

STATE OF NEVADA  
SUPREME COURT COMMISSION  
GUARDIANSHIP COMMISSION  
April 1, 2016  
Completed by Stephanie Heying  
Verbatim Public Comment

**Justice Hardesty** welcomed public comment and stated if someone has provided public comment to the Commission at a prior meeting, the person would be limited to 1 minute. If they had not provided previous public comment, their time for public comment would be limited to 3 minutes.

There was no public comment in Elko or Las Vegas.

**Carson City**

**Ms. Melissa Exline** – Ms. Exline stated she is a family law practitioner with practices primarily in Washoe County and in other counties up north. Ms. Exline wanted to add something specific to the area of minor guardianships. There is a little bit of an area she has been talking with other practitioners and she has ran into this...fortunately she has been in front of Judge Walker in Washoe County and they have been able to reach a resolution in these issues. When she is representing, for example, a grandparent in a minor guardianship matter, whether it be seeking to get a guardianship and if a parent comes in to object or stand opposed to that guardianship being put into place in some way, shape, or form the...and I say in some way, shape, or form because it could be at the outset or it could be at seeking by way of their own petition to terminate. Irrespective of the role, we lack rules under the Nevada Rules of Civil Procedure (NRCPC) to provide us with adequate guidance on how do we share disclosures of documents and play by the rules. So generally, when there is counsel involved it is relatively straightforward. We can get in front of the judge and ask for a status conference beyond and everyone can agree how we are going to do this. Right now, we have NRCPC 16.2 and kind of piggy backing on that NRCPC 16.205. But when you look squarely at those rules they really are intended for the litigation in family law matters; divorce, custody proceedings, 16.205 is paternity and custody for unmarried persons but when you are dealing with the issue of guardianship and how are we litigating and what rules everyone is playing by when do we do our disclosures? Often we are dealing with a tightened timeline with minor guardianships. I was looking at some of the documents and some of the study information provided through all the hard work everyone has put in. For example, some of these are reaching resolution on average of 74 days so if they are reaching resolution that quickly we have to figure out a way, I am hoping to tighten up the timeline. If we have counsel it is a little easier, people tend to call each other, be more collegial and work with the court in trying to get a status order out so that we know who has to produce what. If you have expert witnesses, we have to have a timeline, whether they are doing a report. A lot of the stuff we are starting with is 60 days before a hearing date. Things like this we have to have a written report. Much of this happens so quickly. We are trying to get an assessment, maybe get a child in front of a psychologist or marriage and family therapist. If you represent a proposed guardian or a proposed ward then you do not even have the authority to act so the court has to step in to say what are the rights, to get the information needed to get an adequate decision. So that is one of the areas we

are struggling with and I welcome the court, the input of the folks involved and I just wanted to provide that information so we can figure out if there is a way to integrate solving that dilemma that we have in a more formal way as we proceed.

**Justice Hardesty** – I appreciate the suggestion and I have spoken with Kim Surratt following the Family Law Conference in Ely. I had asked her to reach out to lawyers around the state who might have a comment about this area and I understand that in the south, Ms. Homa Woodrum, you share these views so we will not be redundant here. I guess the question I have before you part is I do not think we really have a formal set of court rules that address disclosure. I don't think in pre-hearing adult guardianship either. So as I looked at NRCP 16.1, 16.2, 16.205 quite frankly, I do not know that we are in good shape in any of those rules as they might apply to the subject matter of guardianship be it adult or minor. So would you agree we should broaden this subject to cover both?

**Ms. Exline** – Absolutely. I have had some limited involvement in the adult guardianship area and fortunately, I have not had to do a full-blown litigation in that context. If I did I would run into those same problems because the rules are silent and so often in adult guardianships the court is involved and we have the hearings and that kind of gets addressed as everyone is talking through things early on. However, the same problem exists and I'll just piggyback on that for the court, Justice Hardesty, the termination of parental rights, which kind of works tandem with the minor guardianships. Often, there is a lack of clarity on how we play by the rules, if you will, under the Nevada Rules of Civil Procedure for termination of parental rights as well. Again, tightened timelines and many of the minor guardianship cases are involving child protective services but not all. When you look at NRCP 17 it says shall...that an incompetent person, a minor being said incompetent person per statute, shall have representation appointed. There is no structure for that. We just as practitioners are scratching our heads, along with the court, I am sure, as to what makes sense and how do we address those issues. This is what we are struggling with and I think if we are here to talk about it then we should have an open conversation. Now the local rules in Washoe County say in a last minute and if we are going to have a hearing, I have to disclose 48-hours beforehand. In the south, there are other rules and in some counties, we do not have local rules and are relying on the DCR, the district court rules. So we are all kind of scratching our heads and I think it makes sense to have a better structure for something so important when they do lead to litigation or integrating a mediation context, which I do see this Commission is talking about pushing more things into an ADR structure. How that interplays with that as well. So those are all the thoughts I have on that issue in kind of brief form.

**Justice Hardesty** - Ok I think that makes sense. I am going to add that to our policy questions and we will discuss that at on April 22. As an aside, you might share with your colleagues, north and south, and Ms. Woodrum, if you could do the same - Justice Gibbons and Justice Hardesty have been discussing concerns they have had over 16.2 and the need for some revisions to the pre-trial disclosure rules, as they apply in family court generally. So he thinks that whole area is going to be revisited and this is a timely approach to a different area of the law even though it is being administered within the family division. I really appreciate your input today. Thank you very much.