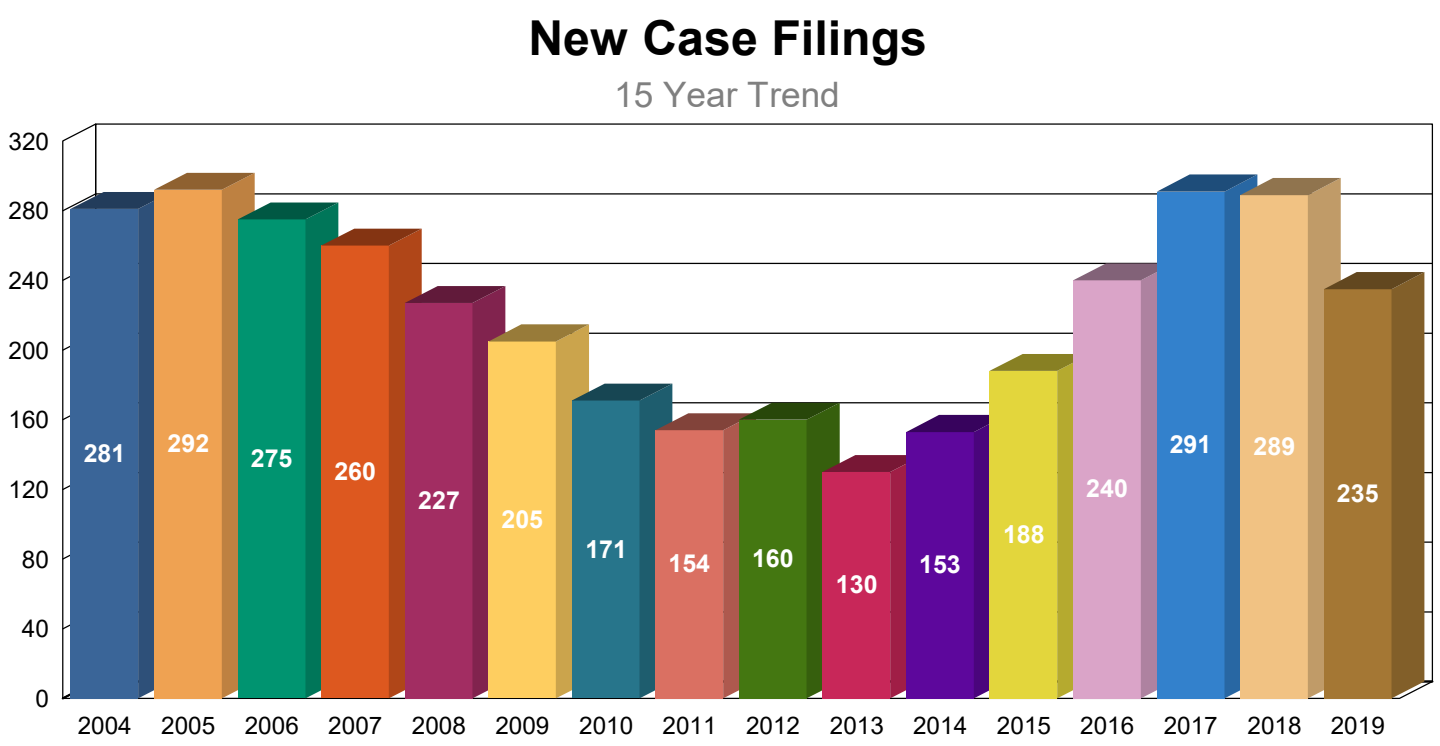
Reopened: A count of cases in which judgments have previously been entered but which have been restored to the courts pending caseload due to the existing filing of a request to modify or enforce existing judgments.

These days represent the time from petition to adjudication, at which point the cases stop aging. This group represents cases that are awaiting a regularly scheduled review (ex., annual report). These cases do not continue to age, and therefore, remain static in their respective age grouping.

Caseload Reports
1.2 - New Minor Guardianship Cases
New Minor Guardianship cases filed in the previous 12 months.



Caseload Reports
1.2.1 - New Minor Guardianship Cases
New Minor Guardianship cases filed in the previous 15 years.

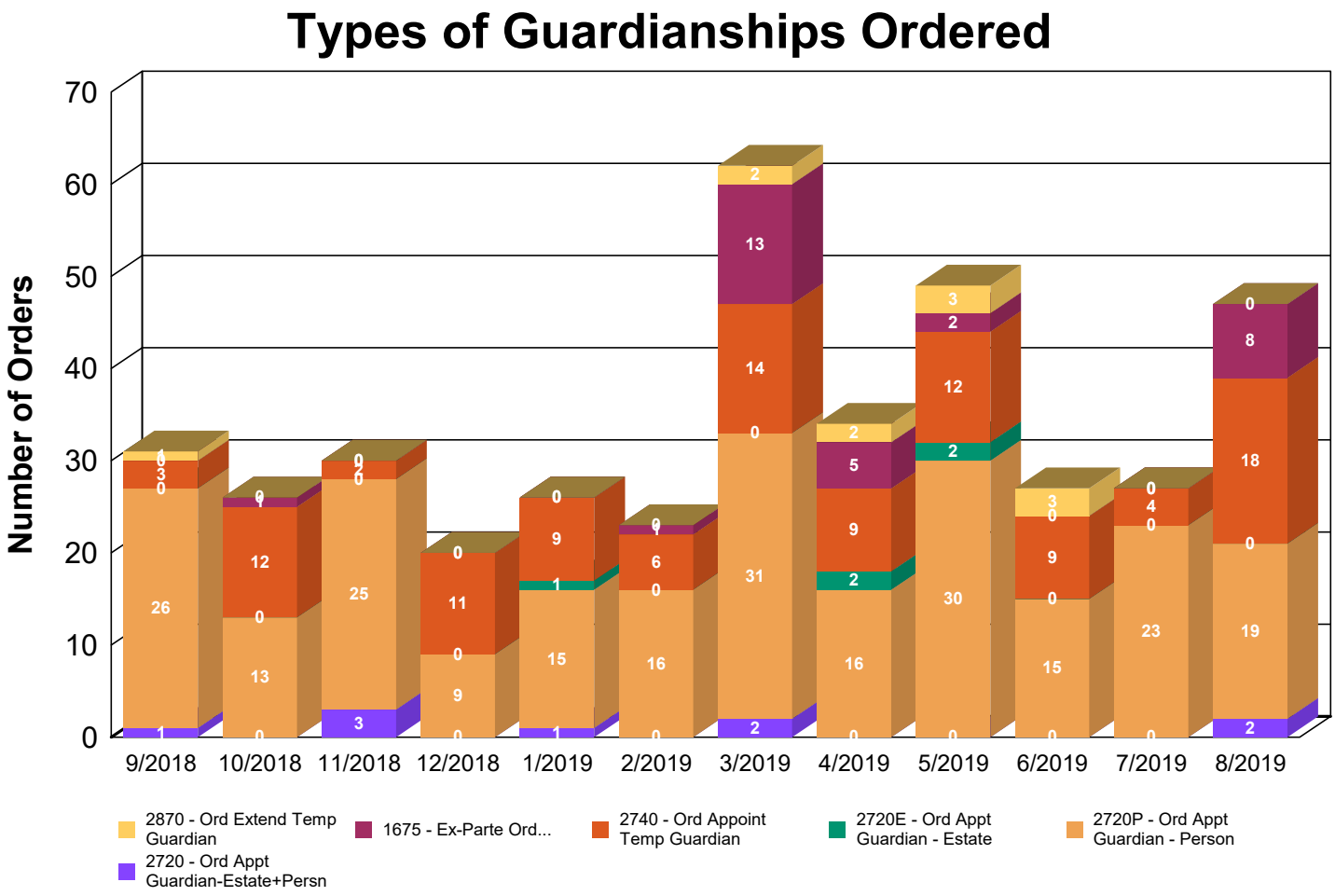


Caseload Reports

1.3 - Types of Guardianships Ordered

The below table shows the number and types of guardianships ordered in the past 12 full months. Definitions regarding the statutory authority for types of guardianships are listed in Appendix A.

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
2720 - Ord Appt Guardian-Estate+Persn	1	0	3	0	1	0	2	0	0	0	0	2	**9**
2720P - Ord Appt Guardian - Person	26	13	25	9	15	16	31	16	30	15	23	19	**238**
2720E - Ord Appt Guardian - Estate	0	0	0	0	1	0	0	2	2	0	0	0	**5**
2740 - Ord Appoint Temp Guardian	3	12	2	11	9	6	14	9	12	9	4	18	**109**
1675 - Ex-Parte Ord...	0	1	0	0	0	1	13	5	2	0	0	8	**30**
2870 - Ord Extend Temp Guardian	1	0	0	0	0	0	2	2	3	3	0	0	**11**
Total	31	26	30	20	26	23	62	34	49	27	27	47	**402**



Caseload Reports
1.4 - Average Time to Disposition for Pending Active Cases - Last 12 Full Months

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	**Total**
Average Number of Days	52.3	59.7	53.6	46.6	38.9	36.6	69.6	38.6	74.7	60.3	52.7	41.7	**54.80**

Caseload Reports
1.5 - Minor Guardianship Cases Disposed.

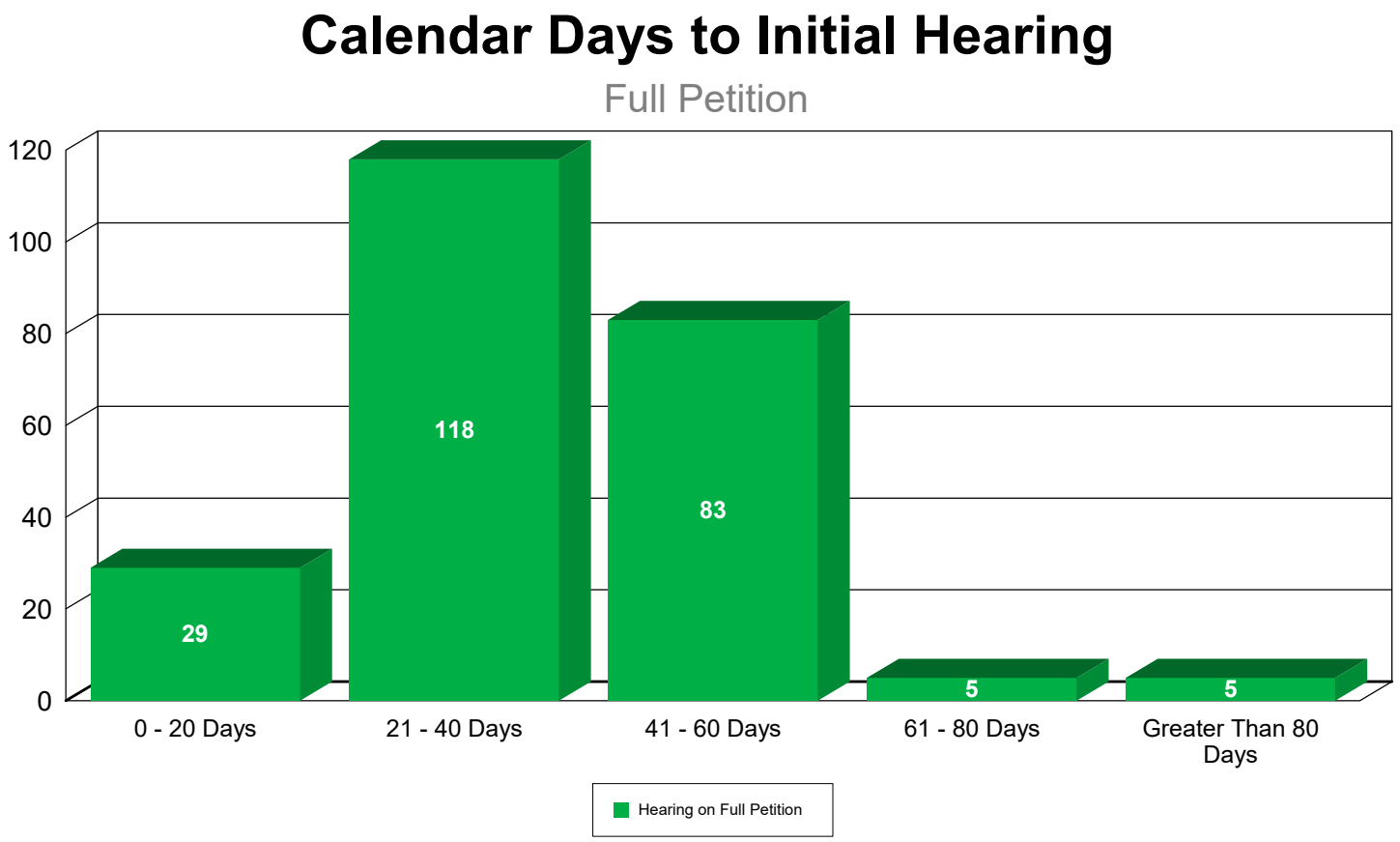
State of Nevada - USJR definitions are provided in Appendix B.

		9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Final Dispositions	Guard: Age of Majority	1	0	3	7	28	15	18	4	11	8	5	4	**104**
	Order Term Guard or Final Actg	6	8	1	4	7	6	8	4	7	8	7	12	**78**
	Guard: Death	0	0	0	0	0	0	0	0	0	0	1	0	**1**
	Total	7	8	4	11	35	21	26	8	18	16	13	16	**183**
First Dispositions	Bench N/J/T Judgment Reached	30	19	41	16	21	14	25	18	31	15	23	18	**271**
	Voluntary Dismissal	0	3	1	1	4	4	5	5	12	1	1	0	**37**
	Involuntary Dismissal	0	1	1	3	0	0	4	0	1	1	2	5	**18**
	Setld/Withdrn with Jud Conf/Hg	0	0	0	2	0	1	8	0	1	6	0	0	**18**
	Other Manner of Disposition	0	2	0	1	1	0	1	3	0	1	0	1	**10**
	Setld/Withdrn w/o Jud Conf/Hrg	0	0	0	1	0	0	0	0	1	0	0	0	**2**
	Total	30	25	43	24	26	19	43	26	46	24	26	24	**356**

Additional Caseload Statistics
2.1 - Timeliness of First Hearing - Last 12 Full Months
2.1.1 - Hearing on Full Petition

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on a full petition.

		0 - 20 Days	21 - 40 Days	41 - 60 Days	61 - 80 Days	Greater Than 80 Days	Total
Hearing on Full Petition	Granted	14	69	56	3	4	146
	Continued	10	20	12	1	1	44
	Dismissed	3	13	6	0	0	22
	Denied	2	8	4	1	0	15
	Vacated	0	8	5	0	0	13
	Total	29	118	83	5	5	**240**



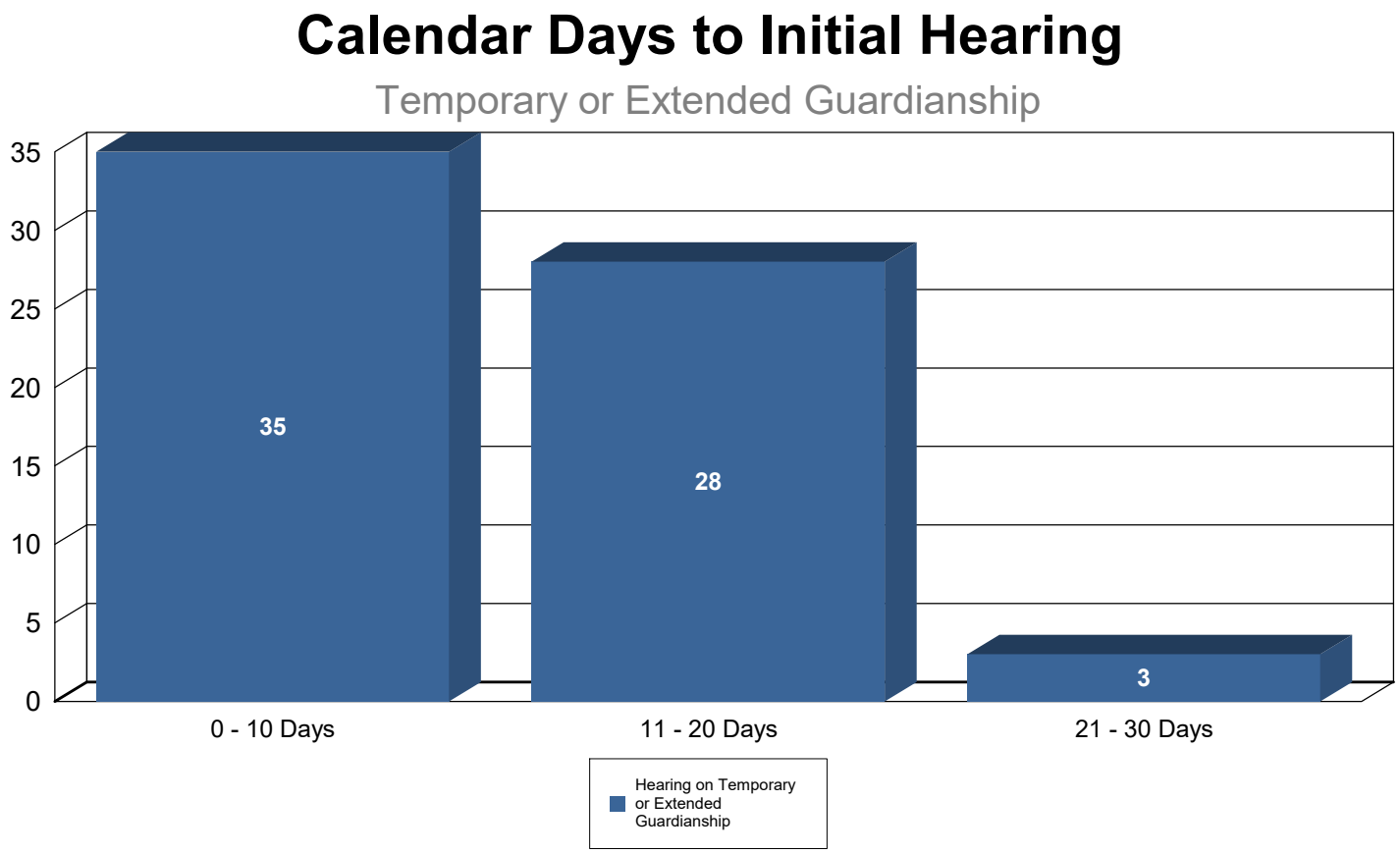
Additional Caseload Statistics

2.1 - Timeliness of First Hearing - Last 12 Full Months

2.1.2 - Hearing on Temporary or Extended Guardianship

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on temporary or extended guardianship.

		0 - 10 Days	11 - 20 Days	21 - 30 Days	Total
Hearing on Temporary or Extended Guardianship	Granted	32	23	2	57
	Denied	1	3	1	5
	Continued	2	2	0	4
	Total	35	28	3	**66**

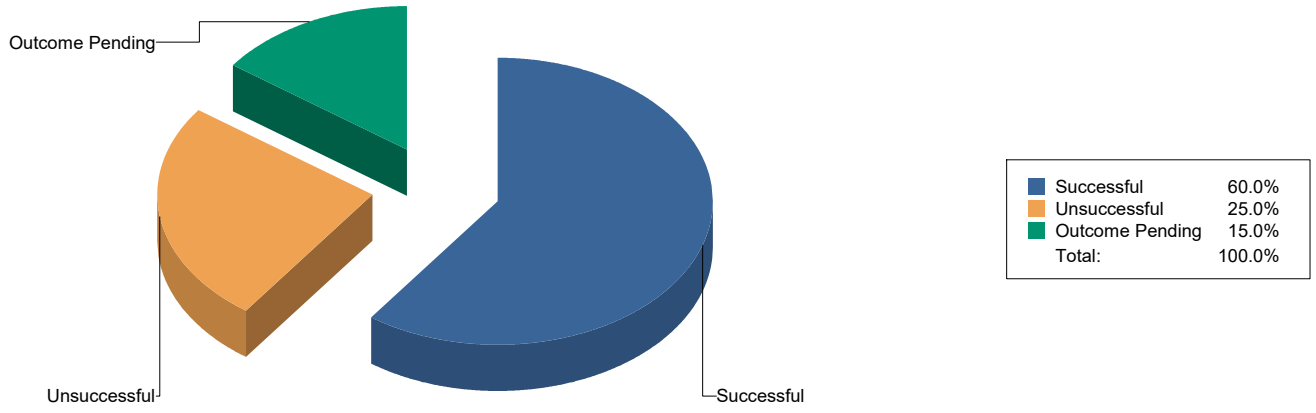


Additional Caseload Statistics
2.2 - Alternative Dispute Resolution: - Last 12 Full Months
2.2.1 - Scheduled Mediations

Cases are grouped based upon resolution type. Pending mediations are labled as 'Outcome Pending'.

	11/2018	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Successful	2	1	2	1	0	3	2	1	**12**
Unsuccessful	1	1	0	0	2	0	0	1	**5**
Outcome Pending	0	0	0	0	1	2	0	0	**3**
Total	**3**	**2**	**2**	**1**	**3**	**5**	**2**	**2**	**20**

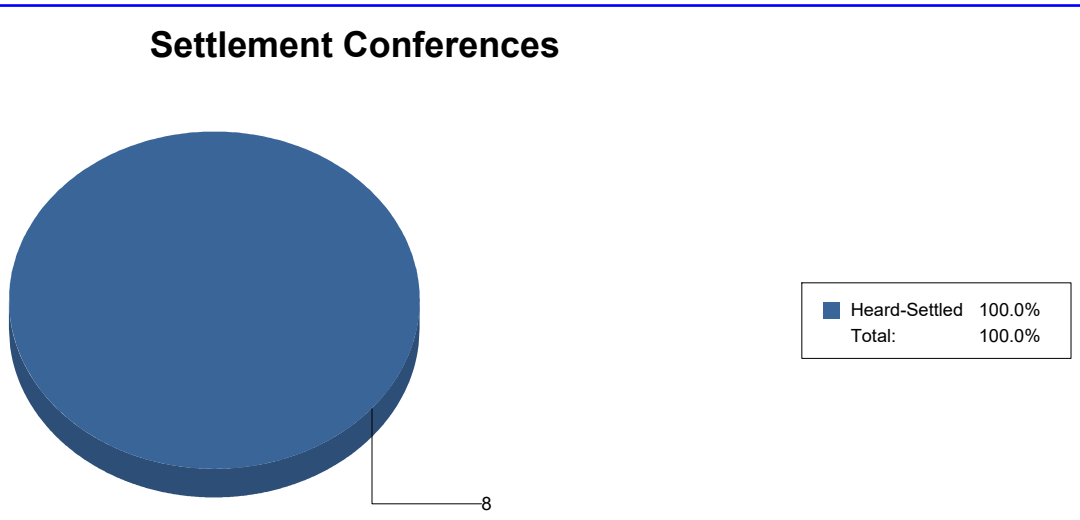
Scheduled Mediations



Additional Caseload Statistics
2.2 - Alternative Dispute Resolution: - Last 12 Full Months
2.2.2 - Scheduled Settlement Conferences

Cases are grouped based upon resolution type. Pending settlement conferences are labled as 'Outcome Pending'.

		3/2019	5/2019	6/2019	7/2019	Total
H812	Heard-Settled	2	4	1	1	8
	Total	**2**	**4**	**1**	**1**	**8**



Additional Caseload Statistics
2.3 - Annual Reports and Inventories Filed
The below table shows the number of annual reports, accountings, inventories, and appraisement and record filings in the past 12 full months.

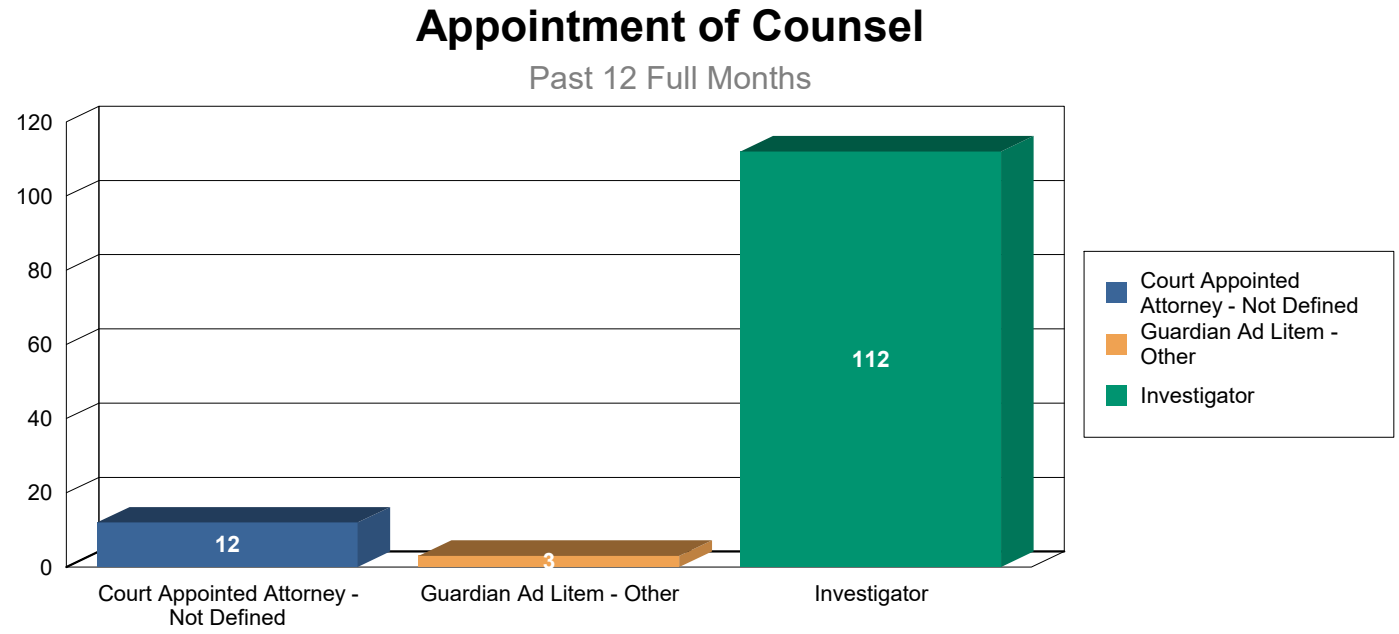
	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Accounting	0	2	4	7	3	2	10	6	6	2	8	7	**57**
Annual Report of Guardian	30	42	43	19	42	47	74	50	34	42	57	76	**556**
Inventories	0	2	1	1	0	0	1	2	3	5	3	1	**19**
Total	30	46	48	27	45	49	85	58	43	49	68	84	**632**

Additional Caseload Statistics

2.4 - Party Representation - Last 12 Full Months

Court appointed Counsel, Guardian Ad Litems, and Investigors for the last 12 months, broken out by the party type.

	9/2018	10/2018	11/2018	12/2018	1/2019	2/2019	3/2019	4/2019	5/2019	6/2019	7/2019	8/2019	Total
Court Appointed Attorney - Not Defined	2	2	4	0	1	0	0	0	0	0	1	2	**12**
Guardian Ad Litem - Other	0	0	0	1	0	0	1	0	0	1	0	0	**3**
Investigator	1	1	1	10	1	1	21	14	11	10	26	15	**112**
Total	3	3	5	11	2	1	22	14	11	11	27	17	**127**

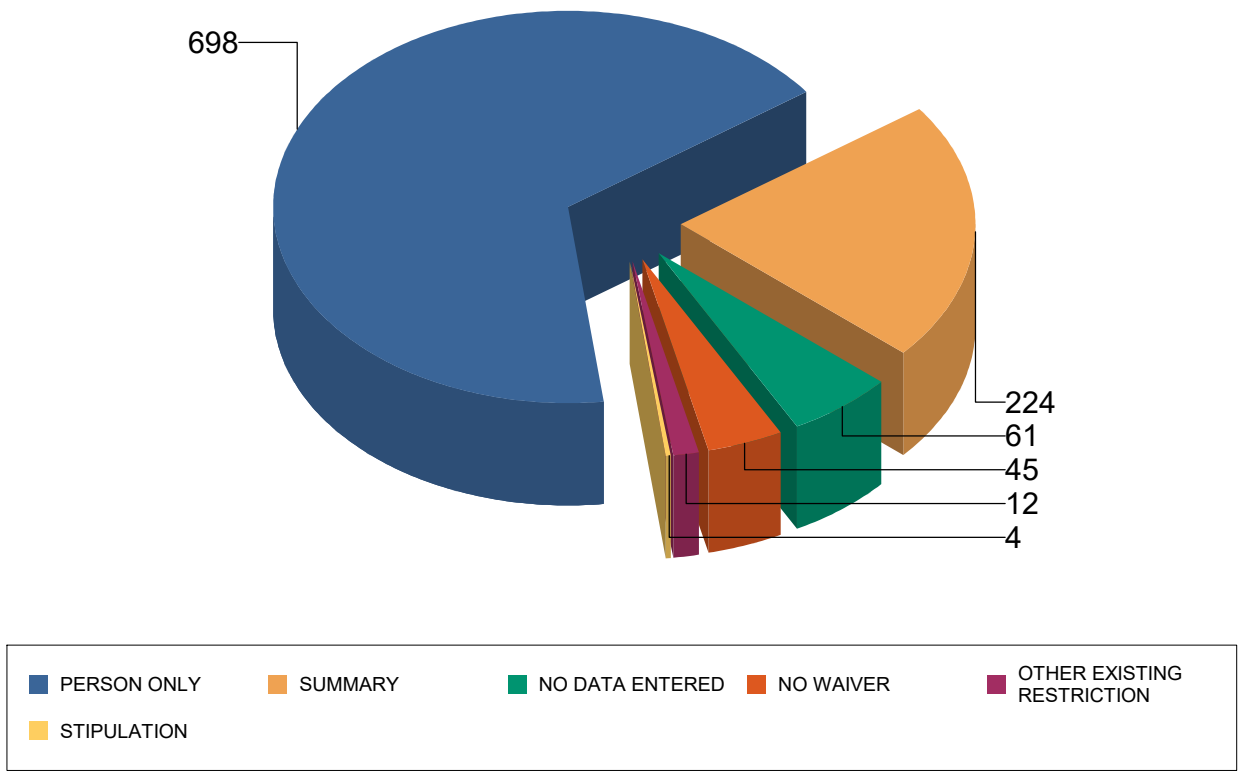


Total Appointments: 127

Please Note: The 'Investigator' category includes appointment of independently contracted private investigators and/or the State Guardianship Compliance Office on a case.

Additional Caseload Statistics
2.5 - Blocked Trust Account / Bond Waiver Information

	Total
PERSON ONLY	698
SUMMARY	224
NO DATA ENTERED	61
NO WAIVER	45
OTHER EXISTING RESTRICTION	12
STIPULATION	4
Total	**1,044**

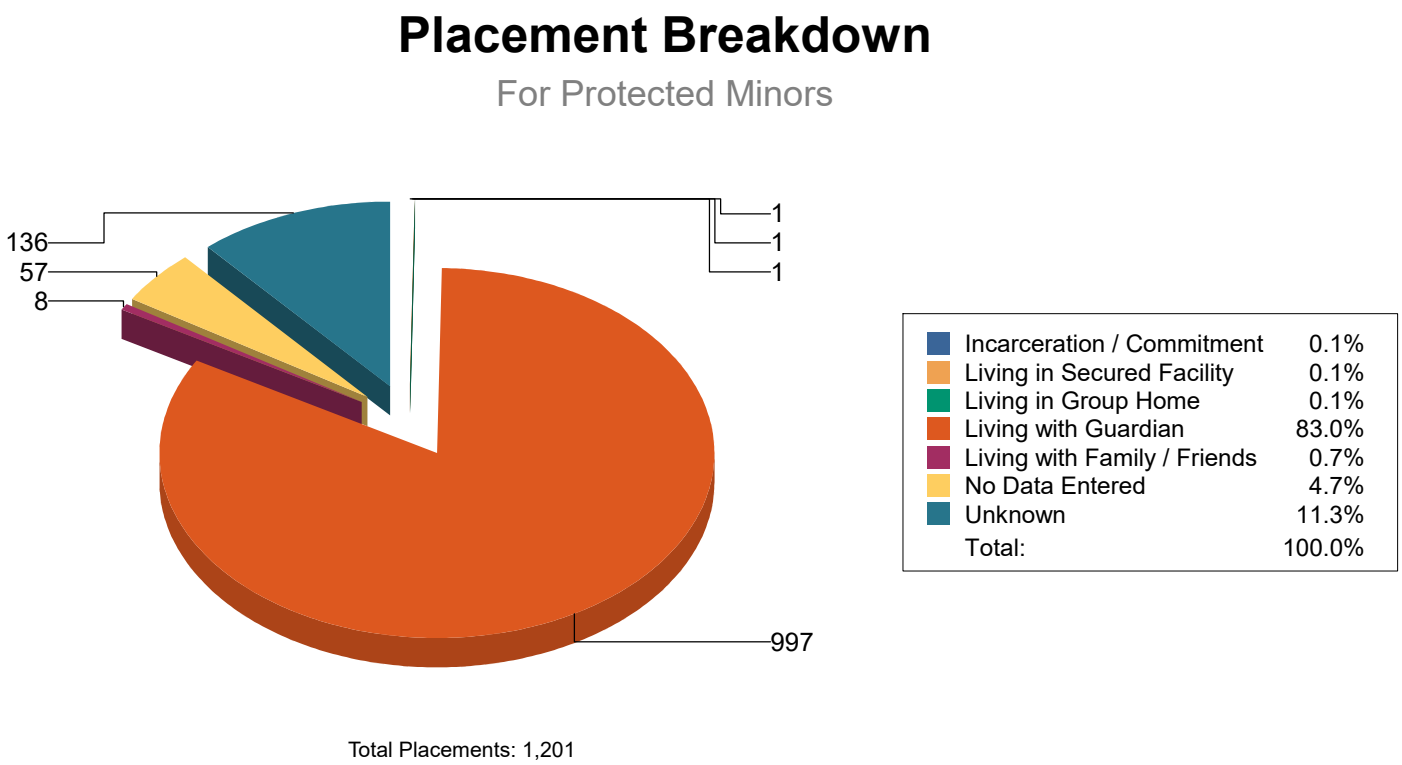


Demographics

4.1 - Protected Minor - Placement

For all pending cases, the chart below shows the percentage breakdown of guardian types in Minor Guardianship cases.

Please note: 'No Data Entered' represents those cases that are pending active and awaiting a case disposition, where a placement has not yet been established. 'Unknown' represents those cases in which parties cannot be located and are awaiting an appointment of investigator. Definitions for placement and care are located on Appendix C.

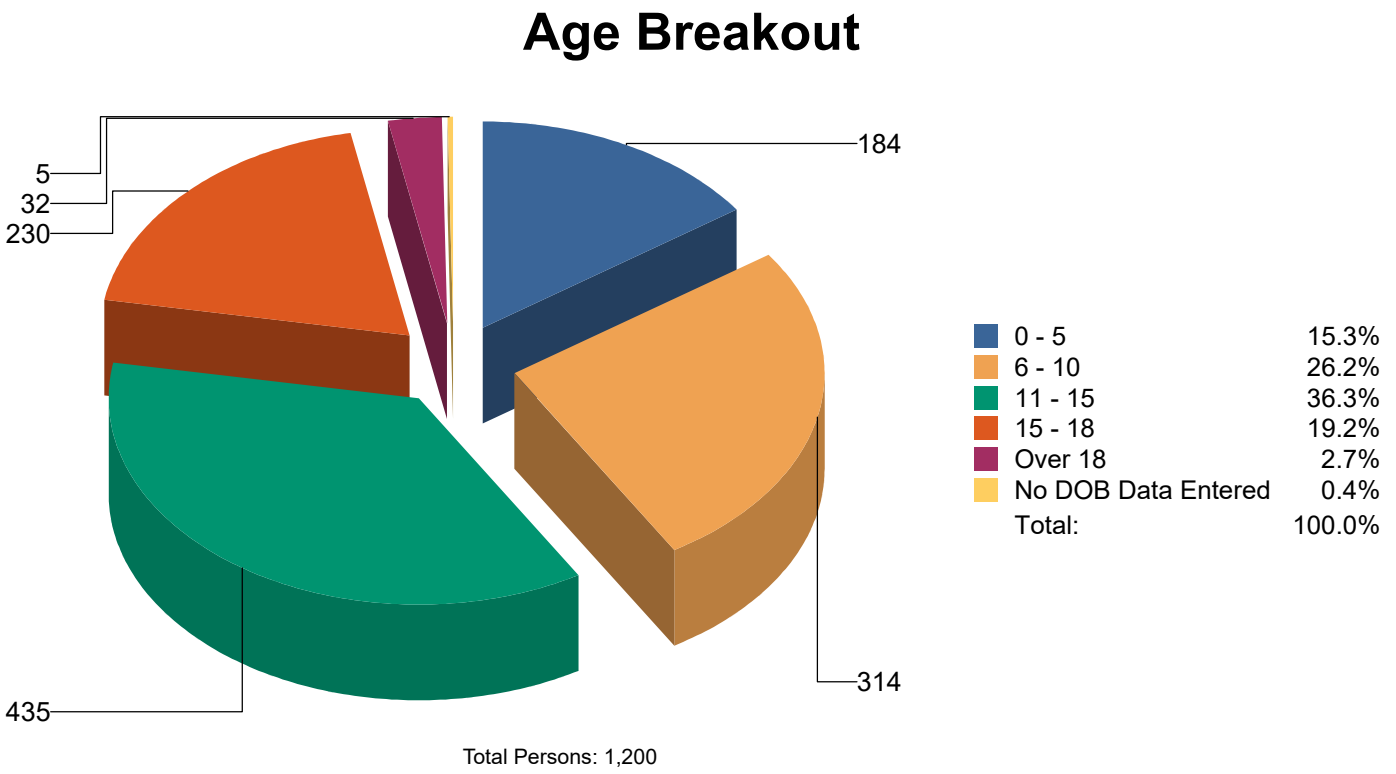


Total Placements: 1,201

Demographics

4.2 - Protected Minor - Age Breakdown

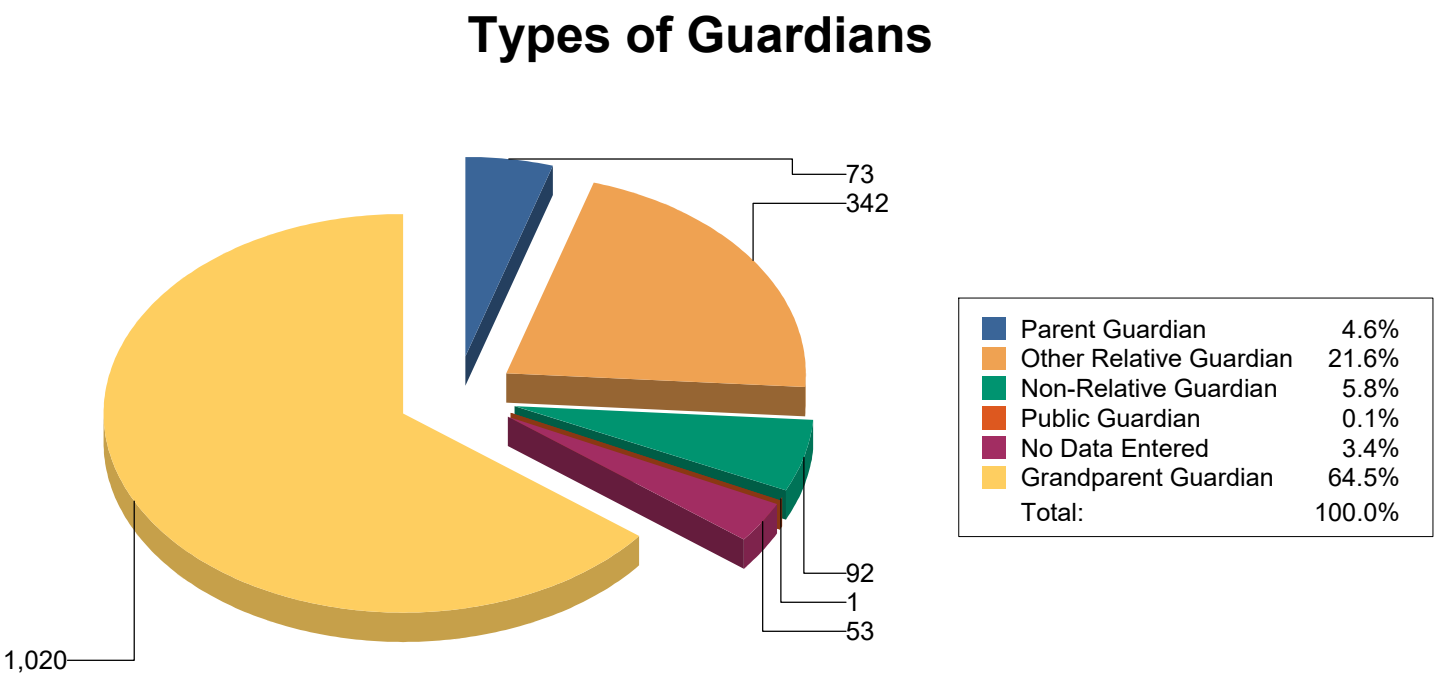
The table and chart below show the breakout in age of protected minors in all pending or set for review cases.



Demographics

4.3 - Guardian Types

For all pending and set for review cases, the chart below shows the percentage breakdown of guardian types in Minor Guardianship cases. *Please note: 'No Data Entered' represents those cases that are pending active and awaiting a case disposition, where a guardian has not yet been established.*



Total Number of Guardians: 1,581

Please note: There may be more than one guardian for the same protected person in some cases.

Appendix A. Statutory Authority for Types of Guardianships

NRS 159A provides for the appointment of 5 different types of Guardian.

1. **Guardians of the Person, of the Estate, or of the Person and Estate minors whose home state is this State** (NRS 159A.0487)
   This is a permanent Guardianship over the Person, Estate or both the Person and Estate. The Guardian must petition the Court before taking action in relation to certain aspects of the Person and/or Estate.
   a. **Summary Administration of a Guardianship Estate** (NRS 159A.076)
      Ordinarily a Guardianship of Estate requires annual accountings to be heard on noticed hearing by the Court. However where it appears after payment of all claims and expenses of the guardianship that the value of the protected minor's property does not exceed $10,000, the Court may dispense with annual accountings and all other proceedings required by this chapter. However the Guardian must notify the Court through an amended inventory should the net estate exceed $10,000 and file annual accountings from that point on.

2. **Guardians of the Person or of the Person and Estate for minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment** (NRS 159A.0487)
   This is the same type of Guardianship as described above. However it is the physical proximity in state and the circumstantial requirement of appointment rather than residence which allows the Court to make an order. The powers granted are the same and subject to the same statutory requirements of permission before action is taken.

3. **Guardians of the Estate for nonresident minors who have property within this State** (NRS 159A.0487)
   This describes a guardianship concerned with property held in this state only.

4. **Temporary Guardian of the Person, of the Estate, or of the Person and Estate** (NRS 159A.052 and 159A.053)
   The Court may grant a temporary guardianship over the Person, Estate or both the Person and Estate. This may be granted on an ex parte basis but in such circumstances must be heard not later than 10 days after the date of appointment or the temporary guardianship will expire. The Court may extend the guardianship for no longer than two successive 60-day periods, unless extraordinary circumstances and good cause is shown. The Court shall limit the powers of the Temporary Guardian to those necessary to respond to an immediate medical concern or a substantial and immediate risk of physical harm or financial loss.

5. **Guardians ad litem** (NRS 159A.0487 and 159A.0455)
   This is an appointment to advocate for the best interests of the minor and which shall serve until relieved by court order.

Appendix B. USJR – Family Disposition Definitions

Non-Trial Dispositions: A major classification category for family-related case dispositions in which a case is disposed of by a dismissal, default, settlement, withdrawal, transfer, or other non-trial action.

Other Manner of Disposition: A subcategory of family-related non-trial case type dispositions including ones of unknown specificity or dispositions not attributable to one of the other defined family-related disposition categories.

Dismissed for Want of Prosecution: A subcategory of family-related non-trial dispositions involving cases dismissed by the court because the plaintiff, petitioner, or obligee has voluntarily ceased to pursue a case.

Involuntary (Statutory) Dismissal: A subcategory of family-related non-trial dispositions involving cases adjudicated by an order of dismissal being entered because the legal time statute has expired, with no other judgment or order being rendered for the case.

Default Judgment: A subcategory of family related non-trial dispositions involving cases in which the defendant(s) either chose not to or failed to respond to (i.e. answer) the plaintiff's allegations.

Settled/Withdrawn Without Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled out of court, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation without a conference or hearing with a judicial officer.

Settled/Withdrawn With Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation following a conference or hearing with a judicial officer.

Settled/Withdrawn by Alternative Dispute Resolution (ADR): A subcategory of family related non-trial dispositions involving cases that were referred by the court to programs such as mediation or arbitration and through those processes, were successfully settled and/or withdrawn from the court docket during the reporting period.

Transferred: A subcategory of family-related non-trial dispositions involving cases in which a judicial order transfers a case from one court to another jurisdiction. Transferred does not mean transferring the case from one judge or master to another judge or master within the same court.

Trial Dispositions: A major classification category for family-related case dispositions that involves a hearing and determination of issues of fact and law, in accordance with prescribed legal procedures, in order to reach a judgment in a case before a court.

Bench (Non-Jury) Trial: A subcategory of family related trial dispositions involving a trial in which there is no jury and a judicial officer determines both the issues of fact and law in the case. For statistical purposes, a Bench trial is initiated when an opening statement is made, the first evidence is introduced, or the first witness sworn, whichever comes first, regardless of whether a judgment is reached.

Disposed After Trial Start: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case, but no judgment is reached, typically because the case settles during the trial.

Judgment Reached: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case and a judgment is rendered by the court/judicial officer.

Appendix C: LEVELS OF CARE/PLACEMENTS

Jail/Commitment Facility: Placement in a commitment facility pursuant to a civil protocol which occurs when a person is involuntarily admitted into an acute care, locked, psychiatric hospital fo serious mental health impairments pursuant to the provisions of NRS 433A. Placement in a jail results when a person is arrested and incarcerated in a locked detention facility pending criminal disposition.

Locked/Secure Facility: Placement serving persons who are experiencing serious psychiatric disabilities and require a secure, safe and structured living environment in which they may benef functionally from psychiatric rehabilitation services and progress to a less restrictive level of care. The facility providing long-term care is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian. This does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living. NRS 159.0255

Hospital-Acute Care: Placement in an acute care hospital of a person receiving brief 24-hour in-patient treatment and recovery care for a serious, health condition or trauma.

Out of State Placement: Placement of a resident of the State of Nevada in a location/facility out of Nevada's boundaries in order to meet placement needs or requirements.

Skilled Nursing Home: Placement of a person in a skilled nursing home receiving continuous 24-hour residential support for activities of daily living and nursing support for challenges associate with disabilities. Skilled nursing homes may also provide transitional rehabilitation and medical services for persons transitioning from hospitalization to a lesser restrictive living circumstance. NRS 449.0039.

Group Home: Placement of a person in a private home that furnishes food, shelter, assistance and limited supervision to a person with an intellectual disability or with a physical disability or a person who is aged or infirm. The term includes, without limitation, an assisted living facility. NRS 449.017.

Supportive Adult Residence: Placement maximizes elder or disabled persons independence while providing supplemental services as needed, i.e., medication management, meal preparation, transportation, apartment cleaning, general health care services, 24 hour monitoring See also NRS449.017.

Host Family /Guardian/Family/Friend: Placement of a person in a family home that allows the living experience of a home setting with a non-relative, relative, guardian or friend who provides housing, meals and services designated in the person's care plan, such as transportation, medication reminders, companionship, socialization, and assistance with activities of daily living.

Independent Living: Placement of a person in their own home living with or without supportive services.

AGENDA ITEM 3(b)

Clark County Statistical Report
By Riley Wilson

EIGHTH
JUDICIAL DISTRICT COURT

Information Regarding Appointment of Counsel and Other Selected Guardianship Statistics

Nevada Supreme Court

Permanent Guardianship Commission Meeting

September 23, 2019

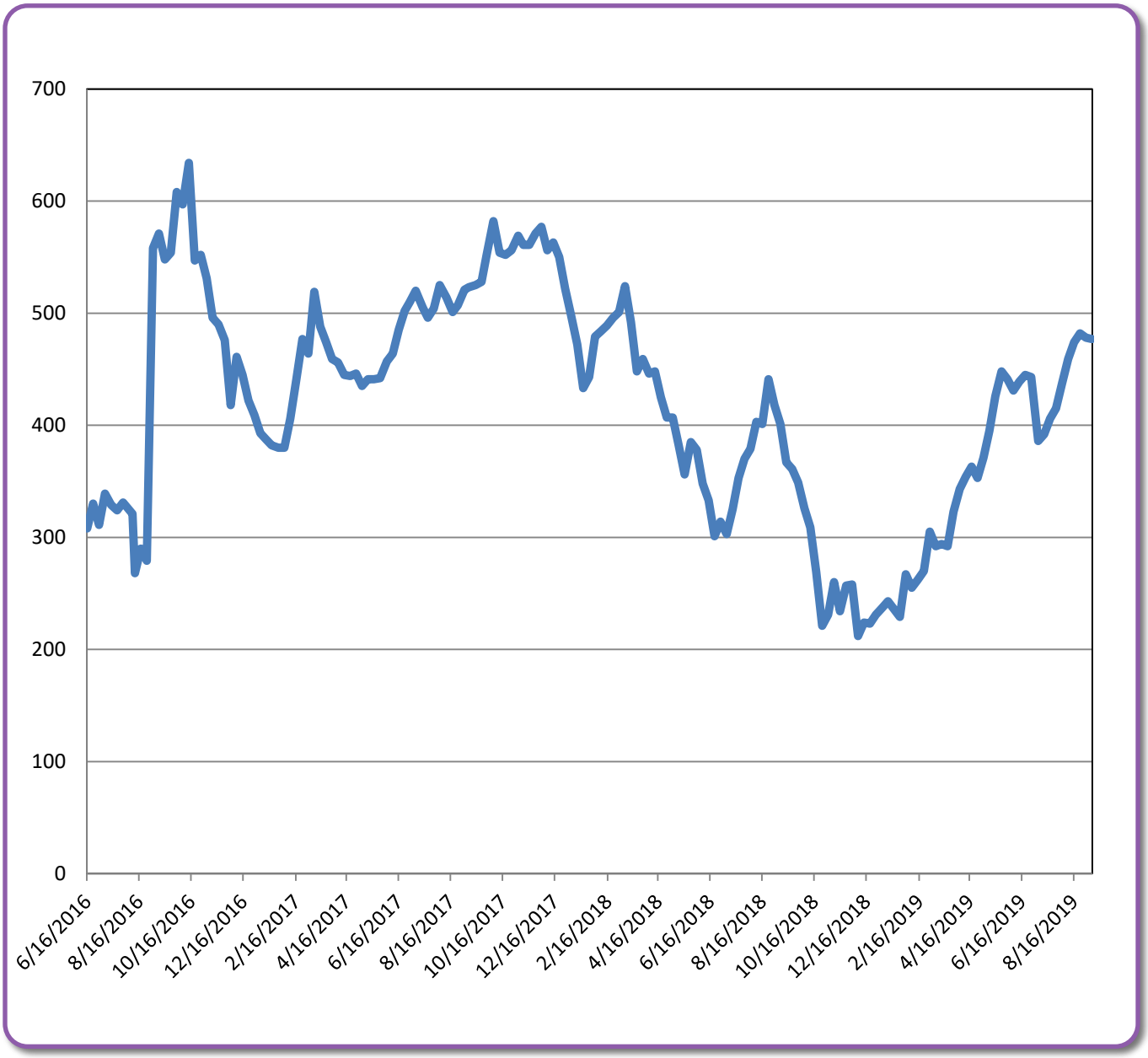
Total Number of Cases for Eighth Judicial District

- Adults Under Guardianship: 3108
- Adult Cases: 3088

- Minors Under Guardianship: 4468
- Minor Cases: 3340

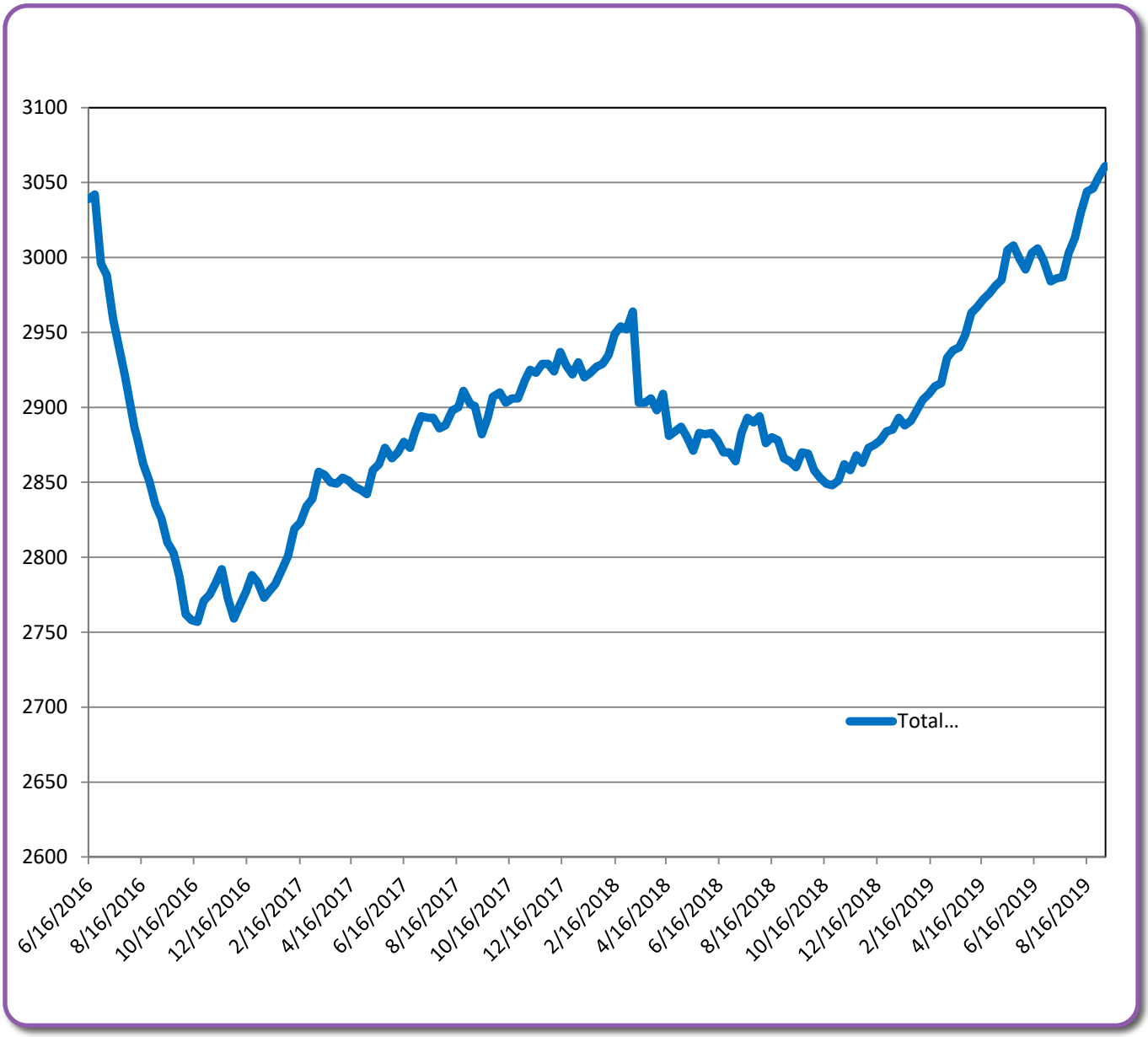
Adult Statistics:

Total number of adult cases which are open and reopen.
Includes only cases with pending hearings.



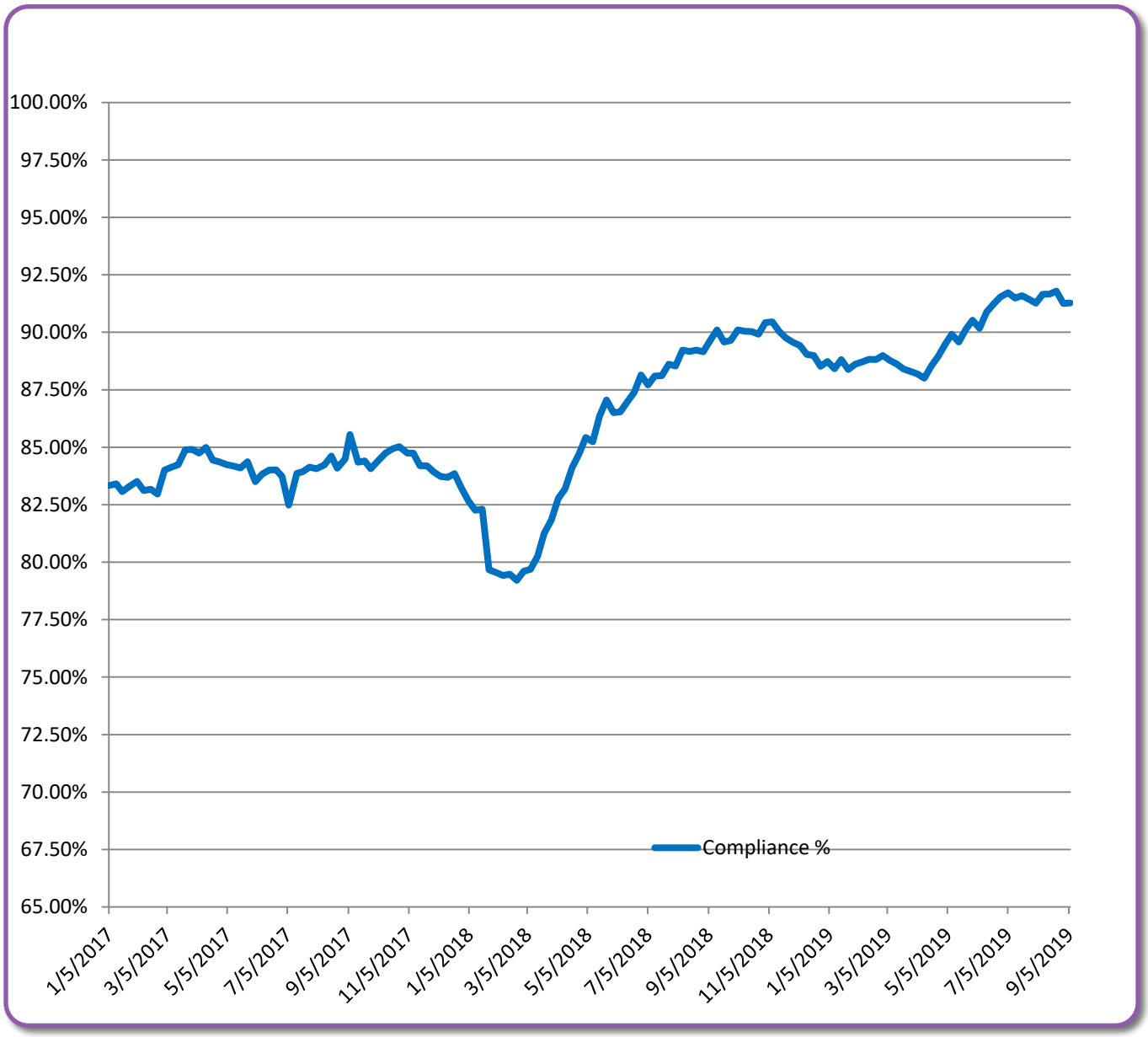
Adult Statistics, Continued:

Historical Total Number of Adult Cases.



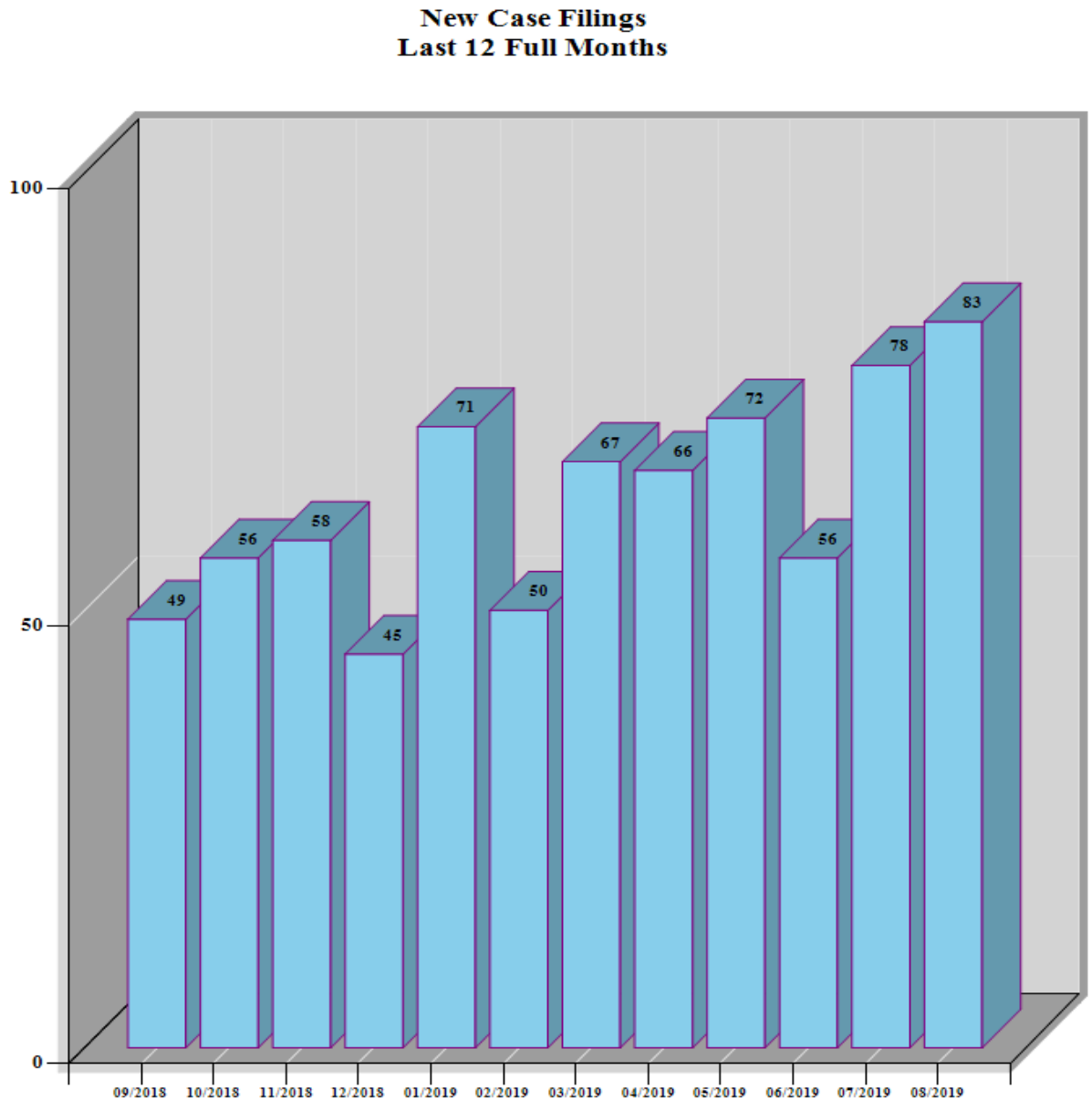
Adult Statistics, Continued:

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

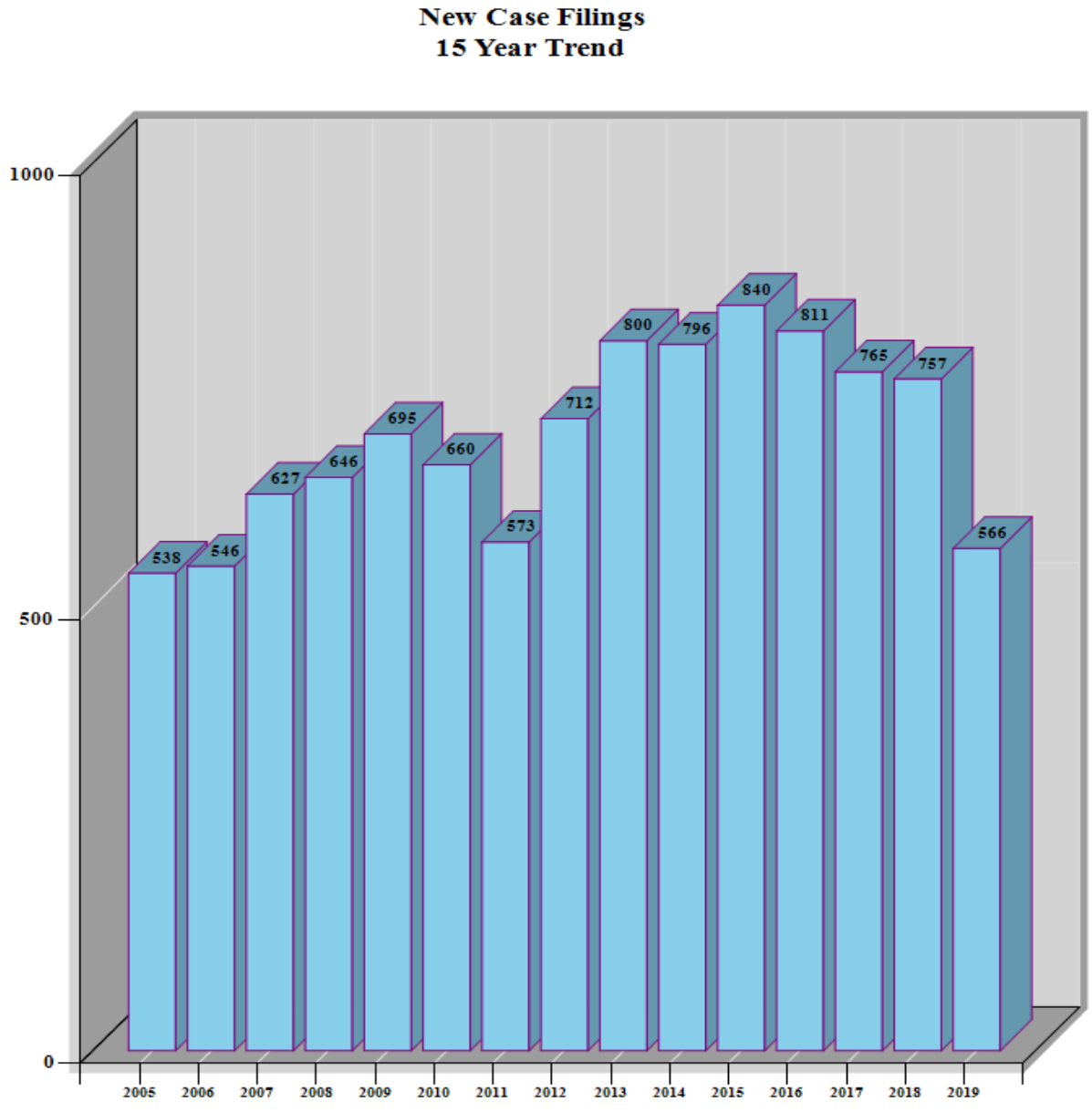


Adult Statistics, Continued:

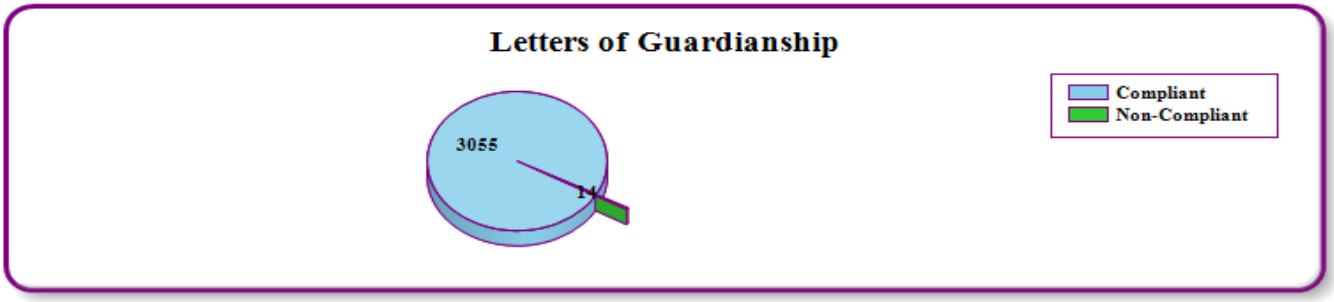
New Adult Case Filings in the Last 12 Months



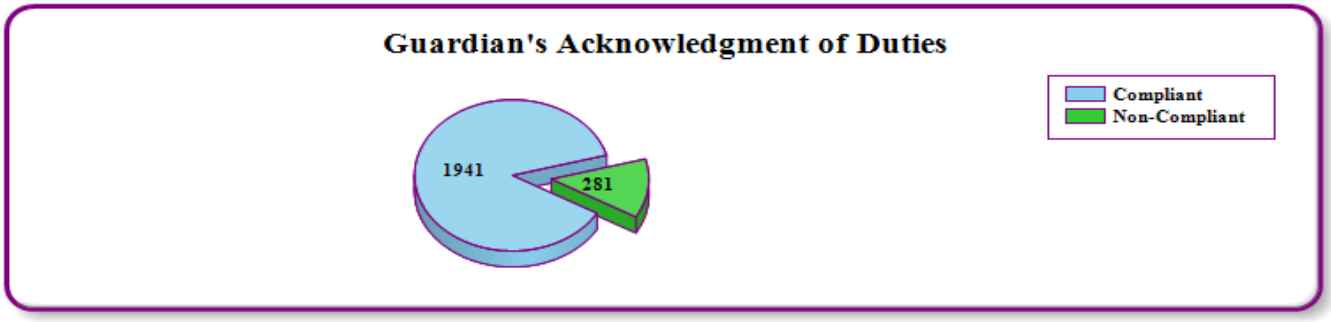
Adult Statistics, Continued:



Adult Statistics, Continued:



Compliant	Non-Compliant
99.54%	0.46%

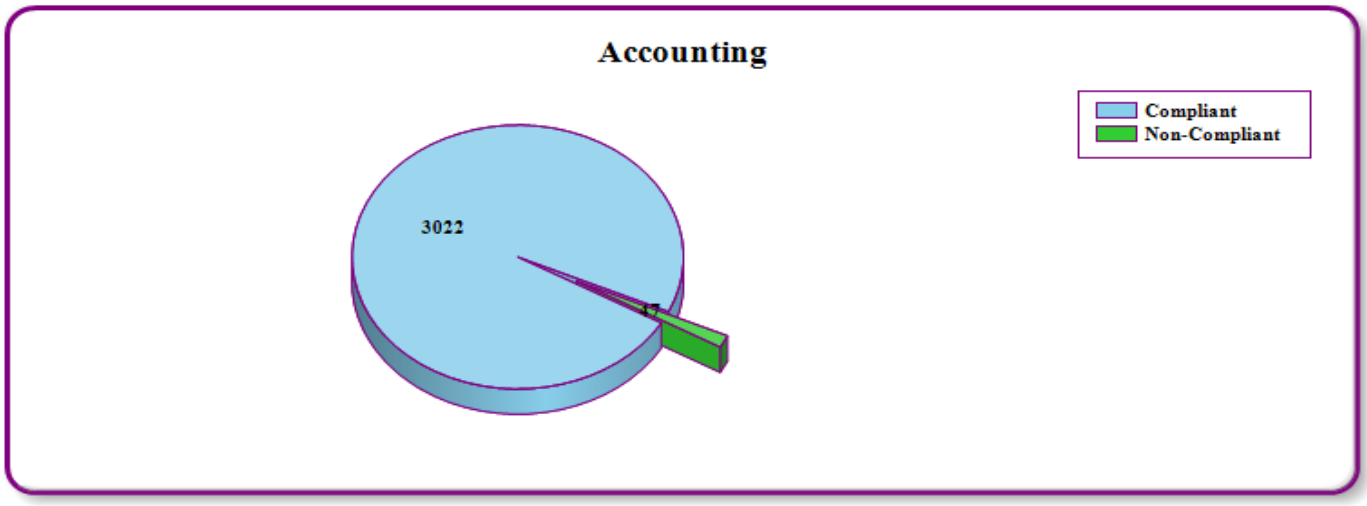


Compliant	Non-Compliant
87.35%	12.65%

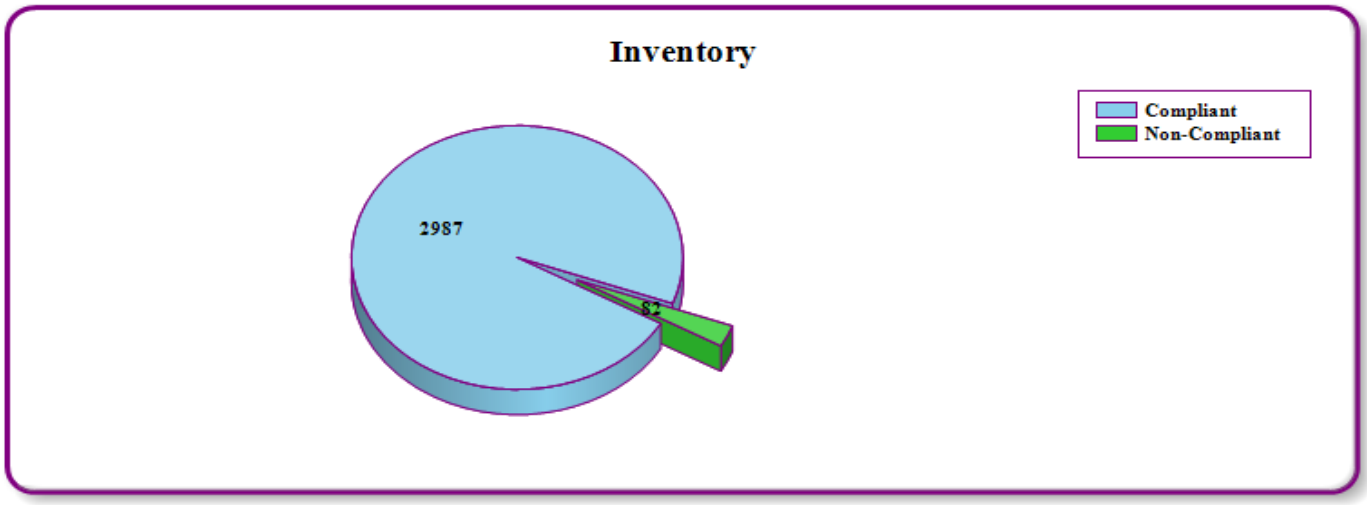
Compliant	Non-Compliant
93.12%	6.88%

* Numbers may include cases where no filing is required.

Adult Statistics, Continued:



Compliant	Non-Compliant
98.47%	1.53%

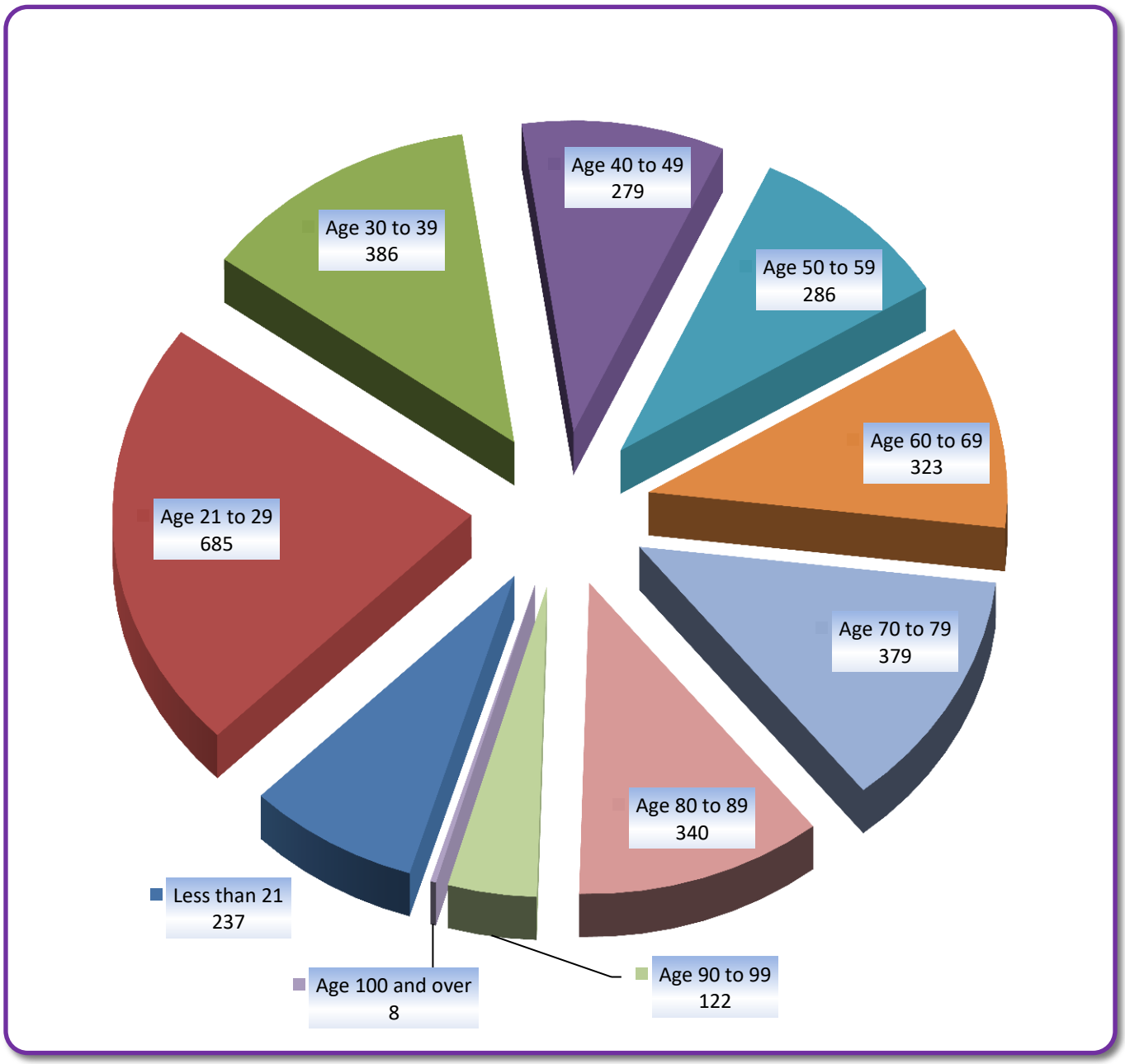


Compliant	Non-Compliant
97.33%	2.67%

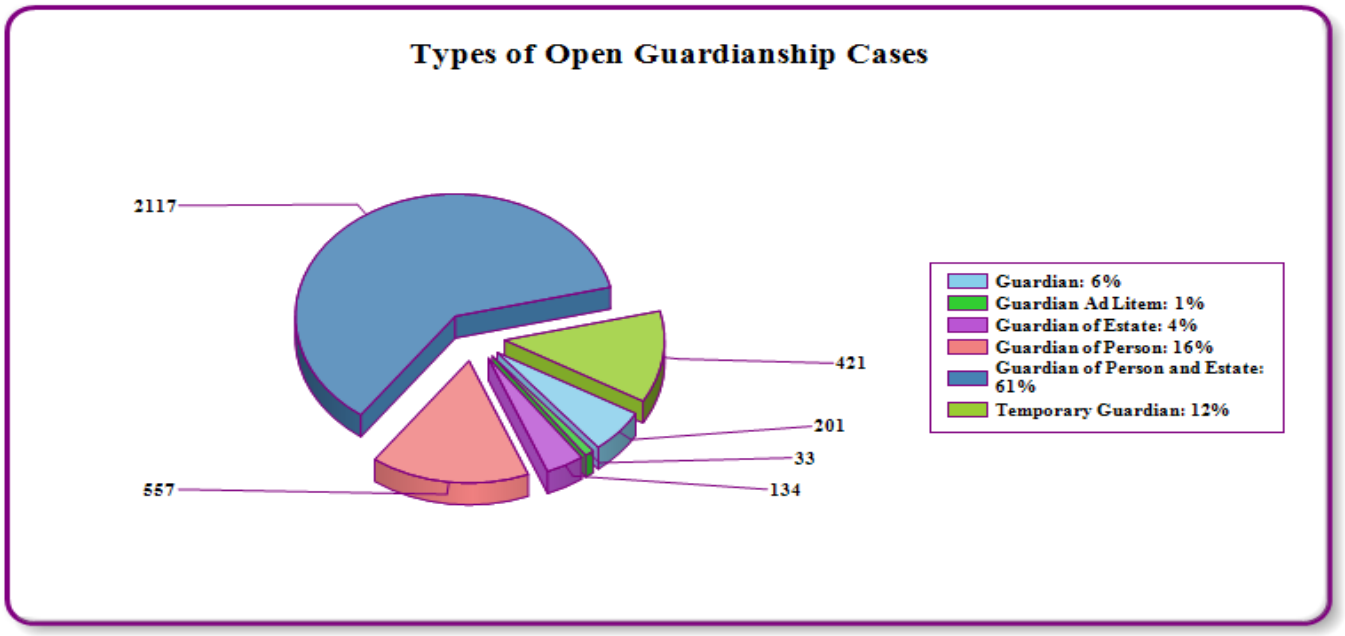
* Numbers may include cases where no filing is required.

Adult Statistics, Continued:

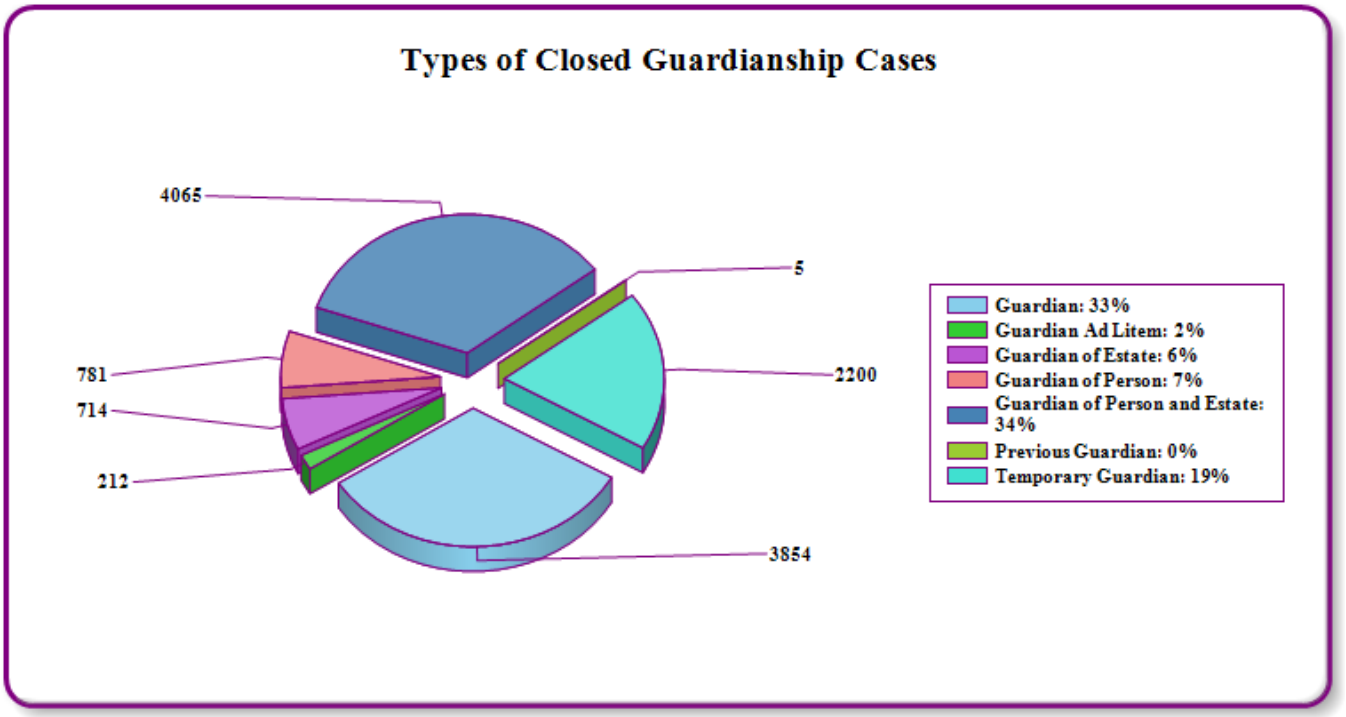
Age of Protected Person



Adult Statistics, Continued:



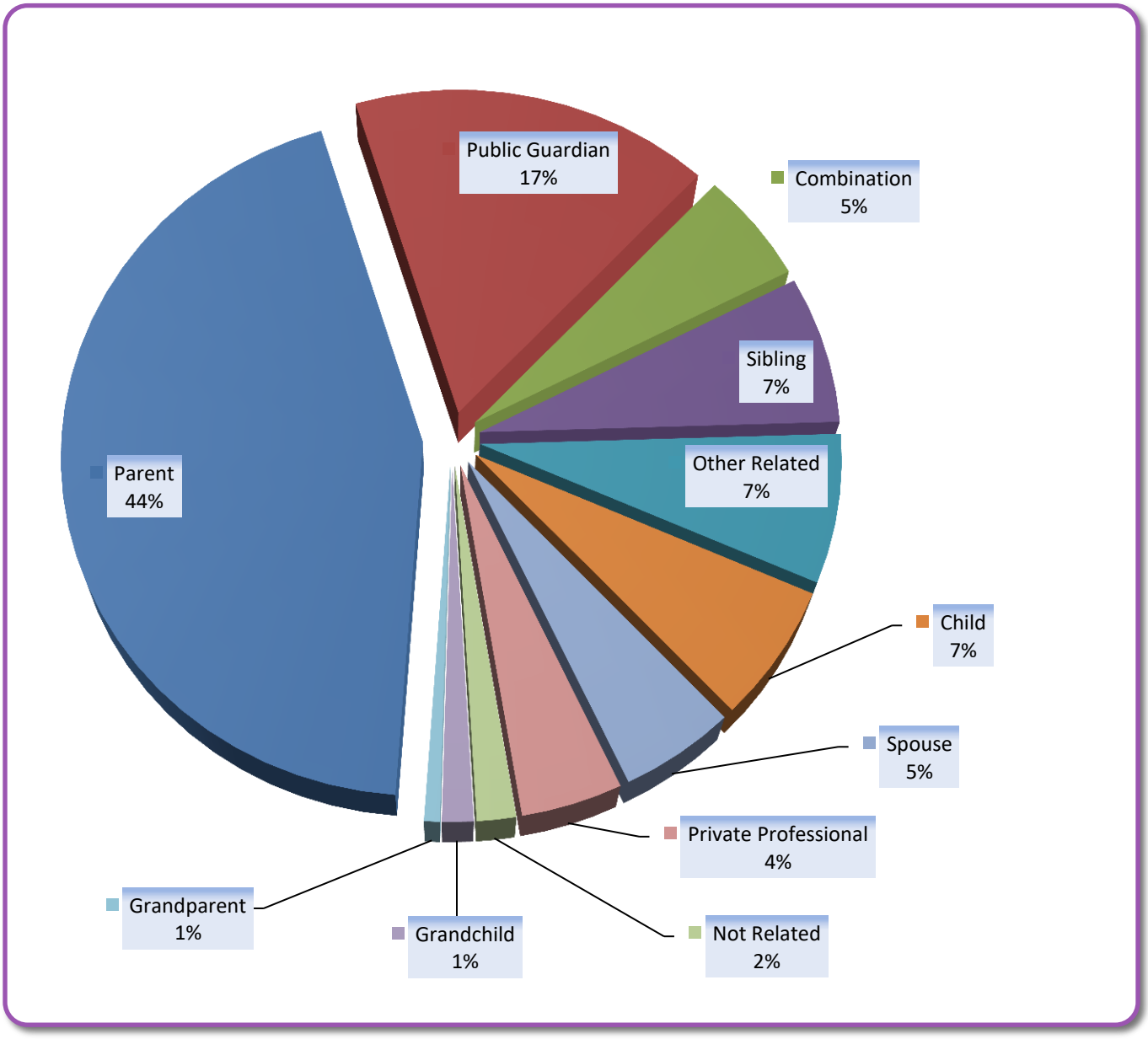
Total Number of Open Guardianship Cases: 3,463



Total Number of Closed Guardianship Cases: 11,831

Adult Statistics, Continued:

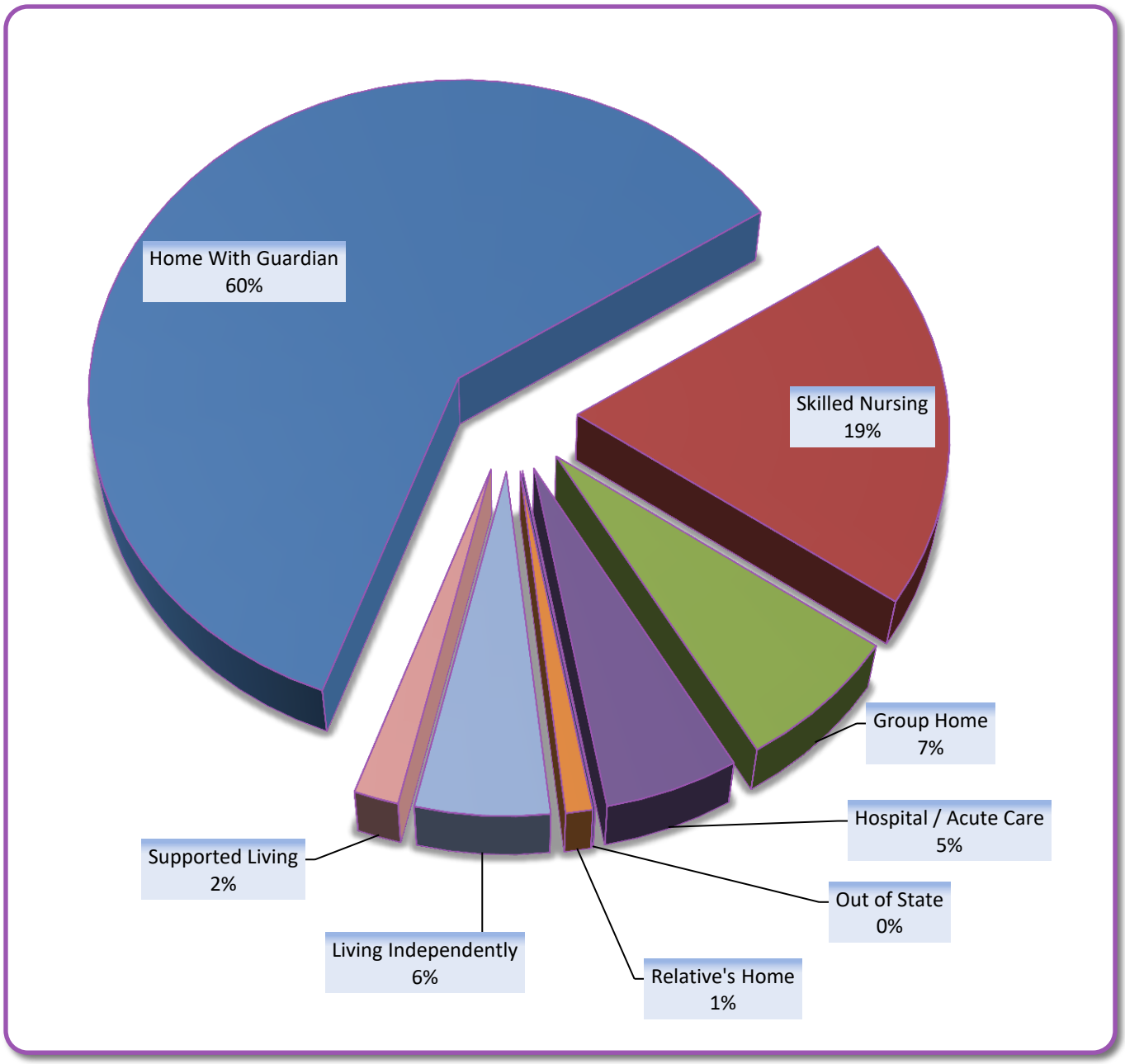
Relationship of Protected Person and Guardian



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

Adult Statistics, Continued:

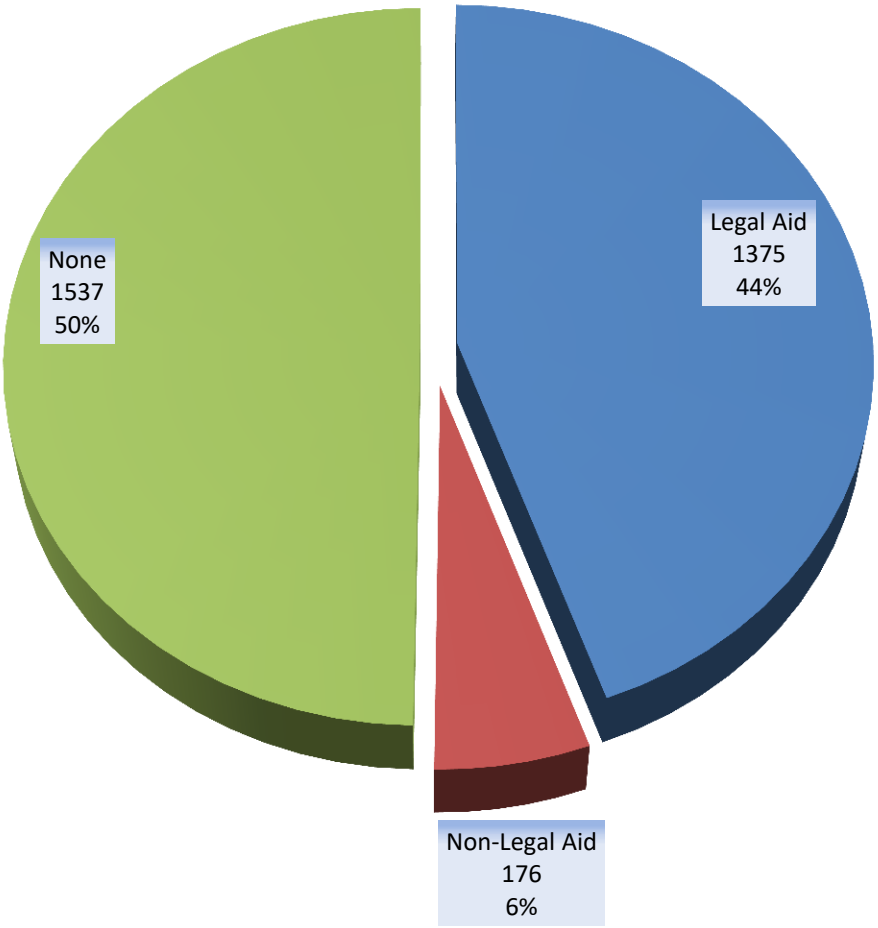
Placement Types



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

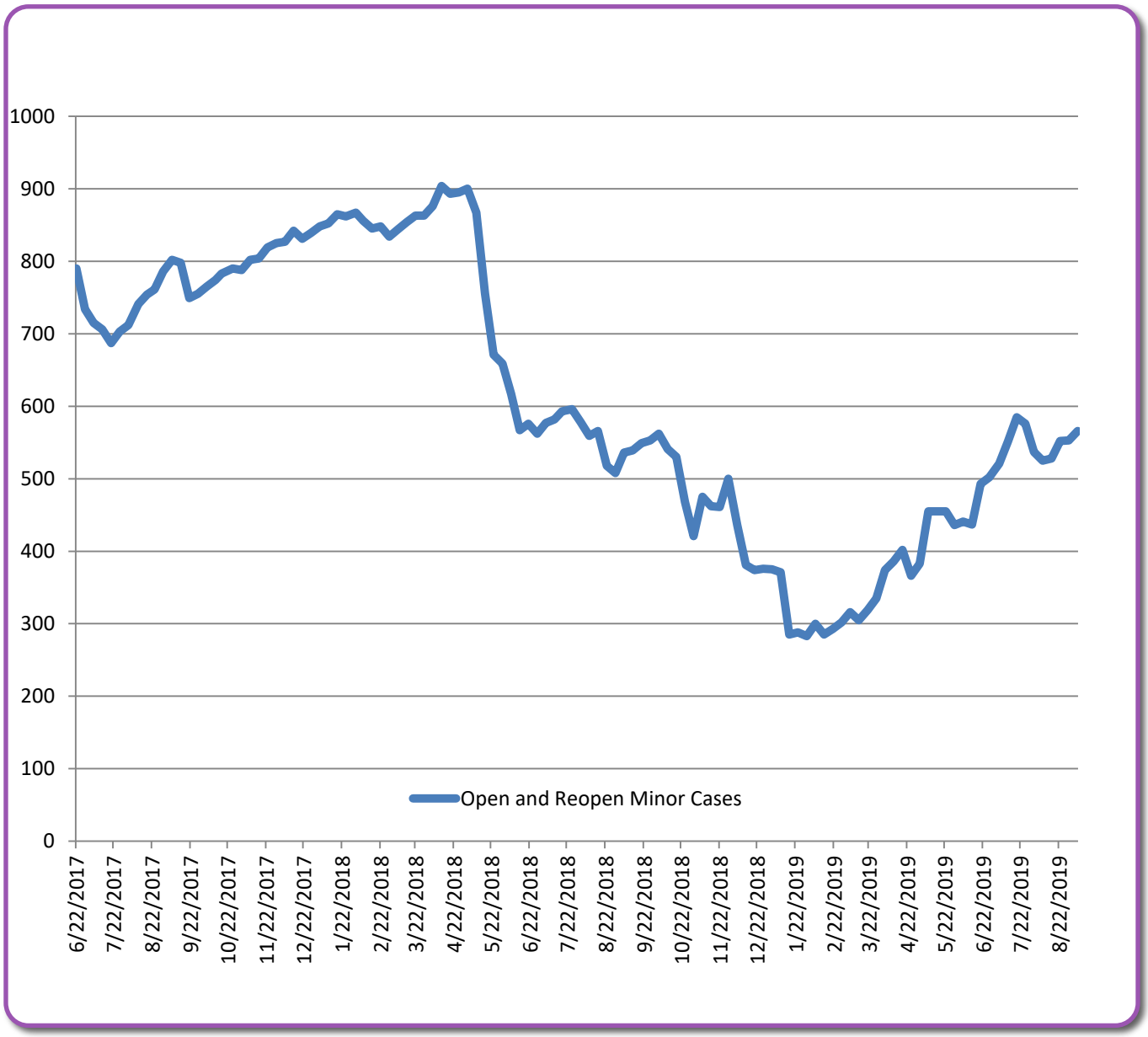
Adult Statistics, Continued:

Adult Cases
Protected Person Represented by an Attorney



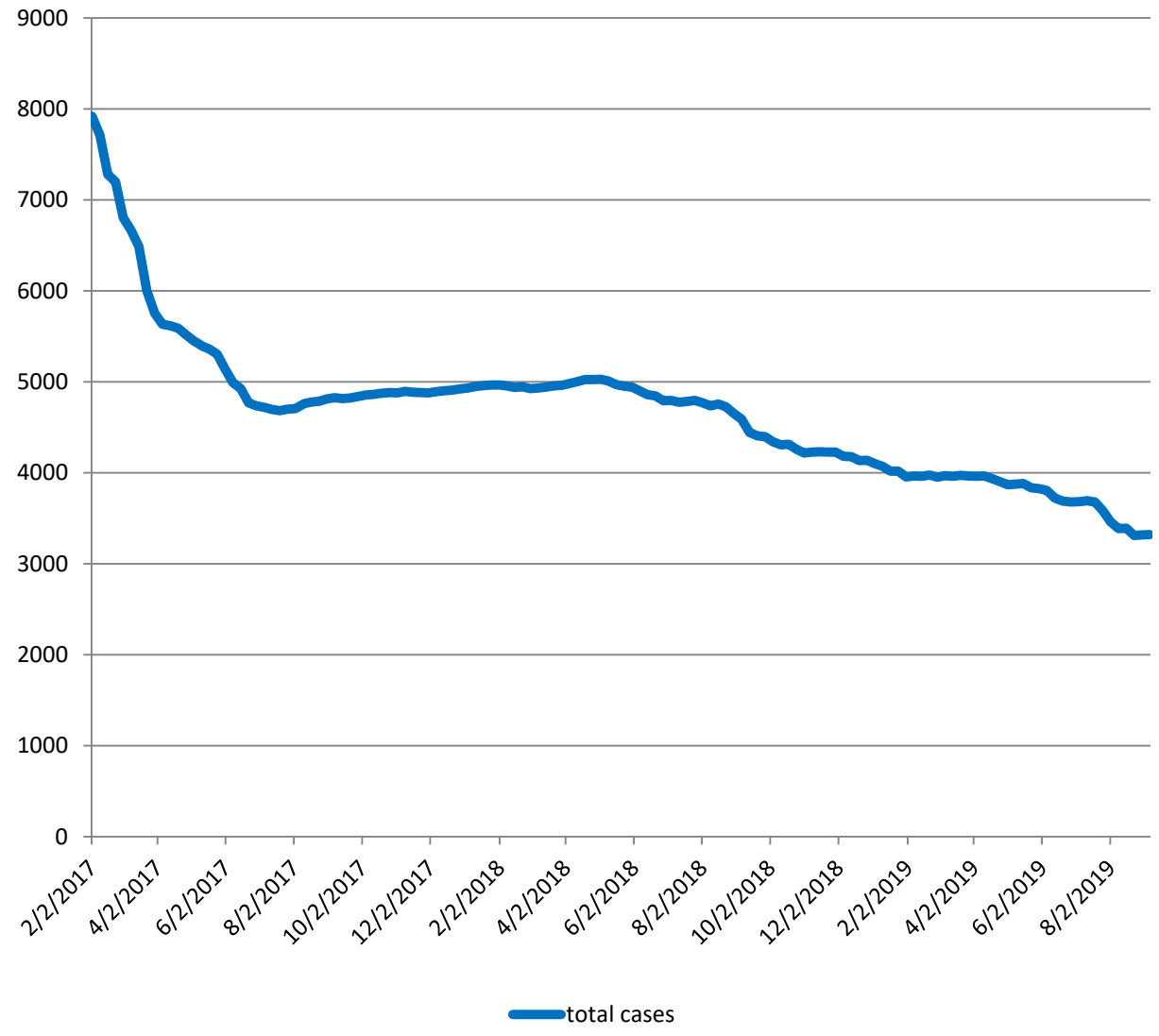
Minor Statistics:

Total Number of Minor Open and Reopen Cases
(Includes Only Cases With Pending Hearings)



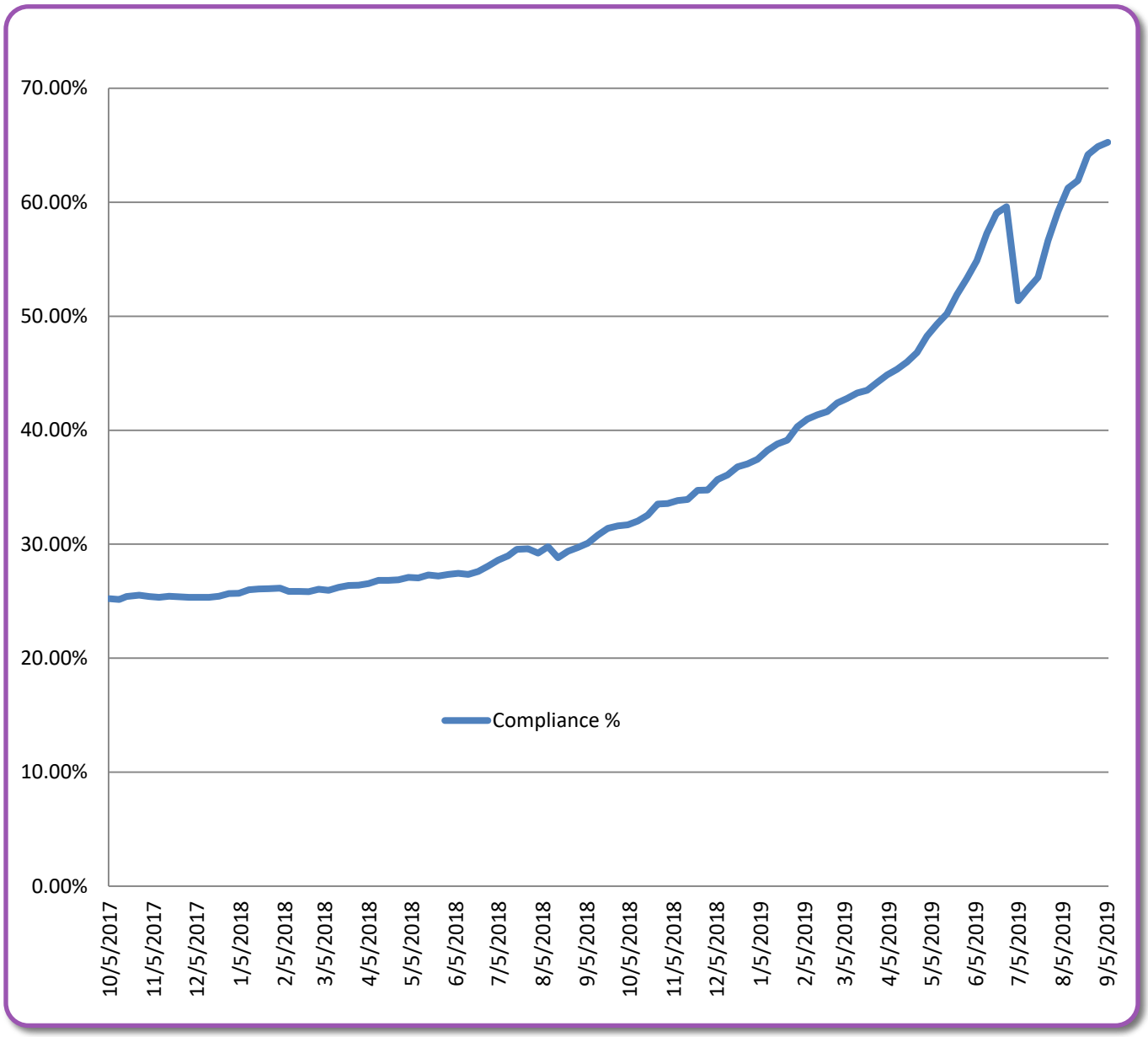
Minor Statistics, Continued:

Total number of Minor Cases

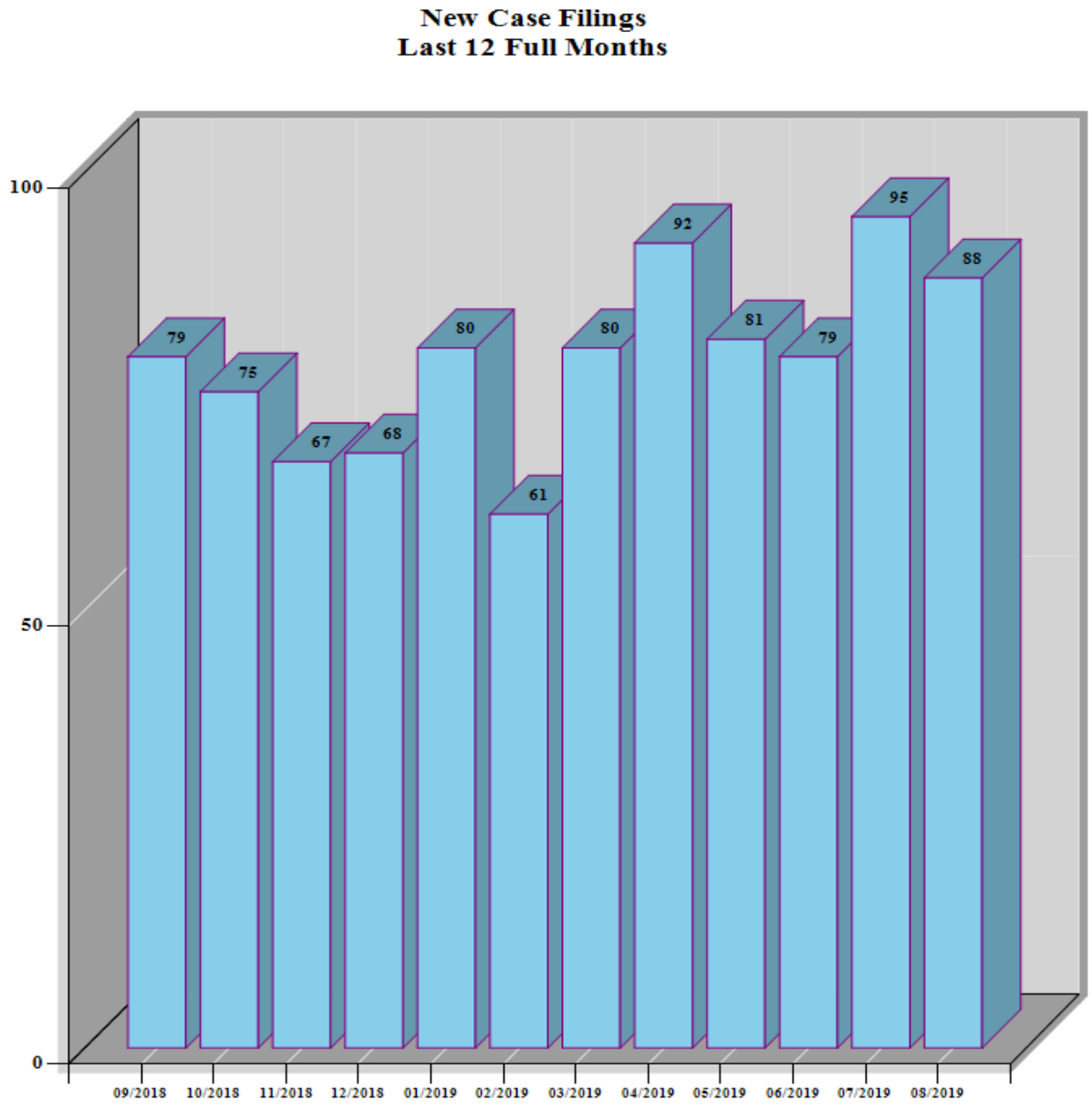


Minor Statistics, Continued:

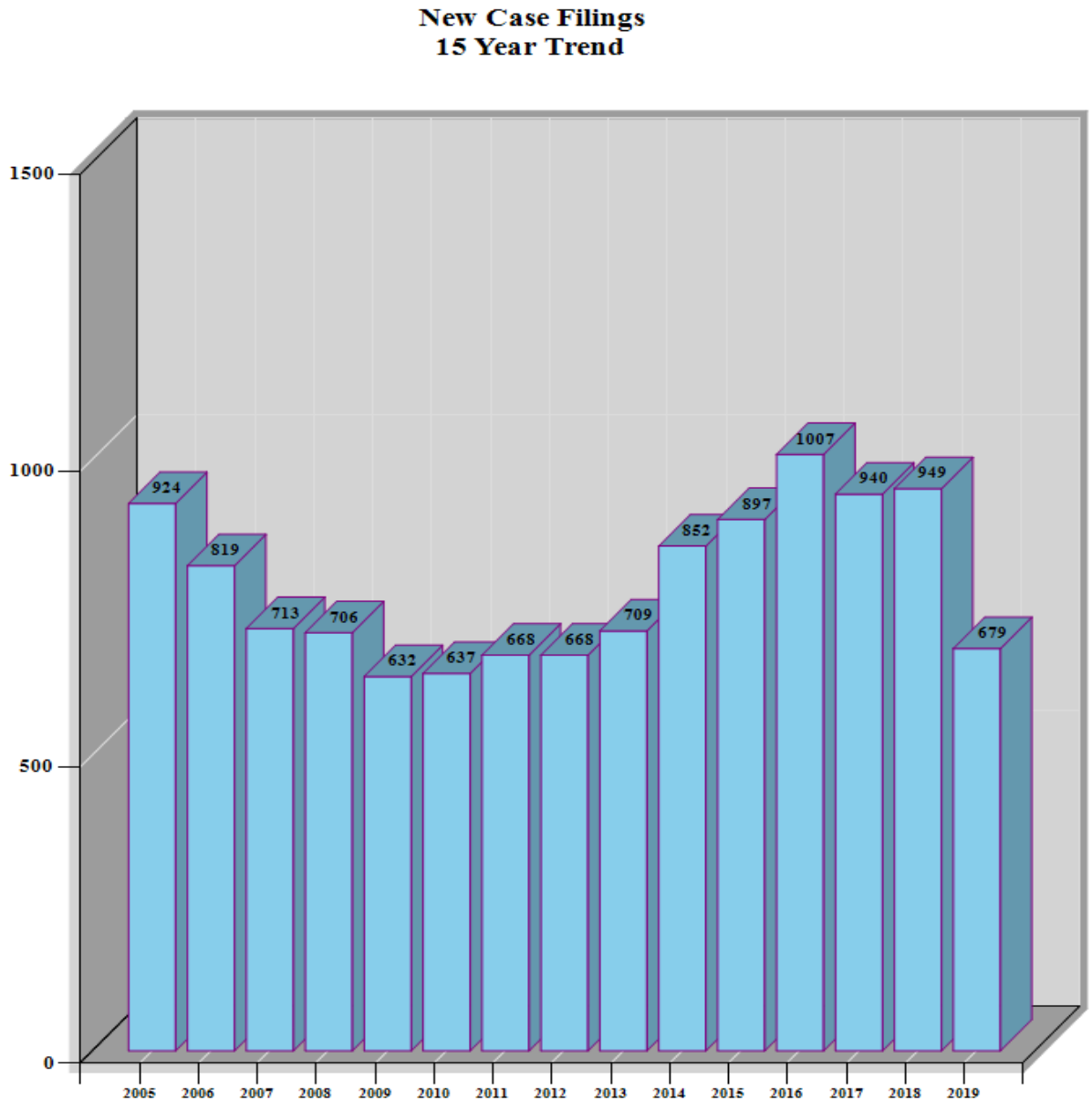
Percent of Minor Cases that have filed the statutorily required documents.



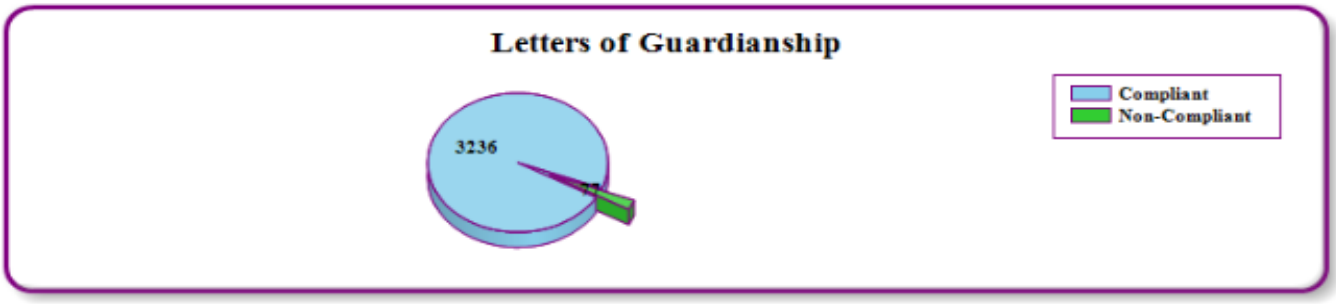
Minor Statistics, Continued:



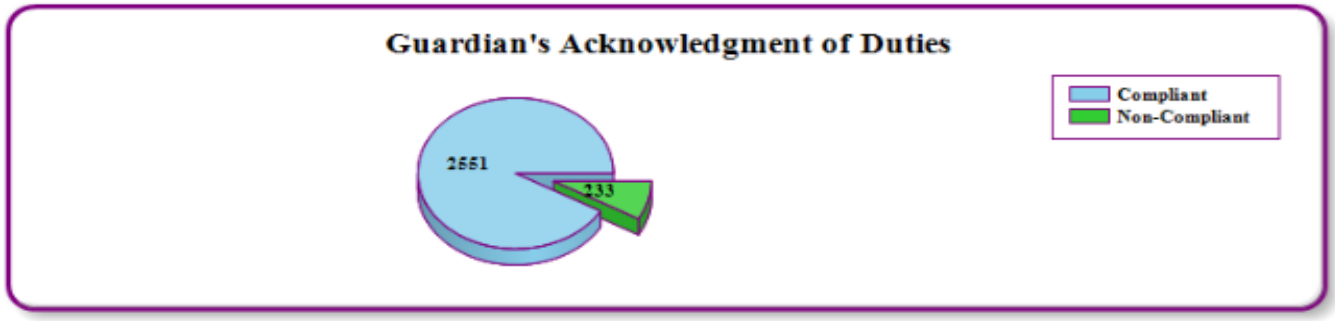
Minor Statistics, Continued:



Minor Statistics, Continued:



Compliant	Non-Compliant
97.68%	2.32%

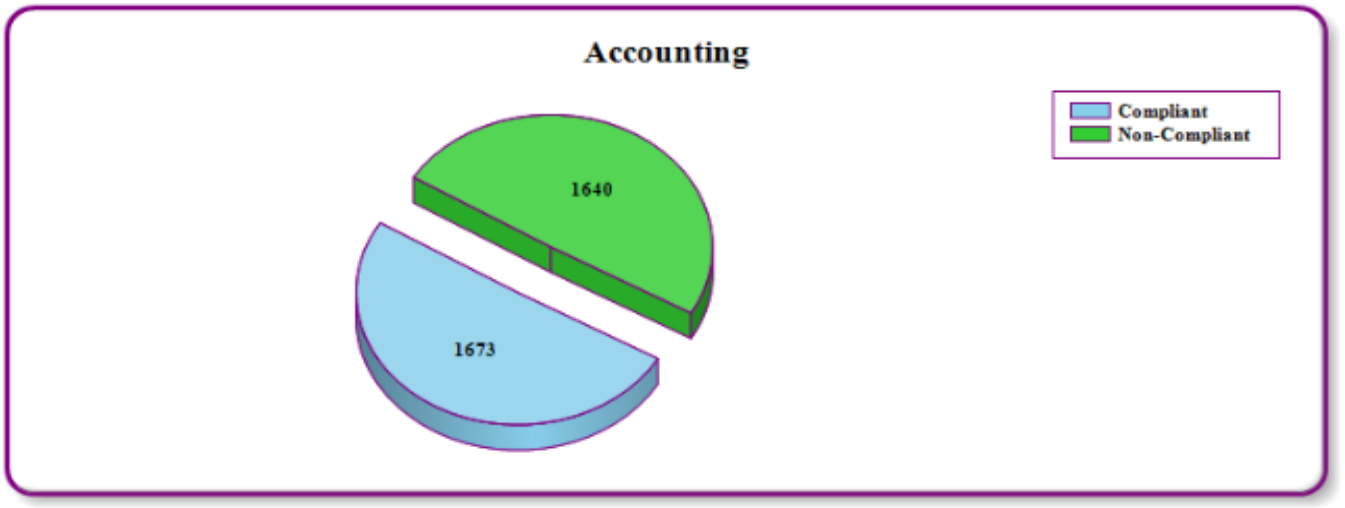


Compliant	Non-Compliant
91.63%	8.37%

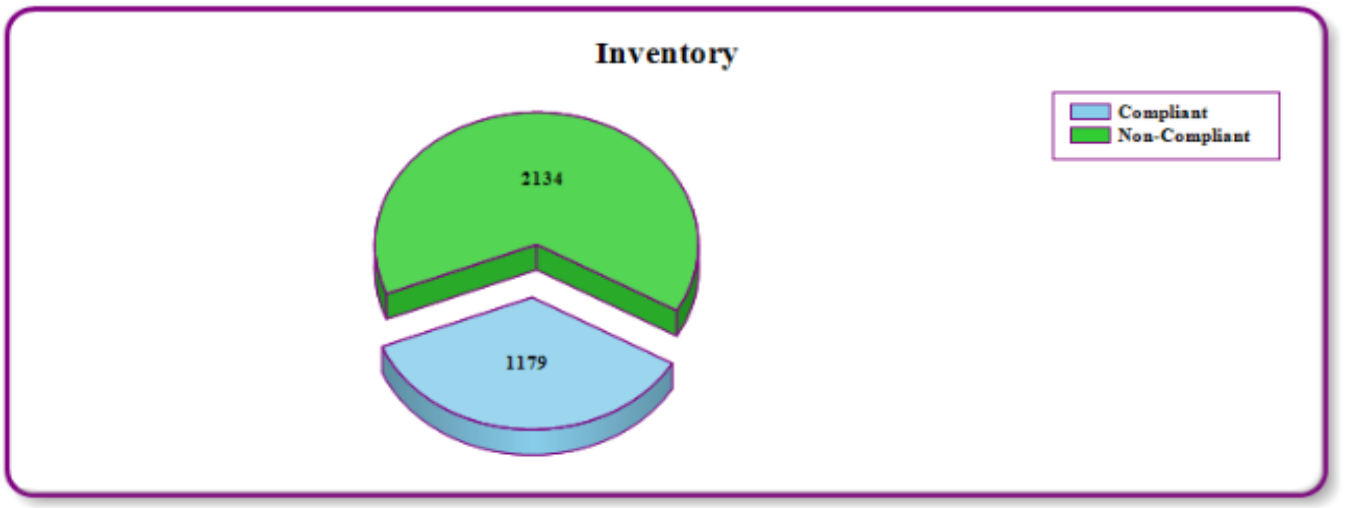
Compliant	Non-Compliant
75.67%	24.33%

* Numbers may include cases where no filing is required.

Minor Statistics, Continued:



Compliant	Non-Compliant
50.50%	49.50%

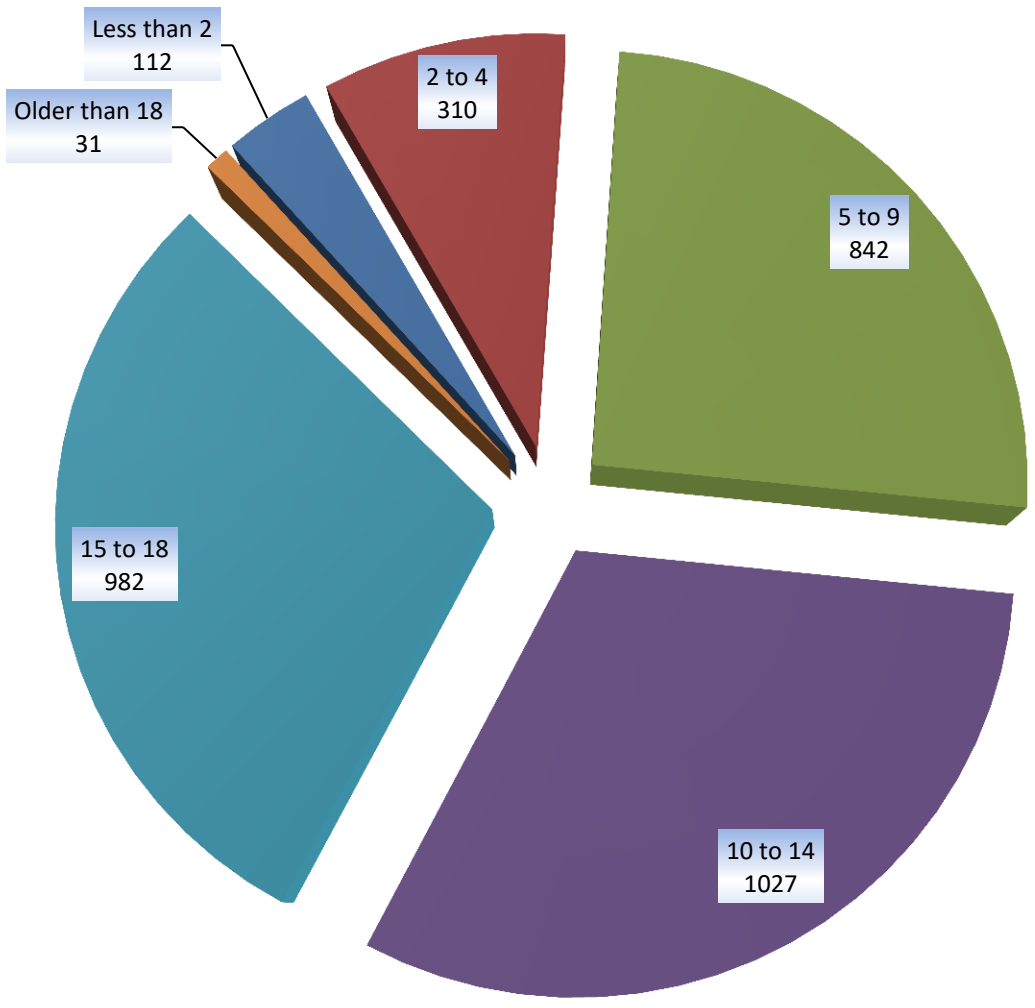


Compliant	Non-Compliant
35.59%	64.41%

* Numbers may include cases where no filing is required.

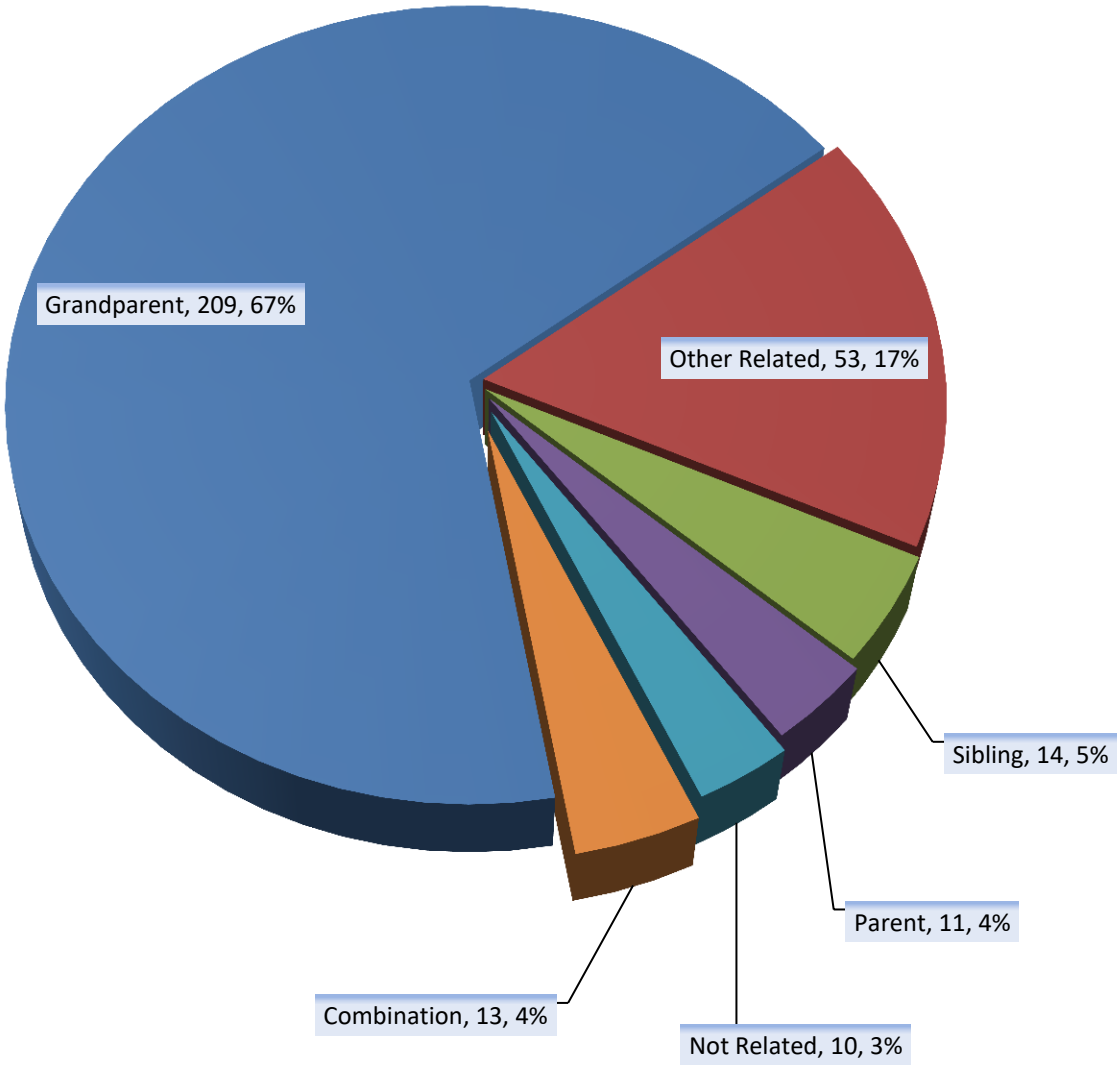
Minor Statistics, Continued:

Age of Minors



Minor Statistics, Continued:

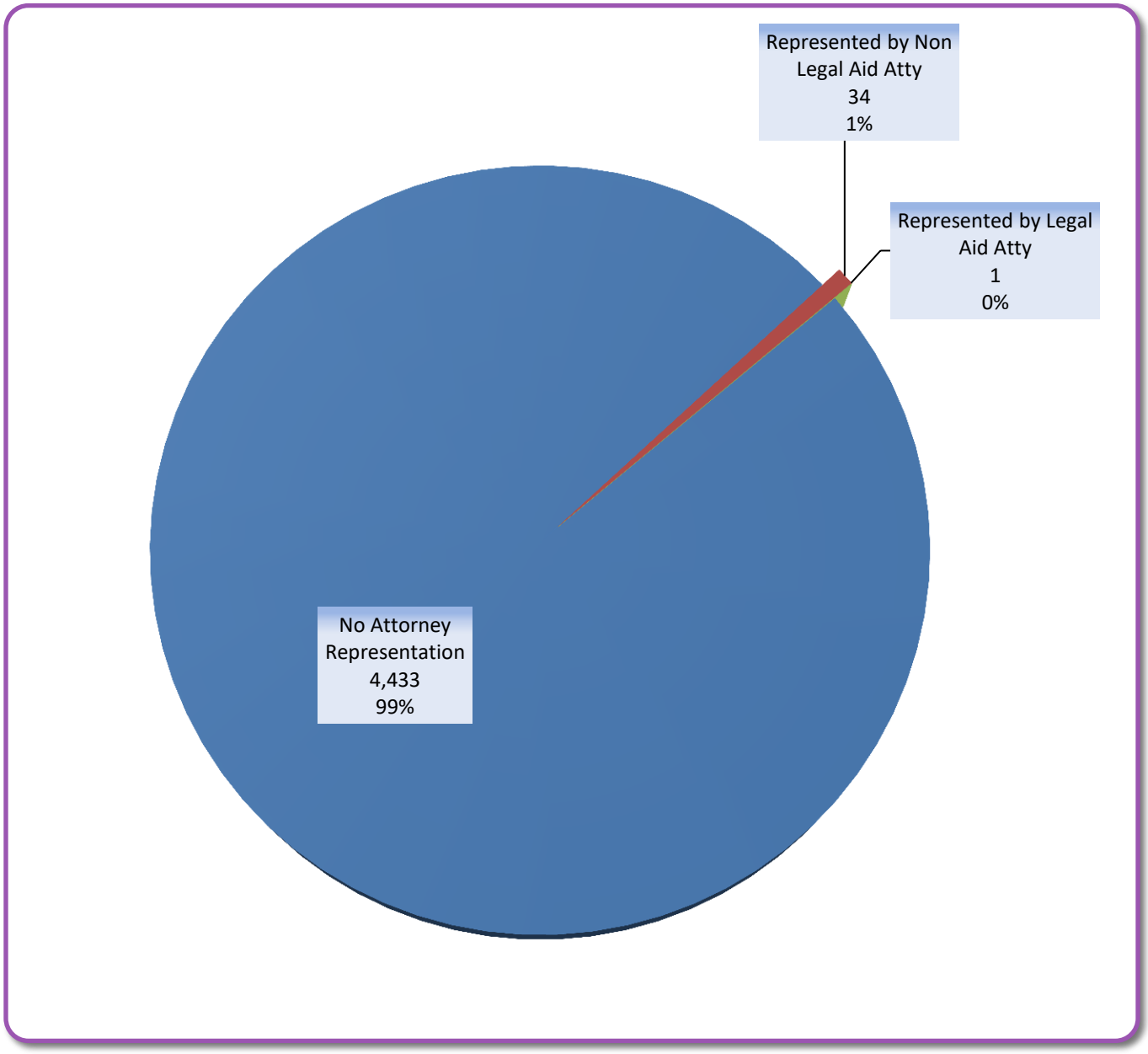
Relationship of Guardian to Minor



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

Minor Statistics, Continued:

Minor Cases
Protected Person Represented by Attorney



Appendix A. Statutory Authority for Types of Guardianships NRS 159.0487 provides for the appointment of 5 different types of Guardian

- Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors whose home state is this Nevada.
  This is a General Guardianship over the Person, Estate or both over a person found to be incompetent with all of the powers available under NRS 159 or 159A granted to the Guardian. However, the Guardian must still petition the Court before taking action in relation to certain aspects of the Person and/or Estate.

  Summary Administration of a Guardianship Estate (NRS 159.076)
  Ordinarily a Guardianship of Estate requires annual accountings to be heard on noticed hearing by the Court. However where it appears after payment of all claims and expenses of the guardianship that the value of the Ward's property does not exceed $10,000 the Court may dispense with annual accountings and all other proceedings required by this chapter. However the Guardian must notify the Court through an amended inventory should the net estate exceed $10,000 and file annual accountings from that point on.

- Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment. This is the same type of Guardianship as described at 1. However it is the physical proximity in state and the circumstantial requirement of appointment rather than residence which allows the Court to make an order. The powers granted are the same and subject to the same statutory requirements of permission before action is taken.
- Guardians of the Estate for non-resident incompetents or non-resident minors who have property within this State. This describes a guardianship concerned with property held in this state only.
- Special Guardians (NRS §§159.026, 159.0801, 159.0805) This is a guardianship over a person found to be a limited capacity as opposed to incompetency. The Court may dictate the powers granted to the Special Guardian and, save in emergency situations, must apply to the Court for instruction or approval before commencing any act relating to the person of limited capacity. The Special Guardian of the Person may also be granted powers to manage and dispose of the estate of the Ward.
- Guardians ad litem Not applicable to this analysis.
- Temporary Guardian of the Person and/or Estate (NRS §§159.0523, 159.0525, 159A.0523, 159A.0525) . The Court may grant a temporary guardianship over the Person, Estate or both. This may be granted on an ex parte basis but in such circumstances must be heard not later than 10 days after the date of appointment or the guardianship will expire. The Court may extend the guardianship for no longer than 5 months unless extraordinary circumstances are shown. The Court shall limit the powers of the Temporary Guardian to those necessary to respond to a substantial and immediate risk of physical harm or financial loss as is relevant."

Appendix B. USJR - Family Disposition Definitions

Non-Trial Dispositions: A major classification category for family-related case dispositions in which a case is disposed of by a dismissal, default, settlement, withdrawal, transfer or other non-trial action.

Other Manner of Disposition: A subcategory of family-related non-trial case type dispositions including ones of unknown specificity or dispositions not attributable to one of the other defined family-related disposition categories.

Dismissed for Want of Prosecution: A subcategory of family-related non-trial dispositions involving cases dismissed by the court because the plaintiff, petitioner or obligee has voluntarily ceased to pursue a case.

Involuntary (statutory) Dismissal: A subcategory of family-related non-trial dispositions involving cases adjudicated by an order of dismissal being entered because the legal time a statute has expired, with no other judgment or order being rendered for the case.

Default Judgment: A subcategory of family-related non-trial dispositions involving cases in which the defendant(s) either chose not to or failed to respond to (i.e. answer) the plaintiff's allegations.

Settled/Withdrawn Without Judicial Conference or Hearing: A subcategory of family-related non-trial dispositions for cases settled out of court, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation without a conference or hearing with a judicial officer.

Settled/Withdrawn With Judicial Conference or Hearing: A subcategory of family-related non-trial dispositions for cases settled, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation following a conference or hearing with a judicial officer.

Settle/Withdrawn by Alternative Dispute Resolution (ADR): A subcategory of family-related non-trial dispositions involving cases that were referred by the court to programs such as mediation or arbitration and through those processes, were successfully settled and/or withdrawn from the court docket during the reporting period.

Transferred: A subcategory of family-related non-trial dispositions involving cases in which a judicial order transfers a case from one court to another jurisdiction. Transferred does not mean transferring the case from one judge or master to another judge or master within the same court.

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

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

Trial Dispositions: A major classification category for family-related case dispositions that involves a hearing and determination of issues of fact and law, in accordance with prescribed legal procedures, in order to reach a judgment in a case before a court.

Bench (Non-Jury) Trial: A subcategory of family-related trial dispositions involving a trial in which there is not jury and a judicial officer determines both the issues of fact and law in the case. For statistical purposes, a Bench trial is initiated when an opening statement is made, the first evidence is introduced, or the first witness sworn, whichever comes first, regardless of whether a judgment is reached.

Disposed After Trial Start: A subcategory of family-related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case, but no judgment is reached, typically because the case settles during the trial.

Judgment Reached: A subcategory of family-related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case and a judgment is rendered by the court/judicial officer.

AGENDA ITEM 4

Report from Kate McCloskey
Guardianship Compliance Manger

AGENDA 4(a)

Update on County Survey of Recording Fees Collected

NRS 247.305.3(a) Legal Services for Protected Persons

County	October 2017-June 2018	July 2018-December 2018
Carson City	$20,343.00	$12,742.00
Churchill	$11,499.00	$8,394.00
Clark	$1,475,745.00	$991,773.00
Douglas	$32,040.00	$22,536.00
Elko	$33,660.00	$20,151.00
Esmeralda	Not Reported by County	Not Reported by County
Eureka	$3,900.00	$6,171.00
Humboldt	$16,026.00	$8,256.00
Lander	$14,841.00	$5,445.00
Lincoln	$5,847.00	$8,040.00
Lyon	$34,690.00	$21,790.00
Mineral	$6,684.00	$2,958.00
Nye	Not Reported by County	$31,811.00
Pershing	$6,309.00	$4,878.00
Storey	$4,815.00	$2,886.00
Washoe	$206,955.00	$136,398.00
White Pine	7,617.00	$1,381.00

NRS 247.305.3 Compensation of Investigators in Minor Guardianship Cases

County	October 2017-June 2018	July 2018-December 2018
Carson City	$6,090.00	$3,800.00
Churchill	$3,833.00	$2,798.00
Clark	$471,915.00	$330,591.00
Douglas	$10,680.00	$7,512.00
Elko	$11,220.00	$6,837.00
Esmeralda	Not Reported by County	Not Reported by County
Eureka	$1,300.00	$2,057.00
Humboldt	$5,342.00	$2,752.00
Lander	$5,814.00	$1,898.00
Lincoln	$1,308.00	$2,688.00
Lyon	$11,549.00	$7,130.00
Mineral	$2,288.00	$986.00
Nye	Not Reported by County	$3,302.00
Pershing	$2,103.00	$1,632.00
Storey	$1,373.00	$792.00
Washoe	$68,985.00	$45,466.00
White Pine	$2,539.00	$1,381.00

NRS 247.305.4 Legal Services for Abused and Neglected Children (optional for counties to collect fee)

County	October 2017-June 2018	July 2018-December 2018
Carson City	Not collecting fee	Not collecting fee
Churchill	$22,998.00	$16,746.00
Clark	$2,459,602.00	$1,652,955.00
Douglas	Not collecting fee	Not collecting fee
Elko	$11,220.00	$6,837.00
Esmeralda	Not collecting fee	Not collecting fee
Eureka	Not collecting fee	Not collecting fee
Humboldt	Not collecting fee	Not collecting fee
Lander	Not collecting fee	Not collecting fee
Lincoln	Not collecting fee	Not collecting fee
Lyon	$34,794.00	$21,533.00
Mineral	Not collecting fee	Not collecting fee
Nye	Not collecting fee	Not collecting fee
Pershing	$10,233.00	10,233.00
Storey	Not collecting fee	Not collecting fee
Washoe	$276,522.00	$272,796.00
White Pine	Not collecting fee	Not collecting fee

AGENDA ITEM 4(b)

Updated Guardianship Compliance Office Status Report

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

MEMORANDUM

TO: Justice James Hardesty

FROM: Kate McCloskey, Guardianship Compliance Manager

COPY: Robin Sweet, Director; Sharon Coates; Michelle Shull

DATE: September 10, 2019

SUBJECT: Guardianship Compliance Office Report

During the 2018-2019 fiscal year, the Guardianship Compliance Office received a total of 332 District Court Orders, and submitted findings reports for 273 investigations and audits. The table below summarizes the types of district court orders received for fiscal year 2018-2019.

Category	Minor Guardianship Orders	Adult Guardianship Orders
Audit	16	62
Pre-Guardianship	39	3
Locate Person	75	63
Other Health, Safety or Welfare	37	37
Total	167	165

The GCO was able to identify, through comprehensive auditing, at least $2,198,881.00 of estate funds at risk of loss (see table below). Protected person's attorneys have been able to begin recovery actions in several cases. In other cases, the Court has taken actions, such as issuing bench warrants and issuing sanctions, including termination of guardianship and awarding damages be paid to the protected person.

Total Worth of Estates Audited	Amount Identified at Risk for Loss
$19,712,480.12	$2,198,811.00

The Guardianship Compliance Office worked collaboratively with LACSN and the 8th Judicial District Court's Guardianship Compliance Office to adapt the Consumer Financial Protection Bureau's "Managing Someone Else' Money" guide for Guardians of the Estate. This guide provides guardians with information on best practices in handling guardianship estates, what guardians can and cannot do, and reporting requirements for guardians of estate. The guide is available in both an English and Spanish version and is accessible on the Guardianship

Compliance Website. District Courts have been provided copies, as well, so they can make them available on their websites.

The Guardianship Compliance Office is currently collaborating with Nevada Legal Services and the 8th Judicial District Court to develop training for guardians regarding compliance, alternatives to guardianship, and the guardianship process. We will be launching our pilot training in Elko in October. Our goal is to eventually have both in person trainings throughout the state utilizing pro-bono attorneys from Nevada Legal Services, as well as an on line training. Additionally, we are currently drafting materials that can be used in supported decision making, such as a manual, contract, and other related forms. We continue to work on bench cards for judges on guardianship related issues, they are currently being revised from their original version we completed late last fiscal year, since guardianship laws were updated.

AGENDA ITEM 4(c)

Guardianship Training Module Available on Guardianship Compliance Office Website

From: Coates, Sharon
To: [redacted]
Subject: FW: NCSC guardianship training module
Date: Monday, May 20, 2019 10:26:41 AM
Attachments: finding-the-right-fit-training-ncpj-holt.pdf
RE NCSC guardianship training module.msg

For those who did not receive Judge Struman's previous email, I am forwarding it. Please see below and the two attachments. Thank you.

Sharon Coates, PP, CLP
Executive Assistant II
Supreme Court of Nevada
201 S. Carson Street
Carson City, NV 89701
(775) 684-1750
scoates@nvcourts.nv.gov

From: Gloria Sturman <[redacted]
Sent: Thursday, May 16, 2019 8:58 AM
To: [redacted]
Subject: NCSC guardianship training module

I am attending the National College of Probate Judges and just saw a presentation on the exciting guardianship training module which they have just completed. The link to sign in is on the attached document. I do not have the

email addresses of the entire commission with me so cannot send the link to everyone, I apologize to anyone I inadvertently excluded.

I understand Kate McCloskey has been in touch with the National Center about customizing the program for Nevada. I only saw a brief introduction but the program looks like a great overview My one concern is that it's entirely web based and many of our pro se guardians do not have access to a computer. I was told the grant for development was limited to the web based tool. LACSN/self help and compliance offices might know whether lack of computer access is a real concern.

I look forward to seeing the training program customized for Nevada.

Gloria Sturman

https://eji.courtlms.org/

Finding the Right Fit: Decision-Making Supports and Guardianship

Description

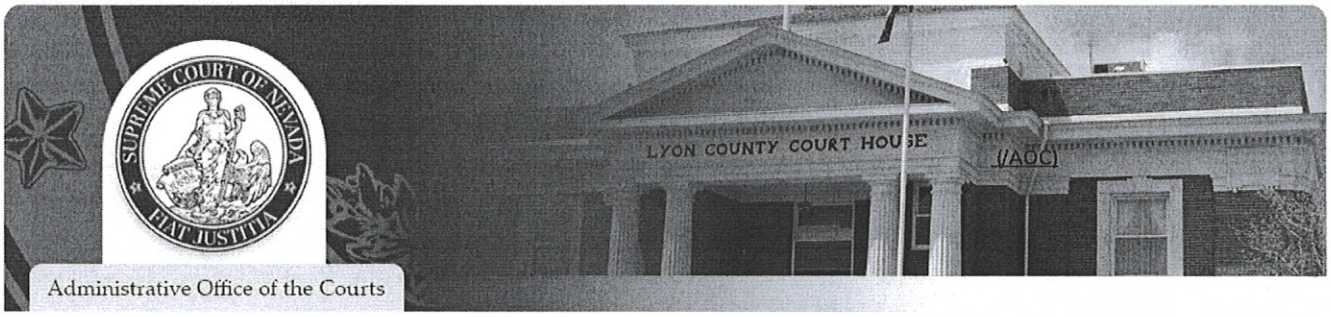
The National Center for State Courts, with the assistance of the American Bar Association Commission on Law and Aging, and with funding from the Department of Justice, Elder Justice Initiative, have created Finding the Right Fit: Decision-Making Supports and Guardianship, a training designed to assist individuals in exploring ways to help someone who may need assistance in making decisions with informal supports, legal options, and/or adult guardianship.

Finding the Right Fit provides a broad overview of decision-making supports and guardianship that is not specific to state laws or rules. The goal of the training is to provide information and guidance on finding the right kind of supports for someone's needs, including:

- Supporting someone in making their own choices about health, money, and lifestyle.
- Discovering ways to exercise independence.
- Deciding whether to become a guardian or conservator, and how to support a person's self-determination and decision-making as a guardian or conservator.
- Preventing and addressing the risk of abuse, neglect and exploitation that is present with any of the above options.

NOTE: Consult the FAQ page for helpful instructions prior to starting this training.

Please be aware that this training is not a substitute for legal advice from a licensed attorney.



Guardianship Compliance Office News

Subscribe (/AOC/RSS.aspx?newsid=239474)

Nevada Guardianship Compliance Office Suggests Online Course (/AOC/Programs_and_Services/Guardianship_Compliance/News/Nevada_Guardianship_Compliance_Office_Suggests_Online_

5/23/2019 8:05:49 AM

The Nevada Guardianship Compliance Office of the Nevada Supreme Court urges individuals involved with or considering guardianship to take part in a new online course.

Nevada Guardianship Compliance Toll-Free Fraud Hotline Established (/AOC/Programs_and_Services/Guardianship_Compliance/News/Nevada_Guardianship_Compliance_Toll-Free_Fraud_Hotline_Established/)

3/6/2018 7:59:14 AM

The Nevada Guardianship Compliance Office has established a toll-free guardianship fraud hotline at (833) 421-7711.

QUICK LINKS

News (/AOC/Programs_and_Services/Guardianship_Compliance/News/)

Links (/AOC/Programs_and_Services/Guardianship_Compliance/Links/)

Guardianship Compliance Office Documents (/AOC/Templates/documents.aspx?folderID=25530)

Self-Help Center Guardianship Forms (http://selfhelp.nvcourts.gov/forms/guardianship-forms)

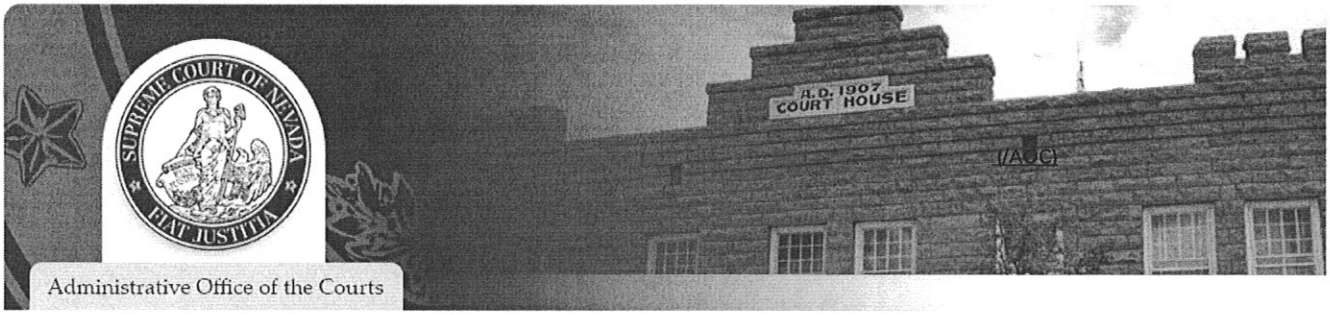
Hotline Flyer (/AOC/Programs_and_Services/Guardianship_Compliance/Documents/Hotline_Flyer/)

Permanent Guardianship Commission (/AOC/Committees_and_Commissions/Guardianship/Overview/)

NEWS AND MEDIA

Annual Grants for Trial Court Improvement; Nearly $63,000 Awarded in 2018 (/AOC/Programs_and_Services/AOC_Grant_Program/News/Annual_Grants_for_Trial_Court_Improvement;_Nearly_$63,000_Awarded_in_

6/20/2019 2:48:31 PM



Nevada Guardianship Compliance Office Suggests Online Course

5/23/2019 8:05:49 AM

The Nevada Guardianship Compliance Office of the Nevada Supreme Court urges individuals involved with or considering guardianship to take part in a new online course.

The training called, *Finding the Right Fit: Decision-Making Supports and Guardianship* is offered free-of-charge from the National Center for State Courts (NCSC). Individuals can find the course at https://eji.courtlms.org/ (https://eji.courtlms.org/). If you do not have access to a computer, your local library probably has one that you could use.

Finding the Right Fit provides a broad overview of decision-making help and the role of guardians. The goal of the training is to provide information and guidance on finding the right supports for someone's needs, including:

- Supporting someone in making choices about health, money, and lifestyle.
- Discovering ways to allow someone to exercise independence.
- Deciding whether to become a guardian, and how to support a person's self-determination and decision-making as a guardian.

In particular, the training offers tips on how to identify and understand the risk of abuse, neglect, and exploitation that comes with any of the above options.

To help report guardianship abuse, the Nevada Guardianship Compliance Office has established a toll-free guardianship fraud hotline at (833) 421-7711.

The NCSC offers the course with support of the U.S. Department of Justice Elder Justice Initiative and the American Bar Association Commission on Law and Aging.

QUICK LINKS

News (/AOC/Programs_and_Services/Guardianship_Compliance/News/)

Links (/AOC/Programs_and_Services/Guardianship_Compliance/Links/)

Guardianship Compliance Office Documents (/AOC/Templates/documents.aspx?folderID=25530)

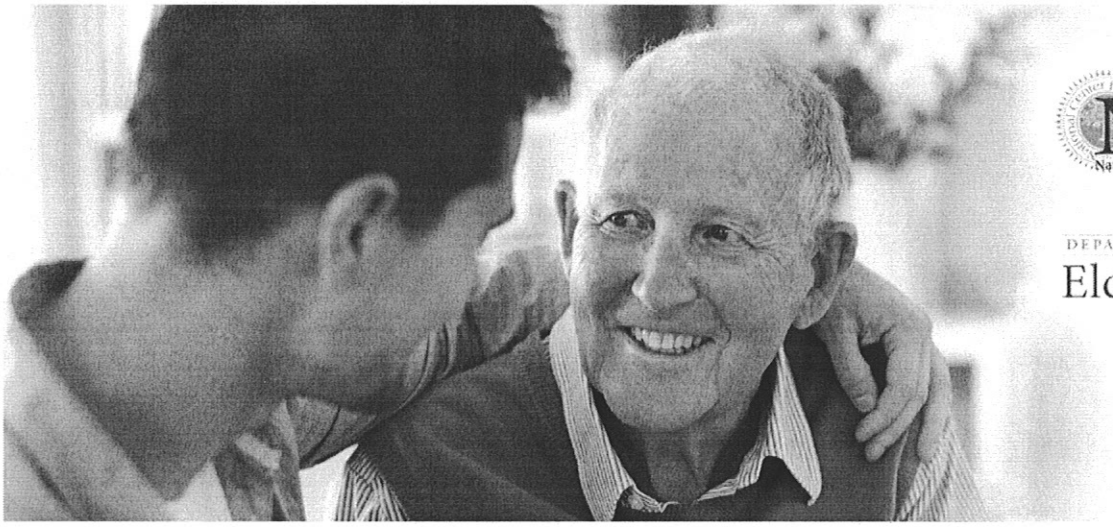
Self-Help Center Guardianship Forms (http://selfhelp.nvcourts.gov/forms/guardianship-forms)

Hotline Flyer (/AOC/Programs_and_Services/Guardianship_Compliance/Documents/Hotline_Flyer/)

Permanent Guardianship Commission (/AOC/Committees_and_Commissions/Guardianship/Overview/)

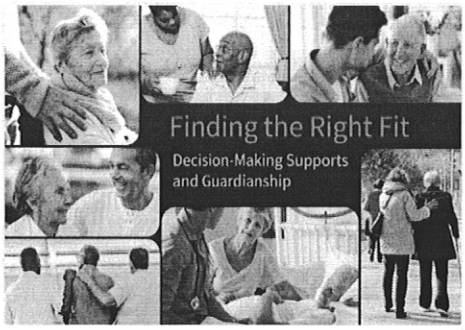
NEWS AND MEDIA

(https://eji.courtlms.org/index)



Free Online Training Course

Finding the Right Fit: Decision-Making Supports and Guardianship



Finding the Right Fit: Decisi...

AGENDA ITEM 5

2019 Legislative Session Update

AGENDA ITEM 5(a)

SB 20

AN ACT relating to guardianships; enacting certain provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; authorizing the filing of a petition for an expedited hearing to transfer a proposed protected person from a health care facility to another health care facility that provides a less restrictive level of care in certain circumstances; revising various provisions relating to guardianships; increasing the additional fee charged by county recorders to allocate additional money for legal representation for protected persons, proposed protected persons, protected minors and proposed protected minors in guardianship proceedings; authorizing a portion of such a fee to be used to pay for certain assistance to protected minors and proposed protected minors in guardianship proceedings; and providing other matters properly relating thereto

Senate Bill No. 20–Committee on Judiciary

CHAPTER.....

AN ACT relating to guardianships; enacting certain provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; authorizing the filing of a petition for an expedited hearing to transfer a proposed protected person from a health care facility to another health care facility that provides a less restrictive level of care in certain circumstances; revising various provisions relating to guardianships; increasing the additional fee charged by county recorders to allocate additional money for legal representation for protected persons, proposed protected persons, protected minors and proposed protected minors in guardianship proceedings; authorizing a portion of such a fee to be used to pay for certain assistance to protected minors and proposed protected minors in guardianship proceedings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2, 3, 30 and 31 of this bill enact certain provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. **Sections 2 and 30** of this bill authorize a court to appoint a successor guardian for a protected person or protected minor, respectively, at any time to serve immediately or when a designated event occurs. **Sections 3 and 31** of this bill authorize a court to appoint a temporary substitute guardian for a protected person or protected minor, respectively, in certain circumstances for a period of not more than 6 months.

Existing law authorizes certain persons to file a petition for the appointment of a guardian for a proposed protected person. (NRS 159.044) **Section 3.5** of this bill provides that if a person who files such a petition reasonably believes that it is appropriate to discharge the proposed protected person from a health care facility for the purpose of transferring the proposed protected person to a more appropriate health care facility that provides a less restrictive level of care, the person must petition the court for an expedited hearing to determine whether such a transfer is appropriate and must include certain information in such a petition. **Section 3.5** also provides that a person may not petition the court for an expedited hearing if the person believes that a proposed protected person should be transferred to: (1) a health care facility outside this State; (2) with certain exceptions, a health care facility outside the judicial district in which a petition for the appointment of a guardian is filed; or (3) a secured residential long-term care facility.

Existing law authorizes a court to appoint a temporary guardian for certain proposed protected persons and extend the appointment of a temporary guardian in certain circumstances. (NRS 159.0523) **Section 23.3** of this bill requires a court to limit the authority of a temporary guardian to that which is necessary to perform any actions required to ensure the health, safety or care of a proposed protected person, including applying for Medicaid or other appropriate assistance, coverage or support for the protected person. **Section 23.3** also authorizes a court to consider the actions taken by a temporary guardian to carry out any requested activities for the benefit of a proposed protected person during the temporary guardianship

when the court is making a determination regarding the extension of a temporary guardianship or the issuance of any ex parte or emergency order.

Existing law requires, with certain exceptions, a proposed protected person who is found in this State to attend the hearing for the appointment of a guardian. (NRS 159.0535) **Section 23.7** of this bill provides an additional exception to such a requirement by authorizing the proposed protected person, through counsel, to waive his or her appearance. Existing law also authorizes a proposed protected person or proposed protected minor who cannot attend the hearing for the appointment of a guardian to appear by videoconference. (NRS 159.0535, 159A.0535) **Sections 23.7 and 31.5** of this bill additionally authorize a proposed protected person or proposed protected minor, respectively, to appear by any other means that uses audio-video communication or by telephone. Existing law further establishes provisions relating to the duties of certain persons if a proposed protected person cannot attend a hearing for the appointment of a guardian by videoconference. (NRS 159.0535) **Section 23.7** removes such provisions.

Existing law generally requires that before a guardian moves a protected person, the guardian must file a notice with the court of his or her intent to move the protected person and serve notice upon all interested persons. (NRS 159.0807) **Section 25** of this bill revises various provisions relating to such a requirement.

Existing law requires a guardian of the person to make a written report containing certain information, file the report with the court and serve the report on the protected person and any attorney for the protected person. (NRS 159.081) **Section 26** of this bill authorizes the court to waive the requirement that the report must be served on the protected person upon a showing that such service is detrimental to the physical or mental health of the protected person. **Section 26** also revises provisions relating to the information required to be included in the report.

Existing law: (1) authorizes a guardian to sell the personal property of a protected person in certain circumstances; and (2) requires that the family members of the protected person and any interested persons be offered the first right of refusal to acquire such personal property at fair market value. (NRS 159.154) **Section 27** of this bill provides that: (1) claims by family members and interested persons to acquire the property must be considered in a certain order of priority; and (2) if multiple claims are received from the same priority group and an agreement cannot be reached after good faith efforts have been made, the guardian is authorized to sell the property.

Existing law requires a guardian to retain receipts or vouchers for all expenditures and further requires: (1) a public guardian to produce such receipts or vouchers upon the request of the court or certain other persons; and (2) all other guardians to file such receipts or vouchers with the court in certain circumstances. (NRS 159.179) **Section 28** of this bill instead requires all guardians to produce such receipts or vouchers upon the request of the court or certain other persons and file such receipts or vouchers with the court only if the court orders the filing.

Existing law requires a county recorder to charge and collect, in addition to any other fee a county recorder is authorized to collect, a fee of $5 in certain circumstances and to pay the amount of such fees collected to the county treasurer on a monthly basis. Existing law requires the county treasurer to remit $3 from each such additional fee received to: (1) the organization operating the program for legal services for the indigent in the judicial district to provide legal services for protected persons or proposed protected persons in guardianship proceedings and, if sufficient funding exists, protected minors or proposed protected minors in guardianship proceedings; or (2) if such an organization does not exist in the judicial district, to an account for the use of the district court to pay for attorneys to represent protected persons and proposed protected persons who do not have the

ability to pay for an attorney. (NRS 247.305) **Section 33** of this bill increases the amount paid to such an organization or account from $3 to $5, thereby increasing the additional fee charged by a county recorder from $5 to $7. Existing law also requires a county treasurer to remit $1 from each additional fee received from a county recorder to an account for the use of the district court to pay the compensation of investigators appointed in a guardianship proceeding concerning a proposed protected minor. (NRS 247.305) **Section 33** provides that such money may also be used to pay for attorneys and self-help assistance for protected minors and proposed protected minors in guardianship proceedings.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 3.5 of this act.

Sec. 2. ***1. The court at any time may appoint a successor guardian to serve immediately or when a designated event occurs.***

2. A person entitled under NRS 159.044 to petition the court to appoint a guardian may petition the court to appoint a successor guardian.

3. A successor guardian appointed to serve when a designated event occurs may act as guardian when:

(a) The event occurs; and

(b) The successor has taken the official oath and filed a bond as provided in this chapter, and letters of guardianship have been issued.

4. A successor guardian has the predecessor's powers unless otherwise provided by the court.

5. The revocation of letters of guardianship by the court or any other court action to suspend the authority of a guardian may be considered to be a designated event for the purposes of this section if the revocation or suspension of authority is based on the guardian's noncompliance with his or her duties and responsibilities as provided by law.

Sec. 3. ***1. The court may appoint a temporary substitute guardian for a protected person for a period not exceeding 6 months if:***

(a) A proceeding to remove a guardian for the protected person is pending; or

(b) The court finds a guardian is not effectively performing the guardian's duties and the welfare of the protected person requires immediate action.

2. Except as otherwise ordered by the court, a temporary substitute guardian appointed under this section has the powers stated in the order of appointment of the guardian. The authority of the existing guardian is suspended for as long as the temporary substitute guardian has authority.

3. The court shall give notice of appointment of a temporary substitute guardian, not later than 5 days after the appointment, to:

(a) The protected person; and

(b) The affected guardian.

4. The court may remove a temporary substitute guardian at any time. The temporary substitute guardian shall make any report the court requires.

Sec. 3.5. ***1. Except as otherwise provided in subsection 2, if a person who files a petition for the appointment of a guardian pursuant to NRS 159.044 reasonably believes that it is appropriate to discharge the proposed protected person from a health care facility for the purpose of transferring the proposed protected person to a more appropriate health care facility that provides a less restrictive level of care, the person must petition the court for an expedited hearing to determine the appropriateness of such a transfer upon a showing of good cause, as set forth in the petition for an expedited hearing. If a person files a petition for an expedited hearing pursuant to this subsection, he or she shall include, without limitation, the following information in the petition:***

(a) The name and address of the health care facility to which the proposed protected person will be transferred;

(b) The level of care that will be provided by the health care facility to which the proposed protected person will be transferred;

(c) The anticipated date of the transfer of the proposed protected person;

(d) The source of payment that will be used to pay for the placement of the proposed protected person in the health care facility to which he or she will be transferred; and

(e) A statement signed by the attending provider of health care of the proposed protected person and an independent physician that:

(1) Verifies that the transfer of the proposed protected person is medically appropriate and advisable and is in the best interests of the proposed protected person;

(2) Describes the way in which, given the condition and needs of the proposed protected person, the level of care that will

be provided by the new health care facility is more appropriate for the care and treatment of the proposed protected person than the level of care of provided by the health care facility in which the proposed protected person is currently placed; and

(3) States specific facts and circumstances to demonstrate why the transfer of the proposed protected person to the new health care facility must occur in an expedited manner and cannot be delayed.

2. A person may not petition the court for an expedited hearing pursuant to subsection 1 if he or she believes that a proposed protected person should be transferred to:

(a) A health care facility outside this State;

(b) Except as otherwise provided in subsection 3, a health care facility outside the judicial district in which the petition for the appointment of a guardian is filed; or

(c) A secured residential long-term care facility.

3. If a health care facility that offers the appropriate level of care for a proposed protected person does not exist in the judicial district in which the petition for the appointment of a guardian is filed, or if such a health care facility exists in the judicial district but is not available to accommodate the proposed protected person, the court may approve the placement of the proposed protected person in a health care facility outside the judicial district if the placement is in the health care facility offering the appropriate level of practicable care that is nearest to the place of residence of the proposed protected person.

Secs. 4-23. (Deleted by amendment.)

Sec. 23.3. NRS 159.0523 is hereby amended to read as follows:

159.0523 1. A petitioner may request the court to appoint a temporary guardian for a proposed protected person who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows the proposed protected person faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter

signed by any governmental agency in this State which conducts investigations or a police report indicating:

(1) That the proposed protected person is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention;

(2) Whether the proposed protected person presents a danger to himself or herself or others; and

(3) Whether the proposed protected person is or has been subjected to abuse, neglect, exploitation, isolation or abandonment; and

(b) Facts which show that:

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

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

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

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

(a) Finds reasonable cause to believe that the proposed protected person is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

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

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours

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

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8 if:

(a) The court finds by clear and convincing evidence that the proposed protected person is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

(b) The extension of the temporary guardianship is necessary and in the best interests of the proposed protected person.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the ~~[~~powers~~]~~ ***authority*** of the temporary guardian to ~~[~~those~~]~~ ***that which is*** necessary to ~~[~~respond~~]~~ ***perform any actions required to ensure the health, safety or care of a proposed protected person, including, without limitation:***

(a) Responding to the substantial and immediate risk of physical harm or to a need for immediate medical attention ~~[.]~~ ***; and***

(b) Applying for Medicaid or other appropriate assistance, coverage or support for the proposed protected person for the purpose of providing adequate care for and ensuring the appropriate placement of the proposed protected person.

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

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

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

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

9. If a court is making a determination regarding the extension of a temporary guardianship or the issuance of any ex parte or emergency order, the court may consider the actions taken by a temporary guardian to carry out any requested

activities for the benefit of a proposed protected person during the temporary guardianship.

Sec. 23.7. NRS 159.0535 is hereby amended to read as follows:

159.0535 1. A proposed protected person who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician or psychiatrist who is licensed to practice in this State or who is employed by the Department of Veterans Affairs specifically states the condition of the proposed protected person, the reasons why the proposed protected person is unable to appear in court and whether the attendance of the proposed protected person at the hearing would be detrimental to the physical or mental health of the proposed protected person; ~~[or]~~

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed protected person, the reasons why the proposed protected person is unable to appear in court and whether the attendance of the proposed protected person at the hearing would be detrimental to the physical or mental health of the proposed protected person ~~[.]~~ ***; or***

(c) The proposed protected person, through court-appointed or retained counsel, waives his or her appearance.

2. A proposed protected person found in this State who cannot attend the hearing for the appointment of a ***temporary,*** general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by ***telephone or by*** videoconference ~~[. If the proposed protected person cannot attend by videoconference, the person who signs the certificate described in subsection 1 or any other person the court finds qualified shall:~~

~~(a) Inform the proposed protected person that the petitioner is requesting that the court appoint a guardian for the proposed protected person;~~

~~(b) Ask the proposed protected person for a response to the guardianship petition; and~~

~~(c) Ask the preferences of the proposed protected person for the appointment of a particular person as the guardian of the proposed protected person.]~~ ***or any other means that uses audio-video communication.***

3. ~~[The person who informs the proposed protected person of the rights of the proposed protected person pursuant to subsection 2 shall state in a certificate signed by that person:~~

~~(a) The responses of the proposed protected person to the questions asked pursuant to subsection 2; and~~

~~(b) Any conditions that the person believes may have limited the responses by the proposed protected person.~~

~~4. The court may prescribe the form in which a certificate required by this section must be filed. If the certificate consists of separate parts, each part must be signed by the person who is required to sign the certificate.~~

~~5.~~] If the proposed protected person is not in this State, the proposed protected person must attend the hearing only if the court determines that the attendance of the proposed protected person is necessary in the interests of justice.

4. As used in this section, "audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.

Sec. 24. NRS 159.079 is hereby amended to read as follows:

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

(a) Supplying the protected person with food, clothing, shelter and all incidental necessaries, including locating an appropriate residence for the protected person based on the financial situation and needs of the protected person, including, without limitation, any medical needs or needs relating to his or her care.

(b) Taking reasonable care of any clothing, furniture, vehicles and other personal effects of the protected person and commencing a proceeding if any property of the protected person is in need of protection.

(c) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the protected person.

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

2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the protected person. A guardian of the person is not required to incur expenses on behalf of the protected person except

to the extent that the estate of the protected person is sufficient to reimburse the guardian.

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

4. A guardian of the person may, subject to the provisions of subsection 6 and NRS 159.0807, establish and change the residence of the protected person at any place within this State. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the protected person and which is financially feasible.

5. A guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the protected person to a location outside of this State. The guardian must show that the placement outside of this State is in the best interest of the protected person or that there is no appropriate residence available for the protected person in this State. The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to NRS 159.1905 or 159.191 or the jurisdiction of the guardianship is transferred to the other state.

6. A guardian of the person must file a notice with the court of his or her intent to move a protected person to or place a protected person in a secured residential long-term care facility pursuant to subsection 4 of NRS 159.0807 unless the secured residential long-term care facility is in this State and:

(a) An emergency condition exists pursuant to ***paragraph (a) of*** subsection ~~[5]~~ ***4*** of NRS 159.0807;

(b) The court has previously granted the guardian authority to move the protected person to or place the protected person in such a facility based on findings made when the court appointed the guardian; or

(c) The move or placement is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county or state office for protective services.

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

8. As used in this section "protective services" has the meaning ascribed to it in NRS 200.5092.

Sec. 25. NRS 159.0807 is hereby amended to read as follows:

159.0807 1. Every protected person has the right, if possible, to:

(a) Have his or her preferences followed; and

(b) Age in his or her own surroundings or, if not possible, in the least restrictive environment suitable to his or her unique needs and abilities.

2. Except as otherwise provided in subsection ~~[5,]~~ ***4,*** a proposed protected person must not be moved until a guardian is appointed.

3. Except as otherwise provided in this section and subsections 5 and 6 of NRS 159.079, the guardian shall notify all interested persons in accordance with subsection 4 ~~[before]~~ ***if*** the protected person:

(a) Is admitted to ~~[a secured]~~ ***any*** residential long-term care facility;

(b) Changes his or her residence, including, without limitation, to or from one ~~[secured]~~ residential long-term care facility to another; or

(c) ~~[Will reside at a location other than his or her residence for more than 3 days.]~~ ***Is admitted to a hospital or is temporarily placed in a facility that provides rehabilitative services.***

4. Except as otherwise provided in this section and subsections 5 and 6 of NRS 159.079, a guardian shall file with the court a notice of his or her intent to move the protected person ***to a higher level of care*** and shall serve notice upon all interested persons not less than 10 days before moving the protected person ~~[.]~~ ***unless:***

(a) An emergency condition exists, including, without limitation, an emergency condition that presents a risk of imminent harm to the health or safety of the protected person, and the protected person will be unable to return to his or her residence for a period of more than 24 hours;

(b) The move or change in placement is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county or state office for protective services; or

(c) The move or change in placement is a result of the protected person being admitted to a hospital or facility that provides rehabilitative services.

5. If an emergency condition exists pursuant to paragraph (a) of subsection 4, the guardian may take temporary action to mitigate the condition without the permission of the court, and shall file notice with the court and serve such notice upon all interested parties as soon as practicable after the action is taken.

6. If no objection to the move is received from any interested person within 10 days after receiving ~~[the]~~ ***a*** notice ~~[,]~~ ***pursuant to subsection 4 or 5,*** the guardian may move the protected person without court permission.

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

~~6.]~~ ***Once a permanent placement for the protected person is established, the guardian shall, as soon as practicable after such placement, file a notice of change of address with the court.***

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

~~[7.]~~ ***8.*** A guardian is not required to provide notice to an interested person or person of natural affection in accordance with this section or NRS 159.0809 if:

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

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

Sec. 26. NRS 159.081 is hereby amended to read as follows:

159.081 1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report

on the condition of the protected person and the exercise of authority and performance of duties by the guardian:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian;

(b) Within 10 days of moving a protected person to a secured residential long-term care facility; and

(c) At such other times as the court may order.

2. A report filed pursuant to paragraph (b) of subsection 1 must:

(a) Include a copy of the written recommendation upon which the transfer was made; and

(b) ~~[Be]~~ ***Except as otherwise provided in subsection 6, be*** served, without limitation, on the protected person and any attorney for the protected person.

3. The court may prescribe the form for filing a report described in subsection 1. Such a report must include, without limitation:

(a) The physical condition of the protected person;

(b) The place of residence of the protected person;

(c) The name of all other persons living with the protected person unless the protected person is residing at a secured residential long-term care facility, group home, supportive living facility, ***home in which supported living arrangement services are provided,*** assisted living facility or other facility for long-term care; and

(d) Any other information required by the court.

4. The guardian of the person shall give to the guardian of the estate, if any, a copy of each report not later than 30 days after the date the report is filed with the court.

5. The court is not required to hold a hearing or enter an order regarding the report.

6. ***The court may waive the requirement set forth in paragraph (b) of subsection 2 that a report filed pursuant to paragraph (b) of subsection 1 must be served on a protected person upon a showing that such service is detrimental to the physical or mental health of the protected person.***

7. As used in this section ~~[, "facility]~~ ***:***

(a) "Facility for long-term care" has the meaning ascribed to it in NRS 427A.028.

(b) "Supported living arrangement services" has the meaning ascribed to it in NRS 435.3315.

Sec. 27. NRS 159.154 is hereby amended to read as follows:

159.154 1. The guardian may sell the personal property of a protected person at:

(a) The residence of the protected person; or

(b) Any other location designated by the guardian.

2. The guardian may sell the personal property only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.

3. Personal property may be sold for cash or upon credit.

4. Except as otherwise provided in NRS 159.1515, a sale or disposition of any personal property of the protected person must not be commenced until 30 days after an inventory of the property is filed with the court and a copy thereof is sent by regular mail to the persons specified in NRS 159.034. An affidavit of mailing must be filed with the court.

5. The guardian is responsible for the actual value of the personal property unless the guardian makes a report to the court, not later than 90 days after the conclusion of the sale, showing that good cause existed for the sale and that the property was sold for a price that was not disproportionate to the value of the property.

6. ~~[The]~~ ***Except as otherwise provided in subsection 7, the*** family members of the protected person and any interested persons must be offered the first right of refusal to acquire the personal property of the protected person at fair market value. ***Claims to acquire the personal property must be considered in the following order of priority:***

(a) The spouse or domestic partner of the protected person;

(b) A child of the protected person;

(c) The parents of the protected person;

(d) A sibling of the protected person;

(e) The nearest living relative of the protected person by blood or adoption; and

(f) Any other interested party.

7. If multiple claims are received from the same priority group pursuant to subsection 6 and an agreement cannot be reached after good faith efforts have been made, the guardian may sell the property.

Sec. 28. NRS 159.179 is hereby amended to read as follows:

159.179 1. An account made and filed by a guardian of the estate or special guardian who is authorized to manage the property of a protected person must include, without limitation, the following information:

(a) The period covered by the account.

(b) The assets of the protected person at the beginning and end of the period covered by the account, including the beginning and ending balances of any accounts.

(c) All cash receipts and disbursements during the period covered by the account, including, without limitation, any disbursements for the support of the protected person or other expenses incurred by the estate during the period covered by the account.

(d) All claims filed and the action taken regarding the account.

(e) Any changes in the property of the protected person due to sales, exchanges, investments, acquisitions, gifts, mortgages or other transactions which have increased, decreased or altered the property holdings of the protected person as reported in the original inventory or the preceding account, including, without limitation, any income received during the period covered by the account.

(f) Any other information the guardian considers necessary to show the condition of the affairs of the protected person.

(g) Any other information required by the court.

2. All expenditures included in the account must be itemized.

3. If the account is for the estates of two or more protected persons, it must show the interest of each protected person in the receipts, disbursements and property. As used in this subsection, "protected person" includes a protected minor.

4. Receipts or vouchers for all expenditures must be retained by the guardian for examination by the court or an interested person. A ~~[~~public~~]~~ guardian shall produce such receipts or vouchers upon the request of the court, the protected person to whom the receipt or voucher pertains, the attorney of such a protected person or any interested person. ~~[~~All other guardians~~]~~ ***The guardian*** shall file such receipts or vouchers with the court ***only*** if ~~[~~:

~~(a) The receipt or voucher is for an amount greater than $250, unless such a requirement is waived by the court; or~~

~~(b) The~~] ***the*** court orders the filing.

5. On the court's own motion or on ex parte application by an interested person which demonstrates good cause, the court may:

(a) Order production of the receipts or vouchers that support the account; and

(b) Examine or audit the receipts or vouchers that support the account.

6. If a receipt or voucher is lost or for good reason cannot be produced on settlement of an account, payment may be proved by

the oath of at least one competent witness. The guardian must be allowed expenditures if it is proven that:

(a) The receipt or voucher for any disbursement has been lost or destroyed so that it is impossible to obtain a duplicate of the receipt or voucher; and

(b) Expenses were paid in good faith and were valid charges against the estate.

Sec. 29. Chapter 159A of NRS is hereby amended by adding thereto the provisions set forth as sections 30 and 31 of this act.

Sec. 30. ***1. The court at any time may appoint a successor guardian to serve immediately or when a designated event occurs.***

2. A person entitled under NRS 159A.044 to petition the court to appoint a guardian may petition the court to appoint a successor guardian.

3. A successor guardian appointed to serve when a designated event occurs may act as guardian when:

(a) The event occurs; and

(b) The successor has taken the official oath and filed a bond as provided in this chapter, and letters of guardianship have been issued.

4. A successor guardian has the predecessor's powers unless otherwise provided by the court.

Sec. 31. ***1. The court may appoint a temporary substitute guardian for a protected minor for a period not exceeding 6 months if:***

(a) A proceeding to remove a guardian for the protected minor is pending; or

(b) The court finds a guardian is not effectively performing the guardian's duties and the welfare of the protected minor requires immediate action.

2. Except as otherwise ordered by the court, a temporary substitute guardian appointed under this section has the powers stated in the order of appointment of the guardian. The authority of the existing guardian is suspended for as long as the temporary substitute guardian has authority.

3. The court shall give notice of appointment of a temporary substitute guardian, not later than 5 days after the appointment, to:

(a) The protected minor;

(b) The affected guardian; and

(c) Each parent of the protected minor and any person currently having care or custody of the protected minor.

4. The court may remove a temporary substitute guardian at any time. The temporary substitute guardian shall make any report the court requires.

5. As used in this section, "parent" does not include a person whose parental rights have been terminated.

Sec. 31.5. NRS 159A.0535 is hereby amended to read as follows:

159A.0535 1. A proposed protected minor who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician or psychiatrist who is licensed to practice in this State specifically states the condition of the proposed protected minor, the reasons why the proposed protected minor is unable to appear in court and whether the proposed protected minor's attendance at the hearing would be detrimental to the physical or mental health of the proposed protected minor; or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed protected minor, the reasons why the proposed protected minor is unable to appear in court and whether the proposed protected minor's attendance at the hearing would be detrimental to the physical or mental health of the proposed protected minor.

2. A proposed protected minor found in this State who cannot attend the hearing for the appointment of a guardian as set forth in a certificate pursuant to subsection 1 may appear by ***telephone or by*** videoconference ~~[.]~~ ***or any other means that uses audio-video communication.***

3. The court may prescribe the form in which a certificate required by this section must be filed. If the certificate consists of separate parts, each part must be signed by the person who is required to sign the certificate.

4. If the proposed protected minor is not in this State, the proposed protected minor must attend the hearing only if the court determines that the attendance of the proposed protected minor is necessary in the interests of justice.

5. As used in this section, "audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.

Sec. 32. (Deleted by amendment.)

Sec. 33. NRS 247.305 is hereby amended to read as follows:

247.305 1. If another statute specifies the fee to be charged for a service, county recorders shall charge and collect only the fee specified. Otherwise, unless prohibited by NRS 375.060, county recorders shall charge and collect the following fees:

(a) For recording a document $25
(b) For copying a record, for each page..... $1
(c) For certifying, including certificate and seal..... $4
(d) For a certified copy of a certificate of marriage $10
(e) For a certified abstract of a certificate of marriage $10

(f) For a certified copy of a certificate of marriage or for a certified abstract of a certificate of marriage, the additional sum of $5 for the Account for Aid for Victims of Domestic Violence in the State General Fund. The fees collected for this purpose must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and must be credited to that Account. The county treasurer shall, on or before the 15th day of each month, remit those fees deposited by the recorder to the State Controller for credit to that Account.

2. Except as otherwise provided in this subsection and NRS 375.060, a county recorder may charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee not to exceed $5 for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder may not charge the additional fee authorized in this subsection for recording an originally signed certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county recorder shall pay the amount of fees collected by him or her pursuant to this subsection to the county treasurer for credit to the account established pursuant to NRS 247.306.

3. Except as otherwise provided in this subsection and NRS 375.060, a county recorder shall charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee of ~~[$5]~~ ***$7*** for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder shall not charge the additional fee authorized in this subsection for recording an originally signed certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county recorder shall pay the amount of fees collected by him or her pursuant to this subsection to the county treasurer. On or before the 15th day of each month, the county

treasurer shall remit the money received by him or her pursuant to this subsection in the following amounts for each fee received:

(a) ~~[Three]~~ ***Five*** dollars:

(1) To the organization operating the program for legal services for the indigent that receives the fees charged pursuant to NRS 19.031 to be used to provide legal services for:

(I) Protected persons or proposed protected persons who are adults in guardianship proceedings; and

(II) If sufficient funding exists, protected persons or proposed protected persons who are minors in guardianship proceedings, including, without limitation, any guardianship proceeding involving an allegation of financial mismanagement of the estate of a minor; or

(2) If the organization described in subparagraph (1) does not exist in the judicial district, to an account maintained by the county for the exclusive use of the district court to pay the reasonable compensation and expenses of attorneys to represent protected persons and proposed protected persons who are adults and do not have the ability to pay such compensation and expenses, in accordance with NRS 159.0485.

(b) One dollar to the State Treasurer for credit to the Account to Assist Persons Formerly in Foster Care established pursuant to NRS 432.017.

(c) One dollar to an account maintained by the county for the exclusive use of the district court to pay ~~[the]~~ ***:***

(1) The compensation of ~~[investigators]~~ ***:***

(I) Investigators appointed by the court pursuant to NRS 159A.046 ~~[.]~~ ***; and***

(II) Attorneys for protected persons and proposed protected persons who are minors in guardianship proceedings; and

(2) For self-help assistance for protected persons and proposed protected persons who are minors in guardianship proceedings.

4. Except as otherwise provided in this subsection and NRS 375.060, a board of county commissioners may, in addition to any fee that a county recorder is otherwise authorized to charge and collect, impose by ordinance a fee of not more than $6 for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder shall not charge the additional fee authorized by this subsection for recording an originally signed certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county

recorder shall pay the amount of fees collected by him or her pursuant to this subsection to the county treasurer. On or before the 15th day of each month, the county treasurer shall remit the money received by him or her pursuant to this subsection to the organization operating the program for legal services for the indigent that receives the fees charged pursuant to NRS 19.031 to be used to provide legal services for abused and neglected children, including, without limitation, to compensate attorneys appointed to represent such children pursuant to NRS 128.100 and 432B.420.

5. Except as otherwise provided in subsection 6, a county recorder shall not charge or collect any fees for any of the services specified in this section when rendered by the county recorder to:

(a) The county in which the county recorder's office is located.

(b) The State of Nevada or any city or town within the county in which the county recorder's office is located, if the document being recorded:

(1) Conveys to the State, or to that city or town, an interest in land;

(2) Is a mortgage or deed of trust upon lands within the county which names the State or that city or town as beneficiary;

(3) Imposes a lien in favor of the State or that city or town; or

(4) Is a notice of the pendency of an action by the State or that city or town.

6. A county recorder shall charge and collect the fees specified in this section for copying any document at the request of the State of Nevada, and any city or town within the county. For copying, and for his or her certificate and seal upon the copy, the county recorder shall charge the regular fee.

7. If the amount of money collected by a county recorder for a fee pursuant to this section:

(a) Exceeds by $5 or less the amount required by law to be paid, the county recorder shall deposit the excess payment with the county treasurer for credit to the county general fund.

(b) Exceeds by more than $5 the amount required by law to be paid, the county recorder shall refund the entire amount of the excess payment.

8. Except as otherwise provided in subsection 2, 3, 4 or 7 or by an ordinance adopted pursuant to the provisions of NRS 244.207, county recorders shall, on or before the fifth working day of each month, account for and pay to the county treasurer all such fees collected during the preceding month.

9. For the purposes of this section, "State of Nevada," "county," "city" and "town" include any department or agency thereof and any officer thereof in his or her official capacity.

Sec. 34. 1. This section and section 3.5 of this act become effective upon passage and approval.

2. Sections 1, 2, 3 and 23.3 to 31.5, inclusive, of this act become effective on July 1, 2019.

3. Section 33 of this act becomes effective on January 1, 2020.

20 ~~~~~ **19**

AGENDA ITEM 5(b)

AB 480

AN ACT relating to written agreements; enacting provisions governing supported decision-making agreements; and providing other matters properly relating thereto

Assembly Bill No. 480–Committee on Judiciary

CHAPTER.....

AN ACT relating to written agreements; enacting provisions governing supported decision-making agreements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill establishes the Supported Decision-Making Act, which authorizes an adult with a disability to enter into a supported decision-making agreement in which he or she designates one or more supporters to provide assistance when making decisions or engaging in certain other activities. Section 12 of this bill authorizes an adult to enter into a supported decision-making agreement at any time if the adult enters into the agreement voluntarily and understands the nature and effect of the agreement. Section 12 also sets forth the requirements for a supported decision-making agreement and authorizes such an agreement to be terminated in writing or verbally, and with notice to the other parties. Sections 13 and 14 of this bill establish the activities in which a supporter is authorized to engage.

Section 15 of this bill prohibits the existence of a supported decision-making agreement from being used as evidence of an adult's incapacity. **Section 16** of this bill provides that a decision or request made or communicated by an adult with the assistance of a supporter must, for the purposes of any provision of law, be recognized as the decision or request of the adult.

Section 17 of this bill authorizes any person who is not a party to a supported decision-making agreement to act in reliance on the agreement if the person acts in good faith and without knowledge of certain information affecting the validity of the agreement.

Section 18 of this bill clarifies that the provisions of the Supported Decision-Making Act must not be construed to affect the requirement of any person to report the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 162A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. ***Sections 2 to 18, inclusive, of this act may be cited as the Supported Decision-Making Act.***

Sec. 3. ***As used in sections 2 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 10, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 4. ***"Adult" means a natural person who is 18 years of age or older.***

Sec. 5. *"Affairs" means personal, health care or financial matters arising in the course of activities of daily living, including, without limitation:*

1. Matters in which an adult makes decisions relating to his or her health, including, without limitation:

(a) Monitoring the adult's health;

(b) Obtaining, scheduling and coordinating health and support services;

(c) Understanding health care information and options; and

(d) Making personal decisions to provide for the adult's care and comfort.

2. Financial matters in which an adult manages his or her income and assets and the use thereof for clothing, support, care, comfort, education, shelter or the payment of his or her liabilities.

Sec. 6. *"Person" means a natural person, health care facility, provider of health care, corporation, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.*

Sec. 7. *"Principal" means an adult who seeks to enter, or has entered, into a supported decision-making agreement with one or more supporters pursuant to sections 2 to 18, inclusive, of this act.*

Sec. 8. *"Support services" means a coordinated system of social and other services that are supplied by private, state, institutional or community providers and are designed to help maintain the independence of an adult, including, without limitation:*

1. Homemaker services, such as house repair, cleaning, laundry, shopping and providing meals.

2. Companion services, such as transportation and the facilitation of written, oral and electronic communication.

3. Medical services.

4. Visiting nurse and attendant care.

5. Physical and psychosocial assessments.

6. Financial assessments and advisement relating to banking, taxes, loans, investments or the management of real property.

7. Legal assessments and advisement.

8. Educational services, including, without limitation, educational assessments and advisement.

9. Personal care services, including, without limitation, assistance with daily activities such as bathing, dressing and eating.

10. Care planning.

11. Residential, employment or day program services and supports, including, without limitation, training or career planning.

12. Other services necessary to maintain the independence of an adult.

Sec. 9. *"Supported decision-making agreement" means an agreement between a principal and one or more supporters that is entered into pursuant to sections 2 to 18, inclusive, of this act.*

Sec. 10. *"Supporter" means a person who is named in a supported decision-making agreement to provide specified assistance to a principal.*

Sec. 11. *1. The purpose of sections 2 to 18, inclusive, of this act is to:*

(a) Provide person-centered and directed assistance to an adult with a disability to gather and assess information, make informed decisions and communicate decisions;

(b) Give supporters legal status to be with such an adult and participate in discussions with others when the adult is making decisions or attempting to obtain information; and

(c) Enable supporters to assist in making and communicating decisions for such an adult but not substitute as the decision-maker for the adult.

2. Sections 2 to 18, inclusive, of this act must be interpreted in accordance with the following principles:

(a) An adult should be able to live in the manner in which he or she wishes and to accept or refuse support, assistance or protection as long as the adult does not harm others and is capable of making decisions about such matters;

(b) An adult should be able to be informed about and, to the best of his or her ability, participate in the management of his or her affairs;

(c) An adult should receive the most effective, yet least restrictive and intrusive, form of support, assistance or protection when the adult is unable to manage his or her affairs alone; and

(d) The values, beliefs, wishes, cultural norms and traditions that an adult holds should be respected in managing his or her affairs.

Sec. 12. *1. An adult may enter into a supported decision-making agreement at any time if the adult:*

(a) Enters into the agreement voluntarily and without coercion or undue influence; and

(b) Understands the nature and effect of the agreement.

2. A supported decision-making agreement must:

(a) Be in writing;

(b) Be dated;

(c) Designate one or more supporters;

(d) List the types of decisions with which the supporter is authorized to assist the principal;

(e) List the types of decisions, if any, with which the supporter is not authorized to assist the principal; and

(f) Be signed by each party to the agreement in the presence of at least two adult witnesses.

3. A principal or a supporter may terminate a supported decision-making agreement at any time, either verbally or in writing, and with notice to the other parties to the agreement.

Sec. 13. ***1. Except as otherwise provided in a supported decision-making agreement and subsection 2, a supporter may do all of the following:***

(a) Assist the principal in understanding information, options, responsibilities and consequences of the principal's life decisions, including, without limitation, decisions relating to the principal's affairs or supportive services.

(b) Help the principal access, obtain and understand any information that is relevant to any given life decision, including, without limitation, medical, psychological, financial or educational decisions, or any treatment records or records necessary to manage the principal's affairs or support services.

(c) Assist the principal in finding, obtaining, making appointments for and implementing the principal's support services or plans for support services.

(d) Help the principal monitor information about the principal's affairs or support services, including, without limitation, keeping track of future necessary or recommended services.

(e) Ascertain the wishes and decisions of the principal, assist in communicating those wishes and decisions to other persons, and advocate to ensure that the wishes and decisions of the principal are implemented.

2. A supporter is prohibited from doing any of the following:

(a) Exerting undue influence upon, or making decisions on behalf of, the principal.

(b) Obtaining, without the consent of the principal, information that is not reasonably related to matters with which the supporter is authorized to assist the principal pursuant to the supported decision-making agreement.

(c) Using, without the consent of the principal, information acquired for a purpose other than assisting the principal to make a decision pursuant to the supported decision-making agreement.

3. A supporter shall act with the care, competence and diligence ordinarily exercised by persons in similar circumstances, with due regard to the supporter's possession or lack of special skills or expertise.

Sec. 14. *1. In addition to the activities set forth in section 13 of this act, a supporter may assist the principal with obtaining any information to which the principal is entitled, including, without limitation, a signed and dated specific consent, protected health information under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, or educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto.*

2. A supporter shall ensure that all information collected on behalf of a principal pursuant to this section is:

(a) Kept privileged and confidential, as applicable;

(b) Not subject to unauthorized access, use or disclosure; and

(c) Properly disposed of when appropriate.

Sec. 15. *The existence of a supported decision-making agreement that is entered into by an adult and one or more supporters pursuant to sections 2 to 18, inclusive, of this act may not be used as evidence of the adult's incapacity and does not preclude the ability of the adult to act independently of the agreement.*

Sec. 16. *A decision or request made or communicated by a principal with the assistance of a supporter in accordance with sections 2 to 18, inclusive, of this act must, for the purposes of any provision of law, be recognized as the decision or request of the principal and may be enforced by the principal or supporter in law or equity on the same basis as a decision or request of the principal.*

Sec. 17. *Any person who is not a party to a supported decision-making agreement, including, without limitation, a provider of health care or provider of financial services, that in good faith accepts a supported decision-making agreement:*

1. Without actual knowledge that any of the signatures thereon is not genuine may rely upon the presumption that such a signature is genuine.

2. Without actual knowledge that the supported decision-making agreement or the purported supporter's authority is void,

invalid or terminated may rely upon the supported decision-making agreement as if the agreement and supporter's authority are genuine, valid and still in effect.

3. Is not subject to civil or criminal liability or discipline for unprofessional conduct for giving effect to a declaration contained within the supported decision-making agreement or for following the direction of a supporter named in the supported decision-making agreement.

Sec. 18. ***1. The provisions of sections 2 to 18, inclusive, of this act must not be construed to affect the requirement of any person to report the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person as provided in NRS 200.5091 to 200.50995, inclusive.***

2. As used in this section, the words and terms defined in NRS 200.5091 to 200.50995, inclusive, have the meanings ascribed to them in those sections.

Sec. 19. This act becomes effective on July 1, 2019.

20 ~~~~~ **19**

AGENDA ITEM 5(c)

Update from Sabrina Sweet re Possible Uniform Procedures to Transfer Minor Guardianship Into Nevada From Other States

Coates, Sharon

From: Sweet, Sabrina [redacted]
Sent: Tuesday, March 12, 2019 2:24 PM
To: Coates, Sharon
Cc: [redacted]
Subject: Out of State Minor Guardianships
Attachments: Certificate of Mailing - Guardianship Registration.docx; Notice of Petition for Registration.docx; Order Regarding Registration.docx; Petition for Registration.docx; UGPPA_2011_Final Act_2014sep9.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon Sharon,

The Guardianship Commission requested the creation of a form to address concerns regarding out-of-state transfers in minor guardianship cases. We developed forms for out-of-state registration of a minor guardianship consistent with jurisdiction under 125A UCCJEA, please see attached. The registration would expire after a six month residency in Nevada, at which time the parties would be required to file a full petition for guardianship. This is outlined in the forms and is consistent with the definition of home state in 159A.

The forms do not fully address the concern that there is no clear statutory authority in 159A for registering, or accepting jurisdiction of, an out-of-state minor guardianship. The forms subcommittee recommends this concern to be addressed through a Supreme Court Rule or an amendment to 159A.

The Supreme Court Rule could be drafted to state: 1) the out-of-state guardianship shall be registered pursuant to UCCJEA; or 2) minor guardianship transfers are subject to NRS 159.2025 except where jurisdiction is otherwise provided under NRS 125A.

An amendment to 159A could be drafted to include language similar to: 1) NRS 159.2025 and cross-referencing jurisdiction as defined in 125A; or 2) section 107 of the Uniform Guardianship and Protective Proceedings Act, attached.

Please let us know if you need any additional information.

Thank you,

Sabrina S. Sweet
Case Compliance Specialist
Project ONE & Minor Guardianship
Second Judicial District Court
1 S. Sierra Street
Reno, NV 89501
Phone: 775.328.3478
www.washoecourts.com

The mission of the Second Judicial District Court Project ONE collaborative is to improve outcomes for children, youth, and families through streamlining court processes, sharing information between parties, informing practice with data, and coordinating care to provide holistic and innovative service options, and thereby, changing the trajectory of familyâ€™s lives in order to have a positive impact on our community.

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SIXTH YEAR
IN SACRAMENTO, CALIFORNIA

July 25 – August 1, 1997

WITH PREFATORY NOTE AND COMMENTS

September 9, 2014

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Guardianship and Protective Proceedings Act (1997) was as follows:

THOMAS L. JONES, University of Alabama, School of Law, P.O. Box 5557, University Station, Tuscaloosa, AL 35486, *Chair*
RHODA B. BILLINGS, Wake Forest University, School of Law, P.O. Box 7206, Winston-Salem, NC 27109
CLARKE A. GRAVEL, P.O. Box 369, 76 St. Paul Street, Burlington, VT 05402
MERRILL MOORES, 244 N. College Avenue, Indianapolis, IN 46202
ELWAINE F. POMEROY, 1415 S.W. Topeka Boulevard, Topeka, KS 66612
ROBERT C. ROBINSON, P.O. Box 568, Portland, ME 04112-0568
RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30602
REBECCA C. MORGAN, Stetson University, College of Law, 1401 61st Street South, St. Petersburg, FL 33707, *Reporter*

EX OFFICIO

BION M. GREGORY, Office of Legislative Counsel, State Capitol, Suite 3021, Sacramento, CA 95814-4996, *President*
W. JACKSON WILLOUGHBY, Placer County Municipal Court, 11546 B Avenue, Auburn, CA 95603, *Chair, Division B*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, *Executive Director*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

UNIFORM LAW COMMISSION
111 N. Wabash, Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

ARTICLE 3
GUARDIANSHIP OF INCAPACITATED PERSON

ARTICLE 4
PROTECTION OF PROPERTY OF PROTECTED PERSON

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

Prefatory Note

The Uniform Guardianship and Protective Proceedings Act (1997/1998) replaces the previous Act of the same name, which was approved by the National Conference of Commissioners on Uniform State Laws in 1982. The 1997 Act may be enacted either as a free-standing Act or as part of the Uniform Probate Code (UPC). States that wish to enact the Act as part of the UPC should consult Article V, Parts 1-4 of the UPC for the official text of the Act as conformed to the Code's definitions and general provisions.

The topics covered in this Act include minors' guardianships, adults' guardianships, and conservatorships of both minors and adults. The Act is divided into five articles. Article 1 contains definitions and general provisions applicable to both guardianships and conservatorships, including provisions that relate to the office of guardian and conservator and to the jurisdiction of the courts, many of which were previously scattered in different sections of the prior Act. Article 2 contains provisions on guardianships for minors, whether by the court or the parent. Article 3 contains provisions for guardianships for incapacitated persons, who will most often be adults, but who may also be minors whose need for guardianship is unrelated to their age. Article 4 covers conservatorships and other protective arrangements for both minors and adults, including the procedures for appointment of conservators and the process for implementing a protective arrangement. Article 5 contains boilerplate provisions common to Uniform Acts.

The revisions to the Uniform Guardianship and Protective Proceedings Act were precipitated by a two year study by the A.B.A. Senior Lawyers Division Task Force on Guardianship Reform. The Task Force consisted of representatives not only of the Senior Lawyers Division, but also of other A.B.A. entities, including the Real Property Probate and Trust Law Section and the Commissions on Legal Problems of the Elderly and Mental and Physical Disability Law, as well as a variety of other groups interested in guardianship, such as AARP and the National Senior Citizens Law Center. The Task Force generated a report that served as the starting point for the redrafting of the Uniform Guardianship and Protective Proceedings Act. The drafting committee of the Uniform Law Commissioners began the drafting of the revision in 1995. The revised Act was approved at the 1997 Annual Meeting of the National Conference of Commissioners on Uniform State Laws, with amendments to the provisions on appointment of counsel approved at the 1998 Annual Meeting of the National Conference of Commissioners on Uniform State Laws, and subsequently approved by the A.B.A. House of Delegates at its 1998 annual meeting. The National Conference, at its 1998 Annual Meeting, also approved the 1997 act for integration into the UPC.

Significant developments in the areas of guardianship and conservatorship occurred in the late 1980s and early 1990s, as states revised their guardianship and conservatorship statutes. The 1982 UGPPA, with its emphasis on limited guardianship and conservatorship, was groundbreaking in its support of autonomy. The 1997 revision builds on this and on developments occurring in the states, by providing that guardianship and conservatorship should

be viewed as a last resort, that limited guardianships or conservatorships should be used whenever possible, and that the guardian or conservator should consult with the ward or protected person, to the extent feasible, when making decisions.

The 1997 revision makes other substantial changes. The following discussion summarizes those of most significance.

The 1997 revision bases the definition of incapacitated person on functional abilities, recognizing that a person may have the capacity to do some things while needing help with others. Before a guardian may be appointed for an adult or a minor for reasons other than age, the individual must be determined to be incapacitated, that is, the individual must be "unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance." (Section 102(5)). If assistive technology is available that may enable the individual to receive and evaluate information or to make or communicate decisions, then the individual may not be an "incapacitated person."

A parent or spouse may appoint a guardian to take office immediately upon the need. Articles 2 and 3 contain provisions for a parental or spousal appointment of a "standby" guardian: by a parent for a minor child under Article 2 and by a parent for an adult disabled child or by a spouse for an incapacitated spouse under Article 3. The addition of these provisions was spurred by the increasing number of single-parent families in the United States as well as by the recognition that adults are living longer and may need assistance in their later lives. The standby provisions are available in a wide variety of situations where there is a need for a guardian to step in immediately upon the occurrence of an event, without seeking prior court approval. The appointment may be used by all parents of minor children as well as for the spouse of an incapacitated adult or the parent of an adult disabled child.

A guardian or a conservator should be appointed only if there are no other lesser restrictive alternatives that will meet the respondent's needs. The Act encourages the use of alternatives to guardianship or conservatorship and views the appointment of a guardian or a conservator as a last resort. The court may not appoint a guardian for an incapacitated person unless the court makes a finding that the respondent's needs cannot be met by any less restrictive means. (Section 311(a)(1)(B)). The visitor appointed by the court to investigate the appropriateness of the guardianship or conservatorship requested for an adult, must investigate whether alternatives are available and report this to the court. (Sections 305(e), 406(e)).

Additionally, procedural steps are specified which must be met before a guardian for an incapacitated person or conservator may be appointed or a protective order entered. Specific information is required in the petition (Sections 304, 403), the respondent must be personally served with the notice of the hearing and the petition at least 14 days in advance of the hearing and others must receive copies (Sections 113, 309, 404), and the court must appoint a visitor (Sections 305, 406). Enacting jurisdictions must choose between requiring counsel if requested by the respondent, recommended by the visitor, or if the court otherwise orders (Alternative A to Sections 305(b) and 406(b)), or requiring counsel for the respondent in all cases (Alternative B to Sections 305(b) and 406(b)). In guardianships, the court must order a professional evaluation of

the respondent if the respondent requests one or the court determines one to be appropriate (Section 306), while in a conservatorship proceeding, the court may order a professional evaluation. (Section 406(f)). The respondent and proposed guardian or conservator must attend the hearing unless excused by the court for good cause. (Sections 308(a), 408(a)).

The committee which drafted UGPPA (1997/1998) preferred Alternative A to Sections 305(b) and 5-406(b). Under the committee's preferred process, a visitor is appointed in every proceeding for appointment of a guardian under Article 3, with counsel appointed on the respondent's request, the visitor's recommendation, or the court's determination that a counsel is needed. See Section 305. Concomitantly, in Article 4, a visitor is appointed in every case where a petition for appointment of conservator is filed and may be appointed when a protective arrangement is sought and the respondent is not already represented by counsel. See Section 406.

Alternative B for Sections 305(b) and 406(b) was included at the request of the American Bar Association (A.B.A.) Commission on Legal Problems of the Elderly.

Emphasized throughout the Act are the concepts of limited guardianship and limited conservatorship. Only when no alternative to guardianship or conservatorship is available should the court create a guardianship or conservatorship. Courts are directed to tailor the guardianship or conservatorship to fit the needs of the incapacitated person and only remove those rights that the incapacitated person no longer can exercise or manage. (Sections 311(b), 409(b)). If an unlimited guardianship or conservatorship is requested, the petition must state why a limited guardianship or conservatorship is not being sought. (Sections 304(b)(8), 403(c)(3)). The guardian or conservator must take the views of the ward or protected person into account when making decisions. The guardian must maintain sufficient contact with the ward so that the guardian knows of the capabilities, limitations, needs and opportunities of the ward (Sections 207(b)(1), 314(b)(1)). The guardian or conservator must encourage the ward or protected person to participate in decisions, to act on his or her own behalf, and to develop or regain capacity to manage personal or financial affairs. (Sections 314(a), 418(b)). The guardian must consider the ward's expressed desires and personal values when making decisions (Section 314(a)), while the conservator, in making decisions with respect to the protected person's estate plan, or the court, in deciding on a protective arrangement, must rely, when possible, on the decision the protected person would have made. (Sections 411(c), 412(b)).

The position of the drafting committee is that appointment of counsel should not be mandated in every guardianship under Article 3 or every conservatorship under Article 4. Alternative provisions are instead provided. Sections 305(b) and 406(b). The enacting jurisdiction must choose between requiring counsel only when requested by the respondent, recommended by the visitor, or otherwise ordered by the court, or requiring counsel for the respondent in all cases. The appointment of counsel is in addition to the requirement that a visitor be appointed, a requirement in all proceedings where a guardian for an incapacitated person is requested or where the appointment of a conservator is sought. Sections 305(a) and 406(a).

The burden of proof in establishing a guardianship or conservatorship is clear and convincing evidence, (see Sections 311, 401) while the burden of proof for terminating a guardianship or conservatorship is prima facie evidence. (See Sections 318(c), 431(d)). This distinction was made in recognition that a guardianship or conservatorship, as vehicles that take away from individuals their rights, should require a higher burden of proof (and thus more protections) to establish than should be required to restore rights to an individual.

Monitoring of guardianships and conservatorships is critical. Guardians must present a written report to the court within 30 days of appointment and annually thereafter (Section 317), while the conservator is required to file a plan and an inventory with the court within 60 days of appointment and annual reports thereafter. (Sections 418(c), 419, 420). Both the guardian and the conservator, in their reports, make recommendations as to whether the guardianship or conservatorship should be continued or modified. The court is required to establish a monitoring system. (Sections 317(c), 420(d)). The court may use visitors as part of the monitoring system. (Sections 317(b), 420(c)). Suggestions on what an effective monitoring system should contain can be found in Sally Balch Hurme, *Steps to Enhance Guardianship Monitoring* (A.B.A. 1991)

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Guardianship and Protective Proceedings Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) "Claim," with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator" means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

(3) "Court" means the [designate appropriate court].

(4) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse, or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

(5) "Incapacitated person" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

(6) "Legal representative" includes the lawyer for the respondent, a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent

designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

(7) "Letters" includes letters of guardianship and letters of conservatorship.

(8) "Minor" means an unemancipated individual who has not attained [18] years of age.

(9) "Parent" means a parent whose parental rights have not been terminated.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

(12) "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

(13) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) ["Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

(15)] "Ward" means an individual for whom a guardian has been appointed.

Comment

The concepts of limited guardian and limited conservator, embraced in this Act, are reflected in the definitions of "guardian" (see paragraph (4)) and "conservator" (see paragraph (2)).

While the Act authorizes the appointment of a conservator with limited powers, no provision is made in the Act for the appointment of an emergency or temporary conservator, a type of conservatorship usually denoting an appointment of limited duration. In situations where

other statutes might permit the appointment of a temporary, emergency or special conservator, Article 4 instead allows the court to appoint a "master." See Sections 405(a), 406(g) and 412(c). This is a departure from the 1982 UGPPA, which provided for the appointment of special conservators, but not of temporary or emergency conservators. See, e.g., UPC Section 5-408(c) (1982).

Like the 1982 UGPPA, the 1997 revision allows the appointment of a guardian by a parent or spouse by will or other signed writing, but subjects the appointment to significantly different requirements. See Sections 202 and 302. The definition of guardian (see paragraph (4)) includes a limited guardian, an emergency guardian, or a temporary substitute guardian. See Sections 204, 311, 312, and 313. There is a distinction between an emergency guardian and a temporary substitute guardian. Compare Sections 312 and 313. Guardian ad litem is specifically excluded from the definition of guardian, as a guardian ad litem is generally viewed as having a separate and limited role in the proceedings.

A finding that a person is an "incapacitated person" is required before a guardian may be appointed for reasons other than that the respondent is a minor. The definition of "incapacitated person" (see paragraph (5)) requires that the respondent have an inability to receive and evaluate information or to make or communicate decisions to the point that the person's ability to care for his or her health, safety or self is compromised. This definition emphasizes the importance of functional assessment and recognizes that the more appropriate measure of a person's incapacity is a measurement of the person's abilities. Like other areas of the law where the concept of capacity is used, the required incapacity for the appointment of a guardian is no longer considered an all or nothing proposition but instead it is recognized as having varying degrees. This definition is designed to work with the concepts of least restrictive alternative and limited guardianship or conservatorship-only removing those rights that the incapacitated person cannot exercise, and not establishing a guardianship or conservatorship if a lesser restrictive alternative exists. See Sections 311 and 409 for examples. These concepts are carried throughout the Act.

The definition of incapacitated person differs significantly from the definition in the 1982 UGPPA. The requirement that the person be unable to make "responsible" decisions is deleted, as is the requirement that the person have an impairment by reason of a specified disability or other cause, a requirement which may have led the trier of fact to focus unduly on the type of the respondent's disabling condition, as opposed to the respondent's actual ability to function. The revised definition is based on recommendations of the 1988 Wingspread conference on guardianship reform, the report of which should be referred to for additional background. See Guardianship: An Agenda For Reform 15 (A.B.A. 1989). See also Stephen J. Anderer, Determining Competency in Guardianship Proceedings (A.B.A. 1990). Courts seeking guidance on particular factors to consider should also consult the California Due Process in Competency Determination Act, California Probate Code Section 811.

The definition of "legal representative" (see paragraph [6]) expands beyond the traditional lawyer to include as well those who act in a legally recognized representative capacity, such as a representative payee, trustee, custodian, and agent, as well as those who hold court appointments, such as the traditional guardian and conservator. This definition serves to identify those persons who must receive notice of both guardianship and protective proceedings,

the lawyer, if any, as well as those others holding nominated positions. See Sections 304, 403.

The definition of "minor" (paragraph (8)) excludes a minor who has been emancipated. The effect of this definition is to preclude the appointment of either a guardian or conservator for an emancipated minor unless the appointment is made for reasons other than the minor's age. A guardianship or conservatorship for a minor also terminates upon the minor's emancipation. See Sections 210, 431. Under the 1982 UGPPA, the appointment of a guardian terminated upon the minor's marriage but not other emancipation, and the appointment of a conservator could continue until the minor attained age 21, without regard to marriage or other emancipating event.

The drafters of the 1997 revision intentionally chose not to define parent (other than as those whose parental rights have not been terminated), instead leaving the definition up to the enacting state's probate code. Thus, the definition of "parent" (see paragraph (9)) may or may not include a step-parent. A parent whose parental rights have been terminated, however, is not a parent as so defined even if the parent is allowed to inherit from the child under the enacting state's probate code. Because such a parent has been found to be unfit, the parent is denied a continued role in determining the child's custody, including the appointment of a guardian, whether by parental or court appointment. See Sections 202, 204, 205 and 403.

The person who is the subject of a proceeding is referred to as the "respondent." See paragraph (12). Once a guardianship is established, the incapacitated person or minor is referred to as the "ward." See paragraph (15). Once the conservatorship is established or other protective order entered, the respondent who was the subject of the proceeding is referred to as the "protected person." See paragraph (11). A person for whom a guardian and a conservator has been appointed or other protective order made is both a ward and a protected person.

For states that enact the UGPPA, paragraph (14) gives the enacting state a process for a state court to certify questions to, and answer questions from, a tribal court, but this paragraph does not authorize a tribal court to certify or answer questions which are determined by tribal law. If a tribe wishes to enact this Act, references to "this state" would be replaced by "this tribe." The definition of "tribe" in this paragraph is broad and is intended to include Native American tribes as well as other Native American governmental units that perform functions similar to a tribe.

SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW

APPLICABLE. Unless displaced by the particular provisions of this [act], the principles of law and equity supplement its provisions.

Comment

If this Act is enacted as a stand-alone act, this section will be needed. If this Act is enacted by a state as part of its version of the UPC, this section will not be needed. In that case, to preserve the numbering system, the enacting state should place the section number in brackets,

[SECTION 103. RESERVED].

The source of this section is Section 1-103 of the 1982 UGPPA.

SECTION 104. FACILITY OF TRANSFER.

(a) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding [$10,000] a year, by transferring it to:

(1) a person who has the care and custody of the minor and with whom the minor resides;

(2) a guardian of the minor;

(3) a custodian under the Uniform Transfers To Minors Act or custodial trustee under the Uniform Custodial Trust Act; or

(4) a financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.

(b) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(c) A guardian or other person who receives money or property for a minor under subsection (a)(1) or (2) may only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess must be preserved for the future support, care, education, health, and welfare of the minor, and any balance must be transferred to the minor upon emancipation or attaining majority.

Comment

When a minor annually receives from a specific payer property or cash of [$10,000] or less, in all likelihood it will be expended for the ward's support within the year and it would be cumbersome and unnecessarily expensive to require the establishment of a conservatorship to handle the payments. This section allows the person required to transfer the property to do so in a more expeditious way.

The person required to transfer the property has the option of making the transfer to the person having care and custody of the minor when the minor resides with that person, or may instead make payments to the minor's guardian, a custodian under the Uniform Transfers to Minors Act (1983/1986) or the custodial trustee under the Uniform Custodial Trust Act (1987), or to a financial institution where an interest-bearing account or certificate in only the minor's name is located.

The protections of this section do not apply if the person required to make the transfer knows that a conservator has been appointed or that there is a proceeding pending for the appointment of a conservator. Consequently, the fact that a guardian has been appointed does not require that payment be made to that guardian. A guardian of a minor may receive payments but has no power to compel payment from a third person. See Section 208. Should a guardian desire such authority, the appropriate course is for the guardian to petition the court to be appointed as conservator.

Although the person making the transfer has no duty or obligation to see that the money or property is properly applied, this section is a default statute and does not override any specific provisions in a will or trust instrument relating to monies to be paid to a minor. In those cases, the duty of the person making the transfer would be dictated by the terms of the instrument. This section also does not override the provisions of other statutes in the enacting jurisdiction such as the Uniform Transfers to Minors Act (1983/1986), which allow payment by alternative means based on the size of the minor's estate, as opposed to this section, which allows payment based on the annual payment obligation of the person making the payment.

The section limits the use of the money or property to the minor's support, care, education, health or welfare. Only necessary expenses may be reimbursed from this money or property, with the balance being preserved for the minor's future education, health, support, care or welfare. This section is not applicable to child support payments made pursuant to a court order because child support payments are made to another for the minor's benefit.

While a recipient of funds is not a fiduciary in the normally understood sense of a person appointed by the court or by written instrument, a recipient under this section is subject to fiduciary obligations. Under subsection (c), the recipient may not derive any personal benefit from the transfer and must preserve funds not used for the minor's benefit and transfer any balance to the minor upon emancipation or attainment of majority. Should the recipient misapply the funds or property transferred, the recipient, given this fiduciary role, would be liable for breach of trust.

The person receiving the monies may consider, in appropriate cases, the purchase of an annuity or some other financial arrangement whereby payout occurs at a time subsequent to the minor's attainment of majority. But to provide more certainty for the transaction the recipient should consider petitioning the court under Section 412 for approval of the purchase as a protective arrangement.

This section is derived from the UGPPA (1982) Section 1-106 (UPC Section 5-101 (1982)).

2010 Amendment: The amount that can be paid annually was increased from $5,000 to $10,000 to account for inflation and to conform this section to Section 3-915 of the Uniform Probate Code, which addresses distribution from decedent's estates to persons under disability.

SECTION 105. DELEGATION OF POWER BY PARENT OR GUARDIAN. A parent or a guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

Comment

This section provides for a temporary delegation of powers by the parent or guardian. This section does *not* create a guardianship or grant a parent powers not previously possessed-it merely allows delegation of the powers that the individual *already* has. Thus, the ability to make a delegation under this section may be quite limited for a divorced parent without day-to-day custody of a child and, depending on the state's other laws, may not exist at all for a parent of an adult child. But this section could be useful, for example, in other types of situations when a parent or a guardian becomes ill or has to be away from home for less than six months. The parent or guardian under this section could execute a power of attorney delegating to another some or all of the powers of the parent or guardian. For example, a single parent in the military who has to go on a tour of duty that will not exceed six months could use this section to grant a power of attorney relating to the care of the parent's minor children. Should the tour of duty exceed six months, the parent would then need to renew the power. Also, this section may be used when consent to emergency treatment is needed.

This section does not supersede the rights of persons, prior to their incapacity, to delegate powers relating to their own financial or health-care decisions. This section only authorizes the delegation of powers that are held by other persons, and then only powers held by parents or guardians.

In appropriate circumstances, a parent may wish to use a delegation under this section in lieu of a standby appointment of a guardian under Sections 202 and 302. Because no preconditions are imposed, a delegation under this section is easier to accomplish, although a

renewal every six months will be required. A parent with a potential personal incapacity may conclude that it is better to secure the more permanent appointment of a guardian under Articles 2 or 3 rather than to rely on a temporary delegation to an agent under this section.

Although this section refers to a delegation of power over property, the application of this section to management of property is in fact quite limited. Articles 2 and 3 of the Act grant a guardian only limited powers over a ward's property, and the powers of a parent are similarly restricted. Should it become necessary to secure powers over a minor's or ward's property, the appropriate step is to petition the court for appointment of a conservator. In particular, this section does not grant a guardian appointed in the enacting jurisdiction authority to manage the property of a ward located in another state. A conservator would have such authority, however. See Sections 425(b)(1) and 433.

This provision is based on UGPPA (1982) Section 1-107 (UPC Section 5-102 (1982)).

SECTION 106. SUBJECT-MATTER JURISDICTION.

(a) Except to the extent the guardianship is subject to the [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over guardianship for minors domiciled or present in this state. The court of this state has jurisdiction over protective proceedings for minors domiciled in or having property located in this state.

(b) The court of this state has jurisdiction over guardianship and protective proceedings for an adult individual as provided in the [insert citation to Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act].

Comment

Prior to a 2010 amendment, which rewrote this section, this section provided in its entirety that**:**

"This [act] applies to, and the court has jurisdiction over guardianship and related proceedings for individuals domiciled or present in this state, protective proceedings for individuals domiciled in or having property located in this state, and property coming into the control of a guardian or conservator who is subject to the laws of this state."

This very broad grant of jurisdiction frequently resulted in simultaneous jurisdiction by courts in more than one state. A guardian could be appointed both by the court in the state where the individual was domiciled and, if different, the state where the individual was present, even if

temporarily. A conservator could be appointed both by the court in the state where the individual was domiciled, and, if different, the state where any of the individual's property was located.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), which was approved in 2007 and which is codified at Article 5A of the Uniform Probate Code, addresses the rules on jurisdiction over adult proceedings with greater specificity than did the previous version of this section. Due to the widespread enactment of UAGPPJA, this section was amended in 2010 to provide in subsection (b) that the court has jurisdiction over an adult proceeding as provided in the UAGPPJA.

With respect to minors' proceedings, the broad jurisdiction granted under the prior version of this section was pre-empted in substantial part by the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A. Despite its name, the PKPA is a comprehensive federal statute affecting all types of interstate custody issues for minors, including judicial appointment of guardians. The Uniform Child Custody Jurisdiction and Enforcement Act (1997) (UCCJEA) codifies the principles of PKPA at the state level. To recognize that jurisdiction over appointment of guardians for minors is largely controlled by the UCCJEA and not by this Act, subsection (a) of this section was amended in 2010 to clarify that this section applies to a minors' guardianship only to the extent the proceeding is not subject to the UCCJEA. Neither PKPA or UCCJEA, however, applies to proceedings involving a minor's property. Consequently, this section will continue to apply to a protective proceeding over a minor's property. For a discussion of the impact of PKPA and related legislation on minors' guardianships, see David M. English, *Minors' Guardianship in an Age of Multiple Marriage*, 29 Inst. on Est. Plan. ¶ 500 *et seq.* (1995).

SECTION 107. TRANSFER OF JURISDICTION.

(a) Except as otherwise provided in subsection (b), the following rules apply:

(1) After the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another [county] in this state or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(2) If a guardianship or protective proceeding is pending in another state or a foreign country and a petition for guardianship or protective proceeding is filed in a court in this state, the court in this state shall notify the original court and, after consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or

protected person.

(3) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this state if venue in this state is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ward or protected person, if the ward or protected person has attained 14 years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this [act] were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ward or protected person. On the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Not later than 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.

(b) This section does not apply to a guardianship or protective proceeding for an adult individual that is subject to the transfer provisions of [insert citation to Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)].

Comment

Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), approved in 2007, contains a detailed procedure for transferring an adult proceeding to another state. Due to the widespread enactment of UAGPPJA, subsection (b) of this section was added in 2010 to clarify that the UAGPPJA and not this section control to the extent an adult proceeding is subject to the UAGPPJA. The UAGPPJA will control transfers of an adult proceeding to another state. This section will continue to apply with respect to transfer

of an adult proceeding to another county. This section also will continue to apply to transfers of a minor's proceeding, whether to another state or county.

The following is the text of the comment to this section prior to the 2010 amendment: "This section is based on South Dakota Codified Laws, Sections 29A-5-109 and 29A-5-114. This section sets out the process for transferring cases to another county, state, or foreign country and the procedures by which a case transferred in from another state or foreign country is to be received. In the case of a guardianship for a minor under Article 2, the Uniform Child Custody Jurisdiction and Enforcement Act should be consulted for additional rules on when a case may be transferred and the procedures to be used when more than one court is involved in making these determinations.

"This section, and Section 108, which addresses the appropriate venue for the appointment of a guardian or conservator, are designed to limit forum shopping in which some guardians and conservators have engaged and also assist the courts in keeping track of guardianships and conservatorships. Some guardians and conservators have attempted to thwart a court's authority by moving the ward or protected person to another county, state, or foreign country. The standard for transferring a guardianship or protective proceeding under this section is always the best interest of the ward or protected person.

"The use of a best interest of the ward or protected person standard may be differentiated for adults and minors. When dealing with an adult, the personal values and current and past expressed desires of the ward or protected person should be considered. To the extent that these personal values and expressed desires are unknown, the guardian or conservator should make an effort to learn the ward's or protected person's values and ask about the ward's or protected person's desires. Considering the personal values and expressed desires of the ward or protected person is also a priority consideration under this Act for decision making by guardians and conservators in general. See Sections 314(a), 411(c), and 418(b).

"Once the guardianship is established, the court does not lose jurisdiction because of a change in location of the guardian or the ward. See Section 201 and Section 301.

"In the case of intra-state transfer of proceedings, transfers should be made only when the best interest of the ward or protected person will be advanced, and care should be used by the court to determine that this is not an attempt to secure more favorable venue for other reasons. Under subsection (a), courts should be particularly cognizant in minors' guardianships of attempts to use such transfers to circumvent school district assignments or tuition payment rules.

"When a guardianship or protective proceeding is started in one state and a guardianship or conservatorship already exists in another state, the courts from those two states should communicate with each other. For purposes of subsection (b), the original court is the court where the petition is first filed, not necessarily where the appointment was first made. The second court, only after consultation with the first court, should take or decline jurisdiction only if doing so is in the best interest of the ward or protected person. The burden is on the second court to contact the original court because the second court would be informed of the existence of the guardianship or conservatorship as well as the contents of the petition and have access to

other information of which the original court most likely would be unaware. In making this determination, the second court would ordinarily grant deference to the determination of the original court, but the granting of such deference is not specifically required by this section nor should such deference be given when the determination of the original court is clearly contrary to the current best interest of the ward or protected person.

"Should a transfer of jurisdiction be appropriate, subsection (c) provides a simplified procedure for transferring the case. The subsection assumes that the appointment in the prior jurisdiction is appropriate and that there is consequently no need to duplicate the documentation and evaluations required in the original proceeding. The establishment of the new guardianship or protective proceeding is not automatic, however. In addition to the authority to decide that jurisdiction should not be transferred, the court may also determine that the appointment is no longer in the best interest of the ward or protected person. The procedure made available in subsection (c) will most often be used for the appointment of a guardian when both the guardian and ward no longer reside in the state of the original appointment. The procedure will also prove useful when the appointment of an ancillary conservator is needed to administer property located in a state other than the state of the protected person's domicile. The appointment of a guardian in the second state would be ineffective in such circumstances because a guardian does not have general authority to manage the ward's property. Should a guardian discover that the ward has property located in another state, the guardian should explore the possibility of being appointed conservator in that state."

SECTION 108. VENUE.

(a) Venue for a guardianship proceeding for a minor is in the [county] of this state in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for an incapacitated person is in the [county] of this state in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the [county] in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the [county] in which the respondent is present.

(c) Venue for a protective proceeding is in the [county] of this state in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this state, in any [county] of this state in which property of the respondent is located.

(d) If a proceeding under this [act] is brought in more than one [county] in this state, the court of the [county] in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

Comment

This section consolidates but otherwise generally follows the venue provisions of the 1982 UGPPA except that it allows for the appointment of a permanent guardian for an incapacitated person only in the place where the incapacitated person resides. A court in the place where the incapacitated person is currently located but not a resident is not prohibited from taking action, however, such action is limited to the appointment of an emergency or temporary substitute guardian. This revision was made in direct response to the growing number of cases where older individuals have been moved across state lines and a guardianship then used to confirm custody rights in the new state. The drafters concluded that while it is always appropriate for a court on the scene to issue temporary orders to protect the person's welfare, only the court in the place where the person has the most significant contacts should be allowed to make what could turn out to be a permanent custody order. This requirement that only a court in the place where the respondent resides may appoint a permanent guardian applies not only to proceedings brought in different states, but also to multiple proceedings brought in different counties within a particular state. Subsection (d) provides that when there is more than one proceeding brought within a state, the first court decides where venue is appropriate. The first court does not automatically proceed; it should decide where proper venue lies and enter an order accordingly.

While the venue provisions are generally consolidated in this section, there is one exception. The venue provisions for the appointment of a guardian by a parent or spouse without prior court approval are contained in Sections 202 and 303. However, the subsequent petition to the court to confirm the parental or spousal appointment is subject to the venue requirements of this section.

SECTION 109. PRACTICE IN COURT.

(a) Except as otherwise provided in this [act], the rules of civil procedure, including the rules concerning appellate review, govern proceedings under this [act].

(b) If guardianship and protective proceedings as to the same individual are commenced or pending in the same court, the proceedings may be consolidated.

Comment

This section incorporates the enacting states' rules of procedure. It is critical when separate petitions for guardianship and conservatorship are filed that the separate proceedings be consolidated into the same proceeding in order to protect the respondent's rights and to provide continuity and consistency.

The source of this section is Sections 1-302(d) and 1-304 of the 1982 UGPPA.

SECTION 110. LETTERS OF OFFICE. Upon the guardian's filing of an acceptance of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond, the court shall issue appropriate letters of conservatorship. Letters of guardianship must indicate whether the guardian was appointed by the court, a parent, or the spouse. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship must be endorsed on the guardian's or conservator's letters.

Comment

A guardian must file an acceptance of office while a conservator must file an acceptance of office as well as any required bond. Any limits on the powers of the guardian or conservator must be stated in the letters. This requirement helps to secure the recognition and honoring of limited guardianships and conservatorships. Under Section 424(a), third persons are charged with knowledge of the restrictions endorsed on the letters of office and are subject to possible liability for failing to act in accordance with those restrictions. Either a certified or authenticated copy of the letters may serve as proof of authority by appointment.

SECTION 111. EFFECT OF ACCEPTANCE OF APPOINTMENT. By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.

Comment

Once the guardian or conservator accepts the appointment, the court has jurisdiction over the guardian or conservator in any proceeding relating to the guardianship or conservatorship. Regardless of where the guardian or conservator may move, jurisdiction over the guardian or conservator continues. See Sections 201 and 301. For purposes of giving notice of proceedings to a guardian or conservator, petitioners may use the address of the guardian or conservator that is in the court file, any other address known to the petitioner, or any other procedure available under the enacting state's rules of civil procedure. It is incumbent on the guardian and the conservator to keep their current addresses in the court file.

SECTION 112. TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.

(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. [A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.] Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.

(b) A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian

or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

Comment

Although a guardian or conservator may submit a resignation at any time, the resignation is not effective until the court has approved it. A guardian or conservator, regardless of how the appointment ended, is still liable for previous acts as well as the duty to account for the money and assets of the ward or protected person. In the event of a termination of appointment due to the guardian's or conservator's death, the duty to account is normally performed by the personal representative of the guardian or conservator. In the event of the removal of a guardian or conservator due to the guardian's or conservator's own incapacity, the duty to account will normally be performed by the guardian's or conservator's own guardian, conservator or other legal representative.

Those who may petition for removal of the guardian or conservator are the incapacitated person, the protected person or a person interested in the welfare of the incapacitated or protected person. Under subsection (b), the ground for removal is the best interest of the ward or the protected person. In determining whether it is in the best interest of the ward or protected person for the guardian or conservator to be removed, the use of a best interest of the ward or protected person standard in relation to an adult may be differentiated from that used in reference to minors. When dealing with an adult, every effort should be made to determine the wishes of the ward or protected person regarding the removal of the guardian or conservator. In determining the best interest of the adult ward or protected person, the ward's or protected person's personal values and expressed desires, past or present, should be considered. Considering the personal values and expressed desires of the ward or protected person is also a priority consideration for decision making by guardians and conservators in general. See Sections 314(a), 411(c) and 418(b).

While the section adopts a best interest of the ward or protected person standard, courts seeking more precisely stated reasons for removal may wish to consult their state's law on removal of a trustee. For a statutory list of reasons directed specifically at removal of guardians or conservators, see South Dakota Codified Laws Section 29A-5-504. Among the reasons

justifying removal under the South Dakota statute are: (1) securing of the letters by material misrepresentation or mistake; (2) incapacity or illness, including substance abuse, affecting fitness for office; (3) conviction of a crime reflecting on fitness; (4) wasting or mismanagement of the estate; (5) neglecting the care and custody of the ward, protected person or legal dependents; (6) having an adverse interest that poses a substantial risk that the guardian or conservator will fail to properly perform duties; (7) failure to timely file a required account or report or otherwise comply with a court order; and (8) avoidance of service of process or notice.

Under subsection (c), the court can appoint an additional guardian or conservator, effective either upon appointment or upon a future contingency. A court can also appoint a successor guardian or conservator to fill an existing or potential vacancy. In either case, eligibility to act occurs on the last to occur of the vacancy, the occurrence of the contingency or the filing of the acceptance of appointment. The ability to appoint a guardian or conservator to act upon some specified future event will usually be used to preplan the filling of a vacancy in office. This provision, in the states that have enacted it, has proven useful in situations involving adults with developmental disabilities. The initial guardian or conservator appointed will usually be a parent of the ward or protected person, but the child's need for guardianship or conservatorship is likely to be lifelong. The ability to appoint a successor guardian or conservator at the time of the initial appointment therefore provides the parent with assurance of mind that upon the parent's death someone will be available to step in and assure continuity of care.

The ability to appoint a successor or additional guardian to take office in the future is different from the type of standby appointments authorized in Sections 202 and 302. Those types of appointments permit a guardian to be appointed to take office in the future even though no guardian is currently in office. Under this section, only the appointment of a successor or additional guardian or conservator is allowed.

SECTION 113. NOTICE.

(a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with [insert the applicable rule of civil procedure], at least 14 days before the hearing.

(b) Proof of notice must be made before or at the hearing and filed in the proceeding.

(c) A notice under this [act] must be given in plain language.

Comment

Notice may be provided by mail as well as by private courier or delivery service. If the adopting state's rules allow, a faxed copy of the notice may be an appropriate method of providing notice. This section does not supersede specific notice requirements provided elsewhere in the Act. Special notice requirements apply to a petition for the appointment of an emergency guardian and to service on the respondent of a petition for the appointment of a guardian or conservator or other protective order. See Sections 309, 312, and 404. The requirement of at least 14 days' prior notice is copied from the 1982 UGPPA. A 14 day prior notice provision has also been part of the Uniform Probate Code, including its provisions on guardianships and protective proceedings, since the inception of the Code. Under this section, notice should be given using the method of notice provided in the enacting jurisdiction's applicable rule of civil procedure. However, the time limit for notice contained in subsection (a) should be applied, even if different from that in the state's applicable rule.

Subsection (c) provides that the notice be in plain language. The requirement that all notices be given in plain language is based on a recommendation of the Wingspread conference on guardianship reform. See Guardianship: An Agenda for Reform 9 (A.B.A. 1989). Although this section does not require it, if English is not the respondent's primary language, best practice and due process would direct that a copy of the notice be provided in the respondent's primary language.

SECTION 114. WAIVER OF NOTICE. A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.

Comment

Waivers in this section include both specific and general waivers. Under no circumstances may the respondent, ward, or protected person waive notice. The protection provided by this section applies to all petitions brought under this Act but is particularly pertinent to original petitions for appointment of a guardian or conservator or other protective order. See Sections 309 and 404. In consequence, except as ordered by the court under Section 113 for good cause, a period of at least 14 days must elapse between the filing of the petition and the hearing whenever notice to a respondent, ward, or protected person is required. The source of this section is UGPPA (1982) Section 1-402.

SECTION 115. GUARDIAN AD LITEM. At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be

appointed to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

Comment

Appointments under this section will be infrequent. If the respondent is currently represented, the attorney representing the respondent should not be appointed as the guardian ad litem because of the conflict of interest, since there is a distinct difference between the role of the attorney as an advocate and as a guardian ad litem. It is important that the court, when appointing a guardian ad litem, advise the guardian ad litem of his or her role. This section encourages the giving of such advice by requiring that the court record the duties of the guardian ad litem and its reasons for the appointment. The source of this section is UGPPA (1982) Section 1-403. (UPC Section 1-403(4)(1982)).

SECTION 116. REQUEST FOR NOTICE; INTERESTED PERSONS. An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in a protective proceeding.

Comment

This section allows an interested person not otherwise entitled to notice to file a request for special notice with the guardian or conservator. For purposes of this section, an interested person in a protective proceeding includes a creditor, secured or otherwise. The section also specifically provides that an interested person in a protective proceeding includes a governmental agency that is or will be paying benefits to the respondent or protected person. Whether a creditor, governmental agency or other person is an interested person as the term is used elsewhere in the Act must be determined according to the particular issue involved. For example, under certain circumstances an interested person could include a member of the media

or a "watch-dog" agency. For a request for special notice to be effective, a statement of the person's interest must be contained in the request.

This section is based on UGPPA (1982) Section 1-404 (UPC Section 5-104 (1982)).

SECTION 117. MULTIPLE APPOINTMENTS OR NOMINATIONS. If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

Comment

The most recent appointment or nomination would be the one with the most recent date during the period when the respondent had capacity to make the appointment or nomination. If the most recent appointment is determined invalid due to the respondent's lack of capacity, the prior appointment would control.

ARTICLE 2
GUARDIANSHIP OF MINOR

SECTION 201. APPOINTMENT AND STATUS OF GUARDIAN. A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or minor ward.

Comment

This Article provides for the creation and administration of guardianship over minors. The court's ability to appoint a guardian for a minor under this part is in certain cases partially or wholly superseded by special legislation relating to custody of minors. Reference should also be made to the Uniform Child Custody Jurisdiction and Enforcement Act (1997), the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, and the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq*. For a discussion of the jurisdictional limitations, see David M. English, *Minors' Guardianship in an Age of Multiple Marriage*, 29 Inst. on Est. Plan. ¶¶ 500, 502 (1995).

This section recognizes the creation of a guardianship by parental appointment under Section 202 as well as those created by the court under Section 205. A guardian or the ward can move from the jurisdiction in which the court is located, yet the guardianship will continue until terminated and remains under the court's jurisdiction. See Section 107 regarding transfers of jurisdiction and Section 111 regarding the effect of acceptance of appointment.

This section is the same as UGPPA (1982) Section 2-101 (UPC Section 5-201 (1982)).

SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN.

(a) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

(b) Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within [two] years, and after notice as provided in Section 205(a), the court, before the appointment becomes effective, may confirm the parent's

selection of a guardian and terminate the rights of others to object.

(c) Subject to Section 203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person, or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

(d) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

(1) file the acceptance of appointment and a copy of the will with the court of the [county] in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the [county] in which the minor resides or is present; and

(2) give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

(e) Unless the appointment was previously confirmed by the court, the notice given under subsection (d)(2) must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in Section 203.

(f) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in Section 205(a).

(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an

appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(h) The powers of a guardian who timely complies with the requirements of subsections (d) and (f) relate back to give acts by the guardian which are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

(i) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to Section 203.

Comment

This section enables a parent to make an advance appointment of a "standby" guardian whose powers become effective upon the occurrence of certain specified contingencies. The standby appointment procedure under this section is available to all parents, but is particularly beneficial for parents with pending incapacities which will likely render them unable to care for their children at some point prior to their deaths. The section, like UGPPA (1982) Section 2-102 and UPC Section 5-202 (1982), allows for the appointment of a guardian effective upon a parent's death or adjudication of incapacity. Additionally, following the lead of a growing number of free-standing standby guardianship statutes enacted in the states, it allows for an appointment to become effective upon a determination that the parent is no longer able to provide care. For analysis of these state statutes, see Joshua S. Rubenstein, *Standby Guardianship Legislation: Preparing Before the Tidal Wave Hits*, 22 ACTEC Notes 60 (1996). The parent can make either type of appointment in a will or other signed writing, including a power of attorney, a trust or a document executed for the sole purpose of appointing the guardian.

Under subsection (c), the contingencies upon which the authority of the standby guardian will become effective are the parent's death, adjudication of incapacity or written determination by a physician who has examined the parent that the parent is no longer able to care for a minor child. The physician making the written determination should be the parent's treating physician whenever possible, to avoid the possibility of the other parent manipulating this process in a custody battle.

In the case of a parent who has disappeared, the appointment of an emergency guardian should be sought under Section 204(e). Under that section, preference will be given to the

nominated guardian absent a showing that it is not in the best interest of the minor child for that person to be appointed.

Subsection (a) recognizes that the appointing parent may have additional children after making the appointment, so the provision allows a parent to appoint a guardian for children who may later be born, adopted or whose custody may be given to the appointing parent, without the need to re-execute the nomination.

The appointment of a person as guardian under this section creates a rebuttable presumption that the appointed person should be appointed as guardian and that the court should not disregard the appointment without good cause. A person who chooses not to accept the appointment is not liable for failing to act.

Under subsection (b), the appointing parent may petition the court prior to the triggering event for advance confirmation of the appointment. Advance court confirmation terminates both the right of others to object, including an objection by the child's other parent, and the right of the appointing parent to revoke the appointment. Subsection (b) provides that a petition for advance court confirmation may be made at anytime within the recommended two years from the date of the likely need, but this time limit is placed in brackets to indicate that the enacting jurisdiction is free to select a different time period. Depending on the length of time set by the enacting states, courts may need to show flexibility regarding the time limit. It may be difficult for the appointing parent to prove with absolute certainty that the appointing parent will become unable to care for the child within the specified period of time. Courts should liberally construe this provision in favor of the appointing parent. For this reason, subsection (b) does not require absolute certainty, and instead uses the standard that it is "likely" that the guardian will be needed within the time period. If the court confirms the guardian in advance and the stated deadline (e.g., two years) has passed without the guardian's filing the acceptance of appointment required under subsection (d), the court should hold a hearing to determine the appointing parent's status and whether the advance confirmation should continue.

While this section allows the court to confirm an appointment in advance, more typically the guardian will assume duties based solely on the parent's written appointment. A guardian so appointed must then seek court confirmation, thereby turning the standby appointment into a regular guardianship. Allowing the guardian's appointment to become effective immediately upon the triggering event avoids gaps in the care and custody of the child. The purpose of the confirmation of appointment process contained in subsections (d)-(f) is to convert a nominated guardianship into a regular guardianship as soon as possible. The court should develop procedures to monitor the conversions.

The section does not specifically enumerate the contents of the petition for confirmation of appointment to be filed by the guardian. In order for the court to make an informed review, the petition should include the name and address of the minor; the identity and whereabouts of all persons having parental rights or serving as guardian; the petitioner's name and address, relationship to the parent and child, interest in the appointment, and a statement of the petitioner's willingness to serve; information about any custody orders; any limitations the appointing parent has placed on the powers of the appointed guardian, the powers to be given the

guardian, and if an unlimited guardianship, a statement why a limited guardianship would not work; and reasons why the appointment should be confirmed. The petition should be accompanied by a death certificate, an order of adjudication of incapacity or a written statement by the physician who has examined the appointing parent that the appointing parent is no longer able to care for the minor child. In this last case, the written statement should include the prognosis and diagnosis of the parent's condition, as well as the date of the doctor's examination of the parent. The petition should be accompanied by a copy of the appointing instrument, as well as any other relevant documents, such as a custody order or an order terminating parental rights. If the selection as guardian was previously confirmed pursuant to subsection (b), a copy of the order of confirmation should accompany the required notice.

Under subsection (g), the appointment of a guardian by a parent does not supersede the parental rights of either parent. Until the appointment is confirmed by the court, the rights of the parent and the rights of the guardian coexist. While parental rights are not terminated, at least in theory, the guardian will often supersede the parental rights in fact. The parent making the appointment will no longer be able to provide care for the child, even though not yet legally incapacitated, and the other parent may be uninterested or unable to provide care for the child. To provide more certainty to the situation, the appointee should seek court confirmation of the parental appointment as soon as possible.

At the hearing on the petition for confirmation, if the court finds that the appointing parent will not regain the ability to care for the minor child, the court should enter an order confirming the appointment, absent evidence rebutting the presumption that the appointment is in the child's best interest. If the court finds that the parent may regain ability to care for the minor child, the court should enter an order confirming the appointment for a period of time deemed appropriate by the court. An order of confirmation cuts off the right to object of the minor, the other parent, or a person other than a parent having care and custody of the minor. The confirmation also supersedes the rights of the non-appointing parent.

Until the parental appointment is confirmed by the court, the minor, the other parent or the person other than the parent having care and custody of the minor may file an objection to the appointment under Section 203. See subsections (c) and (e). If an objection is filed, the appointed guardian has no authority to act and instead must petition the court for appointment as guardian under Section 205.

Subsection (h) provides that the timely performance of the requirements for the guardian's acceptance of office relate back to give any acts performed between the appointment becoming effective and the guardian's filing of the notice of acceptance the same effect as those occurring after the filing of the notice of acceptance, as long as the prior acts are beneficial to the minor. In the event of a dispute regarding whether a guardian's prior act should be validated, the court first determines whether the act was beneficial to the minor, and if the court determines the act was beneficial, then subsection (h) will apply.

Unless stated to the contrary in this section, the other provisions of this Act relating to guardians apply to a guardian appointed under this section, including the provisions relating to the duties and powers of guardians.

SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT.

APPOINTMENT. Until the court has confirmed an appointee under Section 202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under Section 204, and proceed accordingly.

Comment

This section provides a mechanism for a listed group of individuals to object to a parental appointment made under Section 202 and to turn the appointment into a contested proceeding. The individuals who may object include the minor, if at least 14 years old, as well as the other parent or a person other than a parent or guardian who has care or custody of the minor. The objection must be in writing and can be filed at any time prior to the court's confirmation of the appointment.

If an objection is filed, the appointee has no authority to act and instead must file a petition for appointment as guardian under Section 205. Although the minor, the other parent, or the person who has care or custody of the minor may object to the appointment, the court still may appoint the person selected by the parent over the objection. An objection that is not timely filed will not prevent the appointment.

When an objection is filed, the court may choose to treat the objection as a petition for the appointment of an emergency (or in appropriate cases, temporary) guardian under Section 204, and use the expedited process contained therein.

This section is based on UGPPA (1982) Section 2-103 (UPC Section 5-203 (1982)).

SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN: CONDITIONS FOR APPOINTMENT.

(a) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

(b) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

(1) the parents consent;

(2) all parental rights have been terminated; or

(3) the parents are unwilling or unable to exercise their parental rights.

(c) If a guardian is appointed by a parent pursuant to Section 202 and the appointment has not been prevented or terminated under Section 203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under Section 202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in Section 113 must be given to the parents and to a minor who has attained 14 years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under Section 205.

(e) If the court finds that following the procedures of this [article] will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed [30] days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment and a hearing on the appropriateness of the appointment held within [five] days after the appointment.

Comment

The court, in order to make an informed decision on a petition for appointment, must have as much information as possible. The court should require that the following specific information be contained in a petition filed under subsection (a): the name, age and address of the minor; the name and address of the petitioner and the petitioner's relationship to the minor; the name and address of the proposed guardian, the proposed guardian's relationship to the minor and the proposed guardian's qualifications to serve as guardian; whether the minor's school district would change if a guardian is appointed; and information about the parents of the minor, their whereabouts, and if missing or absent, the circumstances surrounding their absence and whether any court has entered any order regarding their parental rights. The petition should also include information about the minor's property and, if the guardian is appointed, where the minor would live, as well as any other information that the court would deem relevant. The court should examine the petition to make sure this information has been supplied as fully as possible and should reject any petitions that provide insufficient information.

Subsection (a) allows a petition to be filed either by the minor or by any person interested in the minor's welfare. A person interested in the minor's welfare is any person with a serious interest or concern for the minor's welfare, including both relatives and non-relatives having knowledge of the circumstances, as well as public officials from relevant agencies. Should the court determine that the petitioner's concerns stem from interests other than the welfare and best interest of the minor, the court may dismiss the petition.

Under this section, the appointment can be made in one of three situations: when the parents consent, when all parental rights have been terminated or when the parents are unable or unwilling to exercise their parental rights. In the last situation, the court must decide whether a parent is unwilling or unable to act. See David M. English, *Minors' Guardianship in an Age of Multiple Marriage*, 29 Inst. on Est. Plan. ¶¶ 500, 503 (1995), for a discussion of criteria applied in determining unwillingness or unfitness of a parent to care for a minor child. This section is not to be used to resolve custody disputes between parents that are more appropriately resolved in a family law proceeding. See comments to UGPPA (1982) Section 2-104 and to UPC Section 5-204 (1982).

If the parent has made an appointment pursuant to Section 202, this section provides the parental appointee with priority for appointment if a petition for appointment of guardian of the minor is subsequently filed. Where, however, the appointee failed to timely accept the appointment as required in Section 202, the court can appoint another to serve as the guardian. The parental appointee has priority for appointment by the court even over the nominee of a minor age 14 or older.

On occasion, parents have established a guardianship for their minor child in order to change the child's school district. Allowing for such use of guardianship is inconsistent with the intent of this section. For that reason, the recommended information to be contained in the petition includes a statement as to whether the child's school district will change. This information puts the court on notice that the parents may be attempting to use a guardianship to manipulate a school assignment. The court should inquire whether there will be a change in the minor's school assignment if a guardian is appointed. Even when a change of school districts is not mentioned, the court should inquire whether there will be a change in the minor's school district if a guardian is appointed.

Subsection (d) provides for the appointment of a temporary guardian on appropriate petition or motion, when the court finds that an immediate need exists and it is in the minor's best interest for a temporary guardian to be appointed. The temporary guardianship provision is based on South Dakota Codified Laws Section 29A-5-210. Notice is required as provided in Section 113. The temporary guardian has the same authority as an unlimited guardian, but the guardianship may not last for more than six months. If the need for a guardian continues beyond six months, then the temporary guardian should file a petition under Section 205 to be appointed as unlimited guardian.

All individuals listed in Section 205(a) are required to receive notice in a temporary guardianship proceeding under subsection (d). The six month limitation on the temporary guardianship does not prevent the renewal or extension of the guardianship by court order at the expiration of the six months. However, if the duration needs to be extended, the court should examine whether a regular guardianship of the minor would be more appropriate.

Under subsection (e), in emergencies, where following the procedures specified in Section 205 would result in serious harm to the minor's health or safety and where there is no one with authority or who is willing to act, the court, on petition, may appoint an emergency guardian for up to 30 days. Prior notice is required unless the court finds from affidavit or

testimony that the minor will be seriously harmed during the time needed to give notice. Only then may the court act without notice. A court should have a process established to provide notice on an emergency basis. Proceedings without prior notice should be the *rare exception* rather than the rule. However, subsection (e) recognizes that occasionally there will be situations where giving prior notice on an emergency guardianship petition is simply not feasible. Thus, when an emergency guardianship is established without notice, notice has to be given within 48 hours of the appointment and a return hearing held within five days of the appointment. Although the five days is bracketed, giving states the option of adopting a different time limit, five days is the minimum notice requirement in most states for an ex parte hearing. If the enacting states choose to enact a time limit other than five days, to adequately protect the minor the time chosen should be relatively short. The procedures under this subsection are similar to that for emergency appointments for adults, found in Section 312.

For both temporary and emergency guardianships, it is possible that one or both parents may have authority to act but are absent, refusing to act or unable to act. The emergency provision may be used when the minor is having a health care crisis and the parents are absent or dead. In cases where the parents are missing and presumed dead, a temporary guardianship might be used, although this is a situation where the conditions for a permanent appointment of a guardian would likely be met. Use of a temporary or emergency appointment may also be appropriate where the parents are absent for a set period of time. In some jurisdictions, it may be more appropriate to get an order of custody through the juvenile court rather than establishing a temporary guardianship.

SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN: PROCEDURE.

(a) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

(1) the minor, if the minor has attained 14 years of age and is not the petitioner;

(2) any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition;

(3) each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;

(4) any person nominated as guardian by the minor if the minor has

attained 14 years of age;

(5) any appointee of a parent whose appointment has not been prevented or terminated under Section 203; and

(6) any guardian or conservator currently acting for the minor in this State or elsewhere.

(b) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of Section 204(b) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

(c) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age.

Comment

If the conditions for appointment set out in subsection (b) have not been met, or if the appointment is not in the minor's best interest, the court should dismiss the petition or make any other order that serves the minor's best interest, including, where appropriate, treating the petition as one for the appointment of a conservator or other protective order under Article 4.

Under subsection (a)(3), if both parents are dead, notice and a copy of the petition must be given to the adult nearest in kinship. Where there is more than one adult in the same class, notice to one is sufficient.

The court may, at any stage of the proceeding, appoint a lawyer to represent the minor if the conditions in subsection (c) are met. If the minor is at least 14 years old, the minor's preference for a lawyer must be considered by the court in appointing counsel.

This section is based on UGPPA (1982) Section 2-106 (UPC Section 5-206 (1982)).

SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN: PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.

(a) The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor or other interested person, may limit the powers of a guardian otherwise granted by this [article] and thereby create a limited guardianship. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

Comment

Absent a parental appointment, the only person having preference for appointment as guardian under this section is the person nominated by a minor age 14 or older, as long as that person's appointment would be in the minor's best interest. The priority granted under this section does not override the preference given to the parental appointee under Section 204(c). Regardless of the preference granted, the standard used by the court in determining whom to appoint as guardian is the minor's best interest.

Subsection (b) applies the concept of limited guardianship to minors. A court, whenever possible, should only grant to the guardian those powers actually needed. The court should be specific about identifying the powers of the guardian regarding the minor's education, care, health, safety, and welfare. This section gives the court flexibility to design the guardianship in a way to empower the minor as much as possible to make the minor's own decisions, either at the time of appointment or at a later date. Subsection (b) can be used by the court to either expand or limit the guardian's powers. Although the court can grant additional powers, the court can not grant powers beyond those provided in Article 2.

Subsection (a) is based on UGPPA (1982) Section 2-107 (UPC Section 5-207 (1982)). Subsection (b) is based on UGPPA (1982) Section 2-109(e) (UPC Section 5-209(e) (1982)).

SECTION 207. DUTIES OF GUARDIAN.

(a) Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) take reasonable care of the ward's personal effects and bring a protective proceeding if necessary to protect other property of the ward;

(3) expend money of the ward which has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's future needs;

(5) report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule; and

(6) inform the court of any change in the ward's custodial dwelling or address.

Comment

A guardian of a minor is basically a substitute parent, but without the personal financial responsibility for the minor's support. The standard of care for the guardian is contained in subsection (a). As provided in subsection (a), the duties of a parent to which the guardian

succeeds are those relating to the minor's support, care, education, health, and welfare. A guardian also has certain fiduciary responsibilities. A guardian must at all times act in the minor's best interest and exercise reasonable care, diligence, and prudence. Subsection (b) of this section, and Sections 208 and 209 are in substantial part expansions on these underlying responsibilities, specifying subsidiary duties and the powers and immunities necessary to properly implement this role.

A guardian is more than a caretaker. To properly perform the office of guardian, it is essential that the guardian, as required by subsection (b)(1), become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the ward. Such contact is also essential if the guardian is to act in the best interest of the ward.

The development of the self-reliance of the ward is one of the major themes of the Act, as demonstrated by the emphasis on limited guardianship, both for minors and adults. See Section 206(b). To develop the self-reliance of the minor, whether the guardianship for the minor ward is limited or unlimited, it is essential that the minor be involved in decision making, that the guardian ascertain the minor's views and that the guardian, whenever appropriate, make decisions in line with the minor's expressed preferences. In line with this philosophy, Section 208(b)(6) permits the guardian, if reasonable under all of the circumstances, to delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

A guardian's powers with respect to the property of the ward are very limited. If the ward has significant property that requires management, the guardian should petition the court for the appointment of a conservator or other protective order as provided in subsection (b)(2). However, subsection (b)(3) requires that the guardian use the ward's funds, including government benefits received for the ward, for the ward's support, care, education, health, and welfare. The guardian must conserve any excess funds not expended for the ward's future needs, and periodically turn over the excess to the conservator, if one has been appointed. See subsection (b)(4). A guardian may also be required to report the ward's condition to the court as well as to account for money and other assets in the guardian's possession or subject to the guardian's control. See subsection (b)(5).

Subsection (b)(6), which is new to the Act, requires that the court be informed whenever there is a change in the custodial dwelling or address of the ward. Temporary absences, such as for vacations, need not be reported. This required reporting to the court is consistent with the recommendation in National Probate Court Standards, Standard 3.3.14 "Reports by the Guardian" (1993). Keeping the court informed of the minor ward's location will enable the court to exercise appropriate oversight of the guardianship. If the ward is removed to another state, it will also prevent the court from losing jurisdiction over the case without the court's knowledge. See also Section 208(b)(2), which requires the permission of the court before the ward may be relocated to another state.

This section is based on UGPPA (1982) Section 2-109(a)-(b) (UPC Section 5-209(a)-(b) (1982)).

SECTION 208. POWERS OF GUARDIAN.

(a) Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.

(b) A guardian may:

(1) apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's custodial dwelling outside the state upon express authorization of the court;

(3) if a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or service for the ward;

(5) consent to the marriage of the ward; and

(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) The court may specifically authorize the guardian to consent to the adoption of the ward.

Comment

This section should be read with Section 207. Section 207 sets out the duties of the guardian: those responsibilities which a guardian may not ignore. This section sets out the

guardian's powers, the grant of which are necessary in order for the guardian to carry out the duties specified in Section 207.

Section 207(a) imposes on the guardian certain of the duties of a parent. To enable the guardian to properly carry out those duties, subsection (a) of this section grants the guardian corresponding powers of a parent with regard to the support, care, education, health, and welfare of the ward. Subsection (b) then lays out specific applications of the general powers granted in subsection (a).

Subsections (b)(1) and (3) enable the guardian to carry out the guardian's limited duties with respect to the management of the property of the ward. For these duties, see subsections (b)(2)-(5) of Section 207. The powers of the guardian over the minor ward's property are quite limited, recognizing that a conservator should be appointed or other protective order sought for the minor in appropriate circumstances. The guardian is authorized under subsection (b)(1) to apply for government benefits to which the ward is entitled. Under Section 207(b)(3), the guardian must use those benefits for the ward's support, care, education, health, and welfare. Upon appointment, a guardian should also investigate whether proper application has been made for all governmental benefits to which the ward may be entitled. It may also be necessary for the guardian to seek appointment as a representative payee, should the governmental agency in question use a representative payee mechanism for making payments on behalf of beneficiaries without legal capacity.

Subsection (b)(2) recognizes that other courts may have a role in determining the custody of the ward. While a guardian generally has a right to take custody of the ward, the guardian is denied this power if to assume custody would be inconsistent with the custody order of a court of competent jurisdiction. Such an order may have been entered by a juvenile court, by a court responsible for making involuntary mental health commitments, or even by the court supervising the guardianship.

Subsection (b)(2) also prevents the guardian from moving the minor out of state without the court's prior approval. The court must determine whether such move would be in the best interest of the minor ward. The court should make certain that this provision is not used to circumvent a custody order or to avoid a determination of custody by an appropriate court. Under the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, the courts of the former state will generally lose jurisdiction over custody of a minor six months following the minor's removal from the state. If there is no conservator, subsection (b)(3) authorizes the guardian to file a proceeding to collect child support. In implementing this power, the guardian should consult the state's applicable child support statutes, which should be read as if incorporated into this section.

Under subsection (b)(4), the guardian may consent to the medical or other care, treatment or service for the ward. The guardian may ordinarily make health-care decisions for the ward without prior court authorization, but for certain types of health-care decisions, prior court approval may be required or at least be considered. For example, a guardian may ordinarily consent to elective surgery for the ward, but the guardian is strongly advised to consider seeking prior court authorization before consenting to experimental medical treatment. While this Act

does not specifically require that a guardian seek prior court approval before making a particular health-care decision, such prior court approval may be required by other statute, especially when the minor's constitutional rights are in question. For example, a guardian may not be able to place a minor ward in a mental health care facility or consent to electroconvulsive therapy (ECT) or other types of shock therapy without the court's order. State statutes may require that specific procedures be followed before a guardian can consent to an abortion or certain medical treatment for the minor ward. Because of the important and competing interests at stake, a guardian should at least consult with, and may need to obtain an order from, the court if the guardian plans to refuse medical treatment on behalf of the minor ward on the grounds of the minor ward's religious beliefs.

Under subsection (c), the court may specifically authorize the guardian to consent to the ward's adoption. This section conforms to the requirements of the Uniform Adoption Act (1994) that the guardian be given specific authority from a court in order to consent to the minor ward's adoption. The applicable section of the Uniform Adoption Act (1994), Section 2-101 provides:

> (a) The only persons who may place a minor for adoption are:
>
> > (2) a guardian expressly authorized by the court to place the minor for adoption....,

which the comment to that section of the Uniform Adoption Act (1994) then notes is intended to refer to the court supervising the guardianship. This court is chosen because under UGPPA Section 210 the adoption of the ward will have the effect of terminating the guardianship. If the enacting jurisdiction has not enacted the Uniform Adoption Act (1994), the state should verify that subsection (c) is in harmony with the state's existing adoption laws.

Like the adoption of the minor ward, a guardianship also terminates upon the marriage of the ward. But unlike an adoption, the guardian's consent and the court's approval is not necessarily required. Whether such consent is required will depend on the state's laws on the requirements of marriage. But to the extent that the guardian's consent may be necessary, subsection (b)(5) does allow a guardian to consent to the marriage of the ward.

This section is based on UGPPA (1982) Section 2-109(c) (UPC Section 5-209(c) (1982)).

SECTION 209. RIGHTS AND IMMUNITIES OF GUARDIAN.

(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable

compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

Comment

Subsection (a) recognizes that a guardian has a right to reasonable compensation. The amount determined to be reasonable may vary from state to state and from one geographical area to another within a state. In addition, factors to be considered by the court in setting compensation will vary. See the comments to Section 417 for a thorough discussion on the factors to be considered by the court in determining compensation.

If there is a conservator appointed, the conservator, without the necessity of prior court approval, may pay the guardian reasonable compensation as well as reimburse the guardian for room, board and clothing the guardian has provided to the ward. However, if the court determines that the compensation paid to the guardian is excessive or the expenses reimbursed were inappropriate, the court may order the guardian to repay the excessive or inappropriate amount to the estate. See Section 417.

Under subsection (b), the guardian has no duty to use the guardian's personal funds for the ward. Nor is a guardian liable for the acts of a third person, including negligent medical care, treatment or service provided to the ward except if a parent would be liable in the same circumstances. The guardian is not liable, just by reason of being the guardian, if the ward harms a third person. The guardian is liable only if personally at fault.

This section is based on subsections (a) and (d) of the 1982 UGPPA Section 2-109 (subsections (a) and (d) of UPC Section 5-209 (1982)).

SECTION 210. TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT.

(a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority or as ordered by the court.

(b) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained 14 years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

Comment

Subsection (a) lists the traditional grounds for terminating a guardianship for a minor created by reasons of the minor's age. Guardianships created because the minor is also an incapacitated person are governed by Article 3 and may last into adulthood. While a guardianship terminates upon emancipation of a minor, the grounds of emancipation are left to the state's law on the subject, but in many states a minor is emancipated by marriage, military service, or order of emancipation. Even though the guardianship is terminated, the guardian is still liable for previous acts and the obligation to account for the funds of the ward within the guardian's possession or control. See Section 112.

Subsection (b) can be used to seek termination of the guardianship or to expand or restrict the guardian's powers, in furthering the ward's self-reliance. See Section 206.

Subsection (a) is based on UGPPA (1982) Section 2-210 (UPC Section 5-210 (1982)), but has been broadened to allow termination by any act of emancipation, not merely marriage. Subsection (b) is based on UPC Section 5-212 (1982).

ARTICLE 3
GUARDIANSHIP OF INCAPACITATED PERSON

SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN. A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

Comment

This Article provides for the creation and administration of guardianships for incapacitated persons. The definition of incapacitated person is found in Section 102(5). While an incapacitated person will typically be an adult, appointment can be made for a minor under this Article if the reason for the appointment is an incapacity other than the minor's age. If an appointment is made under this Article for a minor, there is no need to petition for a new guardianship upon the minor's attainment of majority.

This section is new, although it has a counterpart in Section 201. This section recognizes the ability of the spouse or parent of an adult individual who meets the definition of incapacitated person to appoint a guardian by spousal or parental appointment under Section 302, as well as that of the court to appoint a guardian under Section 311. A guardian or the ward can move from the jurisdiction in which the court is located, yet the guardianship will continue until terminated and remains under the court's jurisdiction. See Section 107 regarding transfers of jurisdiction and Section 112 regarding termination of appointments.

SECTION 302. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.

(a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse who the appointing spouse believes is an incapacitated person, specify

desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(c) The incapacitated person, the person having care or custody of the incapacitated person if other than the appointing parent or spouse, or the adult nearest in kinship to the incapacitated person may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection does not preclude judicial appointment of the person selected by the parent or spouse. Notice of the objection must be given to the guardian and any other person entitled to notice of the acceptance of the appointment. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under Section 312 or for the appointment of a limited or unlimited guardian under Section 304 and proceed accordingly.

(d) Upon petition of the appointing parent or spouse, and a finding that the appointing parent or spouse will likely become unable to care for the incapacitated person within [two] years, and after notice as provided in this section, the court, before the appointment becomes effective, may confirm the appointing parent's or spouse's selection of a guardian and terminate the rights of others to object.

Comment

This section enables a parent or spouse to make an advance appointment of a "standby" guardian whose powers become effective upon the occurrence of certain specified contingencies. The appointment can be made by will or other instrument, which can include a durable power of attorney, a trust instrument or a specific document for the spousal or parental appointment of the guardian. The appointment is temporary. Section 303(e) requires that a guardian appointed under this section seek court confirmation no more than 30 days following the filing of notice of acceptance of office.

Sections 302 and 303 together are comparable to the standby guardianship provisions for minors in Section 202. The provisions for incapacitated persons are more tentative, since adults,

unlike minors, are presumed to have the legal capacity to make their own decisions. For this reason, an appointment under this section is easily terminable. See subsection (c). Also, an appointment under this section is not a determination of the person's incapacity. See Section 303(g).

Despite these limitations, this section is very useful, especially for parents of developmentally disabled children. For such parents, the need for a guardian for the developmentally disabled child often arises only on the parent's death or other event that necessitates that care be transferred to another. This section, by allowing a guardian of the parent's selection to step in immediately upon the necessitating event, can provide the parents with assurance of mind that care of their children will not be neglected. This section is also useful for a spouse of an individual stricken by Alzheimer's disease, when the spouse no longer is able to care for the Alzheimer's victim.

A parent of an adult unmarried child whom the parent believes is incapacitated may make an appointment under this section as may a spouse for the other spouse whom the appointing spouse believes to be incapacitated. Under subsection (c), the adult disabled child or the incapacitated spouse as well as the person having care or custody of the child or spouse or the adult nearest in kinship have the right to object to the guardian's appointment. If an objection is filed, the guardian's authority terminates, and the guardian must file a petition for appointment of guardian by the court under Section 304. If an objection is withdrawn, it has no effect. An objection does not prohibit the court from appointing the parental or spousal appointee as the guardian.

The appointing spouse or parent may petition the court prior to the triggering event for advance confirmation of the appointment. Advance court confirmation terminates the right to object and the right of the appointing spouse or parent to revoke the appointment. Advance court confirmation is available in situations where the appointment is needed due to the pending incapacity of the appointing spouse or parent. This process provides appointing spouses and parents with peace of mind, knowing that the court has confirmed their selection of guardian.

A petition for advance court confirmation may be made at any time within a recommended two years from the date of likely need, but this time limit is placed in brackets to indicate that the enacting jurisdiction is free to select a different period. Depending on the length of time set by the enacting states, courts may need to show flexibility regarding the time limit. It may be difficult for the appointing spouse or parent to prove with absolute certainty that the appointing spouse or parent will likely become unable to care for the incapacitated spouse or the adult disabled child within the stated period of time. Courts should liberally construe this provision in favor of the appointing spouse or parent. For this reason, subsection (d) does not require absolute certainty, only that the need for a guardian within the specified time frame is "likely." If the court confirms the guardian in advance and the stated deadline (two years) has passed without the guardian's filing the acceptance of appointment required under Section 303(b), the court should hold a hearing to determine the status of the appointing spouse or parent and whether the advance confirmation should continue.

Unless otherwise specified in this section, the other provisions of this Act, including the provisions relating to the duties and powers of guardians, apply to a guardian appointed by a will

or other writing.

This section is based on UGPPA (1982) Section 2-201 (UPC Section 5-301 (1982)). However, the 1982 UGPPA did not require court confirmation of the appointment.

SECTION 303. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING: EFFECTIVENESS; ACCEPTANCE; CONFIRMATION.

(a) The appointment of a guardian under Section 302 becomes effective upon the death of the appointing parent or spouse, the adjudication of incapacity of the appointing parent or spouse, or a written determination by a physician who has examined the appointing parent or spouse that the appointing parent or spouse is no longer able to care for the incapacitated person, whichever first occurs.

(b) A guardian appointed under Section 302 becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

(1) file the notice of acceptance of appointment and a copy of the will with the court of the [county] in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court in the [county] in which the incapacitated person resides or is present; and

(2) give written notice of the acceptance of appointment to the appointing parent or spouse if living, the incapacitated person, a person having care or custody of the incapacitated person other than the appointing parent or spouse, and the adult nearest in kinship.

(c) Unless the appointment was previously confirmed by the court, the notice given under subsection (b)(2) must include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in Section 302.

(d) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(e) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian appointed under Section 302 shall file a petition in the court for confirmation of the appointment. Notice of the filing must be given in the manner provided in Section 309.

(f) The authority of a guardian appointed under Section 302 terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to Section 302, whichever first occurs.

(g) The appointment of a guardian under this section is not a determination of incapacity.

(h) The powers of a guardian who timely complies with the requirements of subsections (b) and (e) relate back to give acts by the guardian which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of appointment.

Comment

The appointment of a guardian for an incapacitated person by will or other writing becomes effective on the first to occur of: the death of the appointing parent or spouse; adjudication of incapacity of that parent or spouse; or a written determination by a doctor who has examined the appointing parent or spouse that the appointing parent or spouse can no longer care for the adult disabled child or the incapacitated spouse.

The guardian's authority terminates upon the timely filing of an objection or upon the appointing parent or spouse regaining the ability to care for the incapacitated person, or if a guardian is appointed for the incapacitated person.

Within 30 days of the contingency giving rise to the guardianship, the guardian must file a notice of acceptance of appointment along with the appointing instrument. If the appointment was not previously confirmed by the court, the guardian also must give written notice of the acceptance and of the right to file an objection to the appointing parent or spouse, if living, the

incapacitated person for whom the appointment was made, the person having care or custody of the incapacitated person, if other than the appointing parent or spouse, and to an adult nearest in kinship.

Subsection (e) requires that the guardian file for confirmation of the appointment no more than 30 days following the filing of the notice of acceptance. Also, because an appointment under Sections 302 and 303 is based on a belief as to the person's incapacity, in seeking confirmation of the appointment by the court, the regular procedures for the appointment of a guardian will apply. See Sections 304 through 310.

The petition for confirmation of appointment to be filed by a guardian must comply with the requirements of Section 304 but should be tailored to reflect the special circumstances of the prior parental or spousal appointment. The petition should include: the name and address of the incapacitated spouse or the adult disabled child, the identity and whereabouts of the adult children of the incapacitated spouse, if any, or if none, then the living parents of the incapacitated spouse, if any, or if none, then the living siblings of the incapacitated spouse; the living parents, if any, or if none, the living siblings of the adult disabled child; all persons serving as guardian; the petitioner's name and address, relationship to the married couple or to the parent and the adult disabled child, interest in the appointment, and a statement of the petitioner's willingness to serve; any limitations placed by the appointing spouse or parent on the powers of the appointed guardian; information about the petitioner; and reasons why the appointment should be confirmed.

The petition should also indicate any limitations placed on the appointed guardian and the powers to be given to the guardian, and if an unlimited guardianship, why a limited guardianship would not work. The petition should be accompanied by a death certificate, an order of adjudication of incapacity or a written statement by the physician who has examined the appointing spouse or parent that the appointing spouse or parent is no longer able to care for the incapacitated spouse or the adult disabled child. The written statement should be made by the treating physician of the appointing parent or spouse and the statement should include the prognosis and diagnosis for the spouse or parent as well as the date of the physician's examination of the appointing parent or spouse. The petition should be accompanied by a copy of the appointing instrument, as well as any other relevant documents. If the selection as guardian was previously confirmed pursuant to Section 302(d), a copy of the order of confirmation should accompany the required notice.

In the hearing on the petition for confirmation, if the court finds that the appointing spouse or parent will not regain the ability to care for the incapacitated spouse or adult disabled child, the court should enter an order confirming the appointment, absent evidence rebutting the presumption of appointment. If the court finds that the appointing spouse or parent may regain ability to care for the incapacitated spouse or adult disabled child, the court should enter an order confirming the appointment for a period of time deemed appropriate by the court. An order of confirmation cuts off the rights of others, including the incapacitated adult or the adult disabled child, to object.

The determination of whether the parental or spousal appointment should be converted

into a regular guardianship should be made as soon as possible. The court should develop procedures for monitoring the conversions.

Subsection (h) provides that the timely performance of the requirements for the guardian's acceptance of office relate back to give any acts performed between the appointment becoming effective and the guardian's filing of the notice of acceptance the same effect as those occurring after the filing of the notice of acceptance, as long as those prior acts are beneficial to the incapacitated person. In the event of a dispute regarding whether a guardian's prior act should be validated, the court first determines whether the act was beneficial to the incapacitated person, and if the court determines that the act was beneficial, then subsection (h) will apply.

SECTION 304. JUDICIAL APPOINTMENT OF GUARDIAN: PETITION.

(a) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(b) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;

(2) the name and address of the respondent's:

(A) spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and

(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;

(3) the name and address of any person responsible for care or custody of

the respondent;

(4) the name and address of any legal representative of the respondent;

(5) the name and address of any person nominated as guardian by the respondent;

(6) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;

(7) the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;

(8) if an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and

(9) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

Comment

This section lists the information that must be contained in the petition for appointment of a guardian. Although the section allows a prospective ward to petition for appointment of a guardian, the court should scrutinize such a petition closely to confirm that the petition is truly voluntary, and that the petitioner has the requisite capacity to file a petition. Normally, in such a case it would be better for the individual to execute a durable power of attorney.

Specifying the required contents of the petition is in accordance with the recommendations of both the Wingspread conference on guardianship reform and the Commission on National Probate Court Standards. See Guardianship: An Agenda For Reform 9 (A.B.A. 1989); National Probate Court Standards, Standard 3.3.1, "Petition" (1993)

Subsections (b)(2)-(6) require the listing in the petition of family members and others who may have information useful to the court and to whom notice of the proceeding must be given under Section 309(b). These persons will likely have the greatest interest in protecting the respondent and in making certain that the proposed guardianship is appropriate.

Subsection (b)(2)(A) requires that the petition contain the name and address of the spouse or, if none, then an adult with whom the respondent has resided for more than six months before the petition is filed. Included among the persons with whom the respondent may have resided are domestic partners and companions. Note that there is no requirement that the respondent have resided for more than six months *immediately prior* to the filing of the petition, just that the requirement have been met at some point in time before the petition was filed. In applying this provision, the court should focus on the purpose of this provision—*i.e.*, to obtain a list of persons who likely have a significant interest in the respondent's welfare. Courts should use a reasonableness standard so that the petitioner does not have to give the name of every person with whom the respondent has resided in the respondent's entire life and whose current interest in the respondent's welfare may be quite remote. Also, in interpreting what is meant by "resided," the closeness of the relationship to the respondent should be taken into account-for example, the on-site manager of a 50-apartment complex whose contact with the respondent was limited to collecting the rent should not be considered as fitting within the definition. However, for a nursing home resident, the term might include her best friend who resides on the next floor.

Courts should consider whether they wish to exclude persons providing care for a fee from the class of persons with whom it is considered that the respondent resided. This would limit the application of subsection (b)(2)(A) to individuals with whom the respondent has a close personal relationship, a relative, or to a domestic partner or companion, and would eliminate a professional relationship such as that of a housekeeper, landlord, or owner of a board and care facility. The committee that drafted the Act originally used the language "domestic partner or companion," and intended to limit the application of this section to the spouse, domestic partner or companion, but at the 1997 Annual Meeting of the Uniform Law Commissioners, where this Act was approved, this phrase was replaced by the phrase "with whom the respondent has resided for more than six months." The intent behind this amendment was not to substantially broaden the concept but only to expand it to include other individuals who have had an enduring relationship with the respondent for at least a six-month period and who, because of this relationship, should be given notice.

Subsection (b)(2)(B) requires that the petition contain the names and addresses of the respondent's adult children or, if none, parents and adult brothers and sisters or, if none, a relative of the nearest degree in which a relation can be found. However, if there are several adults of equal degree of kinship to the respondent, the name and address of one is all that is required, not the names and addresses of the members of the entire class.

Under subsection (b)(4), if the respondent has a legal representative, the representative's name and address must be included in the petition. A "legal representative" is defined in Section 102(6). Notice to such representative, as required by Section 309(b), is especially critical for ascertaining whether a guardianship is really necessary. For example, the court may conclude that there is no need to appoint a guardian if a guardian has already been appointed elsewhere or the respondent has executed a durable power of attorney with authority in the agent to make health and personal care decisions.

Subsection (b)(8) emphasizes the importance of limited guardianship, the encouragement of which is a major theme of the Act. The petitioner, when requesting an unlimited

guardianship, must state in the petition why a limited guardianship would not work. If a limited guardianship is requested, the petition must set out the recommended powers to be granted to the guardian.

Subsection (b)(9) requires the petitioner to include a general statement of the respondent's property, including an estimated value, insurance and pension information and information about other anticipated income or receipts. This information should be as detailed as possible to enable the visitor to expeditiously complete the required report, see Section 305, and to enable the court to determine whether a protective order will be needed. See Section 311.

SECTION 305. JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.

(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a [visitor]. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged.

ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER

Alternative A

[(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(1) requested by the respondent;

(2) recommended by the [visitor]; or

(3) the court determines that the respondent needs representation.]

Alternative B

[(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding.]

End of Alternatives

(c) The [visitor] shall interview the respondent in person and, to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;

(2) determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(3) inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(d) In addition to the duties imposed by subsection (c), the [visitor] shall:

(1) interview the petitioner and the proposed guardian;

(2) visit the respondent's present dwelling and any dwelling in which the respondent will live if the appointment is made;

(3) obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(4) make any other investigation the court directs.

(e) The [visitor] shall promptly file a report in writing with the court, which must include:

(1) a recommendation as to whether a lawyer should be appointed to represent the respondent;

(2) a summary of daily functions the respondent can manage without

assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

(3) recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(4) a statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;

(5) a statement as to whether the proposed dwelling meets the respondent's individual needs;

(6) a recommendation as to whether a professional evaluation or further evaluation is necessary; and

(7) any other matters the court directs.

Legislative Note: *Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all proceedings for appointment of a guardian should not enact subsection (e)(1).*

Comment

Alternative provisions are offered for subsection (b). Alternative A was favored by the drafting committee. Alternative A relies on an expanded role for the "visitor," who can be chosen or selected to provide the court with advice on a variety of matters other than legal issues. Appointment of a lawyer, nevertheless, is *required* under Alternative A when the court determines that the respondent needs representation, or counsel is requested by the respondent or recommended by the visitor.

Alternative B is derived from UGPPA (1982) Section 2-203 (UPC Section 5-303). It is expected that in states enacting Alternative A of subsection (b), counsel will be appointed in virtually all of the cases. However, the A.B.A. Commission on Legal Problems of the Elderly attached great significance to expressly making appointment of counsel "mandatory." Therefore, for states which wish to provide for "mandatory appointment" of counsel, Alternative B should be enacted.

In Alternative A for subsection (b), then, appointment of counsel for an unrepresented respondent is mandated when requested by the respondent, when recommended by the visitor, or when the court determines the respondent needs representation. This requirement is in accord with the National Probate Court Standards. National Probate Court Standards, Standard 3.3.5 "Appointment of Counsel" (1993), which provides:

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

Alternative A of subsection (b) follows the National Probate Court Standards, Standard 3.3.5(a)(1) through (a)(3). Alternative B perhaps may be said to be in accord with the National Probate Court Standards, Standard 3.3.5(a)(4).

The drafting committee for this Act debated at length whether to mandate appointment of counsel or to expand the role of the visitor. The drafting committee concluded that as between the two, the visitor may be more helpful to the court in providing information on a wider variety of issues and concerns, by acting as the eyes and ears of the court as well as determining the respondent's wishes and conveying them to the court. The committee was concerned that including mandatory appointment of counsel would cause many to view this Act as a "lawyer's bill" and thus severely handicap the Act's acceptance and adoption. It is the intent of the committee that counsel for respondent be appointed in all but the most clear cases, such as when the respondent is clearly incapacitated.

For jurisdictions enacting Alternative A under subsection (b), the visitor needs to be especially sensitive to the fact that if the respondent is incapacitated, then the respondent may not have sufficient capacity to intelligently and knowingly waive appointment of counsel. A court should err on the side of protecting the respondent's rights and appoint counsel in most cases.

Appointment of a visitor is mandatory (subsection (a)), regardless of which alternative is enacted under subsection (b). The visitor serves as the information gathering arm of the court. The visitor can be a physician, psychologist, or other individual qualified to evaluate the alleged impairment, such as a nurse, social worker, or individual with pertinent expertise. It is imperative that the visitor have training or experience in the type of incapacity alleged. The visitor must individually meet with the respondent, the petitioner and the proposed guardian. The visitor's report must contain information and recommendations to the court regarding the appropriateness of the guardianship, whether lesser restrictive alternatives might meet the respondent's needs, recommendations about further evaluations, powers to be given the guardian, and the appointment of counsel. If the petition is withdrawn prior to the appointment of the visitor, no appointment of the visitor is necessary.

NATIONAL PROBATE COURT STANDARDS, Standard 3.3.4 "Court Visitor" (1993) provides:

> The probate court should require a court appointee to visit with the respondent in a guardianship petition to (1) explain the rights of the respondent; (2) investigate the facts of the petition; and (3) explain the circumstances and consequences of the action. The visitor should investigate the need for additional court appointments and should file a written report with the court promptly after the visit.

The visitor must visit the respondent in person and explain a number of items to the respondent to the extent the respondent can understand. If the respondent does not have a good command of the English language, then the visitor should be accompanied by an interpreter. The drafters did not mandate that the visitor be able to speak the respondent's primary language, but good practice and due process protections dictate the use of interpreters when needed for the respondent to understand. The phrase "to the extent that the respondent is able to understand" is a recognition that some respondents may be so impaired that they are unable to understand. If assistive devices are needed in order for the visitor to explain to the respondent in a manner necessary so that the respondent can understand, then the visitor should use those assistive devices. The visitor is also charged with confirming compliance with the Americans With Disabilities Act when visiting the respondent's dwelling and the proposed dwelling in which it is expected that the respondent will reside.

Subsection (c)(4) puts the respondent on notice that if the respondent has an estate, costs and expenses are paid from the estate, including attorney's fees and visitor's fees. If there is an estate, those entitled to compensation would be paid from the estate. If there is no estate, those entitled to compensation will ordinarily be compensated by whatever process the enacting state has for indigent proceedings, such as from the county general fund, unless the enacting jurisdiction has made other arrangements. If a conservatorship exists, payment is made pursuant to the procedures provided in Section 417, otherwise the guardian must file a fee petition. See Section 316.

The visitor must talk with the physician or other person who is known to have assessed, treated or advised about the respondent's relevant physical or mental condition. This information is crucial to the court in making a determination of whether to grant the petition, since a professional evaluation will no longer be required in every case. See Section 306. If the doctor refuses to talk to the visitor, the visitor may need to seek from the appointing court an order authorizing the release of the information.

The visitor's report must be in writing and include a list of recommendations or statements. For states enacting Alternative A to subsection (b), if the visitor does not recommend that a lawyer be appointed, the visitor should include in the report the reasons why a lawyer should not be appointed. States enacting this Act should consider developing a checklist for the items enumerated in subsection (e).

"Visitor" is bracketed in recognition that states use and may wish to substitute different words to refer to this position.

SECTION 306. JUDICIAL APPOINTMENT OF GUARDIAN: PROFESSIONAL EVALUATION. At or before a hearing under this [article], the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

(1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(4) the date of any assessment or examination upon which the report is based.

Comment

Under the 1982 UGPPA, a professional evaluation was mandatory. See UGPPA (1982) Section 2-203(b) (UPC Section 5-303(b) (1982)). This section is a major departure. The court *may* order a professional evaluation but *shall* order the evaluation *only* if the respondent demands it. If an evaluation is ordered, then it must be performed by a professional who is qualified to evaluate the alleged impairment of the respondent. When counsel is appointed, the respondent may demand the evaluation through counsel. If the respondent is truly incapacitated and not represented by counsel, it is unlikely that the respondent will demand an evaluation. The court still has the ability to order a professional evaluation either on the visitor's recommendation or on its own motion. Although a reading of this section may leave the impression that a professional evaluation will be ordered sparingly, the converse is true. A court should order a professional evaluation any time it is not absolutely clear, based on its own assessment or on the visitor's report, that the respondent is incapacitated. Further, by providing the court with an expert evaluation of the respondent's abilities and limitations, the professional evaluation will be crucial to the court in establishing a limited guardianship.

The evaluation of the respondent's physical and mental condition referred to in paragraph

(2) should include a summary of the consultation with the respondent's treating physician. Even though the visitor's report required by Section 305 may contain information from the treating physician, it is crucial for the accuracy of the evaluation that the professional evaluator consult about the respondent's treatment, and include in the evaluation a summary of the information received and relied upon and the date of the consultation.

SECTION 307. CONFIDENTIALITY OF RECORDS. The written report of a [visitor] and any professional evaluation are confidential and must be sealed upon filing, but are available to:

(1) the court;

(2) the respondent without limitation as to use;

(3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and

(4) other persons for such purposes as the court may order for good cause.

Comment

This section is new, although a number of states have a comparable provision. This section is designed to protect the respondent's privacy, but still make records accessible when needed, to any of the involved parties or to others on a showing of good cause. The drafting committee recognized that the media and "watch-dog" groups perform essential functions of deterring abuse and facilitating reform, and in drafting this provision balanced the need to protect the respondent's privacy with the need to access to the information.

SECTION 308. JUDICIAL APPOINTMENT OF GUARDIAN: PRESENCE AND RIGHTS AT HEARING.

(a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the [visitor]; and otherwise

participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

Comment

The proposed guardian is required to attend the hearing, although the court may excuse the proposed guardian's attendance on a showing of good cause. This provision is based on a recommendation from National Probate Court Standards, Standard 3.3.8(c), "Hearing" (1993). The guardian's presence at the hearing gives the court the opportunity to determine the guardian's appropriateness for appointment and to make any other inquiry of the guardian that the court deems to be appropriate as well as to emphasize to the guardian the gravity of the guardian's responsibilities.

Also new is the requirement that the respondent must attend the hearing unless excused by the court on a showing of good cause. The respondent has the right to take an active role in the hearing. There may be instances where circumstances dictate that the court hold the hearing where the respondent is located.

The respondent can request that the hearing be closed, but good cause must again be shown for this to occur. Others may make a request to participate, which can be granted by the court without a hearing, if the court finds that the respondent's best interest is served by the participation. The court's order granting the request to participate should indicate the extent to which participation will be allowed.

This section contains elements of subsections (c) and (d) of UGPPA (1982) Section 2-303 (subsections (c) and (d) of UPC Section 5-303 (1982)).

SECTION 309. NOTICE.

(a) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially

complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.

(c) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.

(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the report.

Comment

Personal service of the petition and notice of hearing on the respondent is required. A failure to personally serve the respondent is jurisdictional, as is a notice that does not substantially comply with the requirements of subsection (a). Notice of hearing must be given to the persons who are listed in the petition but failing to give notice to those listed (other than the respondent) is not jurisdictional.

Subsection (c) addresses the notice requirements on hearings on petitions for orders subsequent to the appointment of a guardian-the ward and the guardian, as well as anyone else the court directs, must be given copies of any notice of hearing and a copy of any petition. This provision, along with subsection (d), requiring that the ward receive a copy of the guardian's report and a copy of the notice of filing of the report, ensures that the ward is kept informed of developments in the guardianship.

The National Probate Court Standards, Standard 3.3.7 "Notice" (1993), provides that the respondent should receive timely notice prior to the hearing and that written notice should be in both plain language and in large type, indicating, at a minimum, the place and time of the hearing, the nature and possible consequences of the hearing, and the respondent's rights. Similar recommendations are contained in the report of the Wingspread conference on guardianship reform, which also recommends, in line with Section 113 of this Act, that the respondent be given at least 14 days notice of hearing on a petition for the appointment of a guardian. See Guardianship: An Agenda for Reform 9-12 (A.B.A. 1989).

This section is based on UGPPA (1982) Section 2-204 (UPC Section 5-304 (1982)).

SECTION 310. WHO MAY BE GUARDIAN: PRIORITIES.

(a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

(1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent had sufficient capacity to express a preference;

(3) an agent appointed by the respondent under [a durable power of attorney for health care] [the Uniform Health-Care Decisions Act (1993)];

(4) the spouse of the respondent or an individual nominated by will or other signed writing of a deceased spouse;

(5) an adult child of the respondent;

(6) a parent of the respondent, or an individual nominated by will or other signed writing of a deceased parent; and

(7) an adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(c) An owner, operator, or employee of [a long-term-care institution] at which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

Comment

This section gives top priority for appointment as guardian to existing guardians appointed elsewhere, to the respondent's nominee for the position, and to the respondent's agent, in that order. Existing guardians are granted a first priority for two reasons. First, many of these cases will involve transfers of a guardianship from another state. To assure a smooth transition, the currently appointed guardian, whether appointed in this state or another, should have the right to the appointment at the new location. Second, other cases will involve situations where a guardianship appointment is sought despite the appointment in another place. Granting the existing guardian priority will deter such forum shopping. If the existing guardian is inappropriate for some reason, subsection (b) permits the court to pass over the existing guardian and appoint another with or without priority. While an existing guardian is generally granted a first priority for appointment, a temporary substitute and an emergency guardian are excluded from priority because of the short-term nature of their involvement.

A guardian or individual nominated by the respondent or the agent named in the respondent's health care power of attorney has priority for appointment over the respondent's relatives. The nomination may include anyone nominated orally at the hearing, if the respondent has sufficient capacity at the time to express a preference. The nomination may also be made by a separate document. While it is generally good practice for an individual to nominate as the guardian the agent named in a durable power of attorney, the section grants such an agent a preference even in the absence of a specific nomination. The agent is granted a preference on the theory that the agent is the person the respondent would most likely prefer to act. The nomination of the agent will also make it more difficult for someone to use a guardianship to thwart the authority of the agent. To assure that the agent will be in a position to assert this priority, Sections 304(b)(4) and 309(b) require that the agent receive notice of the proceeding. Also, until the court has acted to approve the revocation of that authority, Section 316(c) provides that the authority of an agent for health-care decisions takes precedence over that of the guardian.

Subsection (a)(7) gives a seventh-level preference to a domestic partner or companion or an individual who has a close, personal relationship with the respondent. Note that there is no requirement that the respondent had resided with the adult for more than six months *immediately prior* to the filing of the petition, just that the requisite residency have occurred at some point in time before the petition is filed. Courts should use a reasonableness standard in applying this subsection so that priority is given to someone with whom the respondent has had a close, enduring relationship. For factors to consider in making this determination, see the comment to Section 304, which discusses the interpretation of the phrase "an adult with whom the respondent has resided for more than six months before the filing of the petition" within the context of the persons required to be listed in the petition for appointment. Note that although the phrase can be interpreted quite broadly, it is intended to be descriptive of those individuals who have had an enduring relationship with the respondent for at least a six month period and who, because of this relationship, should be given a priority for consideration as guardian.

Subsection (c) prohibits anyone affiliated with a long-term care institution at which the respondent is receiving care from being appointed as guardian absent a blood, marital or

adoptive relationship. Strict application of this subsection is crucial to avoid a conflict of interest and to protect the ward. Each state enacting the Act needs to insert the particular term or terms used in the state for those facilities considered to be long-term care institutions.

A professional guardian, including a public agency or nonprofit corporation, was specifically not given priority for appointment as guardian because those given priority are limited to individuals with whom the ward has a close relationship. The committee which drafted the Act recognized the valuable service that a professional guardian, a public agency or nonprofit corporation provides. A professional guardian can still be appointed guardian if no one else with priority is available and willing to serve or if the court, acting in the respondent's best interest, declines to appoint a person having priority. A public agency or nonprofit corporation is eligible to be appointed guardian as long as it can provide an active and suitable guardianship program and is not otherwise providing substantial services or assistance to the respondent, but is not entitled to statutory priority in appointment as guardian.

This section is based on UGPPA (1982) Section 2-205 (UPC Section 5-305 (1982)).

SECTION 311. FINDINGS; ORDER OF APPOINTMENT.

(a) The court may:

(1) appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(A) the respondent is an incapacitated person; and

(B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance; or

(2) with appropriate findings, treat the petition as one for a protective order under Section 401, enter any other appropriate order, or dismiss the proceeding.

(b) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(c) Within 14 days after an appointment, a guardian shall send or deliver to the

ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

Comment

A guardian may be appointed only when no less restrictive alternative will meet the respondent's identified needs. The clear and convincing evidence standard for the appointment of a guardian is new to the Act, but mandated by the Constitution and strongly recommended by many commentators on guardianship. See, e.g., *Sabrosky v. Denver Dep't Social Services*, 781 P.2d 106 (Colo. Ct. App. 1989); *In re Guardianship of Reyes*, 731 P.2d 130 (Ariz. Ct App. 1986); *In re Estate of Boyer*, 636 P.2d 1085 (Utah 1981), all three of which involve the interpretation of the predecessor version of this Act. See also Guardianship: An Agenda for Reform 16 (A.B.A. 1989).

The use of limited guardianship is emphasized in this section. If a guardian is to be appointed, the guardian shall be given only those powers needed to meet the ward's needs and limitations. The court must specify the powers granted to the guardian and the limits on the incapacitated person's rights. The Act's emphasis on less restrictive alternatives, a high evidentiary standard and the use of limited guardianship is consistent with the Act's philosophy that a guardian should be appointed only when necessary, only for as long as necessary, and with only those powers as are necessary. The concept of limited guardianship is also emphasized in the National Probate Court Standards, Standard 3.3.10, "Less Intrusive Alternatives" (1993), requiring a finding of no less intrusive alternative before appointing a guardian and mandating the consideration and utilization of limited guardianships.

If appropriate technological assistance is available to meet the respondent's needs, then the respondent is not an "incapacitated person" within the meaning of Section 102(5) and no guardianship may be established. The drafting committee discussed whether to put any modification or limitation on the technological assistance, such as that which is reasonably available or a limitation on availability based on cost. Given the importance of the respondent's rights, the committee decided to reject any modification or limitation whatsoever on required consideration of technological assistance. Therefore, if appropriate technological assistance exists that can meet the respondent's needs, regardless of the cost, then that assistance must be treated by the court as meeting the respondent's identified needs by a less restrictive means, and the guardianship petition must be denied.

Subsection (a)(2) allows the court to consider the petition as a petition for a protective order and either proceed appropriately under Article 4 or dismiss the Article 3 proceeding. To guarantee the respondent the maximum possible personal liberty, the court should proceed under this subsection whenever it concludes that the respondent's needs can be met by the entry of orders with respect to the respondent's property without the need to limit the respondent's freedom.

In keeping with the concept of limited guardianship, subsection (c) requires the guardian to provide the ward and all those persons given notice of the hearing a copy of the order of

appointment along with a notice of the right to request a termination or a modification of the guardianship. The reason for requiring notice to persons other than the ward is to make certain that those who were originally notified of the petition will also be notified of the results because they are the ones most likely to have a continuing interest in the ward's welfare. The modification contemplated by this subsection only applies to reduction of the guardian's powers from those originally granted, not their enlargement.

SECTION 312. EMERGENCY GUARDIAN.

(a) If the court finds that compliance with the procedures of this [article] will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed [60] days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a lawyer to represent the respondent in the proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment within 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within [five] days after the appointment.

(c) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian at any time. An emergency

guardian shall make any report the court requires. In other respects, the provisions of this [act] concerning guardians apply to an emergency guardian.

Comment

There are limited circumstances where there is no one else willing or able to act when following the normal process for appointment of a guardian would, due to the time involved to follow the procedures, likely lead to substantial harm to the respondent's health, safety or welfare. The classic example of when an emergency guardianship is needed is when the respondent needs a medical procedure, lacks capacity to consent, has no health care power of attorney, and no one else is willing or in a position to make the health-care decision. This section of the Act requires appointment of counsel for the respondent.

An emergency guardian may only be appointed without prior notice when there is testimony that the respondent would be immediately and substantially harmed before the hearing on the appointment. In such case, notice must be given within 48 hours and a hearing held within five days. (Section 113 provides the procedures for giving notice.)

States enacting this Act should look at their requirements for an ex parte hearing and determine whether to adopt the time limit contained in this section or whether to impose different time limits. Five days seems to be the most common time period for a return hearing following an ex parte appointment. If the enacting state uses a different time period for a hearing following an ex parte appointment of a guardian, the time period used should be relatively short.

The NATIONAL PROBATE COURT STANDARDS, Standard 3.3.6 "Emergency Appointment of a Temporary Guardian" (1993), provides:

(a) Ex parte appointment of a temporary guardian by the probate court should occur only:

(1) upon the showing of an emergency;
(2) in connection with the filing of a petition for a permanent guardianship;
(3) where the petition is set for hearing on the proposed permanent guardianship on an expedited basis; and
(4) when notice of the temporary appointment is promptly provided to the respondent.

This Act deviates from the above standard by permitting an emergency guardian to be appointed without the need of filing a petition for a permanent appointment. The drafting committee was concerned that requiring the filing of a petition for a permanent appointment would lend an air of inevitability that a permanent guardian should be appointed. Frequently, the need for an emergency guardian is temporary only and the respondent's long-term needs can be met by mechanisms other than guardianship. Consistent with this, subsection (c) provides that the appointment of an emergency guardian is in no way a finding of incapacity. For purposes of appointing a regular guardian, the same quantum of proof is required whether or not an emergency guardian has been appointed.

Unless stated to the contrary in this section, other sections of this Act apply to an emergency guardian appointed under this section, including the provisions relating to the duties of guardians.

SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.

(a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian, the court, within five days after the appointment, shall inform the ward or guardian of the appointment.

(b) The court may remove a temporary substitute guardian at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this [act] concerning guardians apply to a temporary substitute guardian.

Comment

This section differs from Section 312 since this section is used when there is a guardian, but the guardian is not discharging the functions of office. The role of the temporary substitute guardian, as the name implies, is to literally fill in for the regular guardian, whose powers are suspended for the duration of the appointment. This section also differs from Section 204(d). A temporary guardian for a minor is appointed under Section 204(d) in situations where there is no guardian, whereas under this section, the temporary substitute guardian is temporarily substituted for another non-performing guardian.

The standard for appointment under this section is that the ward's welfare requires immediate action and that the appointed guardian is not effectively performing the duties of office. This is not the same as the best interest standard applied in the selection of the original guardian. The standard instead invokes the sense of urgency usually involved in these cases, most of which involve possible abuse by the regularly-appointed guardian.

If, at the end of the six months, the ward still needs a guardian, the court should appoint a permanent guardian rather than granting an extension to the temporary substitute guardian. A temporary substitute guardian does not automatically have preference to be appointed as guardian in such cases.

In some cases, circumstances may dictate the appointment of the temporary substitute guardian without notice being given to the ward or current guardian. If that occurs, within five days of the appointment of the temporary substitute guardian, the court must inform either the ward or the guardian. Since the authority of the regularly-appointed guardian is suspended by the appointment of the temporary substitute guardian, the court should make every effort to inform the guardian of the appointment. In keeping with the concept of limited guardianship and empowerment of the ward, the court should also notify the ward of the appointment of the temporary substitute guardian if the ward has the ability to understand.

States adopting this Act are free to enact a notice period of less than five days but are encouraged to not enact a notice period of more than five days.

This section is based on UGPPA (1982) Section 2-208(b) (UPC Section 5-308(b) (1982)).

SECTION 314. DUTIES OF GUARDIAN.

(a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

(3) expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;

(5) immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and

(6) inform the court of any change in the ward's custodial dwelling or address.

Comment

Under Section 2-209 of the 1982 UGPPA (UPC Section 5-309 (1982)), the guardian of an incapacitated person was simply granted the powers of guardian of a minor. . As a result of the 1997 revision, this and the sections which follow now list the guardian's powers and duties in detail instead of referring to the provisions on minor's guardianship. The general duty of the guardian of an incapacitated person, as expressed in subsection (a), also differs significantly from that for a guardian of a minor.

Subsection (a) sets out the guardian's reasonable standard of care. Subsection (b), and Sections 315 and 316 are in substantial part expansions on the fundamental responsibilities stated in subsection (a), specifying subsidiary duties and the powers and immunities necessary to properly implement this role. For a discussion of the duties listed in subsection (b), see the comment to Section 207.

Subsection (a) emphasizes the importance of the concept of limited guardianship by directing that the guardian only exercise the authority needed due to the ward's limitations. In the 1982 UGPPA, the phrase "encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations" was used as a standard to encourage the use of limited guardianships. That phrase may still be useful for courts in tailoring a guardianship to the needs of the incapacitated person. The guardian is admonished to encourage the ward's participation in decisions and in developing or regaining capacity to act without a guardian. The ward's personal values and expressed desires, whether past or present, are to be considered when making decisions. Although the guardian only need consider the

ward's desires and values "to the extent known to the guardian," that phrase should not be read as an escape or excuse for the guardian. Instead, the guardian needs to make an effort to learn the ward's personal values and ask the ward about the ward's desires before the guardian makes a decision. Subsection (a) requires the guardian to act in the ward's best interest. In determining the best interest of the ward, the guardian should again consider the ward's personal values and expressed desires.

In furtherance of the limited guardianship and least restrictive alternative concepts, subsection (b)(5) requires the guardian to immediately notify the court if the ward's condition has improved, so that the ward may have rights restored. The guardian is *not* to wait until the next reporting period.

SECTION 315. POWERS OF GUARDIAN.

(a) Except as otherwise limited by the court, a guardian may:

(1) apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside this state upon express authorization of the court;

(3) if a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or service for the ward;

(5) consent to the marriage[or divorce] of the ward; and

(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(b) The court may specifically authorize the guardian to consent to the adoption of the ward.

Comment

Subsection (a)(1) authorizes the guardian to apply for or receive the ward's government benefits. Subsection (a)(2) prohibits the guardian from moving the ward out of state without the court's prior express authorization. This provision should be strictly applied for the protection of the ward and to prevent forum shopping.

Although subsection (a)(4) gives the guardian the power to consent to medical treatment, the guardian must ascertain whether a health care directive is in effect. If there is a valid health-care power of attorney, the decision of the health care agent takes precedence over that of the guardian, absent a court order to the contrary. Further, the guardian may not revoke a health-care power of attorney except on court order. See Section 316(c). If the health-care directive does not appoint an agent, the guardian may proceed to make a health-care decision but must follow the ward's wishes as expressed in the directive.

Additionally, statutes in many states prohibit a guardian from consenting to certain procedures without prior court order or without first complying with detailed statutory requirements, especially procedures which implicate the incapacitated person's constitutional rights. For example, a guardian may not commit a ward to a mental health-care institution without following the state's statute on civil commitment. See Section 316(d). There may be similar requirements regarding a guardian's consent to electroconvulsive therapy (ECT) or other shock treatment, experimental treatment, sterilization, forced medication with psychotropic drugs, or abortion.

The phrase "or divorce" in subsection (a)(5) is placed in brackets in recognition of the split among the jurisdictions over whether a guardian has power to initiate a divorce for the ward. Jurisdictions that do not allow the guardian to initiate a divorce generally base that policy on the very personal nature of marriage. Enacting states that have not yet addressed this issue should decide whether to give the guardian the power. Statutes dealing with the dissolution of marriage should be reviewed to determine whether this issue is addressed.

Consistent with the Act's encouragement of limited guardianship, subsection (a)(6) gives the guardian the power, if reasonable under the circumstances, to delegate certain decision making responsibility to the ward.

Subsection (b) provides the guardian with the authority to consent to the ward's adoption only on express authorization of the court. There may be circumstances when it would be appropriate for the ward, even though an adult, to be adopted by another.

SECTION 316. RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.

(a) A guardian is entitled to reasonable compensation for services as guardian

and to reimbursement for room, board, and clothing provided to the ward, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third party.

(c) A guardian, without authorization of the court, may not revoke a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)] of which the ward is the principal. If a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)] is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(d) A guardian may not initiate the commitment of a ward to a [mental health-care] institution except in accordance with the state's procedure for involuntary civil commitment.

Comment

Subsection (a) recognizes that a guardian has a right to reasonable compensation. The amount determined to be reasonable may vary from state to state and from one geographical area to another within a state. In addition, factors to be considered by the court in setting compensation will vary. See the comments to Section 417 for a thorough discussion on the factors to be considered by the court in determining compensation.

If there is a conservator appointed, the conservator, without the necessity of prior court approval, may pay the guardian reasonable compensation as well as reimburse the guardian for

room, board and clothing the guardian has provided to the ward. However, if the court determines that the compensation paid to the guardian is excessive or the expenses reimbursed were inappropriate, the court may order the guardian to repay the excessive or inappropriate amount to the estate. See Section 417. If there is no conservator, the guardian must file a fee petition.

Under subsection (b), the guardian has no duty to use the guardian's personal funds for the ward. Nor is a guardian liable for the acts of a third person, including negligent medical care, treatment or service provided to the ward except if a parent would be liable in the same circumstances. The guardian is not liable, just by reason of being guardian, if the ward harms a third person. The guardian is liable only if personally at fault.

If the ward had made a power of attorney for health care, the guardian cannot revoke it without court order. Further, the agent's decision takes priority over that of the guardian unless the power of attorney has been revoked. For states which have enacted the Uniform Health-Care Decisions Act (1993), a "mental health-care institution" includes those institutions or treatment facilities defined in the state's version of that Act. Commitment by a guardian to a mental health-care institution may not occur without following the state's procedures for civil commitment. Although a guardian may not commit a ward to a mental health-care institution, the guardian may initiate proceedings in accordance with the state's applicable mental health care statutes for civil commitment, outpatient treatment, or involuntary medication for mental health treatment.

SECTION 317. REPORTS; MONITORING OF GUARDIANSHIP.

(a) Within 30 days after appointment, a guardian shall report to the court in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. A report must state or contain:

(1) the current mental, physical, and social condition of the ward;

(2) the living arrangements for all addresses of the ward during the reporting period;

(3) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

(4) a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

(5) if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;

(6) plans for future care; and

(7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(b) The court may appoint a [visitor] to review a report, interview the ward or guardian, and make any other investigation the court directs.

(c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

Comment

Under subsection (a), the report must contain the current mental, physical and social condition of the ward. Letters from the treating physician should accompany the report. Emphasizing the importance of limited guardianship, even if no limited guardian was appointed, subsections (a)(4), (6), and (7) require the guardian to report information regarding the ward's participation in decisions, future care plans and the need for continuing the guardianship. Compliance with subsection (a)(7) should not be read as relieving the guardian of the duty under Section 314(b)(5) to immediately notify the court that the ward's condition has changed.

Each state enacting the Act should establish a system for monitoring guardianships, which would include, but not be limited to, mechanisms for assuring that annual reports are timely filed and reviewed. An independent monitoring system is crucial for a court to adequately safeguard against abuses in the guardianship cases. Monitors can be paid court personnel, court appointees or volunteers. For a comprehensive discussion of the various methods for monitoring guardianships, see Sally Balch Hurme, Steps to Enhance Guardianship Monitoring (A.B.A.1991).

The National Probate Court Standards also provide for the filing of reports and procedures for monitoring guardianships. See National Probate Court Standards, Standards 3.3.14 "Reports by the Guardian," and 3.3.15 "Monitoring of the Guardian" (1993). The National Probate Court Standards additionally contain recommendations relating to the need for periodic review of guardianships and sanctions for failures of guardians to comply with reporting requirements. See National Probate Court Standards, Standards 3.3.16 "Revaluation of Necessity for Guardianship," and 3.3.17 "Enforcement."

SECTION 318. TERMINATION OR MODIFICATION OF GUARDIANSHIP.

(a) A guardianship terminates upon the death of the ward or upon order of the court.

(b) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward.

Comment

If the ward's condition changes so that the guardian believes that the ward is capable of exercising some or all of the rights that were previously removed, Section 314(b)(5) requires the guardian to immediately notify the court and not wait until the due date of the next report to be filed under Section 317.

Subsection (b) can be used by the court not only to terminate a guardianship but also to remove powers or add powers granted to the guardian.

Subsection (c) requires the court in terminating a guardianship to follow the same procedures to safeguard the ward's rights as apply to a petition for appointment of a guardian. This includes the appointment of a visitor and, in appropriate circumstances, counsel.

Although clear and convincing evidence is required to establish a guardianship, the petitioner need only present a prima facie case for termination. Once the petitioner has made out a prima facie case, the burden then shifts to the party opposing the petition to establish by clear and convincing evidence that continuation of the guardianship is in the best interest of the ward.

Given the constriction on rights involved in a guardianship, the burden of establishing a guardianship should be greater than that for restoring rights. In determining whether it is in the ward's best interest for the guardianship to continue, every effort should be made to determine the ward's wishes and expressed preferences regarding the termination of the guardianship. In determining the best interest of the ward, the ward's personal values and expressed desires should be considered.

To initiate proceedings under this section, the ward or person interested in the ward's welfare need not present a formal document prepared with legal assistance. A request to the court may always be made informally.

Unlike the 1982 UGPPA, this Act does not limit the frequency with which petitions for termination may be made to the court, preferring instead to leave that issue up to general statutes and rules addressing court management in general. Compare UPC Section 5-311(b) (1982).

Termination of the guardianship does not relieve the guardian of liability for prior acts. See Section 112.

ARTICLE 4
PROTECTION OF PROPERTY OF PROTECTED PERSON

SECTION 401. PROTECTIVE PROCEEDING. Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this [article] in relation to the estate and affairs of:

(1) a minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

(2) any individual, including a minor, if the court determines that, for reasons other than age:

(A) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(B) by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

Comment

This section sets out the basic standard for appointment of a conservator or entry of another protective order. Paragraph (1) states the standard for minors for orders entered by reason of the minor's age. Paragraph (2), while principally focused on the standard for adults, also applies to a protective order entered for a minor for reasons other than the minor's age. A

conservatorship created for a minor for reasons other than age need not terminate at age eighteen. See Section 431(a).

This section continues the emphasis on limiting assistance expressed in Article 3 by providing that conservatorship includes both limited and unlimited conservatorships. This Article, like Article 3, encourages the court to appoint a limited conservator whenever possible.

Note the differing evidentiary standards contained in subparagraphs (A) and (B) of paragraph (2). Paragraph (2) establishes a two-part test for the entry of a protective order for an adult, or for a minor for reasons other than age. First, unless it is alleged that the respondent is missing or is an absentee or detainee, the petitioner must show by clear and convincing evidence that the respondent has an impairment and that as a result of the impairment, the respondent is unable to manage the respondent's property and business affairs even with appropriate technological assistance. In addition, the petitioner must show, by a preponderance of evidence, that the respondent's property will be dissipated or wasted without management, or that money is needed to care for the respondent or those entitled to the respondent's support and that protection is needed to provide or receive the money. Under paragraph (2), the requisite impairment for the appointment of a conservator or entry of another protective order is similar to the test for the appointment of a guardian, which relies on the definition of "incapacitated person." See Section 102(5).

Under paragraph (2)(A), if appropriate technological assistance is available to meet the respondent's needs, then no conservatorship may be established or other protective order entered. The drafting committee discussed whether to put any modification or limitation on the technological assistance, such as that which is reasonably available or a limitation on availability based on cost. Given the importance of the respondent's rights, the committee decided to reject any modification or limitation whatsoever on the required consideration of technological assistance. Therefore, if appropriate technological assistance exists that can meet the respondent's needs, regardless of the cost, then that assistance must be treated by the court as meeting the respondent's identified needs by a less restrictive means, and the petition for a protective proceeding must be denied.

This section is based on UGPPA (1982) Section 2-301 (UPC Section 5-401 (1982)).

SECTION 402. JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON. After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservatorship or other protective order;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

Comment

While a majority of all proceedings involving a conservatorship will be held in the court supervising the conservatorship, third parties may bring suit against the conservator or protected person in other courts to determine the validity of claims and questions of title concerning estate assets. For the procedures for filing claims against a conservatorship, see Section 429.

The source of this section is UGPPA (1982) Section 2-302 (UPC Section 5-402 (1982)) with slight changes.

SECTION 403. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.

(a) The following may petition for the appointment of a conservator or for any other appropriate protective order:

(1) the person to be protected;

(2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or

(3) a person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

(b) A petition under subsection (a) must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the

respondent and the relief requested:

(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;

(2) if the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;

(3) if the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;

(4) the name and address of the respondent's:

(A) spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and

(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;

(5) the name and address of the person responsible for care or custody of the respondent;

(6) the name and address of any legal representative of the respondent;

(7) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(8) the reason why a conservatorship or other protective order is in the best interest of the respondent.

(c) If a conservatorship is requested, the petition must also set forth to the extent known:

(1) the name and address of any proposed conservator and the reason why the proposed conservator should be selected;

(2) the name and address of any person nominated as conservator by the respondent if the respondent has attained 14 years of age; and

(3) the type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

Comment

This section lists the information that must be contained in the petition for appointment of a conservator or other protective order. Although subsection (a) allows a petition for appointment to be filed by the person to be protected, the court should scrutinize such a petition closely to confirm that the petition is truly voluntary and that the petitioner has the requisite capacity to file a petition. Normally in such a case it would be better for the individual to execute a durable power of attorney instead of utilizing the more invasive conservatorship.

Subsection (a) specifically provides that a petition for appointment of a conservator or other protective order may be filed by the respondent's guardian. The process for appointing a guardian is more detailed than the appointment of a conservator because of the rights involved and because other mechanisms are available to protect the respondent's property besides a conservatorship. However, in many cases a conservatorship may also be necessary, and so it is incumbent on a guardian to determine whether there is a need for a conservatorship, and if so, petition for an appointment.

Subsections (b)(4)-(6) require that the petition list family members and others who may have information useful to the court and to whom notice of the proceeding must be given under Section 404(b). These persons will likely also have the greatest interest in protecting the respondent and in making certain that the proposed conservatorship is appropriate.

Subsection (b)(4)(A) requires that the petition contain the name and address of the spouse or, if none, then an adult with whom the respondent has resided for more than six months before the petition was filed. Included among the persons with whom the respondent may have resided are a domestic partner and companions. Note that there is no requirement that the respondent have resided with the other person for more than six months *immediately prior* to the filing of the petition, just that the requirement has been met at some point in time before the petition was filed. In applying this provision, the court should keep the purpose of this provision in mind-to obtain a list of person who likely have a significant interest in the respondent's welfare. Courts should use a reasonableness standard so that the petitioner does not have to give the name of every person the respondent has resided with in the respondent's entire life and whose current interest in the respondent may be quite remote. Also, in interpreting what is meant by "resided," the closeness of the relationship to the respondent should be taken into account.

Courts should consider whether they wish to exclude persons providing care for a fee from the class of persons with whom it is considered that the respondent resided. This would limit the application of subsection (b)(4)(A) to individuals with whom the respondent has a close personal relationship, a relative, or to a domestic partner or companion, and would eliminate a professional relationship such as that of a housekeeper, landlord, or owner of a board and care facility.

The drafters originally used the language "domestic partner or companion," and intended to limit the application of subsection (b)(4)(A) to the spouse, domestic partner or companion, but at the 1997 Annual Meeting of the Uniform Law Commissioners where this Act was finalized, this phrase was replaced by the phrase "adult with whom the respondent has resided for more than six months." The intent behind this amendment was not to substantially broaden the concept but only to expand it to include other individuals who have had an enduring relationship with the respondent for at least a six-month period and who, because of this relationship, should be given notice.

Subsection (b)(4)(B) requires the names and addresses of the respondent's adult children or, if none, parent and adult brothers and sisters or, if none, a relative of the nearest degree in which a relation can be found. However, if there are several adults of equal degree of kinship to the respondent, the name and address of one is all that is required, rather than the names and addresses of the members of the entire class.

Under subsection (b)(6), if the respondent has a legal representative, the representative's name and address must be included in the petition. A "legal representative" is defined in Section 102(6). Notice to such a representative, as required by Section 404(b), is especially critical for ascertaining whether a conservatorship or other protective order is really necessary. For example, should a conservator have already been appointed elsewhere or the respondent have executed a durable power of attorney with authority in the agent to make financial decisions, the court may conclude that there may be no need for it to appoint a conservator.

Subsection (b)(7) requires the petitioner to make a general statement of the respondent's property, including an estimated value, insurance and pension information and information about other anticipated income or receipts. This information should be as detailed as possible to enable the visitor to better complete the report required by Section 406, and to enable the court to

determine whether a protective order is really needed.

Subsection (c)(3) emphasizes the importance of limited conservatorship, the encouragement of which is a major theme of the Act. The petitioner must state in the petition why a limited conservatorship is not sufficient when requesting an unlimited conservatorship. If a limited conservatorship is requested, the petition must set out the property requested to be placed under the conservator's control.

This section differs slightly from the National Probate Court Standards, Standard 3.4.1, "Petition" (1993), which also requires that a petition for conservatorship include a description of the respondent's functional limitations and a statement that less intrusive alternatives have been considered.

This section is based on UGPPA (1982) Section 2-304 (UPC Section 5-404 (1982)).

SECTION 404. NOTICE.

(a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent must be made by [substituted service] [or] [publication]. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.

(c) Notice of the hearing on a petition for an order after appointment of a

conservator or making of another protective order, together with a copy of the petition, must be given to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(d) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the inventory, report, or plan of conservatorship.

Comment

Personal service of the petition and notice of hearing on the respondent is required, unless the respondent is missing or personal service cannot be made, in which event the state's method for substituted service must be used. A failure to serve the respondent is jurisdictional, as is a notice that does not substantially comply with the requirements of subsection (a). Where appropriate, the court should hold the hearing where the respondent is located. If the respondent's presence is impossible because the respondent is missing or absent, then the court should excuse the respondent's presence.

Subsection (b) requires that notice of hearing be given to the people listed in the petition but failing to give notice to those listed (other than the respondent) is not jurisdictional.

Subsection (c) addresses the notice requirements for hearings on petitions for orders after the establishment of the conservatorship. The protected person and the conservator as well as anyone else the court directs, must be given copies of the notice of hearing and a copy of any petition. This provision, along with subsection (d), requiring that the protected person be given a copy of the conservator's plan, report, and inventory and a copy of the notice of filing, ensures that the protected person is kept informed of developments.

This section should be read in conjunction with Section 113, which requires that notice be given at least 14 days prior to the hearing unless the court or other provisions of UGPPA establish a different time period.

National Probate Court Standards, Standard 3.4.7, "Notice" (1993), provides that the respondent must receive timely notice prior to the hearing on the conservatorship and that written notice should be in both plain language and in large type. The notice, at a minimum, must indicate the place and time of the hearing, the nature and consequences of the hearing as well as

the respondent's rights.

This section is based on UGPPA (1982) Section 2-305 (UPC Section 5-405 (1982)).

SECTION 405. ORIGINAL PETITION: MINORS; PRELIMINARIES TO HEARING.

(a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age.

(b) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the minor as may be required for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a [master] to assist in that task.

Comment

Subsection (a) gives the court the authority to appoint counsel for the minor at any stage of the proceeding. Subsection (b) allows the court to appoint a master to assist the court in preserving and appropriately applying the minor's property pending the hearing on the petition. The Act provides for the appointment of "masters" instead of either "emergency" or "special" conservators. The role of the master is to carry out only those tasks that are specifically ordered by the court. The terms "emergency" or "special conservator" seemed to be inappropriate because those terms imply that the person appointed would have all of the powers and duties of a conservator, which is a characterization that is too broad for the limited role contemplated. The word "master" is bracketed, recognizing that different states use different words to refer to the same position. The enacting state that uses a different word should substitute its own term.

This section is based on UGPPA (1982) Sections 2-306(a) and 2-307(b)(1) (UPC Sections 5-406(a) and 5-407(b)(1) (1982)).

SECTION 406. ORIGINAL PETITION: PRELIMINARIES TO HEARING.

(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court shall appoint a [visitor] unless the petition does not request the appointment of a conservator and the respondent is represented by a lawyer. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged.

Alternative A

(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(1) requested by the respondent;

(2) recommended by the [visitor]; or

(3) the court determines that the respondent needs representation.

Alternative B

(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding, regardless of the respondent's ability to pay.

End of Alternatives

(c) The [visitor] shall interview the respondent in person and, to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(2) if the appointment of a conservator is requested, inform the respondent

of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(d) In addition to the duties imposed by subsection (c), the [visitor] shall:

(1) interview the petitioner and the proposed conservator, if any; and

(2) make any other investigation the court directs.

(e) The [visitor] shall promptly file a report with the court, which must include:

(1) a recommendation as to whether a lawyer should be appointed to represent the respondent;

(2) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(3) a statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship;

(4) a recommendation as to whether a professional evaluation or further

evaluation is necessary; and

(5) any other matters the court directs.

(f) The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.

(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a [master] to assist in that task.

Legislative Note: *Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all protective proceedings should not enact subsection (e)(1).*

Comment

Alternative provisions are offered for subsection (b). Alternative A is the drafting committee's position. Alternative A relies on an expanded role for the "visitor," who can be chosen or selected to provide the court with advice on a variety of matters other than legal issues. Appointment of a lawyer, nevertheless, is *required* under Alternative A when the court determines that the respondent needs representation, or counsel is requested by the respondent or recommended by the visitor.

Alternative B is derived from UGPPA (1982) Section 2-306 (UPC Section 5-406 (1982)). It is expected that in states enacting Alternative A of subsection (b), counsel will be appointed in most of the cases. However, the A.B.A. Commission on Legal Problems of the Elderly attached great significance to expressly making appointment of counsel "mandatory." Therefore, for states which wish to provide for "mandatory appointment" of counsel, Alternative B should be enacted.

In Alternative A for subsection (b), then, appointment of counsel for an unrepresented respondent is mandated when requested by the respondent, when recommended by the visitor, or when the court determines the respondent needs representation. This requirement is in accord with the National Probate Court Standards. National Probate Court Standards, Standard 3.4.5 "Appointment of Counsel"(1993), like subsection (b) of this section, provides for appointment of counsel in a conservatorship proceeding when the unrepresented respondent requests it, the visitor recommends it, the law otherwise requires it, or the court determines that the respondent needs representation.

The drafting committee for this Act debated at length whether to mandate appointment of counsel or to expand the role of the visitor. The drafting committee concluded that as between the two, the visitor may be more helpful to the court in providing information on a wider variety of issues and concerns, by acting as the eyes and ears of the court as well as determining the respondent's wishes and conveying them to the court. The committee was concerned that including mandatory appointment of counsel would cause many to view this Act as a "lawyer's bill" and thus severely handicap the Act's acceptance and adoption. It is the intent of the committee that counsel for respondent be appointed in all but the most clear cases, where all are in agreement regarding the need for a conservatorship or protective order as well as the proposed conservator. For jurisdictions enacting Alternative A under subsection (b), the visitor needs to be especially sensitive to the fact that if the respondent is incapacitated, then the respondent may not have sufficient capacity to intelligently and knowingly waive appointment of counsel. A court should err on the side of protecting the respondent's rights and appoint counsel in most cases

Appointment of a visitor is mandatory when a conservatorship is sought for reasons other than minority even if the respondent is represented by a lawyer (subsection (a)), and regardless of which alternative is enacted under subsection (b). Only when the respondent is represented by counsel and the petitioner is seeking a protective order other than the appointment of a conservator is the appointment of a visitor waived. Although a lawyer, if qualified, may be appointed as a visitor, the attorney's role is that of a visitor and not that of an attorney for the respondent. The visitor serves as the information gathering arm of the court. The role of the attorney is to act as the respondent's advocate. See National Probate Court Standards, Standard 3.4.5(b) "Appointment of Counsel" (1993).

The role of a visitor in a conservatorship proceeding is addressed in NATIONAL PROBATE COURT STANDARD 3.4.4 "Court Visitor" (1993):

> The probate court should require a court appointee to visit with the respondent in a conservatorship petition to (1) explain the rights of the respondent; (2) investigate the facts of the petition; and (3) explain the circumstances and consequences of the action. The visitor should investigate the need for additional court appointments and should file a written report with the court promptly after the visit.

The visitor may be any qualified individual with "training or experience in the type of incapacity alleged." Under subsection (c), the visitor must visit the respondent in person and explain to the respondent a number of items, to the extent the respondent can understand. If the respondent does not have a good command of the English language, then the visitor should be accompanied by an interpreter. The drafters did not mandate that the visitor be able to speak the respondent's primary language, but good practice and due process protections dictate the use of interpreters where needed for the respondent to understand. The phrase "to the extent that the respondent is able to understand" is a recognition that some respondents may be so impaired that they are unable to understand. If assistive devices are needed in order for the visitor to explain to the respondent in a manner necessary so that the respondent can understand, then the visitor should use those assistive devices.

Subsection (c)(4) puts the respondent on notice that if the respondent has an estate, costs and expenses are paid from the estate, including attorney's fees and visitor's fees. If there is an estate, those entitled to compensation would be paid from the estate. If there is no estate, those entitled to compensation will ordinarily be compensated by whatever process the enacting state has for indigent proceedings, such as from the county general fund, unless the enacting jurisdiction has made other arrangements. Payment is made pursuant to the procedures provided in Section 417.

If the relief sought is a protective order other than the appointment of a conservator, the visitor's powers and duties relate only to the relief sought in the protective order. When the relief sought is a conservatorship, the visitor has an expanded list of duties. The visitor's report must contain information and recommendations to the court regarding the appropriateness of the conservatorship, whether lesser restrictive alternatives might meet the respondent's needs, recommendations about further evaluations, powers to be given the conservator, and the appointment of counsel. The visitor's recommendation about the assets over which the conservator should be granted authority should also include a recommendation of the amount of the bond that should be required of the conservator. For states enacting Alternative A under subsection (b), if the visitor does not recommend that a lawyer be appointed, the reasons for this conclusion should be explained in the visitor's report.

States enacting this Act should consider developing a checklist for the items enumerated in subsection (e).

Subsection (f) authorizes the court to order a professional evaluation of the respondent when recommended by the visitor, requested by counsel, or the court otherwise believes it to be necessary. Subsection (g) authorizes the court to use a master to help in the preservation and application of the respondent's property while a petition for appointment of a conservator or other protective order is pending. For an explanation of why a "master" is appointed instead of a temporary conservator, see the comment to Section 405.

"Visitor" is bracketed in recognition that states use different words to refer to this position. States enacting this Act should insert the term used in their states.

If there is an estate, the visitor would be paid from it. If there is no estate, the visitor will ordinarily be compensated from the county general fund unless the enacting jurisdiction has made other arrangements. Payment is made pursuant to the procedures provided in Section 417.

This section is based on UGPPA (1982) Section 2-306 (UPC Section 5-406 (1982)).

SECTION 407. CONFIDENTIALITY OF RECORDS. The written report of a [visitor] and any professional evaluation are confidential and must be sealed upon filing, but are available to:

(1) the court;

(2) the respondent without limitation as to use;

(3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and

(4) other persons for such purposes as the court may order for good cause.

Comment

This section is new, although a number of states have a comparable provision. This section is designed to protect the respondent's privacy, but still make the records accessible when needed to any of the involved parties or to others on a showing of good cause. The drafting committee recognized that "watch-dog" groups, the media, and others can perform essential functions of deterring abuse and facilitating reform, and in drafting this provision balanced the need to protect the respondent's privacy with the need of others to access this information.

SECTION 408. ORIGINAL PETITION: PROCEDURE AT HEARING.

(a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the [visitor], and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

Comment

The provision requiring the conservator to attend the hearing is new, although based on a recommendation from National Probate Court Standards, Standard 3.4.8(c) "Hearing" (1993).

While the court may waive the proposed conservator's attendance for good cause, in all but the most unusual of circumstances the proposed conservator should be required to attend to give the court the opportunity to assess the conservator's qualifications for appointment and to make any other inquiry of the conservator that the court determines necessary. Additionally, the respondent's attendance is required unless excused for good cause or the respondent's attendance is impossible. The respondent has the right to take an active role in the proceeding.

There may be occasions when the court needs to hold the hearing at a location other than the court, if convenient to the respondent. The respondent may request that the hearing be closed, and if the respondent shows good cause, the court will close the hearing. Others may make a request to participate, which may be granted by the court without a hearing if the court finds that the respondent's best interest is served by the participation. The court's order granting the request to participate should indicate the extent participation will be allowed.

This section is based on subsections (d) and (e) of UGPPA (1982) Section 2-306 (subsections (d) and (e) of UPC Section 5-406 (1982)).

SECTION 409. ORIGINAL PETITION: ORDERS.

(a) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

(c) Within 14 days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained 14 years of age and is

not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

(d) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.

Comment

This section emphasizes the related concepts of least restrictive alternative and limited conservatorship, both of which accord with the philosophy of the Act that a conservator should be appointed only when necessary, and then with only those powers that are necessitated by the respondent's actual limitations. The court, in ordering the creation of the conservatorship, shall, in its order, grant the conservator only those powers that are absolutely essential for the conservator to exercise. The court, in its order, must also ensure that the protected person's self-reliance and independence are maximized.

In keeping with the concept of limited conservatorship, subsection (c) requires the guardian to provide the ward and all those persons given notice of the hearing a copy of the order of appointment along with a notice of the right to request a termination or a modification of the guardianship. This makes certain that those who were originally notified of the petition will also be notified of the results because they are the ones most likely to have a continuing interest in the protected person's welfare.

Per subsection (d), the fact that a conservator is appointed or another protective order is entered is not a determination of the protected person's incapacity under Article 3 for any other purpose.

This section is based on UGPPA (1982) Sections 2-306(f) and 2-307(a) and (d) (UPC Sections 5-406(f) and 5-407(a) and (d) (1982)).

SECTION 410. POWERS OF COURT.

(a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:

(1) with respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and

(2) with respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person which the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(b) Subject to Section 110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

Comment

Subsection (a) gives the court supervising a conservatorship all of the powers the protected person would have been able to exercise directly were the protected person of full capacity and the conservatorship or other protective order not in effect. While these powers may be exercised directly by the court, the powers will most often be exercised by a conservator without prior court approval. Sections 425 and 427 list distributive and administrative powers that a conservator may exercise without prior court approval. Section 411 lists powers, nearly all related to estate planning, that may be exercised only with prior court approval.

Subsection (a)(1) gives the court the power to protect the assets of a minor by withholding distribution from the minor on attainment of majority when continued supervision of the assets is needed. Before ordering such a continuation, however, the court must be convinced, for reasons other than the minor's age, that a basis exists under Section 401(2) for the appointment of a conservator or other protective order.

Subsection (b) authorizes the court at any time to limit the powers of the conservator, subject to any limitations contained in the letters of conservatorship. Formal procedures for enlarging or restricting the powers of a conservator are provided in Section 414. Such formal procedures *must* be utilized in order to grant a conservator additional powers. Such procedures *may* be utilized to limit the powers of a conservator previously granted, or the court may elect instead to proceed under this section. Per Section 110, any restrictions on the conservator's powers must be endorsed on the letters of conservatorship. Under Section 424(a), third persons are charged with knowledge of and subject to possible liability for failing to act in accordance with restrictions endorsed on the letters of office.

This section is based on UGPPA (1982) Sections 2-307(b) and 2-325 (UPC Sections 5-407(b) and 5-425 (1982)).

SECTION 411. REQUIRED COURT APPROVAL.

(a) After notice to interested persons and upon express authorization of the court, a conservator may:

(1) make gifts, except as otherwise provided in Section 427(b);

(2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(3) exercise or release a power of appointment;

(4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

(5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;

(6) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(7) make, amend, or revoke the protected person's will.

(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with [the state's statute for executing wills].

(c) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;

(2) possible reduction of income, estate, inheritance, or other tax liabilities;

(3) eligibility for governmental assistance;

(4) the protected person's previous pattern of giving or level of support;

(5) the existing estate plan;

(6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and

(7) any other factors the court considers relevant.

(d) Without authorization of the court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.

Comment

This section lists actions for which a conservator must obtain prior court approval. The actions for which court approval is required all relate to the protected person's estate plan. Except for the power to make, amend, or revoke the protect person's will, this section duplicates the list of transactions found at UGPPA (1982) Section 2-307(b)(3) (UPC Section 5-407(b)(3)(1982)). The section should be read together with Section 418(d), which authorizes the conservator to examine the protected person's estate planning documents.

The power to make, amend, or revoke the protected person's will is taken from the California and South Dakota statutes. See Cal. Prob. Code Sections 2580, 6100.5(c), 6110(c); S. D. Codified Laws Ann. Section 29A-2-520. In subsection (b), the enacting jurisdiction should insert the citation for its statute on the execution requirements for ordinary attested wills. Subsection (b) follows the approach taken by the South Dakota statute. The other approach, followed by California, is to amend the statute on execution of wills to specifically allow execution by a conservator.

Pursuant to subsection (c), decisions by the conservator under this section must be based

primarily on the decision that the protected person would have made, if of full capacity. The protected person's personal values and expressed desires, past and present, are to be considered when making decisions. Carrying out the protected person's intent or probable intent is a major theme of this Act. In this regard, the Act probably confirms what is already the law. Even in the absence of a statute, the conservator should consider the protected person's probable wishes, particularly with respect to gifts and other estate planning related transactions. For an overview of the history of this judicially-created doctrine and a sampling of representative cases, see Restatement (Third) of the Law of Trusts, § 11, reporter's note to cmt. f (Tentative Draft No. 1, 1996). The authority of a court to authorize a conservator to engage in estate planning related transactions is also expressly confirmed by statute in a majority of states.

While not so limited, the authority confirmed by this section will most often be used to minimize tax liabilities. For example, by making annual exclusion gifts, the federal estate tax liability at the protected person's death may be substantially reduced. Also quite valuable is the ability, with court approval, to amend the protected person's estate planning documents. For example, failures to meet the technical requirements for the federal estate tax marital or charitable deduction can be corrected.

This section can also be used for non-tax transactions. Transfers may be made to qualify the protected person for governmental programs, or the court may continue the protected person's prior pattern or giving to charities and others. Per Section 427(b), court approval is required for gifts exceeding 20% of the estate's annual income.

Under subsection (d), prior court approval is required before a conservator may revoke or amend the protected person's durable power of attorney. Also, if a durable power of attorney is in effect, the decision of the agent takes precedence over that of the conservator, absent a court order to the contrary. The purpose of this provision is to make certain that the court has been made aware of the durable power of attorney and has determined that the power should be revoked. For this reason, the petition for the appointment of a conservator must state whether the respondent has executed a power of attorney and list the name and address of the agent, if known. Also, the agent must be given notice of the proceeding. See Sections 403(b)(6) and 404(b).

The persons who must be given notice of hearing on a petition under this section are as determined under Section 404(c), which prescribes the notice requirements for petitions for orders subsequent to the appointment of a conservator. Notice of the hearing, together with a copy of the petition, must be given to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

Both California and South Dakota have enacted more specific notice requirements with respect to their statutes authorizing conservators, with court approval, to engage in a variety of estate planning related transactions. California requires that notice be given to the conservator, the conservatee, the conservatee's spouse, any person who has made a request for special notice, any other persons required to be named in a petition for the appointment of a conservator, and, so far as known to the petitioner, the conservatee's heirs and beneficiaries under any purported

wills. Cal. Prob. Code Sections 1460, 2581. South Dakota requires notice to the protected person, to the beneficiaries of the protected person's estate plan, to the protected person's presumptive heirs and, if known, to any attorney or financial advisor who advised the protected person within the previous five years. Should the petition request amendment or revocation of a trust or the protected person's will, notice must also be given to the trustee and the nominated executor. See S.D. Codified Laws Section 29A-5-420.

Subsection (a) of this section is based on UGPPA (1982) Section 2-307(b) (UPC Section 5-407(b) (1982)). Subsections (b)-(d) are new.

SECTION 412. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.

(a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

(1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

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

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

(C) purchase of an annuity;

(D) making a contract for life care, deposit contract, or contract for training and education; or

(E) addition to or establishment of a suitable trust[, including a trust created under the Uniform Custodial Trust Act (1987)]; and

(2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction

under this section, the court shall consider the factors described in Section 411(c).

(c) The court may appoint a [master] to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The [master] has the authority conferred by the order and shall serve until discharged by order after report to the court.

Comment

Consistent with the philosophy of the Act that a conservator be appointed only as a last resort, this section authorizes the court, in lieu of appointing a conservator, to order a variety of less intrusive "protective arrangements." A protective arrangement typically involves a single transaction such as a sale of land or the entry of a contract for care. The procedure for obtaining a protective arrangement is similar to that required for the appointment of a conservator. A petition must be filed (Section 403), notice must be given to those listed in the petition (Section 404), the court must appoint a visitor unless the respondent is represented by counsel and the relief sought is a protective proceeding (Section 406(a)), and the court must appoint a lawyer for the respondent if requested by the respondent, if recommended by the visitor, or if the court determines that the respondent needs representation (Alternative A of Section 406(b)), or if otherwise required by statute (Alternative B of Section 406(b)). The procedure to be followed at the hearing is also identical. Sections 408 and 409. At the hearing, the court, applying the standards of Section 401, must determine that a basis for the protective order exists. Finally, the protective arrangement ordered must be consistent with the least restrictive order consistent with the court's findings. Section 409(b).

While the guardianship and conservatorship statutes of many states do not specifically authorize protective arrangements, such arrangements are often ordered, usually under the guise of a temporary or emergency conservatorship. This Act deliberately avoids the use of emergency conservatorships and allows the appointment of a temporary conservator only as a replacement for a conservator who holds a regular appointment. See Section 414(a)(4). The act instead prefers the less intrusive and more precisely defined protective arrangement. But to effectuate a protective arrangement under this section, the temporary appointment by the court of someone to implement the protective arrangement will often be required. To avoid the implication that such appointee is a type of conservator, the Act provides for the appointment of "masters" instead of either "emergency" or "special" conservators. The role of the master is to carry out only those tasks that are specifically ordered by the court. The drafting committee concluded that the terms "emergency" or "special" conservator were inappropriate because they imply that the person appointed would have all of the powers and duties of a conservator, which is much too broad a characterization of the limited role contemplated. The word "master" is bracketed, recognizing that different states use different words to refer to the same position. The enacting state that uses a different word should substitute its own term.

Under subsection (a)(2), the settlement of a claim includes the settlement of a personal

injury lawsuit brought on behalf of the minor. One of the more important protective arrangements listed in subsection (a)(1), and also in the 1982 UGPPA, is the authority to enter into a contract for life care.

This section is based on UGPPA (1982) Section 2-308 (UPC Section 5-408 (1982)).

SECTION 413. WHO MAY BE CONSERVATOR: PRIORITIES.

(a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

(1) a conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 14 years of age and at the time of the nomination had sufficient capacity to express a preference;

(3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney;

(4) the spouse of the respondent;

(5) an adult child of the respondent;

(6) a parent of the respondent; and

(7) an adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(c) With respect to persons having equal priority, the court shall select the one it

considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(d) An owner, operator, or employee of [a long-term care institution] at which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

Comment

This section gives top priority for appointment to existing conservators appointed elsewhere, to the respondent's nominee for the position, and to the respondent's agent, in that order. Existing conservators are granted a first priority for two reasons. First, many of these cases will involve transfers of a conservatorship from another state. To assure a smooth transition, the currently appointed conservator appointed in this state or another should have the right to the appointment at the new location. Second, many cases may involve situations where a conservatorship appointment is sought despite the appointment in another place. Granting the existing conservator priority will deter such forum shopping. Should the existing conservator be inappropriate for some reason, subsection (c) permits the court to skip over the existing conservator and appoint someone with lower priority or even no priority.

A conservator or individual nominated by the respondent or the agent named in the respondent's durable power of attorney has priority for appointment over the respondent's relatives. The nomination may include anyone nominated orally at the hearing, if the respondent has sufficient capacity at the time to express a preference. The nomination may also be made by separate document. While it is generally good practice for an individual to nominate as conservator the agent named in a durable power of attorney, the section grants such an agent a preference in the absence of a specific nomination. The agent is granted preference on the theory that the agent is the person the respondent would most likely prefer to act. The nomination of the agent will also make it more difficult for someone to use a conservatorship to thwart the agent's authority. To assure that the agent will be in a position to assert his priority, Section 404 (b) requires that the agent receive notice of the proceeding. Also, until the court has acted to approve the revocation of that authority, Section 411(d) provides that the authority of an agent takes precedence over that of the conservator.

Subsection (a)(7) gives a seventh-level preference to a domestic partner or companion or an individual who has a close, personal relationship with the respondent. Note there is no requirement that the respondent have resided with the other person for more than six months *immediately prior* to the filing of the petition, just that the requisite residency have occurred at some point in time before the petition is filed. Courts should use a reasonableness standard in applying this subsection so that priority is given to someone with whom the respondent has had a close, enduring relationship. For factors to consider in making this determination, see the

detailed comment to Section 403.

While this section substantially overlaps with Section 310, the comparable provision on selection of guardians, there are some differences. For example, Section 310 denies a priority to an emergency or temporary guardian, but this section does not expressly deny a priority for appointment to an emergency or temporary conservator appointed in another state. But the failure in subsection (a)(1) to expressly exclude these categories of conservator does not mean that they enjoy a priority for appointment. Unlike the case with guardians, emergency or temporary conservators are not included within the definition of "conservator" found in Section 102(2).

Subsection (d) prohibits anyone affiliated with a long-term care facility at which the respondent is receiving care from being appointed as conservator absent a blood, marital or adoptive arrangement. Strict application of this subsection is crucial to avoid a conflict of interest and to protect the protected person from potential financial exploitation. Each state enacting this Act needs to insert the particular term or terms used in the state for facilities considered to be long-term care institutions.

National Probate Court Standards, Standard 3.4.11 "Qualifications and Appointments of Conservators" (1993), recognizes that the court should appoint as conservator one who is both willing and suitable to manage the respondent's finances and property, based on the nature of the respondent's estate and the respondent's incapacity. The standard provides a preference in appointment to one known by, related to, or requested by the respondent.

This section is based on UGPPA (1982) Section 2-309 (UPC Section 5-409 (1982)).

SECTION 414. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

(a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:

(1) requiring bond or collateral or additional bond or collateral, or reducing bond;

(2) requiring an accounting for the administration of the protected person's estate;

(3) directing distribution;

(4) removing the conservator and appointing a temporary or successor conservator;

(5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or

(6) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.

(c) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.

Comment

Once a conservator has been appointed, the court supervising the conservatorship will ordinarily act only following the request of some moving party. This section lists the most common types of petitions. Subsection (a)(6) allows for petitions for "other appropriate relief" to be brought.

It is essential that the protected person have the right to petition for appropriate relief. While such a petition was not forbidden under the 1982 UGPPA, neither was it expressly authorized. The lead-in language to subsection (a) has been revised to clarify that a petition may be filed by the protected person.

While a limited conservatorship should be ordered, whenever feasible, at the time of the original appointment, such appointments may also be made at a later date. Perhaps the possibility of a limited conservatorship was not even considered, or perhaps the protected person's situation has improved to the point that a limited conservatorship is now realistic. Also, even when a limited conservatorship is ordered in the first instance, it is sometimes necessary to grant the conservator additional powers or control over additional property. Subsection (a)(5), which is new, authorizes petitions to increase or decrease the powers granted to the conservator or property subject to the conservatorship. Should a request for increased powers require additional proof of the protected person's impairment, such impairment must be proved by clear and convincing evidence. See Section 401(2)(A).

This section is based on UGPPA (1982) Section 2-315 (UPC Section 5-415 (1982)).

SECTION 415. BOND. The court may require a conservator to furnish a bond

conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the court, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

Comment

Bond for a conservator is required under this Act only if ordered by the court. The bond may be set pursuant to an order entered on the court's own motion or a petition by the protected person or an individual interested in the protected person's welfare. The bond should be in an amount adequate to guard against financial exploitation of the protected person's assets by the conservator. The statute assumes the amount will normally equal the value of the estate plus one year's estimated income. The court is free, however, to set either a lesser or greater amount. The bond should be adequate in all cases, even in cases where the well-meaning relative or friend is appointed as conservator.

Bond may be ordered either at the time of the original appointment or at any later time. The bond requirements for conservators in this section are somewhat more strict than those for personal representatives under Article III, Part 6 of the UPC. Under the UPC, a personal representative usually need file a bond only if an interested person makes a demand.

While this section does not specify factors for the court to consider in deciding whether to require bond, some of the states have enacted such lists. For example, the South Dakota statute requires the court to consider the following factors in determining the necessity for or amount of a conservator's bond: (1) the value of the personal estate and annual gross income and other receipts with the conservator's control; (2) the extent to which the estate has been deposited under an arrangement requiring an order of court for its removal; (3) whether an order has been entered waiving the requirement that accountings be filed and presented or permitting accountings to be filed less frequently than annually; (4) the extent to which the income and receipts are payable directly to a facility responsible for or which has assumed responsibility for the care or custody of the minor or protected person; (5) whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and (6) whether the conservator was appointed pursuant to a nomination which requested that bond be waived. See S.D. Codified Laws Section 29A-5-111.

This section is based on UGPPA (1982) Section 2-310 (UPC Section 5-410 (1982)).

SECTION 416. TERMS AND REQUIREMENTS OF BOND.

(a) The following rules apply to any bond required:

(1) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.

(2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.

(3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.

(4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.

(b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

Comment

This section specifies various technical requirements that apply when bond is required. The cost of the bond is payable from the protected person's estate.

This section is based on UGPPA (1982) Section 2-311 (UPC Section 5-411 (1982)).

SECTION 417. COMPENSATION AND EXPENSES. If not otherwise compensated for services rendered, a guardian, conservator, lawyer for the respondent, lawyer whose services

resulted in a protective order or in an order beneficial to a protected person's estate, or any other person appointed by the court is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order. If the court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate.

Comment

This section establishes a standard of reasonable compensation for both guardians and conservators as well as for the respondent's lawyer and any one else appointed by the court in a guardianship or protective proceeding. Factors to be considered by the court in setting compensation will vary depending on the professional or fiduciary role filled by the person making the request. Rates of compensation may also vary from state to state and at different locales within particular states.

This section is derived from UGPPA (1982) Section 2-313 (UPC Section 5-413 (1982)), but a number of matters left open in the prior version now have been addressed. First, guardians are expressly added to the list of those who are entitled to compensation from the estate. Previously, the guardian's right to compensation was mentioned only in Articles 2 and 3. See Sections 209(a), 316(a). Second, the section sets out more clearly which lawyers are entitled to compensation. The respondent's lawyer, as well as the lawyer whose services resulted in a protective order or any other order of benefit to the estate are entitled to compensation and reimbursement for costs advanced. For example, a lawyer whose services resulted in the removal of an abusive conservator might be entitled to compensation under this provision. Third, while compensation may be paid from the estate without court order, excessive or inappropriate payments must be repaid to the estate.

While the size of the estate is an important factor in setting compensation, in many cases there will be no estate or the estate will not be sufficient to pay the costs of the initial proceeding. In that event the court, without appointing a conservator, may simply divide the estate among those entitled to compensation or reimbursement. Sections 305 and 406 require a visitor to inform the respondent that attorney's fees and other expenses of the proceeding will be paid from the respondent's estate. If the respondent is found to be indigent, compensation and expenses authorized by this section typically will be paid from the general fund of the county, or from whatever funding exists in the enacting state for indigent representation, such as legal aid, with the compensation most likely at a fixed rate.

For a list of factors relevant in determining a conservator's compensation, see Restatement (Third) of Trusts § 38 cmt. c (Tentative Draft No. 2, 1999). Among the factors listed are skill, experience and time devoted to duties; the amount and character of the property; the degree of difficulty; responsibility and risk assumed; the nature and cost of services rendered by others; and the quality of the performance. See also Restatement (Second) of Trusts § 242

(1959). In setting compensation, the services actually performed and responsibilities assumed by the conservator should be closely examined. For example, an adjustment in compensation may be appropriate if the conservator had delegated significant duties. On the other hand, a conservator with special skills, such as those of a real estate agent, may be entitled to extra compensation for performing services that would ordinarily be delegated. See Restatement (Third) of Trusts § 38 cmt. f (Tentative Draft No. 2, 1999).

The standard of reasonable compensation also applies if the estate has multiple conservators. The mere fact that the estate has more than one conservator does not mean that the conservators together are entitled to more compensation than had either one acted alone. Nor does the appointment of multiple conservators mean that the conservators are eligible to receive the compensation in equal shares. The total amount of the compensation to be paid and how it should be divided depend on the totality of the circumstances. Factors to be considered include the court's reasons for appointing multiple conservators and the level of responsibility assumed and exact services performed by each.

This section authorizes the payment of compensation from the respondent's estate even if no guardian or conservator is appointed or other protective order entered. Those entitled to compensation in that case are persons appointed by the court in connection with the proceeding, including the visitor, the respondent's lawyer, and the doctor or other professional appointed to perform an evaluation. However, other law in the enacting jurisdiction may grant the respondent a right to reimbursement should the petition be totally without merit.

A guardian or conservator acting as a representative payee of the ward's or protected person's Social Security benefits may not be paid a fee from Social Security funds. Both Titles II and XVI of the Social Security Act limit the use of the funds to basic necessities. The only time that a fee may be taken is if the guardian or conservator is an "organizational payee" approved by the Social Security Administration.

SECTION 418. GENERAL DUTIES OF CONSERVATOR; PLAN.

(a) A conservator, in relation to powers conferred by this [article] or implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.

(b) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.

(c) Within 60 days after appointment, a conservator shall file with the appointing

court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan must be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections of expenses and resources.

(d) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.

Comment

This section reflects the dual role of a conservator. On the one hand, a conservator is a fiduciary charged with management of another's property. Consequently, subsection (a) requires a conservator to observe the standard of care applicable to trustees. On the other hand, a conservator, like a guardian, also owes obligations directly to the protected person, obligations emphasized in subsection (b). Subsection (b) emphasizes the concept of limited conservatorship by limiting the exercise of the conservator's authority and requiring the participation of the protected person in decision making. The conservator must encourage the participation of the protected person in decisions as well as encourage the protected person to develop or regain the capacity to act without a conservator. Before making a decision, the conservator should also make an effort to learn the personal values of the protected person and ask the protected person about the protected person's desires. The conservator should be particularly cognizant of the views expressed by the protected person prior to the conservator's appointment.

Under subsection (c), the conservator must file a plan with the court within 60 days after appointment. In addition to plans for expenditures, investments, and distributions, the plan must list the steps that will be taken to develop or restore the protected person's ability to manage the person's property and an estimate of the length of the conservatorship. The filing of a plan will help the conservator perform more effectively and reduce the need to take action to recover improper expenditures. While a conservator need not request a hearing on the plan, Section 404(d) does require that the conservator, within 14 days after its filing, give notice of the filing of the plan to the protected person and any other person the court directs. Should those notified have concerns about the plan, a hearing on the plan may be requested pursuant to Section 414.

Subsection (c) of this section, and many of the sections in Article 4 which follow, are in

substantial part specific applications of the fundamental responsibilities stated in subsections (a) and (b), specifying subsidiary duties and the powers and immunities necessary to properly implement the conservator's role. Subsection (c) is derived from National Probate Court Standards, Standard 3.4.15 "Reports by the Conservator" (1993).

Subsection (d), contrary to at least some case law, allows a conservator access to and the right to examine the protected person's will and other documents comprising the protected person's estate plan. Such access is essential for the conservator to carry out the obligation, as stated in subsection (b), to consider the protected person's views when making decisions. For example, by allowing the conservator access to the estate plan, the risk of inadvertent sales of specifically devised property and the difficult ademption problems such sales often create may be avoided. Access to the estate plan also facilitates, where appropriate, the filing of a petition with respect to the protected person's estate plan as authorized by Section 411.

Subsection (a) is based on UGPPA (1982) Section 2-316 (UPC Section 5-416 (1982)), and subsection (d) on UGPPA (1982) Section 2-326 (UPC Section 5-426 (1982)). Subsections (b) and (c) are new.

SECTION 419. INVENTORY; RECORDS.

(a) Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person.

Comment

The time limit for the filing of the inventory has been reduced to 60 days from the 90 days provided in the 1982 UGPPA in order to coordinate with the filing of the conservatorship plan required by Section 418. While technically separate documents, the conservatorship plan and inventory should ideally be prepared in tandem, with the inventory providing backup data for the course of action recommended in the conservatorship plan.

The requirement in the 1982 UGPPA that the conservator provide certain individuals with a copy of the inventory has been revised and moved to Section 404(d). The conservator is no longer allowed to unilaterally decide whether the protected person is competent to understand the inventory and to withhold the protected person's copy. The inventory, like all other documents of which notice is required, must be provided to the protected person regardless of

competency.

This section is based on UGPPA (1982) Section 2-317 (UPC Section 5-417 (1982)).

SECTION 420. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.

(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.

(b) A report must state or contain:

(1) a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;

(2) a list of the services provided to the protected person; and

(3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(c) The court may appoint a [visitor] to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.

(d) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans.

Comment

Similar to previous versions, this section requires a conservator to periodically account except that the requirement to "account" has been changed to the requirement to "report." This change was made because a proper assessment of the conservator's performance requires more than the mere verification of receipts and disbursements. A conservator is more than a manager of property. To assess the conservator's compliance with the general duties stated in Section 418, the court must also determine whether the conservator has acted in accordance with the conservatorship plan, whether the conservator, to the extent feasible, has attempted to involve the protected person in decision making, and whether the conservatorship or its current scope is still appropriate.

The reporting requirements in this section are consistent with those in Section 317 for guardians of incapacitated persons. Enforcement of the reporting requirements under this section is a critical component of court oversight of conservatorships to prevent abuses. This includes the right of the court under subsection (a) to modify the reporting requirements as dictated by the circumstances of a specific conservatorship.

States are required under subsection (d) to establish a system for monitoring conservatorships, which would include, but not be limited to, mechanisms for assuring that annual reports are timely filed and reviewed. An independent monitoring system is crucial so that the court can adequately safeguard against possible abuses. Monitors can be paid court personnel, court appointees, or volunteers. For a comprehensive discussion of the various methods for monitoring conservatorships, see Sally Balch Hurme, Steps to Enhance Guardianship Monitoring (A.B.A. 1991). See also AARP VOLUNTEERS: A RESOURCE FOR STRENGTHENING GUARDIANSHIPS (AARP 1991).

States should also establish a plan for payment for the monitoring. In some states, the monitor may be a court employee or a volunteer. If the estate has sufficient funds to pay the monitoring fee, the estate should be charged accordingly. Only when an estate has insufficient assets to pay for monitoring should public funds be used to cover the cost of monitoring.

The National Probate Court Standards also provide for the filing of reports and procedures for monitoring conservatorships. See National Probate Court Standards, Standards 3.4.15 "Reports by the Conservator," and 3.4.16 "Monitoring of the Conservator" (1993). The National Probate Court Standards additionally contains recommendations relating to the need for periodic review of conservatorships and sanctions for failure of conservators to comply with reporting requirements. See National Probate Court Standards, Standards 3.4.17 "Revaluation of Necessity for Conservatorship," and 3.4.18 "Enforcement."

Subsection (a) of this section is derived from UGPPA (1982) Section 2-318 (UPC Section 5-418 (1982)). Subsections (b)-(d) are new.

SECTION 421. TITLE BY APPOINTMENT.

(a) The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.

(b) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(c) Subject to the requirements of other statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

Comment

Subsection (a) of this section should be read in conjunction with Section 409(d), which provides that the appointment of a conservator or entry of another protective order is not a determination of incapacity. Consequently, the appointment of a conservator under Article 4 does not itself affect the protected person's ability to enter into contracts or engage in other transactions. Instead, protection against possibly improvident contracts is provided by vesting in the conservator legal title to the protected person's assets, the same as if the conservator were acting as a trustee. This allows for administration of the property independent of the actions of the protected person except to the extent the conservator is required to consult with the protected person as required by Section 418. See Section 422 for possible remedies for third parties who deal with a protected person without knowledge of the conservatorship.

The order appointing a conservator does not necessarily vest title in the conservator to all assets of the protected person, but only to assets subject to the conservatorship. Should the order of appointment list the assets subject to the conservatorship, only title to those assets is transferred to the conservator. Ordinarily, in the absence of an order limiting the scope of the conservatorship, title to all of the protected person's assets will be transferred to the conservator. However, if the protected person has executed a durable power of attorney, title to assets within the agent's control are not transferred to the conservator until such time as the power of attorney

is revoked and the assets subject to the agency come within the conservator's control. See Section 411(d).

The appointment of the conservator gives the conservator the authority over the protected person's property, or, if a limited conservator, to that property specified in the court's order. The letters of conservatorship are evidence of the conservator's authority and can be recorded to give notice.

The phrase "other property" in subsection (c) refers only to property title to which is ordinarily transferred by delivery of possession.

This section is based on UGPPA (1982) Sections 2-319(a) and 2-320 (UPC Sections 5-419(a) and 5-420 (1982)), modified to delete the former language that title to assets subject to a power of attorney vests automatically in the conservator.

SECTION 422. PROTECTED PERSON'S INTEREST INALIENABLE.

(a) Except as otherwise provided in subsections (c) and (d), the interest of a protected person in property vested in a conservator is not transferrable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in Section 429.

(b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under Section 429.

(c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(d) A third party who deals with the protected person with respect to property

vested in a conservator is entitled to any protection provided in other law.

Comment

This section provides a spendthrift effect for property of the protected person vested in the conservator. The section, like Section 421, is designed to allow the estate to be administered with a minimum of interference, and to make clear that the conservator, with respect to the property of the conservatorship, occupies a role similar to that of a trustee. The section is also designed to protect the estate, and hence the protected person, against possibly abusive or improvident claims. But some significant exceptions are recognized to protect the rights of third parties. An attempted transfer or assignment by the protected person, while ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied pursuant to the claims procedure provided in Section 429. In addition, a creditor of the protected person, while forbidden to directly levy upon or garnish property held in the conservatorship, may be similarly entitled to relief under the claims procedures.

Subsection (c) addresses a special situation. While title to certain tangible personal property, such as an automobile, is transferred by means of a document of title, title to most tangible personal property is transferred simply by delivery of possession. Sales of such property are often casual, and purchasers do not usually inquire into the source of the seller's title. Upon the conservator's appointment, title to a protected person's tangible personal property, like title to the protected person's other assets, is transferred from the protected person to the conservator. But this transfer of title will normally not be known to a prospective purchaser, particularly if the tangible personal property is still in the protected person's possession. The effect of this subsection is to generally validate the title of such casual purchasers. The conservator may contest the purchaser's title only if the purchaser failed to pay full value, the purchaser knew of the conservatorship, or the purchaser, based on the circumstances, should have inquired into the conservatorship's existence.

Subsection (d) clarifies that this section does not supersede protections third parties may have under other law, such as under the statutes regulating commercial transactions.

Subsections (a) and (b) are based on subsections (b) and (c) of UGPPA (1982) Section 2-319 (subsections (b) and (c) of UPC Section 5-419 (1982)). Subsections (c) and (d) are new.

SECTION 423. SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST. Any transaction involving the conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal

and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

Comment

Transactions involving conservatorship assets entered into by the conservator or by persons with close business or personal ties to the conservator have the potential to be tainted by conflict of interest. Because of this serious risk, a transaction involving the conservatorship property entered into by the conservator or with persons having close ties to the conservator is voidable without further proof. But while this principle is well-established, the exact parameters of the principle are less certain. This section, which is based on comparable provisions of the UPC, articulates the doctrine with more precision. Compare UPC Section 3-713. Under this section, a transaction involving the conservatorship property which was entered into by the conservator or specified relatives or business associates of the conservator is presumed to be premised on an impermissible advantage based on conflict of interest. However, transactions involving conservatorship property with parties not on the list are not necessarily valid. While transactions involving other parties are not presumed to be invalid, a transaction may still be voided if it is proven that a substantial conflict between personal and fiduciary interests exists and that the transaction was affected by the conflict. Also, the fact that the transaction is voidable does not extinguish any action for breach of fiduciary duty or for damages, separate and apart from voiding the transaction. The section intentionally does *not* provide any limitation of time on when an action to void the transaction may be brought. Instead, a laches test will be applied.

Per Section 414, a petition to void a transaction may be filed either by the protected person or by any person interested in the protected person's welfare. Whether the court should grant or deny the petition will typically depend on the financial outcome of the conservatorship estate. Should the transaction have proven unprofitable to the conservator or related party, the court will likely allow the transaction to stand.

Conservators considering entering into transactions that might implicate this section should consider obtaining prior court approval. Under this section, a transaction is not voidable if approved by the court following notice to interested persons.

This section is based on UGPPA (1982) Section 2-321 of the 1982 Act (UPC Section 5-421 (1982)).

SECTION 424. PROTECTION OF PERSON DEALING WITH CONSERVATOR.

(a) A person who assists or deals with a conservator in good faith and for value in

any transaction other than one requiring a court order under Section 410 or 411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section 110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

Comment

The purpose of this section is to facilitate commercial transactions by negating the traditional duty of inquiry found under the common law of trusts. Even the third party's actual knowledge that the third party is dealing with a conservator does not require that the third party inquire into the possession of or propriety of the conservator's exercise of a power. Nor is the third party, contrary to the common law, responsible for the proper application of funds or property delivered to the conservator. But consistent with the emphasis on limited conservatorship, the protection extended to third parties is not unlimited. Third parties are charged with knowledge of restrictions on the authority of limited conservators. Pursuant to Section 110, any limitation on the assets subject to a conservatorship must be endorsed on the conservator's letters.

The protections provided by this section are of limited application. As provided in subsection (b), for many transactions this section will be superseded by statutes relating to commercial transactions, such as the Uniform Commercial Code.

For background on Section 7 of the Uniform Trustees' Powers Act, upon which this section is ultimately based, see Jerome H. Curtis, Jr., *Transmogrification of the American Trust*, 31 Real Prop. Prob. & Tr. J. 251 (1996).

This section is based on UGPPA (1982) Section 2-322 (UPC Section 5-422 (1982)).

SECTION 425. POWERS OF CONSERVATOR IN ADMINISTRATION.

(a) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this state.

(b) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

(1) collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest assets of the estate as though the conservator were a trustee;

(6) deposit money of the estate in a financial institution, including one operated by the conservator;

(7) acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock subscription or conversion rights;

(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

(19) borrow money, with or without security, to be repaid from the estate

or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(20) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(21) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:

(A) to the guardian of the distributee;

(B) to a distributee's custodian under [the Uniform Transfers to Minors Act (1983/1986)] or custodial trustee under [the Uniform Custodial Trust Act (1987)]; or

(C) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary

duties; and

(25) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

Comment

This section is based on UGPPA (1982) Section 2-323 (UPC Section 5-423 (1982)) with some changes. For example, the provision authorizing delegation is now stated as a separate section. See Section 426. Also, subsection (b)(23) is revised to expand the list of individuals to whom the conservator may pay sums otherwise distributable to the protected person. The list now includes custodians under the Uniform Transfers to Minors Act (1983/1986) and trustees under the Uniform Custodial Trust Act (1987). But the most significant change to this section is the deletion of the language of former subsection (a) that allowed a conservator of a minor to exercise the powers of a guardian without seeking formal appointment to that office.

While subsection (b)(7) authorizes a conservator to deal with real property located in another state, before disposing of the property in the other state, local law may require that the conservator have some contact with or supervision by a court in that state.

In recent years, structured settlements have become more common. While the term "structured settlement" is not expressly used in this section, subsection (b)(20) would authorize a conservator to enter into such an agreement. The court, by means of a protective arrangement, may also approve a structured settlement without appointing a conservator. See Section 412(a)(2).

SECTION 426. DELEGATION.

(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(b) The conservator shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;

(3) periodically reviewing an agent's overall performance and compliance

with the terms of the delegation; and

(4) redressing an action or decision of an agent which would constitute a breach of trust if performed by the conservator.

(c) A conservator who complies with subsections (a) and (b) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.

(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(e) By accepting a delegation from a conservator subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Comment

This new section is based on Section 9 of the Uniform Prudent Investor Act (1994), which itself was derived from the Restatement (Third) of Trusts: Prudent Investor Rule Section 171 (1992). The Uniform Prudent Investor Act (1994), despite its title, addresses more than investment of trust assets. It also covers a variety of topics, including delegation, relating to the general management of trusts. Section 9 of the Act is designed to replace Section 3(24) of the Uniform Trustee Powers Act (1964) on which the former delegation provision of this Act was based. Unlike UGPPA (1982) Section 2-323(c)(24) (UPC Section 5-423(c)(24)(1982)), which merely authorized delegation without specifying standards, this section subjects delegation to a standard of care.

The purpose of this section is to encourage and protect the trustee in making delegations appropriate to the facts and circumstances of the particular conservatorship. This section is designed to strike the appropriate balance between the advantages and hazards of delegation. The standard for whether a particular function is delegable by a conservator is whether it is a function that a prudent conservator might delegate under similar circumstances. This section does not mandate delegation or hold a conservator liable for failing to delegate. However, such liability may be imposed under some other section if the conservator, due to a failure to delegate, is unable to perform required duties. See, e.g., Section 418 (general duties of conservator).

This section applies to delegation both to agents and co-conservators. Whether a conservator may delegate to a co-conservator functions which may not be delegated to an agent and vice versa will depend on the facts and circumstances of the particular conservatorship.

Under subsection (b)(3), the duty to review the agent's performance includes the periodic

evaluation of the continued need for and appropriateness of the delegation, including the need to possibly terminate the relationship. The conservator's compliance with this duty should also protect the protected person against the risks of an overly broad delegation.

Although subsection (c) exonerates the conservator from personal responsibility for the agent's conduct when the delegation satisfies the standards of subsection (a), subsection (d) makes the agent responsible to the conservatorship.

SECTION 427. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.

(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to Section 418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:

(1) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.

(2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(3) In making distributions under this subsection, the conservator shall

consider:

(A) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;

(B) the accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and

(C) other money or sources used for the support of the protected person.

(4) Money expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year 20 percent of the income of the estate in that year.

Comment

This section sets forth a conservator's specific duties and powers with respect to ongoing distributions. Distributions upon termination of the conservatorship are addressed in Section 431. Special rules with respect to a termination due to the death of the protected person are covered in Section 428. Distributions under this section may be made without court authorization or confirmation.

This section is based on subsections (a) and (b) of UGPPA (1982) Section 2-324 (subsections (a) and (b) of UPC Section 5-424 (1982)) but with several changes. The categories for which distributions can be made have been expanded to include health and welfare. The authority to make distributions for the protected person's dependents has been clarified.

"Dependents" is not limited to dependents whom the protected person is legally obligated to support, but refers to individuals who are in fact dependent on the protected person, such as children in college and adult children with developmental disabilities. Child and spousal support payments are now specifically included within permitted distributions to dependents. Although Section 411 allows the making of a gift, it may only be done pursuant to court order. Under this section, a conservator may make a gift without court order if the gift meets the stated limitations.

SECTION 428. DEATH OF PROTECTED PERSON.

[(a)] If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.

[(b) If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to administer and distribute the decedent's estate. Upon application for an order conferring upon the conservator the powers of a personal representative, after notice given by the conservator to any person nominated as personal representative by any will of which the applicant is aware, the court may grant the application upon determining that there is no objection and endorse the letters of conservatorship to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative.

(c) The issuance of an order under this section has the effect of an order of appointment of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of the Uniform Probate Code]. However, the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the

conservator as personal representative.]

Comment

Subsection (a) lists the required duties of a conservator incident to the death of the protected person. The conservator must deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or a devisee named in the will that the will has been delivered, and retain the conservatorship estate for delivery to the personal representative or to another person entitled to it.

Subsections (b) and (c) address the particular problems that can arise if the estate beneficiaries fail to take action to appoint a personal representative for the protected person's estate. The conservator will then be unable to close the conservatorship because there is no "successor" to whom to deliver the protected person's assets. To enable the conservator to expeditiously close the conservatorship, this section specifies a streamlined process whereby the conservator can secure appointment as personal representative. These subsections are bracketed for several reasons. First, the enacting jurisdiction's probate code may already specifically address the right of the conservator to petition for appointment as personal representative or the right of the conservator to distribute the conservatorship assets directly to the estate beneficiaries. Second, subsections (b) and (c) are not essential and may be omitted if the enacting jurisdiction so chooses. Even though the state's statute may not specifically authorize a conservator to petition for appointment as personal representative, a conservator, like any other holder of a decedent's assets, may eventually take action to effect a distribution. Finally, subsection (b) is specifically tailored for states, such as states which have enacted the Uniform Probate Code, that allow the appointment of a personal representative without prior notice to the estate beneficiaries. For example, should the state enacting this Act have also enacted the UPC, the conservator-personal representative would be required to give notice of the appointment within 30 days. See UPC Section 3-705. States which require notice to interested persons prior to the appointment of a personal representative should modify subsection (b) accordingly.

This section is based on UGPPA (1982) Section 2-324(e) (UPC Section 5-424(e) (1982)).

SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIMS.

(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:

(1) sending or delivering to the conservator a written statement of the

claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(2) filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(1) costs and expenses of administration;

(2) claims of the federal or state government having priority under other law;

(3) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;

(4) claims arising before the conservatorship; and

(5) all other claims.

(e) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for payment of any or all claims at a future date.

Comment

This section provides a procedure for the expeditious payment and resolution of claims. Should the estate be insufficient to satisfy all claims, payment will be made in accordance with the priorities specified in subsection (d). Subsection (a) provides for the conservator's payment of appropriate claims and the method by which claims can be presented.

Subsection (d), which should be read in conjunction with the applicable bankruptcy law, is not intended to preclude the filing of a petition for bankruptcy if the protected person is otherwise eligible.

This section is based on UGPPA (1982) Section 2-327 (UPC Section 5-427 (1982)), which in turn was drawn from the claims procedure contained in Article III, Part 8 of the UPC, except that the priorities in subsection (d) are designed for a conservatorship as opposed to a decedent's estate. The principal update is to incorporate into this section a 1987 amendment made to UPC Section 3-806. The effect of this change is to clarify that a conservator may change an allowance of claim to a disallowance at any time prior to payment or court order. In addition, subsection (d)(3) has been revised to conform it to the revisions of the distribution standards under Section 427.

SECTION 430. PERSONAL LIABILITY OF CONSERVATOR.

(a) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate

unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.

[(e) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under Section 421.]

Comment

Subsection (a) is significant in that it provides that the conservator is generally *not personally liable* for contracts entered into as the conservator as long as the conservator discloses the representative capacity in the contract as well as identifies the estate. Liability in such cases is limited to the estate assets. But the conservator will be personally liable if the contract expressly so provides.

Subsection (b) reverses the common law rule that a conservator, as a fiduciary is liable for torts committed in the course of administering the conservatorship property regardless of the conservator's personal fault. The protection from liability provided by this subsection does not apply, however, if the conservator is "personally at fault," meaning that the conservator committed the tort either intentionally or negligently.

Subsection (c) confirms the intent of this section, that absent special agreement or other circumstances, a conservator is liable only in a representative capacity.

Subsection (e) is new, in recognition of the growing issue of environmental conditions on land that must be dealt with by the conservator. The effect of this subsection is to protect a conservator from possible liability due to the automatic transfer of title to the protected person's assets accruing upon the conservator's appointment pursuant to Section 421. For actions taken as conservator, the conservator's liability under state or federal environmental provision or regulation is generally limited to those assets held in the capacity as conservator. The conservator may be liable if the conservator's negligence causes or contributes to an environmental problem or potential environmental problem. Whether the conservator might be liable for actions or failures to act with respect to an environmental condition depends on both state and federal environmental regulations, including CERCLA (Comprehensive Environmental Response, Compensation and Liability Act), found at 42 U.S.C. § 9601 et seq.

This section is placed in brackets to signal to the enacting jurisdiction that it should expand on and conform the language of subsection (e) to whatever provisions it may have enacted with respect to liability of other types of fiduciaries for environmental conditions.

This section is based on UGPPA (1982) Section 2-328 (UPC Section 5-428 (1982)). This section, with the exception of subsection (e), is also similar to UPC Section 3-808 (personal representatives).

SECTION 431. TERMINATION OF PROCEEDINGS.

(a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.

(b) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors. The conservator shall file a final report and petition for discharge within [30] days after distribution.

(c) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to

account for funds and assets of the protected person.

(d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.

(e) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. The order of termination must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.

(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.

Comment

This section is new.

Termination of a conservatorship must be distinguished from termination of a particular conservator's appointment. For the provisions on termination of a conservator's appointment, see Section 112. This section does not apply to modification of a conservatorship, which is addressed in Section 414.

Upon termination of a conservatorship, a conservator is not entitled to an order of discharge until the court approves the conservator's final report. A "report" in subsection (b) refers to a full and detailed accounting of monies received and expended, as well as other matters, including a description of the conservator's activities. See Section 420 for the required contents. A report lacking in sufficient detail will preclude entry of the final order of discharge. Until the final order of discharge is entered, a conservator remains liable for previous acts as well as the obligation to account for the protected person's assets and funds. After notice and hearing,

an order allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship. See Section 420(a).

If an enacting state chooses to use a different time period for the filing of the final report and petition for discharge than that contained in subsection (b), the time period used should not be significantly longer than the 30 days contained in subsection (b).

Subsection (d) requires the court to follow the same procedures for a petition to terminate a conservatorship as apply to the petition for conservatorship, which may include the appointment of a visitor and counsel in some cases. The standard to terminate a conservatorship is prima facie evidence, intentionally a lower standard than the standard for creating a conservatorship. Once the petitioner has made out a prima facie case, the burden then shifts to the party opposing the petition to establish by clear and convincing evidence that continuation of the conservatorship is in the best interest of the protected person. A similar standard applies to the termination of a guardianship for an incapacitated person. See Section 318(c) and comment.

Prior to entering a final order of discharge, the court should confirm that the conservator has accounted sufficiently for the assets and other property and executed the appropriate documents and delivered the property under the conservator's control.

To initiate proceedings under this section, the protected person or person interested in the protected person's welfare need not present a formal document prepared with legal assistance. A request to the court may always be made informally.

The termination provision of the 1982 UGPPA, which was quite abbreviated, was located at Section 2-329 (UPC Section 5-429 (1982)).

SECTION 432. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate [county] of this state, certified copies of the order and letters of office.

Comment

This section, which was added in 2010, is identical to Section 401 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (UAGPPJA). But unlike the UAGPPJA, which applies only to adult proceedings, this section and the following two sections also apply to minors. This section is codified here in Part 4 of this article and not with the other

guardianship provisions, which are codified in Parts 2 and 3, so that like the UAGPPJA, all of the provisions dealing with the ability of a guardian or conservator to act outside state boundaries (this section and Sections 433 and 434) will be codified in one place.

As stated in the General Comment to UAGPPJA Article 4:

"Article 4 (Sections 432 through 434 of this Act) is designed to facilitate the enforcement of guardianship and protective orders in other states. This article does not make distinctions among the types of orders that can be enforced. This article is applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.

"Article 4 provides for such recognition. The key concept is registration. Section 401 (Section 432 of this Act) provides for registration of guardianship orders, and Section 402 (Section 433 of this Act) for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 403 (Section 434 of this Act) authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

"The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies."

The 2010 amendment replaces the previous version of Sections 432 and 433, which dealt only with the ability of a conservator to act outside the state of appointment and did not create a registration procedure.

SECTION 433. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

SECTION 434. EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this [article] and other law of this state to enforce a registered order.

ARTICLE 5
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

SECTION 503. EFFECTIVE DATE. This [act] takes effect .....

SECTION 504. REPEAL. The following acts and parts of acts are repealed:

(1) .....

(2) .....

(3) .....

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of child who needs a guardian*) A Proposed Protected Minor.	CASE NO.: _____ DEPT: _____

PETITION FOR REGISTRATION OF OUT OF STATE GUARDIANSHIP

1. I request that you register the attached certified copy of the appointment of guardian entered on (*date of the other state's order*) _____, in the State of (*state*) _____, County of (*county*) _____ pursuant to NRS 125A.465 **(*a certified copy of the out-of-state guardianship order must be attached to this form*).**

2. The children included in the attached guardianship action are:

Child's Name:	Date of Birth	State of Residence:	Length of time child has lived in the state:

3. I am the ❑ guardian / ❑ mother / ❑ father of the children and my current address is:

   _____

4. The mother of the children is _____ and her current address is:

   _____

5. The father of the children is _____ and his current address is:

   _____

6. There ❑ is / ❑ is not another person who has been awarded guardianship in the appointment of guardianship being sought to be registered. *(If there is another person who has been awarded guardianship, you must fill out the following information)*

   Name of person: _____

   Address of person: _____

7. The State of (*state*) _____, County of (*county*) _____ has been notified, or approves of, this child moving out of state to Nevada.
8. The out-of-state child appointment of guardian I am petitioning to have registered, to the best of my knowledge and belief, is valid, enforceable, and has not been modified, vacated or stayed.

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

DATED this *(day)* _____ day of *(month)* _____, 20___.

Submitted By: *(your signature)* ▸ _____

(print your name) _____

VERIFICATION

Under penalties of perjury, I declare that I am the moving party in the above-entitled action; that I have read the foregoing Petition and know the contents thereof; that the pleading is true of my own knowledge, except for those matters therein contained stated upon information and belief, and that as to those matters, I believe them to be true.

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

DATED this *(day)* _____ day of *(month)* _____, 20___.

Submitted By: *(your signature)* ▸ _____

(print your name) _____

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of child who needs a guardian*) A Proposed Protected Minor.	CASE NO.: _____ DEPT: _____

NOTICE OF PETITION FOR REGISTRATION OF OUT OF STATE GUARDIANSHIP

TO: Petitioner and Respondent shown at addresses shown on paragraphs 3, 4, & 5 on the Petition for Registration;

Other persons awarded guardianship at address shown on paragraph 6 on the Petition for Registration

1. An appointment of guardian order entered on (*date of court order*) _____, in the State of (*state*) _____, County of (*county*) _____ was filed and registered in this Court as a foreign judgment on (*date of Nevada filing*) _____, 20___.

2. A copy of the registered order and other related documents are attached to this notice.

3. A registered appointment of guardian determination is enforceable in Nevada as of the date of the registration in the same manner as a determination issued by a court of this state.

4. **You have 20 days from the receipt of this notice to request a hearing to contest the validity of the registered determination**.

5. **Failure to contest the registration will result in confirmation of the appointment of guardian determination and preclude further contest of that determination with respect to any matter that could have been asserted**.

CLERK OF COURT

By:_____
Deputy Clerk Date

Submitted By:

_____
Your Signature

(***Note: you must attach a copy of the filed Petition to this Notice as Exhibit 1***)

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of child who needs a guardian*) A Protected Minor.	CASE NO.: _____ DEPT: _____

CERTIFICATE OF MAILING

I, **(*name of person who mailed document*)**_____,
declare under penalty of perjury under the law of the State of Nevada that the following is true and correct. That I served the Notice of Petition for Registration of Out of State Guardianship with a copy of the Petition for Registration attached by **(☒ *check one*)**

☐ Certified mail, return receipt requested

☐ Registered mail, return receipt requested

I sent the documents on **(*month*)** _____ **(*day*)** _____, 20____, addressed to: **(*Print the name and address of the person you mailed the documents to*)**

_____
_____
_____

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

Submitted By: (*your signature*) ▸ _____
(*print your name*) _____

DRAFT 2/20/2019

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of child who needs a guardian*) A Protected Minor.	CASE NO.: _____ DEPT: _____

ORDER REGARDING REGISTRATION OF OUT OF STATE GUARDIANSHIP

Pursuant to NRS 125A.465, this Court, having reviewed the petition for registration of the out of out of state guardianship entered on (*date of the other state's court order*) _____, in the State of (*state*) _____, County of (*county*) _____, and all other papers and pleadings on file,

THE COURT FINDS that the opposing party was properly served with notice of the petition for registration and (☒ *check one*):

- ❑ The opposing party did not request a hearing within 20 days from the date of receiving notice of the registration.
- ❑ The opposing party filed a timely request for a hearing to challenge the validity of the registered order. A hearing was held and evidence was presented.

THE COURT ORDERS (☒ *check one*):

- ❑ The registration of the out of state guardianship is confirmed. Confirmation of a registered guardianship, whether by operation of law or after notice and hearing, precludes further contest of the guardianship with respect to a matter that could have been asserted at the time of registration. This guardianship registration shall remain in effect for six months from the date of this Order. The parties shall file a petition for full guardianship in the state of Nevada if the parties would like to obtain guardianship beyond six months from the date of this Order.
- ❑ The registration request is denied on the following grounds: (☒ *check all that apply*)
  - ❑ The issuing state lacked jurisdiction to make the determination.
  - ❑ The guardianship has been vacated, stayed, or modified by a court of a state having jurisdiction to do so.
  - ❑ The opposing party did not receive proper notice before the guardianship was issued.

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

_____

DISTRICT COURT JUDGE

AGENDA ITEM 5(d)

Update from Jennifer Rains Regarding Assisted Outpatient Treatment (AOT)

(No handout)

AGENDA ITEM 6

Update-Public Hearing for Guardianship Rules Approved by Commission 11-2-18

AGENDA ITEM 6(a)

Supplement to First Interim Report of the Guardianship Commission (filed 1/2/19)

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF A COMMISSION TO STUDY THE CREATION AND ADMINISTRATION OF GUARDIANSHIPS.

ADKT 0507

SUPPLEMENT TO FIRST INTERIM REPORT OF THE GUARDIANSHIP COMMISSION

On August 2, 2017, the Supreme Court of Nevada created a permanent Guardianship Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules and processes in Nevada.

Pursuant to the First Interim Report of the Guardianship Commission filed on May 30, 2018, the Rules Subcommittee has drafted seven additional rules that were recommended for submission to the full Guardianship Commission. The Commission recommends that these additional rules for guardianship be adopted by the Supreme Court of Nevada.

The Commission requests that the Nevada Supreme Court place this matter on its administrative docket, hold such hearings as it deems necessary, and consider the proposed additional rules as set forth in Exhibit A.

Respectfully submitted,

James W. Hardesty J.

cc: All Supreme Court Justices
All Permanent Guardianship Commission Members
All District Court Judges
Ms. Julie Bobzien, Executive Director, Volunteer Attorneys for Rural Nevadans
Mr. James Conway, Executive Director, Washoe Legal Services
Ms. Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Ms. Anna Marie Johnson, Executive Director, Nevada Legal Services
Ms. Sheri Cane Vogel, Executive Director, Southern Nevada Senior Law Program

EXHIBIT “A”

EXHIBIT "A"

STATEWIDE GUARDIANSHIP RULES

RECOMMENDED FOR SUBMISSION TO THE NEVADA SUPREME COURT

	RULE
7.	Noticing Except as otherwise specially provided in these rules, in computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run must not be included. (a) The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a non-judicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a non-judicial day, or, when the act to be done is the filing of a paper in court or the mailing of a notice, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. The County Clerk shall memorialize and maintain in a written log all such inaccessible days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-judicial days must be excluded in the computation. (b) If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day. (c) whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, or by electronic means, three (3) days must be added to the prescribed period.
8.	Attorney Fee Petitions and Payments A petition for attorney fees, as required by NRS 159.344(4), shall be served on all those entitled to notice pursuant to NRS 159.034 and NRS 159.047. Such notice may be served by first class mail.
9.	Guardian ad Litem for Protected Person or Proposed Protected Person 1. This rule applies to any Guardian Ad Litem appointed pursuant to NRS 159.0455 and NRS 159A.0455. 2. The Guardian Ad Litem shall zealously advocate for the best interest of the Protected Person or proposed Protected Person, in a manner that will enable the court to determine the action that will be the least restrictive and in the best interest of the Protected Person or proposed Protected Person.

	RULE
	3. A Guardian Ad Litem is an officer of the court and a representative of the Protected Person or proposed Protected Person and is not a party to the case. 4. A Guardian Ad Litem may be appointed if the Protected Person or proposed Protected Person will benefit from the appointment or the services of the Guardian Ad Litem or if the appointment will be beneficial in determining the best interest of the Protected Person or proposed Protected Person. 5. The order appointing the Guardian Ad Litem shall set forth with specificity the duties of the Guardian Ad Litem and shall identify the issues that the Guardian Ad Litem is directed to address. The Guardian Ad Litem shall address only the issues identified in the appointing order absent an additional order from the court. The order appointing the Guardian Ad Litem shall authorize the Guardian Ad Litem access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents. 6. The Guardian Ad Litem shall not have authority to waive any of the Protected Person's or proposed Protected Person's due process rights or protections including, without limitation, the Protected Person's or proposed Protected Person's right to counsel, right to oppose the guardianship, right to oppose the choice of guardian, right to attend hearings and the right to object to any action or proposed action by the guardian. 7. The Guardian Ad Litem shall advocate for the best interest of Protected Person or proposed Protected Person based on admissible evidence available to the Guardian Ad Litem. The Guardian Ad Litem shall conduct independent investigation and assessment of the facts to carry out the directives of the appointing order and may submit recommendations to the Court that are based on admissible evidence. The Guardian Ad Litem shall not be a witness and shall not testify or be cross examined. The Guardian Ad Litem shall not be subject to a subpoena, except to the extent an attorney representing the Protected Person or proposed Protected Person would be subject to a subpoena. 8. A Guardian Ad Litem may be a trained volunteer from a court-approved advocate program, an attorney, or any other person that the Court finds has appropriate training and experience. 9. If the Guardian Ad Litem is a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a Guardian Ad Litem pro bono, the appointing order shall state that fact and state that the Guardian Ad Litem is not seeking compensation. If the Guardian Ad Litem is not a volunteer and will seek compensation in the case, the appointing order shall state the hourly rate to be charged by the Guardian Ad Litem and may limit the hours that may be charged by the Guardian Ad Litem, absent further order of the Court. 10. A Guardian Ad Litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344, et al., and the request for payment whether or not payment is to be from the guardianship estate or from any third party shall be subject to the requirements and analysis as set forth in NRS 159.344. 11. An attorney that serves as a Guardian Ad Litem is bound by the Nevada Supreme Court Rules of Professional Conduct to the extent those Rules are applicable. 12. A Guardian Ad Litem shall not communicate with any party represented by counsel outside the presence of the party's attorney without first obtaining the attorney's consent.

	RULE
	13. The Guardian Ad Litem shall provide a copy to all parties of any written report of the Guardian Ad Litem that is filed with the Court. 14. The role of the Guardian Ad Litem is separate and distinct from the role of an attorney for a Protected Person or proposed Protected Person appointed pursuant to NRS 159.0485 and separate and distinct from an Investigator appointed pursuant to NRS 159.046. A Guardian Ad Litem for a Protected Person or proposed Protected Person shall <u>not</u> serve as an attorney for a Protected Person or proposed Protected, as an attorney for a Guardian(s) or as an Investigator in the same case or in a related matter. 15. The Guardian Ad Litem shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the Guardian Ad Litem shall immediately report to the court any transgressions of said rights. 16. A Guardian Ad Litem who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint a separate Guardian Ad Litem in the event that a conflict or potential conflict should arise.
10.	<u>Attorney for Protected Person or Proposed Protected Person</u> 1. A Protected Person or proposed Protected Person has a right to legal representation and shall be entitled to retain counsel of their choosing to represent them in any guardianship or other related court proceeding. A Protected Person or proposed Protected Person may decline representation by an attorney or by a court appointed attorney, unless the Court finds that the Protected Person or proposed Protected Person lacks the minimum capacity to make those decisions. A Protected Person's or proposed Protected Person's waiver of right to counsel must be made knowingly and voluntarily and must be reasonable under the circumstances. 2. The attorney for a Protected Person or proposed Protected Person shall zealously advocate for the Protected Person's or proposed Protected Person's express wishes and shall protect the Due Process Rights of the Protected Person or proposed Protected Person. 3. The attorney for the Protected Person or proposed Protected Person shall maintain, as far as reasonably possible, a normal client-attorney relationship as prescribed by the Nevada Rules of Professional Conduct and shall advocate for the expressed wishes of the Protected Person or proposed Protected Person even if those express wishes are in conflict with the client's apparent best interests. 4. An attorney for a Protected Person or proposed Protected Person shall in all cases: a. review the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings; b. personally visit and interview the Protected Person or proposed Protected Person prior to the initial hearing to appoint a guardian, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall visit as frequently as necessary and practicable under the circumstances;

	RULE
	c. explain to the Protected Person or proposed Protected Person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship; d. secure and present admissible evidence and offer argument as appropriate and warranted to further the expressed wishes of the Protected Person or proposed Protected Person and to protect his or her rights and interests; and e. continue as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court; 5. The duties of the attorney for a Protected Person or proposed Protected Person include, but are not limited to: a. zealously advocating for the express wishes of the Protected Person or proposed Protected Person, including those wishes contained in any advance directive or estate planning document; b. reviewing the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings and supporting documents; c. personally meeting and interviewing the Protected Person or proposed Protected Person prior to a hearing to appoint a guardian or temporary guardian and thereafter as otherwise appropriate to foster communication, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall communicate and/or meet with the Protected Person or proposed Protected Person as frequently as necessary and practicable under the circumstances; d. explaining to the protected person or proposed protected person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship; e. securing and presenting available evidence and testimony and offering argument as warranted that would tend to further the expressed wishes of the Protected Person or proposed Protected Person and protect his or her rights and legal interests; f. conducting independent investigation to ascertain the facts of the case; g. participating in all court proceedings, mediations, settlement conferences and negotiations; h. ensuring the Protected Person or proposed Protected Person is in attendance at court proceedings where attendance is appropriate, unless appearance is waived by the Court; i. communicating, coordinating, and maintaining a professional relationship in so far as possible with all parties; j. filing appropriate petitions, motions, briefs, and appeals on behalf of the Protected Person or proposed Protected Person;

	RULE
	k. communicating the court's decisions and consequences to the Protected Person or proposed Protected Person; l. ensuring there is no less restrictive alternative to guardianship or to the matter before the court; m. ensuring proper due process procedure is followed and relevant statutes are complied with; n. confirming the petition for guardianship can be supported by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in any subsequent proceedings; o. confirming the proposed guardian is a qualified person to serve or to continue to serve, consistent with all statutory requirements; p. advocating for and confirming that if a guardian is appointed, the initial order and any subsequent order is least restrictive of the personal freedom of the Protected Person in type, duration, and scope, consistent with his or her need for care and supervision; q. protecting the dignity of the Protected Person or proposed Protected Person; r. protecting the personal, confidential, financial and medical information and documents concerning the Protected Person or proposed Protected Person; and s. continuing as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court. 6. Upon the appointment of an attorney for the Protected Person or proposed Protected Person, the court shall enter an order authorizing the attorney access to the Protected Person or proposed Protected Person and allowing the attorney access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents. 7. An attorney for a Protected Person or proposed Protected Person shall be entitled to waive rights and admit matters within the guardianship proceeding on behalf of the Protected Person or proposed Protected Person so long as such waiver or admission is not contrary to the express wishes of the Protected Person or proposed Protected Person. 8. The role of the attorney for the Protected Person or proposed Protected Person is distinct from the role of a Guardian Ad Litem appointed under NRS 159.0455 or an investigator appointed under NRS 159.046. An attorney for a Protected Person or proposed Protected Person shall not serve as a Guardian Ad Litem in the same case or in a related matter. An attorney for a Protected Person or proposed Protected Person shall not serve as the attorney for the Guardian(s) in the same or related case. 9. If the Protected Person or proposed Protected Person is unable to express or communicate his or her wishes to the attorney or maintain, as far as reasonably possible, a normal client-attorney relationship, the attorney shall protect the legal interests and due process rights of the Protected Person or proposed Protected Person and the attorney may take reasonably necessary protective action pursuant to Rule 1.14 of the Nevada Rules of Professional Conduct, which may include requesting the appointment of a Guardian Ad Litem under NRS 159.0455 to advocate for the best interest of the Protected Person or proposed Protected Person. 10. The attorney for a Protected Person or proposed Protected Person shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the attorney shall be authorized to prosecute a petition within the

	RULE
	guardianship on behalf of the Protected Person or proposed Protected Person to enforce the rights of the Protected Person or proposed Protected Person, including those rights set forth in the Protected Person's Bill of Rights. With the express prior approval of the Court, the attorney for a Protected Person or proposed Protected Person may commence a separate lawsuit on behalf of the Protected Person or proposed Protected Person to enforce the rights of the Person, including those rights set forth in the Protected Person's Bill of Rights. 11. An attorney who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint separate attorneys in the event that a conflict or potential conflict should arise. 12. An attorney for a Protected Person or proposed Protected Person shall only be entitled to receive compensation for legal services provided upon compliance with NRS 159.344 and upon receipt of a court order approving of said payment, whether or not paid from the Guardianship estate or from a third party.
11.	Termination of guardianships for non-compliance with no further identification of whether a guardianship remains necessary, and if so, a successor guardian A. Where the Court removes a sole guardian based upon the sole guardian's non-compliance with his or her duties and responsibilities pursuant to NRS 159.185 – 159.1857 / 159A.185 – 159A.186, suspend a sole guardian's authority under NRS 159.1855(3) / 159A.1855(3) or revokes letters of guardianship pursuant to NRS 159.085(8) / 159A.085(8), the Court shall not terminate the guardianship pursuant to NRS 159.1905 – 159.192 / 159A.1905 – 159A.192, without making specific findings as to: 1. The protected person's current health and welfare, 2. The reasons a guardianship does or does not remain necessary, including identifying the existence of less-restrictive alternatives, and, 3. Whether maintaining the guardianship would serve the Protected Person's best interests. B. Where the location and circumstances of the protected person are unknown to the court and/or parties of record, prior to terminating a guardianship pursuant to NRS 159.1905 – 159. 192 / 159A.1905 – 159A. 192 based upon a guardian's non-compliance with duties and responsibilities under law, the court shall order an investigation pursuant to NRS 159.046, 159A.046 and/or NRS 159.341 to verify the status of the protected person. C. Upon notice, the court may appoint the public guardian as temporary guardian of a protected adult during pendency of proceedings described in paragraph "A."
12.	Guardianship Review Hearing (a) Guardianship of person. A review hearing shall be held by the court on every guardianship of person not later than three years after the initial appointment of a general or special guardian of person, and not later than three

	RULE
	years after each preceding review hearing. A review hearing may occur in response to the report of person required by NRS 159.081 or at any other time as the court may order. (b) Guardianship of estate. The court shall review every guardianship of estate annually on which a hearing of account is required by NRS 159.181.
13.	Operating Accounts; Bonds (a) The Court may require blocked accounts for the guardianship in addition to or in lieu of requiring a bond of the guardian, and limiting the disbursements from the guardianship estate out of the blocked accounts. Such disbursements shall be made to a separate operating account under the name of the Guardian and on behalf of the protected person, to provide for the health, welfare and support of the protected person. This rule shall not apply to the Public Guardian, under NRS 253.010-250. (b) A guardian shall acquire a bond to secure performance of the guardian's duties if a court issues a finding that a bond is needed to protect the interests of the beneficiaries. (c) Using the inventory of a protected person which shows the value of the guardianship estate's personal property, the probable annual gross income of the estate, and the sum of the probable annual gross payments of the public benefits of the protected person, the Court may set a bond for the protection of a protected person. Except as otherwise provided by statute, every guardian of the estate must furnish a bond that includes an amount 10% in excess of the value of the estate as a reasonable amount for the cost of recovery to collect on the bond. (d) Posting of a bond does not protect a guardian or eliminate personal liability over and above the amount of the bond, should the bond be found to be insufficient to cover any losses to the protected person for improper actions of the guardian. (e) If two or more persons to serve as guardians and the Court does not waive bond, the Court may require each guardian to give a bond. (f) Because a corporate guardian (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual co-guardian, an individual co-guardian who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate co-guardian. (g) The Court may require an additional bond for the Guardian in the event real or personal property is sold from the guardianship estate. (h) The Court may increase, decrease, or terminate a guardian's bond at any time or upon the presentation of facts making it necessary or appropriate to adjust the amount of the bond. (i) Upon good cause, any party or interested person may make a request for an adjustment of the guardian's bond. (j) The Public Guardian's bond under NRS 253.160(2) shall be sufficient for this rule, and Court shall not require additional bonds.

AGENDA ITEM 6(b)

Update From Elizabeth Brickfield, Dania Reid, and John Michaelson re Noticing Rule in Light of Amendments to NRCP 6

Email Request from John Michaelson & Dania Reid regarding Guardianship Noticing Rule:

Hello Elizabeth:

We hope this email finds you well. Recently, the Nevada Supreme Court approved revisions to NRCP Rule 6 addressing computing time (attached). In that regard, Mallory Nelson inquired whether your draft rule No. 9 addressing noticing should be revisited for consistency with the newly revised NRCP Rule 6. After consultation with Justice Hardesty, it was determined that the Rules Subcommittee co-chairs should request of you the following:

(1) Review existing draft rule No. 9 (noticing) to determine whether it remains valid as drafted;
(2) If draft rule No. 9 (noticing) requires revisions based on the newly revised NRCP Rule 6, please complete the revisions for submission to the Rules Subcommittee and subsequently to the full Guardianship Commission for a vote.

It is anticipated that the outstanding rule drafts, including No. 9 (noticing) as it currently written will be scheduled for public hearing and public comment period during the month of April, therefore if your review and any necessary revisions can be completed in time for submission to and voting by the Rules Subcommittee and Guardianship Commission in March, your efforts in that regard will be greatly appreciated.

Thank you, and please let us know if you have any questions or concerns.

- Dania & John

Email response from Elizabeth Brickfield:

In analyzing this issue, I reviewed the Amended NRCP 6 and Chapter 159, specifically the statutes with notice provisions. Chapter 159 does not specify a method of computing time, so the default would be the amended NRCP 6.The Chapter 159 notice provisions generally refer to 10 day periods for notice, For example NRS 159.034 2(a) requires notice to be mailed 10 days prior to the hearing.
NRS 159.0523 and NRS 159.0525, - the temporary guardianship statutes, require a hearing to extend the temporary guardianship to be held within 10 days.
First, it appears to me under Amended NRCP 6, any change to extend time periods in guardianship could best occur by a statutory change.
Second, it would be confusing and judicially inefficient, to use different methodologies to compute time periods for guardianship and non-guardianship process and procedures with such confusion benefitting no one.

However, the NRCP 6 method for computing time can be problematic for third parties whose notice of a petition would be consistent with statute if it was mailed within 10 days of a hearing and we are using calendar and not business days, except for the final day. Given that the legislative intent has been to ensure greater communications with a broader range of family members as well as the protected person, NRCP 6 effectively shortens the time period for a family member – whether locally located or living further away geographically – to learn about and object to the imposition of a temporary guardianship or the taking of actions by a guardian.

It also imposes more strain on the hearing officers, because a hearing to extend a temporary guardianship would have to occur even more quickly then they do now.

I recognize that all of this will be accommodated by the court system. However, most troubling to me is the concept of differing ways to compute time and I think we need to be consistent. Having said that, already adopted Guardianship Rule 9 is unnecessary and I suggest that we not go forward with it.

Elizabeth Brickfield

Noticing [formerly designated as draft rule 9 and approved by the guardianship Commission on November 2, 2018]

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

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

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

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

Rule 5 generally conforms to FRCP 5. It retains former NRCP 5(a)'s reference to a "paper relating to discovery" to remind practitioners of the need to serve discovery documents on other parties, including deposition notices under Rule 30, requests for inspections under Rule 34, and subpoenas directed to a third party under Rule 45.

The amendments to Rule 5 relating to electronic filing and service reflect Nevada rules (such as the NEFCR) and practice. Rule 5(b)(4) retains the provisions requiring a proof of service to be attached to an electronic filing; the April 2018 amendments to the federal rule eliminating the proof of service for electronic filing are not adopted. NEFCR 9 bases the time to respond to a document served through an electronic filing system on the date stated in the proof of service.

Rule 5.1. Reserved

Rule 5.2. Reserved

Advisory Committee Note—2019 Amendment

The procedures for privacy protection in Nevada are located in the Rules Governing Sealing and Redacting Court Records.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Period Stated in Hours.** When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) **Inaccessibility of the Clerk's Office.** Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) **"Last Day" Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing under the NEFCR, at 11:59 p.m. in the court's local time; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) **"Next Day" Defined.** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **"Legal Holiday" Defined.** "Legal holiday" means any day set aside as a legal holiday by NRS 236.015.

(b) **Extending Time.**

(1) **In General.** When an act may or must be done within a specified time:

(A) the parties may obtain an extension of time by stipulation if approved by the court, provided that the stipulation is submitted to the court before the original time or its extension expires; or

(B) the court may, for good cause, extend the time:

(i) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(ii) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **Exceptions.** A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not extend the time after it has expired under Rule 54(d)(2).

(c) **Motions, Notices of Hearing, and Affidavits.**

(1) **In General.** A written motion and notice of the hearing must be served at least 21 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules or the local rules provide otherwise; or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) **Supporting Affidavit.** Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 6(a) represents a major change in calculating time deadlines. It adopts the federal time-computation provisions in FRCP 6(a). Under Rule 6(a)(1), all deadlines stated in days are computed the same way, regardless of how long or short the period is. This simplifies time computation and facilitates "day-of-the-week" counting, but it has required revision to time deadlines stated elsewhere in the NRCP. To compensate for the shortening of time periods previously expressed as less than 11 days by the directive to count intermediate Saturdays, Sundays, and legal holidays, many of the periods have been lengthened. In general, former periods of 5 or fewer days are lengthened to 7 days, while time periods between 6 and 15 days are now set to 14 days. Time periods of 16 to 20 days were set to 21 days, and periods longer than 30 days were retained without change. The use of 7-, 14-, and 21-day periods enables "day-of-the-week" counting; for example, if a motion was filed and served on Wednesday with 7 days to

respond, the opposition would be due the following Wednesday. Statutory- and rule-based time periods subject to this rule may not be changed concurrently with this rule. If a reduction in the times to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice.

Subsection (b). Rule 6(b) addresses extensions of time. While it borrows language from its federal rule counterpart, the rule retains Nevada-specific provisions governing stipulations for extension of time, subject to court approval. Rule 6(b) provides the court may extend the time to act "for good cause." If another rule provides a method for extending time, such as Rule 29 for stipulations about discovery, the court or the parties may extend time as provided in that rule.

Subsection (c). Rule 6(c), previously NRCP 6(d), is conformed to FRCP 6(c), with reference to Nevada's local rules. The local rules govern motion practice in general and may provide, for example, larger periods of time in which to file motions, specific procedures governing motion practice, or procedures to request a hearing or to submit a motion without a hearing.

Subsection (d). Rule 6(d) limits the instances in which three additional days will be added to a time calculation to instances in which service is accomplished by mail, by leaving it with the clerk, or in cases involving express consent.

In all other respects, the 2019 amendments to the NRCP and the companion amendments to the Nevada Electronic Filing and Conversion Rules (NEFCR) and the NRAP eliminate the former inconsistent provisions for adding three days for electronic service. These amendments also require the simultaneous filing and service of documents on submission to a court's electronic filing system. The Committee recognizes this will require local rule

amendments and changes to existing electronic filing systems. However, the Committee agrees with the following advisory committee notes to the 2016 amendments to FRCP 6, which explain that the FRCP were amended

> in 2001 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. These concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.
>
> ***
>
> Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting the 7-, 14-, 21-, and 28-day periods that allow 'day-of-the-week' counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Requiring simultaneous filing and service of documents submitted to an electronic filing system will take advantage of the speed of electronic communication and reduce litigation delays. If electronic service after business hours, or just before or during a weekend or holiday, results in a practical reduction of the time available to respond, an extension of time may be warranted to prevent prejudice. Consent to and use of electronic filing and service remain governed by local courts and the NEFCR.

AGENDA ITEM 6(c)

Possible Creation of Rule for Statewide Fee Guidelines for Guardianship Cases
By Shelly Register

Email from Shelly Register regarding Proposed Rules – Guardian fees:

I am submitting the following information to you for consideration by the Supreme Court Permanent Commission on Guardianship. I had discussed the possibility of a proposed rules for Guardianship fees with Dania Reid last year and did not think it would be feasible. Susan Hoy has provided me with some research on what other states are doing and given some difficulties they are having the Business and Industry Commission Financial Institutions Division (FID) Auditors requiring minute by minute billing.
I agree with Suzie Hoy, in her email below that it would be better not to reinvent the wheel, if these other states have already adopted similar rules. Suzie shared some of her research with me, and I am sharing it with the Commission.

> Information from Susan Hoy:
> Most jurisdictions address fees at the judicial level, including timekeeping and appropriate time spent on tasks. I'll do some research but I think we should present this in a manner that we agree this area needs to be addressed but not through licensure. In the spirit of statute we keep records which are converted to a billing invoice. Ultimately the court should provide direction as to the manner in which the bills are submitted and would be approved. Currently fee petitions are reviewed by the courts upon filing, PP's attorneys and other individuals entitled to notice.
>
> I just found this in Wisconsin – I'm going to review it more in depth – but cursory review I like some of the main points – such as Mark-Ups. None of us are marking up the fees. We are billing for actual time spent and the time spent is reasonable to the task.
>
> Wisconsin borrowed from Arizona and Ohio. There is no reason for Nevada to reinvent the wheel on Guardianship Fees. * * *
>
> I also believe these fees should apply to ALL Private Guardians (non-family members) included County and individuals not related but seeking compensation. (Those still providing services to 3 or less PP)

I recalled that we discussed a Supreme Court Rule on Guardianship billing. However, one of the previous Commission Members, Susan Hoy did some research and found some other states rules. I am including the Wisconsin article as an attachment and Arizona and Ohio links below:

Arizona - Below is the link to the Arizona Rules of Probate Procedure
VI. Post Appointment Procedures **Rule 33. Compensation for Fiduciaries and Attorneys; Statewide Fee Guidelines**
https://govt.westlaw.com/azrules/Document/N1A2111B0687611E1ADAFE8B282824269?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1

Ohio – Supreme Court rule on compensation refers to Local Rule.
http://www.supremecourt.ohio.gov/ruleamendments/documents/Adult%20Guardianships%20(FINAL).pdf
Rule 74A Compensation (A preliminary review of local rules are all over the place, and additional study would be required.)

An additional issue has arisen in one of the divisions in Clark County. In most courts, Guardians are authorized to bill a certain limited amount per month but those fees are subject to ratification, can be denied or approved and must be submitted to the court for approval on an annual basis. One of the Family Court Judges does not feel that this is authorized by the statute and has declined to follow this practice. The parties have agreed and the Judge approved that the Private Professional Guardian will submit their request for fees on a quarterly basis and the attorney for the ward can stipulate if there is no objection. This still could potentially result in three additional hearings a year, increasing the legal costs. If we could include the authorization for the current practice in our rule, that would be helpful to the court and the professional guardians.

Thank you for your consideration of this proposed rule. Let me know how we might proceed. Shelly

NRS 628B.560 Requirements for guardianship accounts for protected persons; recordkeeping requirements; examination of records and accounts by Commissioner; authority of Commissioner to require submission of audited financial statement and to issue subpoenas; fee for examination.

1. Except as otherwise provided in NRS 159.076 and 159A.076 a private professional guardian company shall maintain a separate guardianship account for each protected person into which all money received for the benefit of the protected person must be deposited, unless otherwise ordered by the court for a substantiated reason. Each guardianship account must be maintained in an insured bank or credit union located in this State, be held in a name which is sufficient to distinguish it from the personal or general checking account of the private professional guardian company and be designated as a guardianship account. Each guardianship account must at all times account for all money received for the benefit of the protected person and account for all money dispersed for the benefit of the protected person, and no disbursement may be made from the account except as authorized under chapter 159 or 159A of NRS or as authorized by court order.

2. Each private professional guardian company shall keep a record of all money deposited in each guardianship account maintained for a protected person, which must clearly indicate the date and from whom the money was received, the date the money was deposited, the dates of withdrawals of money and other pertinent information concerning the transactions. Records kept pursuant to this subsection must be maintained for at least 6 years after the completion of the last transaction concerning the account. The records must be maintained at the premises in this State at which the private professional guardian company is authorized to conduct business.

3. The Commissioner or his or her designee may conduct an examination of the guardianship accounts and records relating to protected persons of each private professional guardian company licensed pursuant to this chapter at any time to ensure compliance with the provisions of this chapter.

4. During the first year a private professional guardian company is licensed in this State, the Commissioner or his or her designee may conduct any examinations deemed necessary to ensure compliance with the provisions of this chapter.

5. If there is evidence that a private professional guardian company has violated a provision of this chapter, the Commissioner or his or her designee may conduct additional examinations to determine whether a violation has occurred.

6. Each private professional guardian company shall authorize the Commissioner or his or her designee to examine all books, records, papers and effects of the private professional guardian company.

7. If the Commissioner determines that the records of a private professional guardian company are not maintained in accordance with subsections 1 and 2, the Commissioner may require the private professional guardian company to submit, within 60 days, an audited financial statement prepared from the records of the private professional guardian company by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. The Commissioner may grant a reasonable extension of time for the submission of the financial statement if an extension is requested before the statement is due.

8. Upon the request of the Division, a private professional guardian company must provide to the Division copies of any documents reviewed during an examination conducted by the Commissioner or his or her designee pursuant to subsection 4, 5 or 6. If the copies are not provided, the Commissioner may subpoena the documents.

9. For each examination of the books, papers, records and effects of a private professional guardian company that is required or authorized pursuant to this chapter, the Commissioner shall charge and collect from the private professional guardian company a fee for conducting the examination and preparing a report of the examination based upon the rate established and, if applicable, adjusted pursuant to NRS 658.101. Failure to pay the fee within 30 days after receipt of the bill is grounds for revoking the license of the private professional guardian company.

10. All money collected under this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

(Added to NRS by 2015, 2356; A 2017, 394, 909, 2432)

NRS 628B.560 Requirements for guardianship accounts for protected persons; recordkeeping requirements; examination of records and accounts by Commissioner; authority of Commissioner to require submission of audited financial statement and to issue subpoenas; fee for examination.

1. Except as otherwise provided in NRS 159.076 and 159A.076 a private professional guardian company shall maintain a separate guardianship account for each protected person into which all money received for the benefit of the protected person must be deposited, unless otherwise ordered by the court for a substantiated reason. Each guardianship account must be maintained in an insured bank or credit union located in this State, be held in a name which is sufficient to distinguish it from the personal or general checking account of the private professional guardian company and be designated as a guardianship account. Each guardianship account must at all times account for all money received for the benefit of the protected person and account for all money dispersed for the benefit of the protected person, and no disbursement may be made from the account except as authorized under chapter 159 or 159A of NRS or as authorized by court order.

2. Each private professional guardian company shall keep a record of all money deposited in each guardianship account maintained for a protected person, which must clearly indicate the date and from whom the money was received, the date the money was deposited, the dates of withdrawals of money and other pertinent information concerning the transactions. Records kept pursuant to this subsection must be maintained for at least 6 years after the completion of the last transaction concerning the account. The records must be maintained at the premises in this State at which the private professional guardian company is authorized to conduct business.

3. The Commissioner or his or her designee may conduct an examination of the guardianship accounts and records relating to protected persons of each private professional guardian company licensed pursuant to this chapter at any time to ensure compliance with the provisions of this chapter.

4. During the first year a private professional guardian company is licensed in this State, the Commissioner or his or her designee may conduct any examinations deemed necessary to ensure compliance with the provisions of this chapter.

5. If there is evidence that a private professional guardian company has violated a provision of this chapter, the Commissioner or his or her designee may conduct additional examinations to determine whether a violation has occurred.

6. Each private professional guardian company shall authorize the Commissioner or his or her designee to examine all books, records, papers and effects of the private professional guardian company.

7. If the Commissioner determines that the records of a private professional guardian company are not maintained in accordance with subsections 1 and 2, the Commissioner may require the private professional guardian company to submit, within 60 days, an audited financial statement prepared from the records of the private professional guardian company by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. The Commissioner may grant a reasonable extension of time for the submission of the financial statement if an extension is requested before the statement is due.

8. Upon the request of the Division, a private professional guardian company must provide to the Division copies of any documents reviewed during an examination conducted by the Commissioner or his or her designee pursuant to subsection 4, 5 or 6. If the copies are not provided, the Commissioner may subpoena the documents.

9. For each examination of the books, papers, records and effects of a private professional guardian company that is required or authorized pursuant to this chapter, the Commissioner shall charge and collect from the private professional guardian company a fee for conducting the examination and preparing a report of the examination based upon the rate established and, if applicable, adjusted pursuant to NRS 658.101. Failure to pay the fee within 30 days after receipt of the bill is grounds for revoking the license of the private professional guardian company.

10. All money collected under this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

(Added to NRS by 2015, 2356; A 2017, 394, 909, 2432)

General Fee Standards and Guidelines: Recommendations for Compensating Wisconsin Corporate Guardians

Prepared by the Corporate Guardian Fee Standards Initiative
June 2018

CORPORATE GUARDIAN FEE STANDARDS INITIATIVE SUMMARY

Purpose and Introduction

The Corporate Guardian Fee Standards Initiative (Initiative) was created to analyze the current system for determining fees for corporate guardians and recommending standards and/or guidance to assist the court system (judges, registers in probate, corporation counsel, Adult Protective Services, etc.) in deciding how to consistently and adequately compensate qualified guardians. The standards and guidance outlined in this report were designed to:

- Ensure that the fees charged to the ward are fair and equitable under the circumstances and are appropriate for the services provided by the corporate guardian.
- Ensure that corporate guardian fees do not unnecessarily or prematurely erode the estate of the ward to Medicaid threshold eligibility required for participation in state Medicaid funded long term care support programs.
- Structure rates and fees so that corporate guardians are willing to accept referrals for wards with small or depleted estates.

Corporate guardians are increasingly needed to handle complex cases and cases in which family, friends, or volunteers are either unable or unwilling to serve as guardian. Costs are high and many people do not have sufficient funds to pay for their long term care and compensate guardians who are responsible for ensuring that care. Once an individual's estate is depleted, the county or state may be obligated to pay guardianship fees. Guardianship fees for long term care participants in programs such as Family Care reduce the amount that participants have available for cost share and, for those without cost share, come directly from the Managed Care Organization's (MCO) capitated payment.

The annual county survey of corporate guardian fees conducted by the Division of Quality Assurance consistently indicates that there is no uniformity of court-ordered corporate guardian rate structures or fees in Wisconsin. In coming years, the problem will worsen as the Baby Boomers age and the demand for corporate guardians grows. Whether corporate guardian fees are paid out of individual estates or public funds, fees must be fair and equitable under the circumstances and the services provided by corporate guardians and the fees paid for those services must be appropriate.

History

The Initiative grew out of an ad hoc committee that was convened by the Office on Aging (OOA) in the Department of Health Services in November 2012 to begin a discourse among stakeholders about corporate guardian fees. The committee was developed in response to complaints about fees and related issues received by the OOA during the prior eighteen months. It met twice in 2013 to hear presentations from stakeholders about corporate guardian fee issues of concern to them with time for questions and discussion following each presentation.

The Initiative was convened in January 2014 and met quarterly until this report was issued in June 2018. Members conducted a literature review about guardian fees and looked at model

standards and guidelines from other states, including Ohio and Arizona. They concluded that recommendations about fees necessitated recommendations about roles and responsibilities of guardians. In 2014, the Wisconsin Guardianship Association (WGA) issued a document, Standards of Practice, Best Practices for Wisconsin Independent and Corporate Guardians. The WGA document was created using the National Guardianship Association Standards of Practice as a guide, and contains standards about fees (Standard 22) as well as duties of guardians of the person and of the estate (Standards 12 and 18). It served as the point of departure for the Initiative's work.

Contents of Report

The Initiative has developed the following documents and tools related to fees and roles and responsibilities that are included in the report:

- Corporate Guardian General Fee Standards and Guidelines
- Corporate Guardian Fees – Common Scenarios
- Corporate Guardian Fees – Unresolved Issues

Also included in the report are the following:

- Wisconsin Guardianship Association Standards of Practice, Best Practices for Wisconsin Independent and Corporate Guardians
- Roles and Responsibilities Chart: Corporate Guardians, Adult Protective Services, and Managed Care Organizations
- Wis. Stats. § 54.72, Guardian Compensation and Reimbursement.
- Chapter DHS 85, Non-Profit Corporations and Unincorporated Associations as Guardians
- DQA Memo 10-015
- Resources Link

CORPORATE GUARDIAN
GENERAL FEE STANDARDS AND GUIDELINES

These standards and guidelines are intended to supplement the Wisconsin Guardianship Association Standards of Practice and Standard 22 – Guardianship Service Fees as well as Wis. Stats. § 54.72 and Chapter DHS 85. They are designed to assist judges, registers in probate, corporation counsel, Adult Protective Services, corporate guardians, guardians ad litem, MCOs, and other attorneys, parties, and interested persons who participate in the court system in determining how to consistently and adequately compensate qualified corporate guardians. Certain standards and guidelines provide additional best practices, while others clarify practices set forth in the WGA document. In all cases, compensation paid to guardians for services provided to or on behalf of the ward shall be reasonable, and guardian services and fees must be tailored to be in the ward's best interest and to meet the unique circumstances of each ward.

Categories of Payments to Corporate Guardians

- Reasonable compensation for services provided by the guardian.
- Reasonable compensation for services provided by an employee of the guardian or a third-party hired by the guardian.
- Reimbursement of expenses incurred by the guardian.
- Reimbursement of expenses incurred by an employee of the guardian or a third-party hired by the guardian.

General Considerations

1. Reasonable compensation for corporate guardians shall be determined on a case-by-case basis, applying consistent compensation standards and guidelines and balancing the totality of the circumstances.
2. General factors for consideration by the court include:
    - Agency size and structure, including staff expertise and training (non-profit/not-for-profit; "mom and pop shop"/large organization with multiple services, large staff).
    - Where the ward resides relative to guardianship jurisdiction.
    - Nature and probable duration of the ward's cognitive impairment.
    - Effect of guardian fees on the ward's financial ability to meet his or her foreseeable health, medical care, and maintenance needs.
    - Overall difficulty and complexity of the case.

3. The court must approve compensation and reimbursement of expenses before a guardian may be paid. However, charges may be incurred by the guardian prior to court approval. Wis. Stats. § 54.72 (3).
4. The guardian shall not loan funds to or borrow funds from the ward. Wis. Stats. § 54.18 (3); WGA Standard 20.II.F.
5. The guardian shall avoid actual or apparent conflicts of interest relative to a ward's personal or business affairs. The guardian shall report to the court all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the ward's best interest.
6. A guardian shall report to the court any likelihood that the ward's funds will be exhausted and advise the court whether the guardian intends to seek withdrawal as the guardian. In such a case, the guardian must continue to serve until a suitable replacement is found. WGA Standard 22.V.
7. A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the ward's best interest or upon court order.

Reasonable Compensation

1. Corporate guardians are entitled to *reasonable compensation* for their services. Compensation should be fair, appropriate, and timely paid.
2. When assessing reasonable compensation, the court shall weigh the totality of the circumstances in each case and consider the statutory factors:
   - The reasonableness of the services rendered.
   - The fair market value of the services rendered.
   - Any conflict of interest of the guardian.
   - The availability of another to provide the services.
   - The value and nature of the ward's assets and income, including the sources of the ward's income.
   - Whether the ward's basic needs are being met.
   - The hourly or other rate proposed by the guardian for the services.

   Wis. Stats. § 54.72 (1) (b); WGA Standard 22.VII.
3. The amount of compensation may be determined on an hourly basis, as a monthly stipend (flat fee), or on any other basis that the court determines is reasonable under the circumstances. Wis. Stats. § 54.72 (1) (c). Examples:
   - Flat fee: The court orders that a guardian for wards receiving Medicaid benefits be compensated at a rate of $200 per month to cover an average of three hours of services provided. Variations to the flat fee may be considered by the court when increased activity by the guardian is necessary. When a guardian works on a flat monthly fee, the

guardian commonly asks for additional startup/closeout fees. Generally, these fees are in an amount between one to one and one-half times the monthly fee, and are requested in advance of the first month of the guardianship and then again before the ward's file is closed. These fees are designed to compensate the guardian for the additional time needed to complete the startup and closeout process. Examples of activities often included in startup/closeout fees are: attending hearings; securing assets; opening bank accounts; connecting with the ward, his or her family, and the care team; contacting physicians; addressing emergent concerns; applying for appropriate benefits, services, and supports; reviewing support plans and medical records; filing probate documents, such as inventories and accountings; listing and selling property; closing accounts; notifying Social Security and other benefit programs; cleaning out residences; and assisting with funeral arrangements.

- Hourly rate: The court orders that a guardian be compensated at an hourly rate and bills monthly according to the amount of time spent on ward-specific guardian duties. This type of rate is most commonly associated with private pay guardianships.

4. Prior to approval of a monthly stipend or flat fee, the guardian shall disclose to the court in writing the basis or justification for the amount of the proposed monthly stipend or flat fee, specifying in detail the services included in any flat-fee, the units of each service, and the usual hourly rate for such services. The actual delivery of services included with the flat fee shall be documented, as well as any startup or closeout costs.
5. Prior to approval of an hourly rate, the guardian shall disclose to the court in writing the proposed rate and basis for that rate and, if it is higher than the usual hourly rate for such services, provide justification for the higher rate. The hourly rate charged for any given task shall be at the approved rate commensurate with the task performed, regardless of who actually performed the task.
6. "Block billing" for services provided is not permitted. Block billing occurs when a total amount of time spent working on multiple tasks is provided, rather than an itemization of the time expended on each specific task. Exceptions may be permitted at the court's discretion. For example, a court might permit a guardian to bill each ward one hour per month for banking, opening mail, and paying bills.
7. "Value billing" for services provided is not permitted when guardians are compensated on an hourly basis. Value billing is the amount that is charged for services based on the price of the service instead of how much time was dedicated to the project. Only the actual time expended may be compensated.
8. Travel time and waiting time may be billed, except when time is spent on other billable activity while traveling or waiting. Travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication; for example, telephonic court hearings.
9. Billable time that benefits multiple wards, including travel and waiting time, banking, postal and mail-related activities, and routine bill paying, shall be appropriately apportioned between each ward.
10. Billable time does not include time spent on billing activities or internal business activities, including clerical and secretarial support provided to the guardian.

11. Fees shall be documented, and shall clearly and accurately state: the date and time spent on a task, the task performed, expenses incurred, collateral contacts involved, and identification of the individual who performed the task and skill level.
12. Guardians shall perform tasks that require the attention and skill level of a guardian. The court should consider whether a different person could have rendered better, faster, or less expensive service (e.g., shoppers, housecleaners, plumbers, electricians, care providers, real estate agents, etc.). The court may also consider the result of the task performed, the fidelity and loyalty displayed by the guardian, including whether the guardian put the best interest of the ward before the economic interest of the guardian, whether benefits were derived from the efforts, and whether probable benefits exceeded costs.
13. Attorneys or other professionals may serve as guardians, but may not charge an attorney or other professional rate for their services. While acting as guardian, they may only charge a reasonable guardianship rate.
14. The court shall approve the fee structure and compensation at the time of the initial appointment of the guardian, unless the court finds that circumstances warrant otherwise. In all cases, the guardian shall disclose in writing the basis or justification for the fee prior to the court's approval. During the course of the guardianship, the guardian shall seek authorization from the court for any fee changes or for fee-generating activities not contained in the appointment, and disclose a detailed explanation for any claim for such fees or activities.
15. A guardian may not seek payment of fees from a ward receiving Medicaid benefits until after the ward's health insurance, spousal support, and personal needs allowance have been paid.

Reimbursement of Expenses

Corporate guardians are entitled to reimbursement of expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers. Wis. Stats. § 54.72 (2). A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the court.

1. Guardian Expenses
    - Reasonable costs incurred in the best interest of the ward are reimbursable at actual cost, without "mark up" or increase in price.
    - Reimbursable costs include, but are not limited to postage, goods or services obtained for or consumed by the ward, process servers, publication fees, etc.
    - Reimbursable costs do not include agency overhead (any cost not specifically or directly associated with the delivery of goods or services to an identified ward) or time and expenses to correct an error made by the guardian and/or staff or to defend a case for removal as guardian.

2. Other Expenses

- Professional services shall be tailored to the specific circumstances of each case in order to meet the best interest of each ward.
- The guardian shall not perform professional or direct services for the ward.
- The guardian shall not receive incentives or compensation from any direct service provider providing services to a ward.
- The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. The guardian shall coordinate services rather than provide services directly.
- The guardian shall be independent from all service providers. Exceptions shall be in the best interest of the ward and approved by the court.

CORPORATE GUARDIAN FEES – COMMON SCENARIOS

The source of funding for corporate guardian fees is of concern to wards, guardians, courts, counties, and others. In most cases, wards over age 65 with significant assets will not be receiving benefits of any kind except for Social Security. These wards are typically considered to be private pay, meaning the ward is responsible for payment of corporate guardian fees. Private pay wards constitute a minority of guardianships served by corporate guardians. Even when a ward has significant assets when the guardianship is established, the high cost of long-term care may deplete those assets prior to the ward's death, thereby, requiring the ward to become dependent on Medical Assistance (Medicaid).

In the majority of cases, funding sources available to pay for corporate guardian fees depend on the type of benefits a ward receives, such as Supplemental Security Income or Medical Assistance in one form or another. The benefits that a ward receives may depend on where the ward resides.

Below are five common scenarios that courts and other interested parties may encounter. Each scenario explains the process used to determine whether a ward has a sufficient funding source available to pay corporate guardian fees along with problems and potential outcomes.

1. Ward receives Social Security, is enrolled in Family Care (Medicaid waiver benefit), and resides in a Community-Based Residential Facility (CBRF), Adult Family Home (AFH), or group home.

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward's "countable income" as provided for in the Medicaid Eligibility Handbook, thereby reducing the Ward's "cost share" or the amount of income Ward has available to contribute to the cost of Family Care services. "Cost share" refers to a member's payment obligation in Home and Community Based Waivers programs (Family Care/Partnership) in order to maintain eligibility. Ward's "countable income" is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys' fees, and other allowable items. As a result of all of the reductions that apply to the Ward's income, the Managed Care Organization (MCO) pays more toward the cost of Ward's care. The reduced "cost share" does not affect Ward's personal spending allowance since personal spending allowances are set at a fixed rate by the Medicaid program. If Ward resides in substitute care, Ward must have sufficient funds to pay his or her monthly room and board. If these costs are not accounted for prior to payment of guardian fees, Ward may not have sufficient income to meet Ward's obligation to pay for room and board, and may have to move.

2. Ward receives Social Security, is enrolled in Family Care (Medicaid waiver benefit), and resides in his or her own home or apartment.

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward's "countable income" as provided for in the Medicaid Eligibility Handbook, thereby reducing Ward's "cost share" or the amount of income

Ward has available to contribute to the cost of Family Care services. "Cost share" refers to a member's payment obligation in Home and Community Based Waivers programs (Family Care/Partnership) in order to maintain eligibility. Ward's "countable income" is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys" fees, and other allowable items. In most cases, Ward pays no "cost share" because all Ward's income is used for expenses such as rent or a mortgage, insurance, utilities, groceries, personal items, etc. This also means that no income is available to pay for guardian fees. Typically, either a volunteer guardian is needed or a third party payer must cover the cost of guardian fees, such as county human services departments, trusts, or families. As with Wards who are Family Care members residing in substitute care, Wards who are Family Care members residing in their own home or apartment must have sufficient funds to pay for the monthly expenses described above. If these expenses are not accounted for prior to payment of guardian fees, Ward may not have sufficient income to meet Ward's obligation to pay for them. If this is the case, Ward may not have sufficient income to continue to reside in the community and may have to move.

3. Ward receives Social Security, is enrolled in Nursing Home (Institutional) Medicaid, and resides in a Nursing Home. (In most cases, a Ward who resides in a Nursing Home is not enrolled in Family Care.)

Guardian must submit a petition and order for fees to the court. Once the order is signed, Guardian submits it to the Central Data Processing Unit (CDPU) at the State for Economic Support Services. The Economic Support Services worker enters the court order for fees into the system. Court-ordered guardian fees reduce Ward's "countable income" as provided for in the Medicaid Eligibility Handbook, thereby reducing Ward's "patient liability" or the amount of income Ward has available to contribute to the cost of Medicaid services. "Patient liability" refers to a member's payment obligation in Institutional Medicaid in order to maintain eligibility. Ward's "countable income" is also reduced by the costs pertaining to the personal needs allowance, spousal support, medication, court-ordered attorneys" fees, and other allowable items. As a result of all the reductions that apply to Ward's income, Medicaid pays more toward the cost of Ward's nursing home care. The reduced "patient liability" does not affect Ward's personal spending allowance since personal spending allowances are set at a fixed rate by the Medicaid program.

4. Ward receives Supplemental Security Income (SSI) and Medicaid benefits, but is not enrolled in Family Care, and resides in an institutional setting, such as nursing homes, State centers for the disabled (e.g., Northern Wisconsin Center), or psychiatric treatment centers (e.g., MMHI, WMHI, Trempealeau Health Center, etc.).

SSI is fixed at $30 per month when Ward resides in a nursing home or other institutional setting, such as a State center for the disabled or a psychiatric treatment center. The amount is fixed at such a low rate because it is assumed that these institutions provide for all of the Ward's care. The low income received by Ward means there is no income available to pay for guardian fees. Typically, either a volunteer guardian is needed or a third party payer must cover the cost of guardian fees, such as county human services departments, trusts, or families.

5. Ward has significant assets, is not receiving Medicaid benefits of any kind, and is, therefore, considered to be private pay. Ward resides in his or her own home or apartment at the time of appointment, but may need to be moved to a supported residential setting during the guardianship.

Ward's income and assets exceed the Medicaid eligibility threshold. Often Guardian is required to manage a number of diverse assets including homes, income properties, vehicles, insurance policies, trusts, investments, etc. Ward is not receiving Medicaid benefits of any kind so there are no additional supports provided, such as case managers. Guardian must assist with tasks such as securing homes, facilitating estate sales, selling homes or other properties, selling vehicles, consolidating and/or liquidating investment so that liquid assets are available to pay for Ward's supports and services, and moving Ward into a supported residential setting. Since Guardian is required to interact directly with providers, Guardian will spend significantly more time ensuring Ward receives necessary supports and services, especially when Ward resides in his or her own home or apartment. A private pay, hourly rate is often used in these cases to cover Guardian's increased involvement and responsibility.

CORPORATE GUARDIAN FEES – UNRESOLVED ISSUES

The Initiative was charged with the specific task of analyzing the current system for determining fees for corporate guardians and recommending standards and/or guidance to assist the court system in deciding how to consistently and adequately compensate qualified guardians. During its analysis, the Initiative concluded that a delineation of roles and responsibilities for guardians was also necessary. Finally, over the course of its work, a number of other important related issues came to the Initiative's attention. The Initiative was unable to address these issues because they were outside the scope of its charge and time was limited. However, several of the most important issues are briefly discussed below with the hope that another committee or workgroup will be formed to deal with one or more of them.

1. Non-payment of corporate guardian fees for time spent attending guardianship hearings in cases where the petition for guardianship is denied.

Professional guardianship agency fees are not approved by the court until after the agency is appointed as guardian. In some cases, a corporate guardian is required to attend multiple hearings and, ultimately, the petition for guardianship is denied. The guardian's fees are not approved because the guardian was not appointed as guardian in the case. However, all other professionals in attendance at the hearings are compensated for their time, including Corporation Counsel, Guardians ad Litem, adversary counsel, physicians, social workers, etc. Corporate guardians, as professionals, must be recognized and compensated accordingly.

Possible Solutions:

- Include corporate guardian fees in the allowable expenses covered by the county petitioning for the guardianship.
- Allow corporate guardian agencies to attend hearings telephonically.

2. Non-payment of corporate guardian fees in cases involving wards with inadequate assets.

Professional guardianship agencies are often the guardian of last resort. Increasingly, professional agencies are called upon to assist in difficult and complex situations in which little, if any, financial information about the ward is available until after the guardian is appointed. Often, the corporate guardianship agency will spend a significant amount of time working on a case only to learn there are no assets and no way to pay for the guardian's fees. The agency's request for county funding to cover this cost is frequently denied, leaving the agency with no way to cover its fees and expenses.

Compensation will continue to be a barrier to finding qualified guardians willing to serve in complex situations, particularly in cases involving wards with little or no assets.

Possible Solution:

- Grant petitions requesting that guardian fees be paid by the county petitioning for the guardianship.

3. Guardians and end-of-life decision-making.

4. Guardian monitoring and oversight.

5. Training requirements for all guardians with an emphasis on corporate guardianship agencies.

Possible Solutions:

- Require training prior to approval under DHS Chapter 85 as corporate guardian or appointment of volunteers and family members as guardians.
- Require ongoing training for volunteers and family members. Corporate guardians already have continuing training requirements.

6. Requirements for becoming a corporate guardian.

Possible Solution:

- Revise DHS Chapter 85.
- Insurance recommendations.

7. Requirements for guardian background checks.

Possible solutions:

- Requirements
  - When should they be required.
  - What should the process include.
  - Who should be responsible.
- Guardian misconduct registry.

Initiative Membership

Current Members:

The Honorable Andrew Bissonnette (retired, Dodge County)

The Honorable Gregory Gill, Jr., Outagamie County Probate Court

Doreen Goetsch, Department of Health Services Office on Aging, APS

Grace Knutson, Director, Guardianship Support Center, GWAAR

Alice Page, Department of Health Services, Office on Aging, APS

Kay Schroeder, Corporate Guardians of Northeast Wisconsin (corporate guardian)

Dinh Tran, Department of Health Services, Division of Quality Assurance

Nan Upright-Sexton, ANS Guardianship Services (corporate guardian)

Past Members:

Jody Bartels, Grant County Register in Probate

Cheryl Beekman, Brown County Register in Probate

Alene Kleczek Bolin, (former) Sauk County Assistant Corporation Counsel

Tami Eisenga, (former) Green Lake County Register in Probate

John Etzler, (former) Department of Health Services, Office of Family Care Expansion

Susan Fisher, former Director, Guardianship Support Center, GWAAR

Ardell Klaske, Fond du Lac County Register in Probate

Ann Lamberg, Department of Health Services, Bureau of Managed Care

Susan Podebradsky, (former) Dane County Guardianship Administrator

Kyle Sargent, Outagamie County District Attorney's Office

Tom Stratton, (former) Outagamie County Department of Health and Human Services

Wisconsin Guardianship Association

Standards of Practice

Best Practices for Wisconsin Independent and Corporate Guardians

Adopted 2014
First Edition 2014
Revised 02/10/2015

Table of Contents

The WGA Best Practice Standards Committee Members responsible for the creation of this document are the following:

Corporate Guardians of Northeast Wisconsin, Kay Schroeder, NCG, President
Empathos Solutions, Inc, Dan Dillon
Family Services, Inc. of Barron Co, Judy Nelson
Golden Care Services, Ruth Zych
Opportunities, Inc, Linda Branson

This document was created using the National Guardianship Association Standards of Practice document as a guide.

Definitions

ADVANCE DIRECTIVE - A written instruction, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his or her desires.

ADVOCATE - To assist, defend, or plead in favor of another.

ARM'S-LENGTH RELATIONSHIP - A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both.

BEST INTEREST - The course of action that maximizes what is best for a person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the person.

CAPACITY - Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one's acts. (Black's)

CONFLICT OF INTEREST - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

COURT - An arm of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. (Black's)

COURT ORDER - A legal document issued by the court and signed by a judge. Examples include a letter of guardianship spelling out directions for the care of the person and the estate and an authorization or denial of a request for action.

COURT-REQUIRED REPORT - A report that the guardian is required by statute or court order to submit to the court relative to the guardianship.

DESIGNATION OF GUARDIAN - A formal means of nominating a guardian before a guardian is needed.

DIRECT SERVICES - These include medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

ESTATE - Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

EXTRAORDINARY MEDICAL CIRCUMSTANCE - Includes abortion, removal of life support, sterilization, experimental treatment, and other controversial medical issues.

FIDUCIARY - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

FREESTANDING ENTITY - An agency or organization that is independent from all other

agencies or organizations

FUNCTIONAL ASSESSMENT - A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

GUARDIAN – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

> **Conservator** is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.
>
> **Emergency/Temporary Guardian** is a guardian whose authority is temporary and who is usually appointed only in an emergency.
>
> **Foreign Guardian** is a guardian appointed in another state or jurisdiction.
>
> **Guardian of the Estate** is a guardian who possesses any or all powers and rights with regard to the property of the individual.
>
> **Guardian of the Person** is a guardian who possesses any or all of the powers and rights granted by the court with regard to the personal affairs of the individual.
>
> **Limited Guardian** is a guardian appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.
>
> **Plenary Guardian** is a person appointed by the court to exercise all delegable rights and powers of the person after the court finds the person lacks the capacity to perform all of the tasks necessary to care for his or her person or property.
>
> **Pre-Need Guardian** is a guardian who is formally nominated before a guardian is needed.
>
> **Standby Guardian** is a person, agency, or organization whose appointment as guardian becomes effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.
>
> **Successor Guardian** is a guardian who is appointed to act upon the death or resignation of a previous guardian.

INFORMED CONSENT - A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

LEAST RESTRICTIVE ALTERNATIVE - A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

PERSON UNDER GUARDIANSHIP OR SIMPLY "PERSON" - A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Conservatee, Disabled Person, Protected Person, Incapacitated Person and Ward.

PERSON-CENTERED PLANNING[1] **-** A family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand and clearly describe the unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- Is supported in a web of relationships, both natural and paid, within their communities.

PRUDENT INVESTOR RULE - All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and the guardian who does not use risk-reducing strategies may be penalized. Under most circumstances, the person's assets must be diversified. The guardian is obligated to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk. The possible effects of inflation must be considered as part of the investment strategy. The guardian shall either demonstrate investment skill in managing assets or shall delegate investment management to another qualified party.

SELF-DETERMINATION - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

SOCIAL SERVICES - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

SUBSTITUTED JUDGMENT - The principle of decision-making that requires implementation of the course of action that comports with the individual person's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

---

[1] Personal communication with Michael Smull, Mary Lou Bourne & Leigh Ann Kingsbury, Support Development Associates, LLC (May 2, 2012). *See* Michael Smull, The Learning Community for Person Centered Practices, www.learningcommunity.us (April 2012). *See also* John O'Brien & Connie Lyle O'Brien, eds., *A Little Book About Person Centered Planning,* Inclusion Press (2000).

NGA and CGC Qualifications for Court-Appointed Guardians

Corporate Guardian - A corporate guardian is a corporation that is named as guardian for an individual and may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities, and nonprofit entities.

Guidelines:

A corporate guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the *NGA Standards of Practice*.
3. Should strive to have decision-making staff become national certified guardians and national master guardians.

Family Guardian - A family guardian is an individual who is appointed as guardian for a person to whom he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective person, the court prefers to appoint the family member as guardian. On court approval, a family guardian may receive reasonable compensation for time and expenses relating to care of the person.

Guidelines:

A family guardian:

1. Is encouraged to recognize the resources available through the NGA and WGA.
2. Shall follow the *Model Code of Ethics for Guardians*.
3. Shall follow the *NGA Standards of Practice* when carrying out guardianship responsibilities.

Individual Professional Guardian - An individual professional guardian is an individual who is not related to the person by blood or marriage and with court approval may receive compensation in his or her role as guardian. He or she usually acts as guardian for two or more individuals.

Guidelines:

An individual professional guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the N*GA Standards of Practice*.
3. Should strive to become a national certified guardian and national master guardian, if applicable.

National Master Guardian - A national master guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national master guardian:

1. Shall meet the Master guardian qualifications as established by the Center for Guardianship Certification.

2. Shall follow the *Model Code of Ethics for Guardians*.

3. Shall follow the N*GA Standards of Practice*.

Public Guardian - A public guardian is a governmental entity that is named as guardian of an individual and may receive compensation in its role as guardian with court approval. Public guardians may include branches of state, county, or local government.

Guidelines:

A public guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.

2. Shall follow the N*GA Standards of Practice*.

3. Should strive to have decision-making staff become national registered guardians and national master guardians.

National Certified Guardian - A national certified guardian is an individual who has met the qualifications established by the Center for Guardianship Certification.

Guidelines:

A national certified guardian:

1. Shall meet the National certified guardian qualifications as established by the Center for Guardianship Certification.

2. Shall follow the *Model Code of Ethics for Guardians*.

3. Shall follow the N*GA Standards of Practice*.

4. Should strive to become a national master guardian.

Volunteer Guardian - A volunteer guardian is a person who is not related to the person by blood or marriage and who does not receive any compensation in his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval.

Guidelines:

A volunteer guardian:

1. Shall follow the *Model Code of Ethics for Guardians*.
2. Shall follow the N*GA Standards of Practice*.
3. Is encouraged to become a national certified guardian and national master guardian, if applicable.

WGA Standards of Practice

Standard 1 – Applicable Law and General Standards

I. The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships.

II. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians as defined by Wisconsin Statues and Codes and Department of Health Services:

A. Chapter 51 – Mental Health Act

B. Chapter 54 – Guardianship And Conservatorships

C. Chapter 55 – Protective Service System

D. Wisconsin Department of Health Services Administration Code 85 - Non–Profit Corporations and Unincorporated Associations as Guardians

III. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment.

IV. Every guardian should be held to the same standards, regardless of familial relationship, except a guardian with a higher level of relevant skills shall be held to the use of those skills.

Standard 2 – The Guardian's Relationship to the Court

I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and all decisions and actions shall be consistent with the court order specific to the ward.

II. The guardian shall obtain court authorization for actions that are subject to court approval.

III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action.

IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.

V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.

VI. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute through the use of annual condition of the ward and annual accounting reports.

VII. The guardian shall use available technology to:

A. File the general plan, inventory and appraisal, and annual reports and accountings

B. Access responsible education and information about guardianships

C. Assist in the administration of the estate.

VIII. The guardian shall inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian's authority.

Standard 3 – The Guardian's Professional Relationship with the Person

I. The guardian shall treat the person under guardianship with dignity.

II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.

III. The guardian may not engage in sexual relations with the person under guardianship unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.

IV. The guardian shall follow the Wisconsin Department of Health Services Administration Code 85 which requires 20 hours of ongoing education within a 2(two) year period concerning the following:

A. Person-centered planning

B. Best Interest decision-making

C. Responsibilities and duties of guardians

D. Legal processes of guardianship

Standard 4 – The Guardian's Relationship with Family Members and Friends of the Person

I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.

A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.

B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

II. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence.

III. When disposing of the person's assets, the guardian may notify family members and friends and give them the opportunity, with court approval, to obtain assets (particularly those with sentimental value).

IV. The guardian shall make reasonable efforts to preserve property designated in the person's will and other estate planning devices executed by the person.

V. The guardian may maintain communication with the person's family and friends regarding significant occurrences that affect the person when that communication would benefit the person.

VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the person. The guardian may request and consider family input when making medical decisions.
Note: Refer to Standard 11 as it relates to confidentiality issues.

Standard 5 – The Guardian's Relationship with Other Professionals and Providers of Service to the Person

I. The guardian shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation on behalf of the person.

II. The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community.

III. The guardian shall stay current with changes in community resources to ensure that the person under guardianship receives high-quality services from the most appropriate provider.

IV. A guardian who is not a family member guardian may not provide direct service to the person. The guardian shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.

V. The guardian shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person.

VI. The guardian shall make a good faith effort to cooperate with other Best Interest decision-makers for the person. These include, where applicable, any other guardian, agent under a power of attorney, health care proxy, trustee, VA fiduciary, and representative payee.

VII. The guardian may consider mentoring new guardians.

Standard 6 – Informed Consent

I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent as referred to in Chapter 54.25(2)(d)2.

II. Informed Consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.

IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.

V. In evaluating each requested decision, the guardian shall consider the following:

A. Have a clear understanding of the issue for which informed consent is being sought

B. Have a clear understanding of the options, expected outcomes, risks, and benefits of each alternative

C. Determine the conditions that necessitate treatment or action

D. Encourage and support the person in understanding the facts and directing a decision

E. Maximize the participation of the person in making the decision

F. Determine whether the person has previously stated preferences in regard to a decision

of this nature

G. Determine why this decision needs to be made now rather than later

H. Determine what will happen if a decision is made to take no action

I. Determine what the least restrictive alternative is for the situation

J. Obtain a second medical or professional opinion, if necessary

K. Obtain information or input from family and from other professionals as appropriate

L. Obtain written documentation of all reports relevant to each decision

Standard 7 – Standards for Decision-Making

I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.

II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.

A. The guardian shall ask the person what he or she wants.

B. If the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.

C. If the person, even with assistance, cannot express his or her goals and preferences, the guardian shall seek input from others familiar with the person to determine what the individual would have wanted.

III. Best Interest is the principle of decision-making that should be used when:

A. The person has never had capacity; the person's goals and preferences cannot be ascertained even with support

B. Following the person's wishes would cause substantial harm to the person.

C. The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.

D. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

Standard 8 – Least Restrictive Alternative

I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing least restrictions on his or her freedom, rights, and ability to control his or her environment.

II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person while maintaining the person's dignity, rights, protection, and safety.

III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.

IV. The following guidelines apply in the determination of the least restrictive alternative:

A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.

B. The guardian shall strive to know the person's goals and preferences.

C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

Standard 9 – Self-Determination of the Person

I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to his or her personal care and financial needs.

II. The guardian shall attempt to maximize the self-reliance and independence of the person.

III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

IV. The guardian shall participate in the implementation of a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.

V. The guardian shall, wherever possible, seek to ensure that the person leads the planning process and at a minimum ensure that the person participates in the process.

Standard 10 – The Guardian's Duties Regarding Diversity and Personal Preferences of the Person

I. The guardian shall determine the extent to which the person under guardianship identifies with particular ethnic, religious, and cultural values. To determine these values, the guardian shall also consider the following:

A. The person's attitudes regarding illness, pain, and suffering

B. The person's attitudes regarding death and dying

C. The person's views regarding quality of life issues

D. The person's views regarding societal roles and relationships

E. The person's attitudes regarding funeral and burial customs

II. The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take steps to ensure that a person's sexual expression is consensual, that the person is not victimized, their privacy is ensured, and that an environment conducive to this expression is provided.

A. The guardian shall ensure that the person has information about and access to accommodations necessary to permit sexual expression to the extent the person desires and to the extent the person possesses the capacity to consent to the specific activity.

B. The guardian shall take reasonable measures to protect the health and well-being of the person.

C. The guardian shall ensure that the person is informed of birth control methods. The guardian shall consider birth control options and choose the option that provides the person the level of protection appropriate to the person's lifestyle and ability, while considering the preferences of the person. The guardian shall encourage the person, where possible and appropriate, to participate in the choice of a birth control method.

D. The guardian shall protect the rights of the person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the person's values and customs.

Standard 11 - Confidentiality

I. The guardian shall keep the affairs of the person under guardianship confidential.

II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.

III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.

IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.

V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk.

Standard 12 – Duties of the Guardian of the Person

I. The guardian shall have the following duties and obligations to the person under guardianship unless the order of appointment provides otherwise:

A. To see that the person is living in the most appropriate environment that addresses the person's goals, needs, and preferences.

1. The guardian shall have a strong priority for home or other community- based settings, when consistent with the person's goals and preferences.

2. The guardian shall authorize moving a person to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the person and serves the overall best interest of the person.

3. The guardian shall consider the proximity of the setting to those people and activities that are important to the person when choosing a residential setting.

4. At a minimum the guardian shall report to a court before a move to a more restrictive residential setting and state the justification for the move

Standard 13 – Guardian of the Person: Initial and Ongoing Responsibilities

I. With the proper authority, initial steps after appointment as guardian are as follows:

A. The guardian shall address all issues of the person under guardianship that require immediate action.

B. The guardian shall meet with the person within 14 days after the appointment. At the first meeting, the guardian shall:

1. Communicate to the person the role of the guardian

2. Explain the rights retained by the person

3. Assess the person's physical and social situation, the person's educational; Vocational; and recreational needs, the person's preferences, and the support systems available to the person

4. Attempt to gather any missing necessary information regarding the person

C. After the first meeting with the person, the guardian shall notify relevant agencies and individuals of the appointment of a guardian and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The guardian shall:

1. Obtain an evaluation of the person's condition, treatment, and functional status from the person's treating physician or appropriate specialist, if a comprehensive medical evaluation was not completed as part of the petitioning process or has not been done within the past year

2. Obtain a psychological evaluation, if appropriate

3. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts

4. Establish contact with and develop a regular pattern of communication with the guardian of the estate or any other fiduciary for the person

II. The guardian shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs, and preferences of the person.

A. The plan shall emphasize a "person-centered philosophy."

B. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs, and preferences of the person.

C. The plan must also address whether the person's finances and budget are in line with the services the person needs and are flexible enough to deal with the changing status of the person.

D. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.

E. The plan must be based on a multidisciplinary functional assessment.

F. The plan must be updated no less often than annually.

III. The guardian shall maintain a separate file for each person. The file must include, at a minimum, the following information and documents:

A. The person's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications

B. All legal documents involving the person

C. Advance directives

D. A list of key contacts

E. A list of service providers, contact information, a description of services provided to the person, and progress/status reports

F. A list of all over-the-counter and prescribed medication the person is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication

G. Documentation of all client and collateral contacts, including the date, time, and activity

H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the person

I. The guardianship plan

J. An inventory

K. Assessments regarding the person's past and present medical, psychological, and social functioning

L. Documentation of the person's known values, lifestyle preferences, and known wishes regarding medical and other care and service

M. A photograph of the person

N. Ward Rights and Grievances

IV. The guardian shall visit the person no less than quarterly.

A. The guardian shall assess the person's physical appearance and condition and assess the appropriateness of the person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.

B. The guardian shall maintain substantive communication with service providers, caregivers, and others attending to the person.

C. The guardian shall participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the person.

D. The guardian shall require that each service provider develop an appropriate service plan for the person and shall take appropriate action to ensure that the service plans are being implemented.

E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the person at the place of residence and at any program site to ascertain that the care plan is being properly followed.

F. The guardian shall advocate on behalf of the person with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the person, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.

G. The guardian shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the individual's current goals, needs, and preferences, including but not limited to:

1. Evaluating the plan

2. Enforcing residents' rights, legal and civil rights

3. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the person

V. The guardian shall fully identify, examine, and continue to seek information regarding options that will fulfill the person's goals, needs, and preferences.

A. Guardians shall take full advantage of professional assistance in identifying all available options for long term services and supports.

B. Sources of professional assistance include but are not limited to area agencies on aging,

centers for independent living, protection and advocacy agencies, long- term care ombudsmen, developmental disabilities councils, aging and disability resource centers, and community mental health agencies.

VI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.

VII. The guardian shall become educated about the nature of any incapacity, condition, and functional capabilities of the person.

Standard 14 – Decision-Making About Medical Treatment

I. The guardian shall promote, monitor, and maintain the health and well-being of the person under guardianship.

II. The guardian shall ensure that all medical care for the person is appropriately provided and that the person is treated with dignity.

III. The guardian shall seek to ensure that the person receives appropriate health care consistent with person-centered health care decision-making.

IV. The guardian, in making health care decisions or seeking court approval for a decision, shall:

A. Maximize the participation of the person

B. Acquire a clear understanding of the medical facts

C. Acquire a clear understanding of the health care options and the risks and benefits of each option

D. Encourage and support the individual in understanding the facts and directing a decision

V. The guardian shall use the Best Interest standard with respect to a health care decision.

VI. The guardian shall determine whether the person, before the appointment of a guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts. On finding such documents, the guardian shall inform the court and other interested parties of the existing health care documents.

VII. To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian.

VIII. If the person's preferences are unknown and unascertainable, the guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the person's welfare, to determine the person's best interests, which determination shall include consideration of consequences for others that an individual in the person's circumstances would consider.

IX. Absent an emergency or the person's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates the person's wishes with respect to a medical intervention, a guardian who has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria listed in Standards 6 and 7.

X. In the event of an emergency, a guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of

the criteria listed in Standards 6 and 7, within the time allotted by the emergency.

XI. The guardian shall seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to the person. The guardian shall obtain a second opinion from an independent physician.

XII. Under extraordinary medical circumstances, in addition to assessing the criteria and using the resources outlined in Standards 6 and 7, the guardian shall enlist ethical, legal, and medical advice, with particular attention to the advice of ethics committees in hospitals and elsewhere.

XIII. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment.

XIV. The guardian may not authorize extraordinary procedures without prior authorization from the court unless the person has executed a living will or health care power of attorney that clearly indicates the person's desire with respect to that action as allowable by law. Extraordinary procedures may include, but are not limited to, the following medical interventions:

A. Psychosurgery

B. Experimental treatment

C. Sterilization

D. Abortion

E. Electroshock therapy

XV. The guardian shall seek to ensure that appropriate palliative care is incorporated into all health care unless not in accordance with the person's preferences and values.

XVI. The guardian shall keep individuals that are important to the person reasonably informed of important health care decisions.

Standard 15 – Decision-Making About Withholding and Withdrawal of Medical Treatment

I. The WGA recognizes that there are circumstances in which, with the approval of the court if necessary, it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of the person under guardianship. In making this determination there shall in all cases be a presumption in favor of the continued treatment of the person.

II. If the person had expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, the guardian shall consider the wishes of the person. If the person's current wishes are in conflict with wishes previously expressed when/if the person had capacity, the guardian shall have this ethical dilemma reviewed by an ethics committee and if necessary, submit the issue to the court for direction.

III. When making this decision on behalf of the person, the guardian shall gather and document information as outlined in Standard 6 and shall follow Standard 7.

Standard 16 – Conflict of Interest: Ancillary and Support Services

I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing and why they should be avoided.

III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:

A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.

1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.

2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.

3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.

B. A guardianship program must be a freestanding entity and must not be subject to undue influence.

C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity, and it shall have independent decision-making ability.

D. The guardian may not be in a position of representing both the person and the service provider.

E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.

F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.

G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.

H. The guardian shall neither solicit nor accept incentives from service providers.

I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.

J. A guardian who is an attorney or employs attorneys may provide legal services to a person only

when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.

K. The guardian may enter into a transaction that may be a conflict of interest only when necessary or when there is a significant benefit to the person under the guardianship and shall disclose such transactions to interested parties and obtain prior court approval.

Standard 17 – Duties of the Guardian of the Estate

I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.

II. When making decisions the guardian shall:

A. Give priority to the goals, needs, and preferences of the person
B. Weigh the costs and benefits to the estate

III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.

IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.

V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.

VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.

VII. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.

VIII. The guardian shall provide competent management of the person's property and shall supervise all income and disbursements of the estate.

IX. The guardian shall manage the estate only for the benefit of the person.

X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.

XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.

XII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets.

XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.

XIV. The guardian shall employ prudent accounting procedures when managing the estate.

XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage

estate assets and property.

XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.

XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect, and/or exploitation as defined by state statute.

Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities

I. With the proper authority, the initial steps after appointment as guardian are as follows:

A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.

1. The guardian shall ascertain the income, assets, and liabilities of the person.

2. The guardian shall ascertain the goals, needs, and preferences of the person.

3. The guardian shall coordinate and consult with others close to the person.

B. The guardian shall meet with the person under guardianship within 14 days and:

1. Communicate to the person the role of the guardian

2. Outline the rights retained by the person and the grievance procedures available

3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity

4. Attempt to gather from the person any necessary information regarding the estate

5. Contact personally quarterly and face to face annually thereafter

II. The guardian shall become educated about the nature of any incapacity, condition, and functional capabilities of the person.

III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs, and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.

A. Guardian shall value the well-being of the person over the preservation of the estate.

B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.

C. The financial plan shall emphasize a "person-centered philosophy."

IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.

V. The guardian shall obtain all public and insurance benefits for which the person is eligible.

VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.

VII. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.

VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.

IX. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.

X. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.

XI. The guardian may monitor, provide oversight, or manage the personal allowance of the person.

XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

Standard 19 – Property Management

I. The guardian may not dispose of real or personal property of the person under guardianship without judicial, administrative, or other independent review giving consideration to the points listed in Standard 19, III.

II. In the absence of reliable evidence of the person's views before the appointment of a guardian, the guardian, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of the person or an interest in that property unless doing so is in the best interest of the person.

III. In considering whether to dispose of the person's property, the guardian shall consider the following:

A. Whether disposing of the property will benefit or improve the life of the person

B. The likelihood that the person will need or benefit from the property in the future

C. The previously expressed or current desires of the person with regard to the property

D. The provisions of the person's estate plan as it relates to the property, if any

E. The tax consequences of the transaction

F. The impact of the transaction on the person's entitlement to public benefits

G. The condition of the entire estate

H. The ability of the person to maintain the property

I. The availability and appropriateness of alternatives to the disposition of the property

J. The likelihood that property may deteriorate or be subject to waste

K. The benefits versus the liability and costs of maintaining the property

IV. The guardian shall consider the necessity for an independent appraisal of real and personal property.

V. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

Standard 20 – Conflict of Interest: Estate, Financial and Business Services

I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

II. Rules relating to specific situations that might create an impropriety or conflict of interest include the following:

A. The guardian may not commingle personal or program funds with the funds of the person, except as follows:

1. If the guardian maintains joint accounts, separate and complete accounting of each person's funds shall also be maintained by the guardian.

2. When an individual or organization serves several persons, it may be more efficient and more cost-effective to pool the individual estate funds in a single account. In this manner, banking fees and costs are distributed rather than being borne by each estate separately.

3. If the court allows the use of combined accounts, they should be permitted only where the guardian has available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.

B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.

C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above.

D. The guardian may not loan or give money or objects of worth from the person's estate unless specific prior approval is obtained.

E. The guardian may not use the person's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained and a reasonable showing is made that such support is consistent with the person's goals, needs, and

preferences and will not substantially harm the estate.

F. The guardian may not borrow funds from or lend funds to the person unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the person's benefits, and the transaction is approved by the court.

G. The guardian may not profit from any transactions made on behalf of the person's estate at the expense of the estate, nor may the guardian compete with the estate, unless prior approval is obtained from the court.

Standard 21 – Termination and Limitation of Guardianship

I. Limited guardianship of the person and estate is preferred over a plenary guardianship.

II. The guardian shall assist the person under guardianship to develop or regain the capacity to manage his or her personal and financial affairs.

III. The guardian shall seek termination or limitation of the guardianship in the following circumstances:

A. When the person has developed or regained capacity in areas in which he or she was found incapacitated by the court

B. When less restrictive alternatives exist

C. When the person expresses the desire to challenge the necessity of all or part of the guardianship

D. When the person has died

E. When the guardianship no longer benefits the person

Standard 22 – Guardianship Service Fees

I. Guardians are entitled to reasonable compensation for their services.

II. The guardian shall bear in mind at all times the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.

III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.

IV. The guardian shall:

A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action

B. Disclose a projection of annual fiduciary fees within 90 days of appointment

C. Disclose fee changes

D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment

E. Disclose a detailed explanation for any claim for fiduciary fees

V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.

VI. A guardian may seek payment of fiduciary fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance, and health care insurance premiums.

VII. Factors to be considered in determining reasonableness of the guardian's fees include:

A. Powers and responsibilities under the court appointment

B. Necessity of the services

C. The request for compensation in comparison to a previously disclosed basis for fees and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity

D. The guardian's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment

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

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

G. The work actually performed, including the time actually expended and the attention and skill-level required for each task, including whether a different person could have rendered the service better, cheaper, and/or faster

H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs

I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate

J. The fees customarily paid and time customarily expended for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter

K. The degree of financial or professional risk and responsibility assumed

L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement

M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest

VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:

A. Date and time spent on a task

B. Duty performed

C. Expenses incurred

D. Collateral contacts involved

E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer)

IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

Standard 23 – Management of Multiple Guardianship Cases

I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum visit per statutory requirements for each person, and that allows regular contact with all service providers.

II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.

A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.

B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

Standard 24 – Quality Assurance

I. Guardians shall actively pursue and facilitate periodic independent review of their provision of guardianship services.

II. The independent review shall occur periodically but no less often than every two years and must include a review of a representative sample of cases.

III. The independent review must include, but is not limited to, a review of agency policies and procedures, a review of records, and a visit with the person and with the individual providing direct service to the person.

IV. An independent review may be obtained from:

A. A court monitoring system

B. An independent peer

C. An CGC national master guardian

V. The quality assurance review does not replace other monitoring requirements established by the court.

Standard 25 – Transfer or Purchase of a Guardianship Practice

I. Guardianship is a fiduciary relationship and as such is bound by the fiduciary obligations recognized by the community and the law.

II. A guardianship practice is defined as private, professional guardianship services provided to two or more individuals found by a court to be incapacitated and in need of a guardian.

III. A professional guardian may choose to sell all or substantially all of a guardianship practice, including goodwill, subject to the following guidelines:

A. A professional guardian considering the sale of a guardianship practice shall ensure that the persons are considered in the sale process and that guardianship responsibilities continue to be met during the transition.

B. The professional guardian shall require documentation of the purchaser's references pertaining to qualifications to serve as guardian, as defined by state statutes.

C. Sale of a guardianship practice to a purchaser engaged in serving or representing any interest adverse to the interest of the persons is not appropriate.

D. The sale price for the guardianship practice must not be the sole consideration in selecting the purchaser.

E. The professional guardian shall provide formal written notice of the proposed sale to the court, to the persons, and to other interested parties, even if not required by state statutes.

F. Consideration should be given to requesting that the court appoint a guardian ad litem, or another third party reviewer, to protect the interests of the persons.

G. All parties to the sale of the guardianship practice shall take steps to ensure the continuity of care and protection for the persons during the period of the sale and transfer of ownership.

H. The professional guardian may not disclose confidential information regarding a person for the purpose of inducing a sale of a guardianship practice.

I. The fees charged to existing persons may not be increased by the purchaser of a guardianship practice solely for the purpose of financing the purchase.

IV. Admission to, employment by, or retirement from a guardianship practice, retirement plans or similar arrangements, or sale of tangible assets of a guardianship practice may not be considered a sale or purchase under this standard.

Created 11/2016

Roles and Responsibilities of Guardians, Adult Protective Services and Managed Care Organizations

Understanding the roles and responsibilities of a guardian (GP/GE), Adult Protective Services worker (APS), and managed care organization case worker (MCO) is necessary to ensure that individuals under guardianships are receiving the care and services that are in their best interest. Miscommunications between the parties involved in organizing care for a ward invite opportunities for gaps in needed care or services.

The roles and responsibilities of these actors are described in the Wisconsin Statutes, Department of Health Services (DHS) administrative code, and through the language in contracts and memorandums of understanding (MOU). The chart below attempts to organize each party's responsibilities accordingly.

Communication is a priority between APS, MCO and Guardian			
Guardian of Person (GP)	**Guardian of Estate (GE)**	**Adult Protective Services (APS)**	**MCO Case Manager (MCO)**
Wisconsin Statute 54.25, Court order and DHS 85 if corporate guardian	**Wisconsin Statute 54.19, court order and DHS 85 if corporate guardian**	**Wisconsin Statute 55, 46.90, MOUs**	**DHS/MCO contract, MOUs, Wis. Stat. 46**
• Anyone can petition for guardianship in WI including possible proposed guardian • Give MCO copy of guardianship court order and letters of guardianship • Endeavor to secure any necessary care or services for the ward that are in the ward's best interest based on: 1) Regular, in-person, inspection of the ward's condition, surroundings and treatment 2) Attendance and participation in staff meetings discussing the ward's treatment and care of any	• Anyone can petition for guardianship in WI including possible proposed guardian • Give MCO copy of guardianship court order and letters of guardianship • Take possession of the ward's real, personal property and income • Use the ward's income and property to maintain and support the ward and any dependents the ward is legally obligated to support • Pay the legally enforceable debts of the ward, including filing tax returns and paying taxes owed	• Discretion for whether to file petition for guardianship and/or protective placements • Collaborate on problem solving with MCO • Adhere to MOUs with MCOs • Emergency protective placements • Collaborate with guardian and MCO to plan residential moves (Party that initiates transfer of ward under a protective placement must notify court of transfer) • Review of placement if ward is protesting must be completed within 72 hours	• Anyone can petition for guardianship in WI including MCO, but restrictions on who can petition for protective placement • Collaborate on problem solving with APS • Adhere to MOUs with APS • Set up and coordinate all services to meet member's needs (shopping, personal cares, cleaning, transportation) including paid and natural supports • All assessments and member centered plans must be coordinated and approved by the guardian

facility where the ward lives or is a patient 3) Examination of ward's health care and treatment records 4) Inquiry into the risks, benefits of and alternatives to treatment for the ward 5) Consultation with healthcare and social services providers to make all necessary treatment decisions • Collaborate with APS and MCO on planning and coordinating residential moves (Party that initiates transfer of a ward subject to a protective placement order must notify court of transfer) • Notify the court of any change of address of the guardian or ward • Complete annual report on the condition of the ward to the court • Advocate for the ward's best interest	• For a ward who receives governmental benefits for which a representative payee is appropriate, make sure ward has rep. payee, coordinate with MCO • Collaborate with APS and MCO on planning and coordinating residential moves (Party that initiates transfer of ward subject to a protective placement order must notify court of transfer) • Prepare and file an annual account • Perform any other duty required by the court order • File with the Register of Deeds of any county in which the ward possesses real property • Determine if the ward has executed a will, the will's location, the appropriate persons to be notified in the event of the ward's death, and if the death occurs, notify those persons, deliver ward's assets to persons entitled to them upon ward's death	• Verify the individual is in the least restrictive environment consistent with his/her needs and with the resources of the county • Annual Review • Investigate all referrals for elders at risk and all allegations of abuse and neglect. Use discretion for adult at risk referrals • Discretion for when to file review of conduct when allegation is made against the guardian	• Behavior support plans/Restrictive measures • Coordinate DVR/Employment/Pre Voc. • Coordinate with guardian all medical care, psychiatric services or therapies and who will attend medical appointments • Communicate significant changes with medical condition and case plan to guardian • Attend staffings and IEPs – keep guardian informed • Set up representative payee if guardian of estate approves • Collaborate with APS and guardian on all planning and coordinating of residential moves • Coordinate transportation for member and moving member's belongings • Assist with SSI applications or renewals, Medicaid and other benefit reviews or applications • Report any concerns of abuse and/or neglect

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410, email at guardian@gwaar.org, or see www.gwaar.org/gsc.

GSC

GWaar Greater Wisconsin Agency on Aging Resources, Inc.

54.72 Guardian compensation and reimbursement. A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

(1) COMPENSATION.

(a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.

2. The fair market value of the services rendered.

3. Any conflict of interest of the guardian.

4. The availability of another to provide the services.

5. The value and nature of the ward's assets and income, including the sources of the ward's income.

6. Whether the ward's basic needs are being met.

7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

History: 2005 a. 387.

When a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. Yamat v. Verma L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997), 96-2313.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

Chapter DHS 85

NON–PROFIT CORPORATIONs AND UNINCORPORATED ASSOCIATIONS AS GUARDIANS

Note: This chapter replaced ch. PW 65. Chapter HSS 85 was renumbered chapter HFS 85 under s. 13.93 (2m) (h) 1., Stats., and corrections made under s. 13.93 (2m) (h) 6. and 7., Stats., Register, February, 2000, No. 530. Chapter HFS 85 was renumbered chapter DHS 85 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635. Chapter DHS 85 as it existed on May 31, 2010, was repealed and a new chapter DHS 85 was created, Register May 2010 No. 653, effective June 1, 2010.

Subchapter I — General Provisions

DHS 85.01 Purpose and authority. This chapter is promulgated under the authority of ss. 54.15 (7) and 227.11 (2) (a), Stats., to establish the criteria by which the department determines whether a private nonprofit corporation organized under ch. 181, 187, or 188, Stats., or an unincorporated association is suitable to perform the duties of a guardian of the person, or of the estate, or both, of a proposed ward.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.02 Applicability. This rule applies to private non–profit corporations or unincorporated associations applying to the department for consideration of suitability to perform the duties of guardian of a person or of an estate, or both, of a proposed ward.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.03 Definitions. As used in this chapter:

(1) "Applicant" means a private nonprofit corporation or an unincorporated association that applies to the department for a finding of suitability to perform the duties of a corporate guardian.

(2) "Corporate guardian" or "guardian" means a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian.

(3) "Department" means the Wisconsin department of health services.

(4) "Guardian of the estate" has the meaning given under s. 54.01 (11), Stats.

(5) "Guardian of the person" has the meaning given under s. 54.01 (12), Stats.

(6) "Guardianship program" means a system that is established by a corporate guardian to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of its wards under ch. 54, Stats.

(7) "Guardianship program manager" means an employee designated by a corporate guardian, who is responsible for the management and day–to–day operation of the guardianship program.

(8) "Guardian representative" means an individual assigned by a guardian to perform the functions of the guardian of the person under s. 54.25 (1) and (2), Stats., or of the estate under ss. 54.19 and 54.20, Stats., or both, of a ward.

(9) "Successor guardian" has the meaning given in s. 54.01 (35), Stats.

(10) "Unincorporated association" is an organization organized under ch. 184, Stats.

(11) "Ward" has the meaning given under s. 54.01 (37), Stats.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10; reprinted to correct error Register June 2010 No. 654.

DHS 85.04 Waivers and variances. (1) DEFINITIONS. In this section:

(a) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS AND VARIANCES. The department may grant a waiver or variance of a requirement of this chapter to the corporate guardian if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any ward and meet any of the following conditions:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the ward.

(b) An alternative to a requirement, including a new concept, method, procedure or technique, other equipment, other personnel qualifications, or the conducting of a pilot project, is in the interests of better care or management.

(3) APPLYING FOR A WAIVER OR VARIANCE. A corporate guardian may apply for a waiver or variance at any time. Each request shall be made in writing to the department and include all of the following:

(a) The rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific proposed alternative action.

(d) The reasons for the request.

(e) Justification that a requirement under sub. (2) would be satisfied.

(f) Any other information requested by the department.

(4) DEPARTMENT DECISION. (a) The department shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

(b) The terms of a requested variance may be modified upon agreement between the department and the corporate guardian.

(c) The department may impose conditions on the waiver or variance which it deems necessary.

(d) The department may limit the duration of a waiver or variance.

(5) HEARINGS. (a) Denial of a request for a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

(b) The applicant shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(6) REVOCATION. The department may revoke a waiver or variance for any of the following reasons:

(a) The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the wards.

(b) The guardian has failed to comply with the waiver or variance as granted.

(c) The guardian notifies the department in writing of the desire to relinquish the waiver or variance and be subject to the requirement previously waived or varied.

(d) Revocation is required by a change in law.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

Subchapter II — Approvals

DHS 85.05 Application. In this chapter: Only a private nonprofit corporation or an unincorporated association may apply to the department for a determination that the corporation or association is suitable to perform the duties of a guardian. A corporation or association applying for such a determination shall apply to the department on an application form provided by the department. The applicant shall submit the completed application and all of the following to the department:

(1) The filed endorsement of the Articles of Incorporation submitted to the Wisconsin department of financial institutions, if applicable.

(2) A copy of the applicant's written grievance procedure for use by wards and interested parties.

(3) A business plan that includes staffing projections.

(4) A statement agreeing in writing to submit such reports and answer such questions as the department shall require in monitoring a corporate guardian.

(5) Any additional information requested by the department.

Note: Copies of the application form can be obtained at http://www.dhs.wisconsin.gov/rl_DSL/CorptGuardn/CGforms.htm.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.06 Criteria for approval. The department may not approve an applicant until the department determines the applicant is fit and qualified to receive a determination of suitability to perform the duties of a corporate guardian. In determining whether an applicant is fit and qualified, the department may consider all of the following:

(1) Compliance history with Wisconsin's or any other state's licensing requirements and with any federal certification requirements, including any license revocation or denial.

(2) Arrest history and criminal record, including any of the following:

(a) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person.

(b) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance.

(c) Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons.

(d) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility or agency.

(3) Financial stability, including all of the following:

(a) Financial history and financial viability of the owner or related organization.

(b) Outstanding debts or amounts due to the department or other government agencies, including unpaid forfeitures and fines.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.07 Change of ownership. (1) If a corporate guardian sells or otherwise transfers ownership of the corporation or the association, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the final transfer of ownership. This notice shall include the name and contact information of the new corporation.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.08 Corporate guardian closing. (1) If a guardian is a corporation and the corporation's corporate status is revoked by the department of financial institutions or is voluntarily or involuntarily dissolved, or if the guardian is an unincorporated association and the association's status is voluntarily or involuntarily dissolved by the members or a court, or becomes inactive, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the corporation closes.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

Subchapter III — Personnel

DHS 85.09 Staff. (1) GUARDIANSHIP PROGRAM MANAGER. (a) The guardian shall designate an employee who is 21 years or older and is fit and qualified under s. 50.03 (4), Stats., to manage its guardianship program.

(b) The guardianship program manager shall have a high school diploma or its equivalent and have at least 3 years of relevant experience.

(c) The guardianship program manager shall be responsible for the ongoing training and competency of all employees.

(d) Any change of guardianship program manager shall be communicated to the department and the county department designated under s. 55.02 (2), Stats., within 14 days following the effective date of the change.

(2) OTHER EMPLOYEES. (a) Except at provided in sub. (1) (a) each employee shall have the skills, education and ability to fulfill the employee's job requirements.

(b) An employee that has direct contact with a ward shall be at least 18 years old.

(3) BACKGROUND CHECK. At the time of hire, employment or contract and every four years after, the corporate guardian shall conduct and document a caregiver background check on each employee following the procedures in s. 50.065, Stats., and ch. DHS 12. A guardian may not employ or contract with a person

who has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s. 50.065, Stats., unless the person has been approved under the department's rehabilitation review process as defined in ch. DHS 12.

(4) EMPLOYEE RECORDS. A separate record for each employee shall be maintained, kept current, and include all of the following:

(a) A written job description including duties, responsibilities and qualifications required for the employee.

(b) Beginning date of employment.

(c) Educational qualifications and relevant experience.

(d) The results of the background checks required under sub. (3).

(e) Documentation of training.

(5) VOLUNTEERS. The guardian may use volunteers if the volunteer receives the orientation and training necessary to assure the health, safety and welfare of wards.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.10 Training. (1) INITIAL TRAINING. Before performing the duties of a guardian, each guardian representative shall receive training that includes all of the following:

(a) Job responsibilities.

(b) Prevention and reporting of ward abuse, neglect and misappropriation of ward property.

(c) Ward's rights and grievance procedures contained in chs. 54 and 55, Stats., s. DHS 85.13, and ch. DHS 94.

(d) Information regarding the needs and services for each ward for whom the guardian representative is responsible.

(e) Information about local resources available to meet the needs of wards.

(f) Agency policies and procedures.

(2) CONTINUING EDUCATION. Each guardian representative shall complete 20 hours of training every 24 calendar months. The training shall be relevant to the guardian representative's job assignment and designed to increase the effectiveness of the employee to meet the needs of the wards served.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.11 Staffing. (1) The guardian shall at all times have an adequate number of staff who are qualified either by training or by experience to meet the needs of its wards, including knowledge of service needs and resources for meeting service needs.

(2) The guardian representative shall be accessible to the ward and to other persons concerned about the ward's well–being.

(3) The corporate guardian shall have staff available at all times to respond to an emergency situation as defined in s. DHS 94.02 (14).

(4) The corporate guardian shall have staff accessible to the local planning agency or interagency mechanism designated under s. 55.02, Stats.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.12 Conflict of interest. (1) The corporate guardian may not be subject to undue influence from any party.

(2) When the corporate guardian is a part of a larger organization, the corporate guardian shall have designated staff with independent decision–making authority about the guardianship program.

(3) Pursuant to s. 55.03 (1), Stats., a guardian may not be a provider of protective services or protective placement for its ward.

(4) No corporate guardian may accept a guardianship from a court in a county in which a member of the corporate guardian's board of directors or any employee or volunteer of the corporate guardian is a member or employee of the community board organized under s. 46.23, 51.42 or 51.437, Stats., or an employee of the county department of social services or human services or community programs or county board of supervisors or department of aging or a county court commissioner who hears petitions for guardianship or a member of a medicaid managed care organization.

(5) A corporate guardian may not profit from their ward.

(6) The guardian may not commingle personal or corporate funds with the funds of the ward. The guardian may consolidate and maintain wards' funds in accounts with other wards' funds if the guardian keeps separate and complete accounting of each ward's funds.

(7) Pursuant to s. 54.18 (3) (b), Stats., the corporate guardian may not lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(8) The corporate guardian may not engage in any financial transaction involving the ward's estate except as permitted under ch. 54, Stats., and this chapter.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

Subchapter IV — Ward Services

DHS 85.13 Rights of wards. (1) WARDS' RIGHTS. Every ward shall have the right to all of the following in relation to the corporate guardian:

(a) Be treated with respect and dignity by the staff and volunteers of the corporate guardian.

(b) Be free from abuse, mistreatment, neglect and misappropriation of property.

(c) Confidentiality of health and personal information and records, except to the extent the corporate guardian may be authorized under the guardianship order to give informed consent to disclosure.

(d) Be informed of the services provided by the corporate guardian agency.

(e) Be consulted about decisions on the ward's behalf, to the extent the ward is capable.

(f) Have guardianship services provided in a way that is least restrictive as defined in s. 54.01 (18), Stats.

(g) Communicate freely with the advocates of the ward's choice.

(h) File a grievance or a complaint without retaliation.

(2) COMPLAINTS. Any person may file a complaint with a corporate guardian or the department regarding the operation of a corporate guardian. The department may investigate a corporate guardian as it deems necessary.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701–2969 or by calling the department's toll–free complaint line at 1–800–642–6552 or by filing a complaint at http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.14 Duties. (1) The guardian representative shall meet with the ward within 14 days of the court appointment as corporate guardian. At the first meeting, the guardian representative shall complete all of the following:

(a) Explain to the ward the role of the guardian.

(b) Explain the guardianship determination and order including the rights addressed by the court. The guardian representative shall be familiar with the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained. The guardian representative shall explain to the ward the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained.

(c) Explain the applicable rights of the ward contained in ss. 54.18 (1), 54.25 (2), 54.42 and 55.10 (4), Stats., s. DHS 85.13 and the rules of the residence.

(d) Explain how to file a grievance and how to obtain a written copy of the grievance procedures for the living arrangement or for a service provider and the guardianship program.

(e) Explain how to file a complaint with the department and provide the ward with the department's toll–free complaint telephone number and the address and telephone number of the department's division of quality assurance.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701–2969 or by calling the department's toll–free complaint line at 1–800–642–6552 or by filing a complaint at http://dhfs.wisconsin.gov/hqaconsumer/HealthCareComplaints.htm.

(2) The guardian representative shall notify relevant agencies and individuals of the appointment guardianship and shall provide letters of guardianship to the ward's service providers and others, as necessary.

(3) If a medical evaluation was not completed within the past year, the guardian shall obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate treatment provider.

(4) The guardian representative shall fulfill the duties of a guardian of person pursuant to ss. 54.18 (2) and (3) and 54.25 (1), Stats. The guardian representative shall fulfill the powers assigned by the court and shall exercise only those powers granted to the guardian representative by the court pursuant to s. 54.25 (2), Stats. A guardian representative shall be aware of and, if applicable, advocate for the ward's rights under ss. 50.09 and 51.61, Stats., and shall advocate for the least possible restrictions on the ward's liberty and exercise of constitutional and statutory rights, pursuant to ss. 54.18 (2) and 54.25 (2) (d) 3., Stats.

(5) A guardian representative of the estate shall fulfill the duties of a guardian of the estate pursuant to ss. 54.18 (2) and (3), 54.19, and 54.20 (1), Stats. A guardian representative shall fulfill the powers assigned by the court pursuant to s. 54.20, Stats., and shall seek court approval for those powers requiring court approval pursuant to s. 54.20 (2), Stats. In seeking compensation or reimbursement from the ward's funds, a guardian representative shall ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(6) A corporate guardian shall obtain court approval prior to receiving any compensation or reimbursement from the wards funds, pursuant to s. 54.72, Stats. In seeking compensation or reimbursement from the ward's funds, a corporate guardian must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(7) For a guardian of person, the guardian representative shall have face–to–face contact with the ward at least once every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall visit the ward in their residence at least annually.

(8) For guardian of estate, the guardian representative shall have personal contact every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall have face–to–face contact with the ward at least annually.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register July 2015 No. 715.

DHS 85.15 Records. (1) The corporate guardian shall maintain a separate file for each ward including all of the following information and documents as applicable:

(a) Name, date of birth, address, telephone number, and social security number. Guardians of person shall also maintain information regarding the ward's medical coverage, physician, diagnoses, medications, and allergies to medications.

(b) A current photograph of the ward.

(c) All relevant legal documents involving the ward.

(d) Advance directives.

(e) A list of key contacts.

(f) A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.

(g) Documentation of all ward and collateral contacts, including the date, time, and activity.

(h) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.

(i) A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.

(j) Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.

(k) Documentation of the ward's known values, preferences, and wishes regarding medical and other care and services including all advanced directives made prior to guardianship, and financial matters and other services.

(L) A personal and social history of the ward including a family history.

(2) If guardianship is transferred, the corporate guardian shall transfer the original record required in this section to the successor guardian.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

Subchapter V — Withdrawal of Approval

DHS 85.16 Actions affecting approval. (1) If at any time the department determines that a corporate guardian no longer meets the criteria under this chapter, the department may withdraw its approval upon 30 day written notice to all of the following:

(a) Corporate guardian.

(b) All courts that assigned the corporate guardian's guardianships.

(c) The ward.

(d) The ward's family.

(e) Any other interested parties.

(f) The county department designated under s. 55.02, Stats.

(2) The corporate guardian shall comply with the provisions in s. DHS 85.08 (2) regarding a corporate guardian closing.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 85.17 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a private non–profit corporation or an unincorporated association for corporate guardianship may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats. The request for a hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when the request is received by that division.

Note: To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707.

History: CR 09–061: cr. Register May 2010 No. 653, eff. 6–1–10.

DIVISION OF QUALITY ASSURANCE

Jim Doyle
Governor

Karen E. Timberlake
Secretary

State of Wisconsin
Department of Health Services

1 WEST WILSON STREET
P O BOX 2969
MADISON WI 53701-2969

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 888-241-9432
dhs.wisconsin.gov

Date: June 9, 2010 DQA Memo 10-015

To: Non-profit Corporate Guardians

From: Alfred C. Johnson, Director
Bureau of Technology, Licensing & Education

Via: Otis Woods, Administrator
Division of Quality Assurance

Implementation of the Revised Chapter DHS 85, Wisconsin Administrative Code, Relating to Non-Profit Corporate Guardians and Unincorporated Associations Effective June 1, 2010

On June 1, 2010, significant changes to Wisconsin Administrative Code, ch. DHS 85, took effect establishing standards for the approval of non-profit corporate guardians or unincorporated associations suitable to perform the duties of guardian of a person, or of an estate, or both.

This memo contains important information on the following topics:

- Implementation
- Current standard of practice
- Caregiver background checks
- Policies and procedures
- Approval process
- Training

Implementation
Effective June 1, 2010, non-profit guardians and unincorporated associations will be expected to be in compliance with the new requirements in Chapter DHS 85. The Department will use reasonable regulatory action in fulfilling its mandate to assure that the health, safety, and welfare of wards being served by the non-profit guardians and unincorporated associations are protected and safeguarded.

Current Standard of Practice
Significant new provisions have been added to Chapter DHS 85 in the areas of staff qualifications, staff training, continuing education, caregiver background checks, duties and powers of the guardian, rights of wards, how to file a complaint, contacts with wards, wards' records, and conflict of interest standards. These requirements reflect the current standards of practice for non-profit corporate guardianships. **NOTE:** It is the responsibility of each corporate guardian to review and become familiar with the specific language and requirements that are identified in the newly-revised chapter DHS 85.

Caregiver Background Checks
Chapter DHS 85 requires the corporate guardian to conduct and document a caregiver background check completed on each employee, at the time of hire or contract and every four years thereafter, who has contact with wards following the procedures found in s.50.065, Stats, and Chapter DHS 12. A corporate guardian may not employ or contract with a person who has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s.50.065, stats., unless the person has been approved under the Department's rehabilitation review process as defined in ch. DHS 12. Please access the following website for information on Wisconsin Caregiver Background Checks:
http://dhs.wisconsin.gov/caregiver/StatutesINDEX.HTM

Policies and Procedures
Chapter DHS 85 now requires corporate guardians to develop and maintain policies and procedures in the areas of abuse and neglect, misappropriation of property, grievance procedure for use by wards and interested parties, and complaint and grievance investigation.

Approval Process
Chapter DHS 85 now establishes standards for the guardian application process, and criteria the Department uses to determine whether a person is fit and qualified to operate as a corporate guardian. Chapter DHS 85 also creates notification and other provisions a corporate guardian must follow when changing ownership or ceasing operations that result in closing the corporate guardian agency.

Training
A training session on the new DHS 85 will be held at the Wisconsin Guardianship Association's Educational Conference on September 15, 2010, at the Kalahari Resort Convention Center, Wisconsin Dells. The following website will be available as of June 14, 2010: http://www.wisconsinguardianshipassociation.com . Please check the website for further information regarding the educational conference.

Resources
You may access the following websites for information on guardianship associations, Register in Probates and resources:

- http://www.legis.state.wi.us/statutes/Stat0054.pdf
- http://www.cwagwisconsin.org/elder-law-center/guardianship-support-center/
- http://www.guardianship.org/reports_and_updates.htm
- http://wripa.org/

If you have any questions about this information, please contact: Dinh Tran at (608) 266-6646 or dinh.tran@wi.gov or Deb Bursaw at (608) 267-2838 or deb.bursaw@wi.gov.

cc: Registers in Probate
BOALTC
DRW
WGA Board Members

DHS 85, Wisconsin Administrative Code

WINGS Wisconsin

WINGS Wisconsin (Working Interdisciplinary Networks of Guardianship Stakeholders) is a group of professionals dedicated to reviewing and improving the guardianship systems in Wisconsin.

Wisconsin Guardianship Resources

Updated 04/2017

WINGS Wisconsin Publications

- Alternatives to Guardianship

Available Webcasts

- Guardianship Training Series – "Guardianship 101" – June 2015
- Guardianship Training Series – "A Day in the Life of a Corporate Guardian" – June 2015
- Guardianship Training Series – "Probate Court Expectations of a Guardian"
- WGA Educational Seminar – "Preserving the Rights of Individuals Under Guardianship;" "End of Life Panel;" and "Financial Abuse" – September 2016

Online Resources

- Circuit Court Access for guardianship forms
- WI Guardianship Support Center (GWAAR): Consumer publications about a variety of guardianship and other legal decision-making topics
  - Roles and Responsibilities of Guardians, APS and MCO
- WI State Law Library: Variety of legal resources, including some county forms
- National Guardianship Association (NGA) and Wisconsin Guardianship Association (WGA): Information about national and state guardian standards
  - NGA
  - WGA
  - WGA Standards of Practice
- National Adult Protective Services Association (NAPSA)
- Waisman Center for information about youth transitioning to adulthood and guardianship:
  - Youth Transition Hub
  - General Information
- Wisconsin Department of Health Services
  - Corporate Guardians
  - Adult Protective Services
- WI Veterans Services Office Locator

Published Resources

- "Landmark Guardianship and Adult Protective Services Reforms Signed into Law," Betsy Abramson and Jane Raymond. *Wisconsin Lawyer,* vol. 79, number 8.
- *"Understanding Guardianships: A Handbook for Guardians,"* (2013). To order, contact (800) 728-7788 or (608) 257-3838 or go to www.wisbar.org.
- Maren Beerman and Gretchen Viney, *Guardianship and Protective Placement for the Elderly in Wisconsin,* (3d ed. 2012). To order, contact (800) 728-7788 or (608) 257-3838 or go to www.wisbar.org.
- Guardianship of Adults Handbook, DHS, (2011).
- *"Guide to Elder Law and Benefits in Wisconsin,"* (2015). To order go to http://www.gwaar.org/guide-to-elder-law-and-benefits-in-wisconsin.html.
- *"*The Guardian,*"* Wisconsin Guardianship Support Center, GWAAR, published quarterly.

Additional Information

- Regional Center for Children and Youth with Special Health Care Needs
- Local Registers in Probate
- Aging & Disability Resource Centers: find your county ADRC here

Advocacy Resources

- Board on Aging and Long Term Care: Ombudsman 1-800-815-0015
- Disability Rights Wisconsin: 800-928-8778

Legal Resources

- WI Guardianship Support Center: 855-409-9410 or guardian@gwaar.org
- *Children's Hospital of Wisconsin, Inc. Guardianship Clinic and Milwaukee County Guardianship Assistance Program: (414) 266-3465
- *Disability Rights Wisconsin

*Eligibility for services may be conditioned upon program specific criteria such as the individual's location within the state, income, etc.

Home Table of Contents

Rule 33. Compensation for Fiduciaries and Attorneys; Statewide Fee Guidelines
Arizona Revised Statutes Annotated
Arizona Rules of Probate Procedure

Arizona Revised Statutes Annotated
Arizona Rules of Probate Procedure
VI. Post Appointment Procedures

17B A.R.S. Rules Probate Proc., Rule 33

Rule 33. Compensation for Fiduciaries and Attorneys; Statewide Fee Guidelines

Currentness

A. A guardian, conservator, attorney or guardian ad litem who intends to be compensated by the estate of a ward or protected person shall give written notice of the basis of any compensation as required by Arizona Revised Statutes Section 14-5109.

B. Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R. S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;

2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and

3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

C. Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court.

D. If a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing, and a copy of such written objections shall be given to or served on each party and person who has appeared or requested notice in the case. Proof of service or delivery of such notice shall be filed with the court.

E. When an attorney or fiduciary fee statement accompanies an annual accounting, the fee statement shall match the charges reported in the annual accounting or a reconciliation of the fee statement to the accounting shall be provided by the fiduciary

F. When determining reasonable compensation, the superior court shall follow the statewide fee guidelines set forth in the Arizona code of judicial administration.

G. Unless ordered by the court, neither a personal representative nor a personal representative's attorney is required to file a petition for approval of such person's fees.

H. Compensation payable to attorneys or guardians ad litem from the estate of a ward or protected person is waived if not submitted in compliance with Arizona Revised Statutes, Section 14-5110.

Credits

Added Sept. 16, 2008, effective Jan. 1, 2009. Amended Sept. 2, 2010, effective Jan. 1, 2011; Dec. 13, 2011 (corrected *nunc pro tunc* Dec. 22, 2011), effective Sept. 1, 2012.

Editors' Notes

COMMENT

This rule is not intended to require court approval of fiduciary fees or attorneys' fees in all circumstances. Instead, this rule clarifies that if approval of fees is requested, the court may require that certain information be provided to assist the court in determining the reasonableness of the fees. In many circumstances, especially with respect to decedents' estates and trusts,

court approval of fiduciary fees and attorneys' fees is not required unless an interested person specifically requests that the court review the reasonableness or propriety of compensation paid to a fiduciary or attorney. *See, e.g.*, A.R.S. § 14-3721.

When a fiduciary asks the court to approve an accounting, the fiduciary necessarily is asking the court to approve, among other things, all the disbursements made by the fiduciary during the accounting period, including any fiduciary or attorney fees paid during the accounting period. Consequently, when a fiduciary files a petition requesting approval of the fiduciary's accounting, the burden is on the fiduciary to supply the information required by Rule 33(A), not just with respect to the fiduciary's fees but also with respect to all fiduciary and attorney fees paid during the accounting period. Pursuant to Rule 33 (D), in such cases, the fiduciary should supply fee statements that match the disbursements reported in the accounting. The fee statements may take the form of the invoices paid during the accounting period so long as those invoices contain the information required by Rule 33(A).

A.R.S. § 14-5651 limits the classes of persons or entities who are entitled to receive compensation for acting as a guardian, a conservator, or a personal representative.

This rule is not intended to apply when a party has requested that the court award the party attorneys' fees against another party, such as an award of sanctions or an award of attorneys' fees in a matter arising out of contract. Instead, this rule applies only to those circumstances in which a fiduciary or an attorney seeks compensation from the estate of a ward or protected person, a decedent's estate, or a trust.

Pursuant to Rule 7(A), fee statements are not confidential documents or information.

In assessing whether compensation paid to or requested by a fiduciary or an attorney is reasonable, the court should consider a variety of factors, not just the amount of time spent on a particular task. *See Schwartz v. Schwerin*, 85 Ariz. 242, 245-46, 336 P.2d 144, 146 (1959) (holding that in determining the reasonableness of attorneys' fees, the court should not give undue weight to any one factor). For example, when reviewing the fiduciary's compensation, the court also should consider the amount of principal and income received and disbursed by the fiduciary, the fees customarily paid to agents or employees for performing like work in the community, the success or failure of the administration of the fiduciary, any unusual skill or experience that the particular fiduciary may have brought to the work, the fidelity or disloyalty displayed by the fiduciary, the degree of risk and responsibility assumed by the fiduciary, the custom in the community as to allowances to trustees by settlers or courts and as to fees charged by trust companies and banks, the nature of the services performed in the course of administration (whether routine or involving skill and judgment), and any estimate that the fiduciary has given of the value of the services. *See* Mary F. Radford, George G. Bogert & George T. Bogert, *The Law of Trusts & Trustees* § 977 (3d ed. 2006). Similarly, when reviewing the attorney's compensation, the court should consider, among other factors, the attorney's ability, training, education, experience, professional standing, and skill; the character of the work performed by the attorney (its difficulty, intricacy, and importance, time and skill required, and the responsibility imposed); the work actually performed by the attorney (the skill, time, and attention given to the work by the attorney); and the success of the attorney's efforts and the benefits that were derived as a result of the attorney's services. *See Schwartz*, 85 Ariz. at 245-46, 336 P.2d at 146.

The purpose of requiring a detailed statement of services that describes each task performed, the date each task was performed, the amount of time spent on each task, and the person performing each task is to assist the court in determining whether the amount of time spent on a particular task was reasonable. Such requirement is intended to prevent "block billing," which occurs when a timekeeper provides only a daily total amount of time spent working on the case rather than an itemization of the time expended on specific tasks. *See, e.g., Hawaii Ventures, LLC, v. Otaka, Inc.*, 173 P.3d 1122, 1132 (Haw. 2007). "Block billing" makes it difficult, if not impossible, for the court to determine the reasonableness of the time spent on a particular task because all the tasks are lumped together in a single entry that provides only a total amount of time spent. *Id.* That is not to say, however, that the combining of related tasks in a single time entry is prohibited, especially if the time involved for each such task is minimal. For example, if reading an e-mail takes one minute and drafting the response to that e-mail takes four minutes, a single time entry of one-tenth of an hour for both tasks is more appropriate than two time entries of one-tenth of an hour each. Thus, lawyers and fiduciaries should exercise "billing judgment" when writing time entries to ensure that the court can determine whether the time expended was reasonable.

17B A. R. S. Rules Probate Proc., Rule 33, AZ ST PROB Rule 33
Current with amendments received through 05/1/19

END OF DOCUMENT

AMENDMENTS TO THE SUPREME COURT RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

The following amendments to the Rules of Superintendence for the Courts of Ohio (new Sup.R. 66.01 through 66.09 and amended Sup.R. 73) were adopted by the Supreme Court of Ohio. The history of these amendments is as follows:

May 26, 2014	Published for public comment
March 10, 2015	Final adoption by conference
June 1, 2015	Effective date of amendments

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 66.01. Definitions.

As used in Sup.R. 66.01 through 66.09:

(A) Best interest

"Best interest" means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward.

(B) Direct services

"Direct services" means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. The term "direct services" does not include services of a guardian.

(C) Guardian

"Guardian" has the same meaning as in R.C. 2111.01(A).

(D) Ward

"Ward" means any adult person found by the probate division of a court of common pleas to be incompetent and for whom a guardianship is established.

(E) Guardianship services

"Guardianship services" means the duties assigned to a guardian in an adult guardianship case pursuant to R.C. Chapters 2109 and 2111.

RULE 66.02. Application of Rules.

(A) General

Sup.R. 66.01 through 66.09 shall apply in an adult guardianship case where the probate division of a court of common pleas appoints a guardian to protect and control a ward pursuant to R.C. 2111.02, provided the appointing court for good cause may, by order of the court, exempt a guardian who is related to the ward by consanguinity or affinity.

(B) Corporation as guardian

Sup.R. 66.01 through 66.09 shall apply to the employees of a corporation who provide guardianship services in an adult guardianship case where the probate division of a court of common pleas appoints the corporation as guardian.

RULE 66.03. Local Guardianship Rule.

The probate division of a court of common pleas that establishes guardianships shall adopt local rules governing the establishment of guardianships that do all of the following:

(A) Establish a process for emergency guardianships;

(B) Establish a process for submitting in electronic format or hard copy comments and complaints regarding the performance of guardians appointed by the court and for considering such comments and complaints. The process shall include each of the following:

(1) The designation of a person for accepting and considering comments and complaints;

(2) A requirement that a copy of the submitted comment or complaint be provided to the guardian who is the subject of the comment or complaint;

(3) A requirement that the court give prompt consideration to the comment or complaint and take appropriate action;

(4) A requirement that the court maintain a record regarding the nature and disposition of the comment or complaint;

(5) A requirement that the court notify the person making the comment or complaint and the guardian of the disposition of the comment or complaint.

(C) Addresses other provisions as the court considers necessary and appropriate, including but not limited to indicating where filed comments and complaints will be kept.

RULE 66.04. Establishment of Guardianship.

(A) Scope of guardianship

When establishing a guardianship, the probate division of a court of common pleas shall consider a limited guardianship before establishing a plenary guardianship.

(B) County of residence

The last county of residence in Ohio in which a ward resided prior to losing the cognitive ability to choose shall be the ward's county of residence for purposes of establishing a guardianship, unless determined otherwise by the probate division of the court of common pleas establishing the guardianship.

(C) Guardianship of estate

The probate division of a court of common pleas may waive establishing or continuing the guardianship of the estate of a ward if the assets and principal income of the ward do not support a guardianship of the estate.

(D) Restrictions on direct service providers

The probate division of a court of common pleas shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law.

RULE 66.05. Responsibilities of Court Establishing Guardianships.

(A) General responsibilities

The probate division of a court of common pleas that establishes a guardianship shall do both of the following:

(1) Conduct, or cause to be conducted, a criminal background check. If the applicant to serve as a guardian is an attorney, the court may accept a certificate of good standing with disciplinary information issued by the Supreme Court in place of a criminal background check.

(2) Require each guardian appointed by the court to submit to the court information documenting compliance with the guardian qualifications pursuant to Sup.R. 66.06 or 66.07, as applicable.

(B) Responsibilities regarding guardians with ten or more wards

The probate division of a court of common pleas shall do all of the following with respect to guardians with ten or more wards under the guardian's care:

(1) Maintain a roster, including the name, address, telephone number, and electronic mail address, of the guardians. The court shall require the guardians to notify the court of any changes to this information.

(2) Require the guardians to include in the guardian's report a certification stating that the guardian is unaware of any circumstances that may disqualify the guardian from serving as a guardian;

(3) Require the guardians to submit to the court an annual fee schedule that differentiates guardianship services fees, as established pursuant to local rule, from legal or other direct services;

(4) On or before March 1st of each year, review the roster of guardians to determine if the guardians are in compliance with the education requirements of Sup.R. 66.06 or 66.07, as applicable, and that the guardians are otherwise qualified to serve.

RULE 66.06. Guardian Pre-Appointment Education.

(A) Requirement

Except as provided in division (B) of this rule, the probate division of a court of common pleas shall not appoint an individual as a guardian unless, at the time of appointment or within six months thereafter, the individual has successfully completed, at a minimum, a six-hour guardian fundamentals course provided by the Supreme Court or, with the prior approval of the appointing court, another entity. The fundamentals course shall include, at a minimum, education on the following topics:

(1) Establishing the guardianship;

(2) The ongoing duties and responsibilities of a guardian;

(3) Record keeping and reporting duties of a guardian;

(4) Any other topic that concerns improving the quality of the life of a ward.

(B) Exception

An individual serving as a guardian on June 1, 2015, or who served as a guardian during the five years immediately preceding that date shall have until June 1, 2016, to complete

the training required under division (A) of this rule unless the appointing court waives or extends the requirement for good cause.

RULE 66.07. Guardian Continuing Education.

(A) Requirement

In each succeeding year following completion of the requirement of Sup.R. 66.06, a guardian appointed by the probate division of a court of common pleas shall successfully complete a continuing education course that meets all of the following requirements:

(1) Is at least three hours in length;

(2) Is provided by the Supreme Court or, with the prior approval of the appointing court, another entity;

(3) Is specifically designed for continuing education needs of guardians and consists of advanced education relating to the topics listed in Sup.R. 66.06(A)(1) through (4).

(B) Annual compliance

On or before January 1st of each year, a guardian shall report to each probate division of a court of common pleas from which the guardian receives appointments information documenting compliance with the continuing education requirement pursuant to division (A) of this rule, including the title, date, location, and provider of the education or a certificate of completion.

(C) Failure to comply

If a guardian fails to comply with the continuing education requirement of division (A) of this rule, the guardian shall not be eligible for new appointments to serve as a guardian until the requirement is satisfied. If the deficiency in continuing education is more than three calendar years, the guardian shall complete, at a minimum, a six-hour fundamentals course pursuant to Sup.R. 66.06(A) to qualify again to serve as a guardian.

RULE 66.08. General Responsibilities of Guardian.

(A) Orders, rules, and laws

A guardian shall obey all orders of the probate division of a court of common pleas establishing the guardianship and shall perform duties in accordance with local rules and state and federal law governing guardianships.

(B) Pre-appointment meeting

Unless otherwise determined by the probate division of a court of common pleas, an applicant guardian shall meet with a proposed ward at least once prior to appearing before the court for a guardianship appointment.

(C) Reporting abuse, neglect, or exploitation

A guardian shall immediately report to the probate division of a court of common pleas and, when applicable, to adult protective services any appropriate allegations of abuse, neglect, or exploitation of a ward.

(D) Limitation or termination of guardianship

A guardian shall seek to limit or terminate the guardianship authority and promptly notify the probate division of a court of common pleas if any of the following occurs:

(1) A ward's ability to make decisions and function independently has improved;

(2) Less restrictive alternatives are available;

(3) A plenary guardianship is no longer in the best interest of a ward;

(4) A ward has died.

(E) Change of residence

(1) A guardian shall notify the probate division of a court of common pleas of a ward's change of residence and the reason for the change. Except if impracticable, the guardian shall notify the court no later than ten days prior to the proposed change.

(2) A ward's change of residence to a more restrictive setting in or outside of the county of the guardian's appointment shall be subject to the court's approval, unless a delay in authorizing the change of residence would affect the health and safety of the ward.

(F) Court approval of legal proceedings

A guardian shall seek approval from the probate division of a court of common pleas before filing a suit for the ward.

(G) Annual plan

A guardian of a person shall file annually with the probate division of the court of common pleas a guardianship plan as an addendum to the guardian's report. A guardian

of an estate may be required to file an annual guardianship plan with the probate division of the court of common pleas. The guardianship plan shall state the guardian's goals for meeting the ward's personal and financial needs.

(H) Annual registration

All guardians appointed by the court who have ten or more wards under their care shall annually register with the probate division of the court of common pleas and provide such information as the court may require, including but not limited to a fee schedule that differentiates guardianship services from legal or other direct services.

(I) Ward's principal income

A guardian shall inform the probate division of the court of common pleas and apply to close the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

(J) Limits on guardian's compensation

(1) A guardian's compensation is subject to Sup.R. 73.

(2) A guardian who is in receipt of fees other than through the guardianship of the estate shall report to the probate division of the court of common pleas the source and entity which reviewed and authorized payment.

(3) A guardian shall not receive incentives or compensation from any direct service provider providing services to a ward.

(K) Conflict of interest

A guardian shall avoid actual or apparent conflicts of interest regarding a ward's personal or business affairs. A guardian shall report to the probate division of the court of common pleas all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the best interest of the ward.

(L) Filing of ward's legal papers

In addition to filing an inventory, if applicable, pursuant to R.C. 2111.14(A)(1) and within three months after the guardian's appointment, a guardian shall file with the probate division of the court of common pleas a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing.

RULE 66.09. Responsibilities of Guardian to Ward.

(A) Professionalism, character, and integrity

A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.

(B) Exercising due diligence

A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.

(C) Least restrictive alternative

Unless otherwise approved by the probate division of a court of common pleas, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.

(D) Person-centered planning

A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.

(E) Ward's support system

A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest.

(F) Communication with ward

(1) A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.

(2) A guardian shall do all of the following:

(a) Meet with the ward as needed, but not less than once quarterly or as determined by the probate division of the court of common pleas;

(b) Communicate privately with the ward;

(c) Assess the ward's physical and mental conditions and limitations;

(d) Assess the appropriateness of the ward's current living arrangements;

(e) Assess the needs for additional services;

(f) Notify the court if the ward's level of care is not being met;

(g) Document all complaints made by a ward and assess the need to report the complaints to the court of common pleas.

(G) Direct services

Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court.

(H) Monitor and coordinate services and benefits

A guardian shall monitor and coordinate all services and benefits provided to a ward, including doing all of the following as necessary to perform those duties:

(1) Having regular contact with all service providers;

(2) Assessing services to determine they are appropriate and continue to be in the ward's best interest;

(3) Maintaining eligibility for all benefits;

(4) Where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.

(I) Extraordinary medical issues

(1) A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decisions involving extraordinary medical issues.

(2) A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.

(J) End of life decisions

A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

(K) Caseload

A guardian shall appropriately manage the guardian's caseload to ensure the guardian is adequately supporting and providing for the best interest of the wards in the guardian's care.

(L) Duty of confidentiality

A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.

RULE 73. Guardian's Compensation.

(A) Setting of compensation

Guardian's compensation shall be set by local rule.

(B) Itemization of expenses

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

(C) Additional compensation

Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The probate division of a court of common pleas may require the application to be set for hearing with notice given to interested persons in accordance with Civ.R. 73(E).

(D) Co-guardians

The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(E) Denial or reduction of compensation

The probate division of a court of common pleas may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the guardian has not faithfully discharged the duties of the office.

RULE 99. Effective Date.

[Existing language unaffected by the amendments is omitted to conserve space]

(PPP) New Sup.R. 66.01 through 66.09 and the amendments to Sup.R. 73, adopted by the Supreme Court of Ohio on March 10, 2015, shall take effect on June 1, 2015.

AGENDA ITEM 7

Update-Public Hearing for Guardianship Mediation Manual Approved by Commission 11-2-18

AGENDA ITEM 7(a)

Second Supplement to First Interim Report of the Guardianship Commission (filed 9/12/19)

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF A COMMISSION TO STUDY THE CREATION AND ADMINISTRATION OF GUARDIANSHIPS.

ADKT 0507

FILED

SEP 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

SECOND SUPPLEMENT TO FIRST INTERIM REPORT OF THE GUARDIANSHIP COMMISSION

On August 2, 2017, the Supreme Court of Nevada created a permanent Guardianship Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules and processes in Nevada.

Pursuant to the First Interim Report of the Guardianship Commission filed on May 30, 2018, the Commission has prepared a Mediation Manual and recommends that it be adopted by the Supreme Court of Nevada.

The Commission requests that the Nevada Supreme Court place this matter on its administrative docket, hold such hearings as it deems necessary, and consider the Mediation Manual as set forth in Exhibit A.

Respectfully submitted,

James W. Hardesty J.

James W. Hardesty

19-38158

cc: All Supreme Court Justices
All Permanent Guardianship Commission Members
All District Court Judges
Ms. Julie Bobzien, Executive Director, Volunteer Attorneys for Rural Nevadans
Mr. James Conway, Executive Director, Washoe Legal Services
Ms. Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Ms. Anna Marie Johnson, Executive Director, Nevada Legal Services
Ms. Sheri Cane Vogel, Executive Director, Southern Nevada Senior Law Program

EXHIBIT "A"

Nevada Court System
Adult Guardianship Mediation Policies and Procedures Manual

January 2019

TABLE OF CONTENTS

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #1: Mediation Defined
Date adopted/revised:

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

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #2: Referrals to Mediation
Date adopted/revised:

This section describes which types of guardianship cases and issues should be referred to mediation and the timing of referrals.

I. Judicial Order of Referral to Mediation

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

The referral order (see Forms) shall:

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

II. Timing of Referral

Referrals may be made at any time or at any stage in a case once a petition is filed. A request for mediation may also be filed with the petition. Mediation may also be requested at any point after a determination of incapacity has been made.

III. Cases Appropriate for Referral

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

IV. Cases Not Appropriate for Referral

A. Ability to Participate in Mediation

Although some cases may be mediated with only a representative of the respondent or protected person present, others are not appropriate for mediation if the respondent or protected person cannot participate. The mediator has a

duty to assure that all participants understand the nature of the process and how it proceeds, the role of the mediator and the parties' relationship to the mediator. If the mediator determines that any necessary participant is not able to understand these matters, mediation is not appropriate.

B. Emergency Cases

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

C. Abuse, Neglect, Exploitation, and/or Isolation Cases

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

D. Domestic Violence Protective Orders

Cases in which there is an active domestic violence protective order between individuals who would be necessary participants in mediation, may not be referred to mediation.

V. Issues Appropriate for Mediation

Mediation is available for both personal and financial issues.

When requesting mediation, the parties shall inform the court about which issues are contested or in need of decisions that they would like to discuss in mediation.

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

- Is a guardian needed?

  What are the safety concerns?
  Is the level of risk understood?
  Is the level of risk acceptable?
  Should autonomy and self-determination be limited?

- The type or level of care or assistance that might be needed
  What alternatives exist?

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

- Communication

  How do we want to relate to each other?
  What information is needed or missing?
  How do we share information with those who need it?

- Decision-making

  Who should have the authority to make decisions?
  What input, if any, should others have?
  What kind of decision-making process feels fair, respectful and satisfying?
  Concerns over a coercive, involuntary or adversarial process

- Family disputes and impediments to decision-making

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

- Financial decisions

  How should money be spent?
  How should investments be handled?
  What to do about "unwise" spending

- Living arrangements

  Where?
  With whom?
  How to decide?
  How much independence or supervision?
  Housekeeping concerns that threaten safety

- Health/Medical Care decisions

  What care is needed?
  Who should provide it?
  How should medical decisions be made?
  Concerns about not following care or treatment recommendations

- Needs of other family members and caregivers

  How to meet needs of respondent or protected person and themselves

How to maintain positive relationships under stress

- Post-appointment issues

  May include many of the above
  Disagreements with the decisions made by the guardian or who is serving as guardian

VI. Issues Not Appropriate for Mediation

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

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

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

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #3: Voluntary Participation
Date adopted/revised:

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

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

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #4: Professional Standards of Conduct for Mediators
Date adopted/revised:

Mediators with this project shall comply with professional standards of practice. They shall maintain impartiality and neutrality in performance of their duties.

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

Mediators are required to conduct mediations in accordance with the requirements of the Americans with Disabilities Act of 1990. Mediators are required to complete training in the model of mediation set forth in Policy 6, Section II "Mediation Model and Style."

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #5: Confidentiality
Date adopted/revised:

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

I. Scope of Confidentiality

A. Contractual and/or by Court Rule

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

B. Mediator Confidentiality

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

Mediators will not discuss or convey any specific information from or about a mediation to judicial officers. Mediator communication with the judiciary should be minimized. When needed, communication should be made in writing, or through administrative personnel. The mediator has the responsibility to report the following without comment or recommendations:

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

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

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

C. Participant Confidentiality

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

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

II. Limits of Confidentiality

A. Limits Created by Statute or Law

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

- reporting allegations of threat or harm to a frail or vulnerable protected person to the protected person and to the appropriate social welfare and/or law enforcement agency;

- reporting allegations of abuse or neglect of a child to the appropriate social welfare and/or law enforcement agency;

- reporting specific threats of harm to oneself or to an identified third party to the third party, to law enforcement and/or to a social welfare agency.

Mediators may have other professional roles in which they are mandated reporters, including when in the performance of his/her duties as a mediator they have reasonable cause to believe that a vulnerable [protected person] suffers from abandonment, exploitation, abuse, neglect, or self-neglect.

B. Other Limits on Confidentiality

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

C. Final Agreements Released to Court

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

D. Limits Created by Consent

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

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #6: Mediation Process and the Role of the Mediator
Date adopted/revised:

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

I. Mediator Responsibility

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

II. Mediation Model and Style

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

In instances involving a power imbalance and/or unrepresented litigants, use of a more evaluative type model of mediation may be of assistance in helping the parties come to agreement.

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

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

- Provide an informal, less intimidating, more private process or arena for the resolution of disputes;

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

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

III. Role of the Mediator

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

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

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

Mediators have the responsibility for identifying and assessing power imbalances and then work to balance or expose them. Ultimately, it is the role of the mediator to

evaluate the continued appropriateness for mediation and to discontinue it when inappropriate.

IV. Stages of Mediation

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

A. Preparation and the Pre-Joint Session Meetings

The objectives of preparation are to:

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

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

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

The mediator asks in these meetings what it is that people want to mediate. What needs to be decided? What concerns or disagreements exist? What are the topics for discussion? The mediator looks for information both as to the substantive issues to be discussed, as well as the dynamics that might be involved in the case. The discussion of substantive issues should be focused on permitting the mediator to understand the issues likely to be mediated and to be prepared for mediation (not on fact-finding). The mediator will want to know the

dynamic issues (for example, are there specific relationships that are problematic, or that are working well? Are there issues of abuse, neglect, exploitation, and/or isolation [See Policy #9 Abuse, Neglect, Exploitation, and/or Isolation Protocol]?) so that the mediator can structure the mediation in a way that will allow for safety and for people to feel that they can have a voice without a concern for intimidation, and that will deal with the needs and concerns underlying the substantive issues.

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

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

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

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

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

B. Other Considerations for Preparation

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

C. Joint Mediation Session

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

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

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

The mediator will then proceed to assist the parties to:

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

D. Ongoing Screening

The mediator shall continue to screen during the mediation. The mediator shall discontinue mediation if the mediation seems unsafe or if any of the participants

lack the capacity to negotiate effectively. Situations in which the mediator should consider terminating the mediation include:

- Necessary participant is unable to participate effectively;
- Necessary participant refuses to participate or exhibits behavior that undermines the mediation;
- A power imbalance cannot be balanced;
- Mediator identifies undue coercion of a party;
- The respondent's or protected person's rights are not adequately protected; and
- Mediator, after careful reflection, decides that he or she can no longer be of assistance to the parties.

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

E. Caucus

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

F. Subsequent Joint Sessions

Subsequent mediation sessions may be scheduled in the following situations:

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

- Agreement is not reached at the first joint session and the participants wish to continue, the mediator shall schedule subsequent sessions.

G. Terminating Mediation

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

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

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

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

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

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

3. **Participant Terminates Without Agreement**. Because mediation is a voluntary process, any participant is free at any time to stop participating in mediation. In many instances it will no longer be useful or appropriate to

mediate in the absence of that person, but in other instances there may still be issues that can be mediated by the group remaining. The mediator, with input from the participants, will make the determination if it is appropriate to continue mediation.

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

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #7: Parties and Participants in Mediation and their Roles
Date adopted/revised:

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

I. Necessary Participants

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

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

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

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

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

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

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

II. Potential Participants and their Roles

A. The Respondent or Protected Person

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

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

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

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

B. Attorney for Respondent or Protected Person

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

C. Family of Respondent or Protected Person

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

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

D. Guardian ad litem (GAL)

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

E. Protected Person's Appointed Counsel

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

F. Protective Services (PS) Worker

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

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

G. Guardian of the Person

Guardianship of the Person is a legal arrangement in which a person or other entity/agency is appointed as a guardian to make decisions for an incapacitated person about housing, medical care, legal issues, and services. If a guardian has been appointed in a case, it is likely such guardian of the person will be a necessary participant in mediation. The duties, powers and limitations of a guardian of the person are defined in statute. See NRS 159.077 et seq.

H. Guardianship of the Estate

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

I. Others

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

III. Others Who May Have a Role in Mediation

Others who may be involved in mediation include:

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

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

IV. Authority to Enter into Agreements

It is imperative that necessary participants in mediation have the authority to commit to agreements that may be made. Whether family members, representatives from

other agencies or organizations, or others, each person should enter into mediation prepared to sign agreements reached in mediation.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #8: Safety, Balance of Power, and Protection of Rights
Date adopted/revised:

The mediator must prepare adequately for the mediation to be able to assess for safety, protection of the respondent or protected person's rights, and balance of power issues. This assessment may include information from sources deemed necessary by the mediator. The mediator assesses for family violence, abuse, neglect, exploitation and/or isolation issues that might create an environment that is unsafe or would render mediation inappropriate. In most cases the mediator is capable of creating a safe, supportive environment in which power can be balanced, the respondent or protected person's rights protected, and non-coercive agreements formed. (Also see Policy #9, Abuse, Neglect, Exploitation, and/or Isolation Protocol.)

I. Balance of Power and Safety

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

Power imbalances may be related to:

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

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

- providing information and an orientation to the mediation process

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

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

II. Protection of the Respondent or Protected Person's Rights

A. Participation of the Respondent or Protected Person

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

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

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

The role of preparation and screening as discussed in Policy #7 is central to promoting the physical and emotional safety and protection of rights of the respondent or protected person in mediation.

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

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

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

B. Medical Records in Mediation

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

C. Inclusion of Legal Counsel in Mediation

Legal counsel for the respondent or protected person may not be excluded from attending mediation.

D. Determining Mediation Not Appropriate

If at any time the mediator determines that a necessary participant is not able to participate in the mediation or that it would otherwise be unethical to continue the

mediation process, the mediator may terminate the session and withdraw his or her services.

E. Legal Counsel – Advocacy for the Legal Rights, Needs and Concerns of the Respondent or Protected Person

1. **Post-Petition, Pre-Hearing Cases**. Due to the inherent doubt of mediating when the legal capacity of a party is in question, the availability of an attorney or advocate to support the respondent or protected person in mediation is vital. Access to counsel regarding legal rights and assurance that the respondent or protected person's needs and concerns are articulated in the mediation process, and that they are not subject to manipulation and undue pressure, are key considerations in providing this protection.

   In a guardianship case an attorney will be appointed for the respondent or protected person, and it is strongly encouraged that the attorney participate in mediation. The alternative of the attorney reviewing any written agreement to be sure the respondent or protected person fully understands it and its consequences before it is finalized may be considered in some instances, but may not be deemed to provide adequate protection.

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

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

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

F. Due Process

Mediation is not intended to circumvent the rights or due process of any person. A determination of capacity is not made in mediation, nor may a guardian be appointed in mediation. While mediation may address those topics and result in

agreement about recommendations to the court on those topics, they require judicial decisions.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #9: Abuse, Neglect, Exploitation, and/or Isolation Protocol
Date adopted/revised:

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

I. Appropriateness of Mediation in Cases Involving Abuse, Neglect, Exploitation, and/or Isolation

1. While there is a general presumption against mediating abuse cases, cases should not be automatically rejected without further investigation or consideration for the sole reason of possible abuse implications. Refusal to mediate a case solely because of an allegation of abuse, without further investigation, could deny a party a worthwhile alternative to the court process and potential resolution of issues that are unrelated to the abuse allegations.

2. There may be some cases for which mediation is appropriate, even though abuse, neglect, exploitation, and/or isolation has been alleged. For example, the abuse may be alleged about a person who is not a party to the mediation. Or, a case may involve an allegation about a person who is a party, but around whom the "victim" feels absolutely no intimidation as far as making a voluntary agreement. Or, the two parties may be living separately, the victim feels no intimidation around the perpetrator, and has a domestic abuse advocate who will be present. There are many possible scenarios under which an experienced mediator could determine, in concert with the affected parties, that it is safe and worthwhile to mediate.

3. Mediators should take disparities of power between parties informed by abusive conduct or allegations of abusive conduct into consideration in a culturally sensitive manner that does not re-traumatize or otherwise trigger negative emotional responses--not on a standard of the mediator projecting

their own views of the alleged or actual conduct, but on the actual feelings of the affected parties.

4. To determine appropriateness for mediation, thorough screening is a necessity. (See Section III - Screening Guidelines for Domestic Abuse)

II. Inappropriate Cases

1. Inappropriate cases would include:

    a. Cases in which there is a protective order or other order that does not allow the parties to be in the same vicinity of one another.

    b. Cases in which the issue to be mediated concerns whether or not the abuse occurred.

    c. Cases in which one party feels intimidated by another party so that a voluntary agreement or negotiation is not possible.

        i. Indicators of intimidation could include actions by the abusing party, such as physical or emotional abuse; denial or making excuses for the actions; blaming the victim for the acts of the abuser; or admission by the victim that she/he fears a recurrence or feels unsafe in the presence of the other.

    d. Cases in which one party threatens another or demonstrates a desire to exert physical or psychological control over another party.

III. Screening Guidelines for Domestic Abuse

Phase 1

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

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

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

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

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

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

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

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

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

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

        v. Have you ever called the police, requested a protection order, or sought help for yourself as a result of abuse by this person?

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

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

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

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

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

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

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

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

4. Screening should be in a face-to-face interview. However, when that is not possible or feasible, it may be conducted over the phone. If the protected person or proposed protected person is represented by counsel, they should be afforded the right to invite counsel to screening.

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

<u>Phase 2</u>

1. If there is any indication of abuse in Phase 1, further screening is necessary.

2. The mediator should then review the available information and perform an Abuse Assessment (AA) before going forward with the mediation. The purpose of the AA is:

   a. To assess the victim's ability to participate and adequately represent her/himself, especially regarding the potential for non-coerced settlement.

   b. To clarify the history and dynamics of the abuse issues in order to determine the most appropriate manner in which mediation should proceed consistent with the other provisions of this protocol and to put procedures in place that assure all parties are able to negotiate to the maximum extent possible on an equal footing. In other words, to address the power imbalance and safety issues between parties before, during, and after the mediation.

   c. To assist the parties in formulating an agreement that provides appropriate safeguards for victims, caregivers, family members, and others.

3. The AA involves a more in-depth conversation than the initial screening questions. The AA should help the mediator to assess the nature of the abuse issues in the case and to evaluate the situation so that the mediator may deal with the participants in the most appropriate manner. During the assessment, the mediator may want to consider the following:

a. The nature of the alleged abuse, neglect, exploitation, and/or isolation, including the history, frequency, severity and level of dangerousness, and the impact of the abuse on all parties or family members.

b. Consideration and consultation regarding appropriate conditions and measures for protecting persons involved.

c. A review of any pertinent related information or documentation including consultations or investigations (written or individual interviews) with others involved regarding the nature of the allegations of abuse in the case.

d. At what stage in the case the allegations were made, and whether any investigations are pending or are still likely to occur (note: the act of filing a guardianship may be in itself part of an attempt to continue a pattern of abuse/control).

Phase 3

1. If abuse, neglect, exploitation, and/or isolation is alleged, after initial screening and an AA, the case will be determined as:

   a. Appropriate for standard mediation;
   b. Appropriate for mediation but necessitating some modification in form;
   c. Inappropriate for mediation

IV. Suggested Safeguards: If the Victim Insists on Mediation or if the Case is Deemed Appropriate if Safeguards Are in Place

1. If the mediator has explained to the victim the mediation process and the reasons why the case is inappropriate for mediation, and the victim insists on mediation, the mediator must make a determination as to whether the mediation can occur with assurance of safety to all participants. (None of the factors listed under section II.1. a-d should be present, if the decision is made to mediate.)

2. If the victim insists on mediation, or if the case is determined to be appropriate with safeguards in place, the following arrangements may be made, depending on the situation. The mediator should explain to and consult with the victim regarding the need for additional arrangements before the mediation can occur:

   a. Consultation with the mentor and/or program director.

   b. Acknowledgment from both parties of the abusive behavior.

c. Appropriate advocates or supporters for the victim and the abuser (could be legal counsel) before, during, and after the mediation.

d. A mediation site with separate waiting areas and available emergency support.

e. Arrangements for the parties to arrive and leave the mediation session separately and at different times.

f. If the parties are living separately, the mediator must avoid disclosure of the parties' addresses or other confidential identifying information to one another.

g. Arrangements to hold the mediation entirely in caucus, if that becomes necessary.

h. Mediator (or co-mediator) must have had special training in mediating abuse cases.

i. Prior to, or early in the mediation, the mediator should again explore power dynamics with the parties in order to confirm the comfort of each participant with the mediation format and confirm the ability of each participant to speak and negotiate for him/herself. (This is also part of the AA, but it is useful to confirm this at the time of the mediation.)

j. Mediator and the victim should work out a "code" system for notifying the mediator if the victim feels intimidated; mediator should continually check in with the victim in caucus to make sure she/he is not feeling intimidated.

k. Mediator must feel she/he can stop the mediation at any point at which she/he believes the mediation is unsafe or that one of the parties is intimidated. If necessary, mediator must summon appropriate security or emergency help. The mediator should always take responsibility for stopping a mediation; the victim could be placed at further risk of harm if the abuser knew the session ended on the victim's account. (Mediator might say simply that it appears the parties are quite far apart in their perceptions or ideas for resolution and it would not be helpful to continue the session.)

V. Confidentiality in Screening for Abuse, Neglect, Exploitation, and/or Isolation

1. The mediator must keep intake/screening information confidential in accordance with applicable rules and best practices, including any limits on confidentiality such as reporting new allegations of abuse or a threat of

imminent harm (these limits on confidentiality must be disclosed and clearly explained to participants during initial preparation/screening contacts).

2. Unless the victim consents to the mediator's disclosure about the abuse allegations, the mediator may not disclose the information to others, including the court (unless the mediator is reporting new allegations of abuse or a threat of imminent harm to the proper authorities). (Others, including courts, should simply be told that the case is inappropriate for mediation.) The mediator should provide appropriate referrals to the victim.

3. If a case is determined to be inappropriate for mediation due to abuse, the mediator should first establish that the victim is safe and protected. Then she/he should notify the victim of the decision not to mediate, provide appropriate referrals to the victim, and only to the extent that it is acceptable to the victim and assessed to be safe by the mediator, inform the alleged abuser of the reason why the situation is not appropriate for mediation. If it is not acceptable to notify the alleged abuser of the reason why the case is not appropriate for mediation, the mediator should simply notify the alleged abuser that the mediator is unable to mediate the case. If pressed, it may be explained that the case does not contain issues of a nature that the program is qualified or able to mediate.

VI. Notification of Program Director

The mediator's responsibility to the program is to notify the Program Director when:

- The mediator makes a report of harm or threat of imminent risk
- The mediator terminates a mediation as inappropriate due to domestic abuse

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #10: Case Processing & Scheduling
Date adopted/revised:

I. Time Frames

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

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

Mediators accepting referrals should initiate preparatory contacts within three working days of receiving the referral order and contact information.

II. Processing the Referral

Referrals may be processed in accordance with local practice or as set forth in applicable local or guardianship court rules.

III. Assignment and Disqualification of Mediator

Mediators are appointed from the court-approved list. Parties may also request a specific, mutually agreeable mediator, to be appointed from the court approved list. Each interested person has the right once to challenge peremptorily the mediator appointed by the court if the challenge is made within five days after notice that the case has been assigned to a specific mediator. When such a challenge is made, interested persons may submit a stipulated request for the appointment of a specific mutually agreed mediator.

Mediators on the schedule to accept appointments are to begin the initial contacts within three working days of notice of appointment, unless referral information directs otherwise.

IV. Scheduling

A. Mediation Session

The mediator will work with the necessary participants to find a mutually agreeable date and time for the initial joint mediation session that also is within the timeframes set out in the court's order of referral.

B. Orientation Meeting

Although the parties are welcome to initiate contact with the mediator, the mediator will contact parties to schedule the Orientation Meeting.

C. Follow-up Mediation Sessions

After the first session, the mediator will set with the parties any needed follow-up sessions and immediately notify the court of continued mediation (see Forms: Notice of Continued Mediation).

D. Canceling and Rescheduling

Unless the mediator has determined that mediation is inappropriate at the time, or a necessary participant has elected not to mediate after attending the Initial Joint Mediation Session, neither the mediator nor a party/interested person has the authority to cancel a court ordered Initial Joint Mediation Session. A person, or persons, wishing to "cancel" mediation may file a motion or request with the court asking that the order of referral to mediation be vacated.

The initial joint mediation session may be rescheduled when the necessary participants and mediator agree.

V. Mediator Billing

The mediator bills the parties for time spent in the mediation process, recorded in six minute increments.

VI. Closing the Case

A. The Notice of Outcome Form

The mediator completes the Notice of Outcome of Mediation (see Forms) at the end of the mediation process for the case and submits it to the court clerk. The court clerk will distribute it to the referring judicial officer, the parties, and place the original in the case file.

When the mediator has assessed a case inappropriate for mediation, the mediator notifies the judicial officer making the referral.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #11: Program Administration
Date adopted/revised:

I. Forms

The following forms are used in this program:

Request for Mediation
Order of Referral to Mediation
Mediation Contact List
Notice of Continued Mediation
Notice of Outcome of Mediation
Confidentiality and Mediation Agreement
Consent for Release of Information from Mediation
Satisfaction Survey
Mediator Timesheet
Program Evaluation Data Form

II. Accommodations for Participants

It is the policy of the Nevada Court System that the services, programs and activities of the court system be accessible to persons with disabilities as defined in the Americans with Disabilities Act of 1990.

The assistance of a sign language interpreter may be requested for necessary participants experiencing hearing loss. Often the court will pay for this.

III. Publicizing the Program

The District Courts shall work to make parties, attorneys and families aware of the option to mediate adult guardianship issues.

Brochures describing the program and access to it are available to all parties and interested persons. The brochures shall advise people that this Adult Guardianship Manual is available at the office of the Court Clerk and online.

IV. Cost to Parties

The services of the mediator are available with the costs allocated by the mediator among the parties. Costs associated with participating (participant transportation, counsel, etc.) must be borne by the participants.

V. Mediator Compensation

A. Rate

Mediators shall be compensated at a rate set by the Nevada Court System for case preparation, pre-mediation and mediation conferences. Mediators must submit copies of their bills to the party designated by the referring judicial officer.

B. Billing

Charges appropriate for case preparation include time for necessary review of files and documents, phone calls and face-to-face contacts with parties to the case as well as significant collaterals. Mediators' billing should document case preparation time in six minute blocks of time. Joint mediation sessions typically are scheduled for 3-hour blocks but should be scheduled to accommodate the needs of the participants.

Appointments for joint mediation sessions or Orientation Meetings cancelled or rescheduled prior to the mediator attending the session shall not be compensated. Appointments at which the party or parties are no-shows will be compensated at one half hour.

The Mediator Timesheet shall have the case number on it and itemize services provided in 6-minute increments. It shall be attached to the mediator's invoice which shall contain the mediator's name, name in which the mediator does business (if different), address and contact information. The invoice shall specify that it is for mediation and give the mediator's contract rate as specified by the Nevada Supreme Court. The time to be paid shall be totaled and a total amount due indicated.

Mediation costs should be reported to the guardianship compliance office for monitoring and tracking purposes statewide.

VI. Cultural Competence and Diversity

This program strives to incorporate into its policies, procedures, practice, and philosophy, a knowledge and understanding of, sensitivity to, and appreciation for the culture and diversity of the community it serves. In this view, traditional contexts of culture integrate with diversity and the specific histories, characteristics and

qualities of each individual in recognition that each person embodies a "culture" that is uniquely his or hers.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #12: Mediator Qualifications
Date adopted/revised:

I. Mediator Qualifications and Competencies

Mediation in adult guardianship cases is highly specialized and requires a variety of competencies and specific skills to be effective. While basic mediation skills are essential, it is not sufficient to understand the principles and process and demonstrate a capacity to apply those concepts. Mediators in this arena must also have extensive knowledge of the adult guardianship system; the special issues affecting these respondent or protected persons, their families and caregiver and support networks; and of family functioning. They must understand the substantive law relevant to these cases and have a good grasp of available community resources.

Qualifications sought include the following:

1. A degree in a relevant area of study (such as social work, law, psychology).

2. Experience related to issues and concerns associated with adult guardianship cases.

3. Empathy and compassion for respondent or protected persons and those involved with them who face concerns about capacity and care-giving needs.

4. Communication skills that foster rapport and trust building.

5. Training and experience in the mediation of family issues.

6. Knowledge in the following areas:

    a. Adult guardianship proceedings

    b. State statutes and court rules relevant to adult guardianship cases

    c. Family functioning and dynamics

    d. Abuse and exploitation of vulnerable respondent or protected persons

e. Understanding of the following as they may affect capacity, care-giving needs, and the support and service resources related to them:

i. Mental illness
ii. Developmental disabilities
iii. Substance abuse and addictions
iv. Dementias and related disorders, including Alzheimer's Disease
v. Impacts of aging
vi. Traumatic brain injury
vii. Other physical trauma or illness

7. Cultural awareness and understanding of issues of diversity, with an emphasis on marginalized populations;

8. Availability to provide mediation services.

Mediators must also complete the required week-long, 40 hour, multi-party mediator training in the facilitative model of mediation and provided in the context of adult guardianship issues.

Mediators must demonstrate maturity and conduct themselves in a highly professional manner that earns the respect and confidence of the other participants. Mediators must demonstrate an understanding of and adherence to appropriate standards of practice. Ongoing training and professional development are essential in this area of mediation practice, and commitment to them should be demonstrated.

II. Mediator Selection, Monitoring and Evaluation

These qualifications and competencies discussed above, as evidenced in application materials, personal interviews, and reference information, form the basis for mediator selection.

All mediators are encouraged to keep current professional liability insurance specifically covering mediation practice.

Mediator performance is monitored and evaluated on an ongoing basis through mentoring, case consultation, record review, observation, interview, and mediator self-evaluation.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #13: Professional Development
Date adopted/revised:

Mediators are expected to continue to expand and update their skills and knowledge in the field of mediation as well as in the substantive areas central to mediation practice in this program (see Policy #12: Mediator Qualifications). Training and education are available through professional seminars, workshops, and university-based programs.

Mediators are required to complete a minimum of two hours of training on issues of domestic abuse and exploitation of vulnerable protected persons. The training must include dynamics and indications of abuse or exploitation; deciding whether or not to mediate; and how to safely terminate mediation. This training must be completed before the mediator has sole responsibility for a case and is no longer being mentored, and no later than one year from entering the program.

Nevada Court System
Adult Guardianship Mediation
Policies and Procedures Manual

Subject:
Policy #14: Complaints and Alleged Ethics Violations
Date adopted/revised:

Any complaints against mediators or allegations of ethical violations are directed to the Guardianship Compliance Office for consideration of involvement.

AGENDA ITEM 7(b)

Draft Mediation Forms for Consideration by Commission

Coates, Sharon

From: McCloskey, Kathleen
Sent: Tuesday, September 10, 2019 9:34 AM
To: Coates, Sharon; Homa Woodrum [redacted] Henry Cavallera [redacted]
Cc: 'Hank Cavallera'; 'Homa Woodrum'
Subject: RE: 9/23 Guardianship Commission meeting--Mediation Manual
Attachments: Adult Mediation Memo.docx; ghsip - adult guardianship mediation contact list (2).doc; gship - adult guardianship mediation agreement.docx; gship-adult-mediation-ROI.docx; gship-notice of outcome of adult guardianship mediation (1).docx; gship-order of referral to mediation (1).docx; gship-request for mediation.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sharon, please see attached drafts for the Commission to consider. Additionally, per the memo, the Commission may want to consider outcomes they would like to capture before we draft a satisfaction survey and program evaluation data sheet.

Kind regards,

Kate McCloskey
Guardianship Compliance Manager
Supreme Court of Nevada |Administrative Office of the Courts
201 S. Carson Street, Suite 250 |Carson City, Nevada 89701-4702
Phone (775) 684-1783 |Fax (775) 684-1723
kmccloskey@nvcourts.nv.gov

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

MEMORANDUM

TO: Sharon Coates

FROM: Kate McCloskey

COPY:

DATE: 9/10/2019

SUBJECT: Adult Mediation Forms

Please find attached the draft adult mediation forms for the Guardianship Commission to consider. Hank Cavallera, Homa Woodrum and I met in November and December of 2018 to draft these forms for the Commission's consideration. We have identified at least two more forms that may need to be developed, a satisfaction survey and a program evaluation data form. We thought it best that the full commission consider what outcome data they would like to capture before we drafted these forms.

Attachment

CONFIDENTIAL

NEVADA COURT SYSTEM
ADULT GUARDIANSHIP MEDIATION CONTACT LIST

DATE: _____

TO: Mediator _____

FROM: Court _____

Name _____ Tel._____

SUBJECT: Contact List for Case No.: _____

Participant	Name	Phone/Email	Mailing Address
Attorney for Respondent			
Attorney for Petitioner			
Respondent			
Petitioner			
Family / Interested persons:			
Adult Protective Services			
Guardian Ad Litem			
Others:			

ADULT GUARDIANSHIP MEDIATION AGREEMENT

We understand and agree to all of the following statements:

1. Mediation is a time for the parties and others to have a private conversation. Everyone comes to mediation voluntarily. If mediation is not helpful, any party can choose to return to court. The mediator can end mediation if he/she feels that it is not helpful or appropriate.
2. Nobody can record a mediation session.
3. Nobody can talk about what was said or done in mediation, except that participants may discuss the case with their attorneys. Any participant can talk to their attorney before signing an agreement.
4. The participants are usually together during a session. The mediator may meet with participants separately. Separate discussions with the mediator will be private unless the participant(s) agree to share with the rest of the group.
5. The mediator:
    - Will try to help us reach our own agreement
    - Will keep our discussions confidential
    - Will help us write an agreement
    - May notify the proper authorities if there is a new report of child abuse or neglect or if anyone threatens to harm another person or him/herself.
6. The mediator will not:
    - tell us what we should do
    - give legal advice to anyone
    - act as a counselor or therapist, but may ask about a family's needs or whether a proposed agreement can work
    - testify in court about anything said or done in the session
    - provide notes or draft agreements used in the session for use in a hearing or trial
7. Nothing that is said or done in mediation is part of an agreement unless it is in writing and signed by all participants. The mediator will notify the court if we did not reach agreement.
8. If we reach an agreement, we may sign and file the agreement with the court. If the agreement is filed, it will become part of the court record. If the participants decide not to file the agreement with the court, the agreement will say that it won't be filed.
9. No one may testify at a hearing or trial about anything said or done in mediation except that we can talk to the judge about a written agreement that is filed with the court.
10. The cost for mediation services are allocated among the parties by the mediator. The costs associated with mediation, such as participant transportation and the cost for counsel, must be borne by the participants.

The mediator has reviewed this agreement with us and we agree with all its terms.

_____	_____
Mediator	Date
_____	_____
Respondent/Attorney	Date
_____	_____
Guardian/Attorney	Date

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of person who has a guardian*) A Protected Person.	CASE NO.: _____ DEPT: _____

ORDER OF REFERRAL TO MEDIATION – ADULT GUARDIANSHIP

This matter is pending before the court on a Petition for _____,

filed on _____.

☐ A request for mediation has been received. After review of the case, the court finds that this matter is appropriate for referral to mediation.

or

☐ The court has reviewed this case and finds that this matter is appropriate for referral to mediation.

THEREFORE IT IS ORDERED that:

1. The Court will assign a mediator. The issues referred for mediation include, but are not necessarily limited to:

_____

_____

2. Time and date for initial joint mediation session to be scheduled by mediator with the parties so that mediation is completed no later than _____.
3. The mediator will contact the parties for pre-conference meetings. The initial joint mediation session will occur at a location determined by the mediator and parties.
4. The mediator is authorized to access confidential information, including the court file.
5. The cost for mediation services will be allocated among the parties by the mediator. The costs associated with mediation, such as participant transportation and counsel, are borne by the participants.

Attorneys are strongly encouraged to attend the joint mediation session. Attorneys may also accompany their clients to the orientation meeting with the mediator. The purpose of the orientation meeting is to explain the process, identify necessary participants and begin to identify issues to be resolved.

The joint mediation session(s), and orientation meetings are private and confidential. No participant in mediation may reveal statements, conduct, notes or the substance of negotiations which occur in mediation to anyone outside of mediation unless the parties agree otherwise. Exceptions to confidentiality will be discussed by the mediator and in the Confidentiality and Mediation Agreement.

Mediation is voluntary. Parties fulfill their obligation under this order by participating in an orientation meeting with the mediator and, unless excused by the mediator, attending the initial joint mediation session. Any party not wishing to continue with mediation after attending the initial

joint mediation session may withdraw from the process. The mediator, in consultation with the parties, shall determine if it is appropriate to continue with the mediation.

There are no accommodations for childcare and, unless specifically requested, children may not attend the mediation.

Date: _____ _____

☐ District Court Judge ☐ Master

I certify that on _____ a copy of this order was sent to:

☐ Respondent's Attorney ☐ Petitioner's Attorney ☐ GAL ☐ Guardian

☐ Other _____

Clerk _____

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of person who has a guardian*) A Protected Person.	CASE NO.: _____ DEPT: _____

NOTICE OF OUTCOME OF ADULT GUARDIANSHIP MEDIATION

This mediation referral concluded on _____.

1. ☐ The parties mediated and reached agreement on some or all issues and
   - ☐ put their agreement on the record in court.
   - ☐ a written agreement was prepared and
     - ☐ has been filed.
     - ☐ will be filed with the court on or before _____ by _____.
     - ☐ will not be filed with the court.
2. ☐ The parties mediated and did not reach agreement.
3. ☐ After attending the initial joint conference, one or more of the key participants chose not to mediate and mediation did not occur.

4. ☐ Key participant(s) did not attend the initial joint conference and mediation did not occur.

5. ☐ The mediator terminated mediation as inappropriate at this time.

6. ☐ No mediation has been scheduled in the 45 days since the order of referral to mediation was issued.

7. ☐ At the request of one or more of the parties, the order of referral to mediation was/will be vacated.

Mediation on the initial issues concluded. However, the parties requested mediation on different or related issues. Mediation is ☐ scheduled on _____

☐ to be scheduled.

_____ _____

Date Mediator

_____

Type or Print Name

_____ _____

Phone Number Address Line 1

_____ _____

E-mail Address Address Line 2

I certify that on _____ a copy of this notice was sent to:

☐ Respondent's Atty. ☐ Petitioner or Atty. ☐ GAL

☐ Guardian

☐ Other _____

By: _____

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of person who has a guardian*) A Protected Person.	CASE NO.: _____ DEPT: _____

ORDER OF REFERRAL TO MEDIATION – ADULT GUARDIANSHIP

This matter is pending before the court on a Petition for _____,

filed on _____.

☐ A request for mediation has been received. After review of the case, the court finds that this matter is appropriate for referral to mediation.

or

☐ The court has reviewed this case and finds that this matter is appropriate for referral to mediation.

THEREFORE IT IS ORDERED that:

1. The Court will assign a mediator. The issues referred for mediation include, but are not necessarily limited to:

_____

_____

2. Time and date for initial joint mediation session to be scheduled by mediator with the parties so that mediation is completed no later than _____.
3. The mediator will contact the parties for pre-conference meetings. The initial joint mediation session will occur at a location determined by the mediator and parties.
4. The mediator is authorized to access confidential information, including the court file.
5. The cost for mediation services will be allocated among the parties by the mediator. The costs associated with mediation, such as participant transportation and counsel, are borne by the participants.

Attorneys are strongly encouraged to attend the joint mediation session. Attorneys may also accompany their clients to the orientation meeting with the mediator. The purpose of the orientation meeting is to explain the process, identify necessary participants and begin to identify issues to be resolved.

The joint mediation session(s), and orientation meetings are private and confidential. No participant in mediation may reveal statements, conduct, notes or the substance of negotiations which occur in mediation to anyone outside of mediation unless the parties agree otherwise. Exceptions to confidentiality will be discussed by the mediator and in the Confidentiality and Mediation Agreement.

Mediation is voluntary. Parties fulfill their obligation under this order by participating in an orientation meeting with the mediator and, unless excused by the mediator, attending the initial joint mediation session. Any party not wishing to continue with mediation after attending the initial

joint mediation session may withdraw from the process. The mediator, in consultation with the parties, shall determine if it is appropriate to continue with the mediation.

There are no accommodations for childcare and, unless specifically requested, children may not attend the mediation.

Date: _____ _____

☐ District Court Judge ☐ Master

I certify that on _____ a copy of this order was sent to:

☐ Respondent's Attorney ☐ Petitioner's Attorney ☐ GAL ☐ Guardian

☐ Other _____

Clerk _____

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

DISTRICT COURT
_____ COUNTY, NEVADA

In the Matter of the Guardianship of the: ☐ Person ☐ Estate ☐ Person and Estate of: _____ (*name of person who has a guardian*) A Protected Person.	CASE NO.: _____ DEPT: _____

REQUEST FOR ADULT GUARDIANSHIP MEDIATION

1. I request a referral to the court-sponsored guardianship mediation program.
2. I am the:
   - ☐ Respondent/Protected Person (or attorney)
   - ☐ Petitioner (or attorney)
   - ☐ GAL
   - ☐ Guardian
   - ☐ Other (family, domestic partner, etc.) and my relationship to the person is: _____
3. ☐ I consulted with all other legal parties and we all agree to make this referral (not required).
4. The participants are available to mediate on _____ (date) at _____ ☐am ☐pm or _____ (date) at _____ ☐am ☐pm.
5. People who should participate in the mediation are:

Name	Relationship	Phone(s) and Email address

NOTE: If you need to add more names, please attach an additional sheet.

6. Mediation should focus on the following areas or issues of concern:

_____

_____

7. I understand, and I have communicated with the parties, that the cost for mediation services will be allocated among the parties by the mediator. The costs associated with mediation, such as participant transportation and counsel, are borne by the participants.

Date:_____

I certify that on _____
a copy of this request was sent to:

☐ Respondent's Atty. ☐ GAL
☐ Petitioner or Atty. ☐ Guardian
City State

☐ Other _____

_____
Signature

_____
Type or Print Name

_____
Mailing Address

_____
ZIP

_____
Contact Telephone

AGENDA ITEM 8

Discussion of Future Topics and Meeting Dates (no handout)