

Nevada Supreme Court

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



November 23, 2015, Meeting Materials

Chief Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING NOTICE AND AGENDA

Name of Organization:

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

Date and Time of Meeting: November 23, 2015, 1:30 p.m. to 4:30 p.m.

Place of Meeting:

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

AGENDA

- I. Call to Order
 - a. Call of Roll and Determination of Quorum
 - b. Approval of Meeting Summary from October 19, 2015 (for possible action) (*pages 4 -24*)
- II. Public Comment
Because of time considerations, the period for public comment by each speaker will be limited to 3 minutes, and speakers are urged to avoid repetition of comments made by previous speakers.
- III. Presentation
 - a. Attorney Representation (*Barbara Buckley*) (*pages 26-29*)
 - b. Statutes from Vermont, Arizona, Washington, Texas, Nevada (*pages 31-55*)
 - c. Involuntary Guardianship Referral Process Recommendation (*Richard Black*) (*pages 57-62*)

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

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

- IV. Subcommittees/Working Group Updates (for possible action)
 - a. Minor Guardianship Statute (*Judge Walker*)
 - b. Data/IT Subcommittee (*Hans Jessup*) (pages 64-66)
 - c. Eighth and Second Judicial District Working Groups (*Judge Steel & Judge Doherty*)

- V. Discussion and Possible Action on Recommendations (for possible action)
 - a. Additional documentation from Texas
 - i. HB 39 (pages 68-95)
 - ii. SB 1882 – Bill of Rights (pages 97-102)

- VI. Categorize and Prioritize Recommendations (for possible action)
 - a. Recommendations from Commission Members (pages 104 -115)
 - i. Judge Steel
 - ii. Judge Porter
 - iii. Judge Doherty
 - iv. Christine Smith
 - v. Jay Raman
 - vi. Sally Ramm
 - vii. Susan Sweikert
 - viii. Rana Goodman
 - ix. Kathleen Buchanan
 - b. Recommendations from non-members (pages 115 – 116)
 - i. Lora Myles
 - ii. Rick Black

- VII. Other Business
 - a. Nevada Financial Institutions Division – AB 325 (link in email)
 - b. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002 (pages 118-122)
 - i. Idaho Rules Ex Parte Communication (pages 123-124)

- VIII. Future Meeting Dates
 - a. December 15, 2015 –State Bar Office, Las Vegas – 10 a.m. to 4:30 p.m.

- IX. Adjournment

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

MEETING SUMMARY

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MEETING SUMMARY

*Prepared by Always on Time Transcription and Stephanie Heying
Administrative Office of the Courts*

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

Date and Time of Meeting: October 19, 2015, 10:30 a.m. to 4:30 p.m.

Place of Meeting:

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

Members Present:

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge Egan Walker
Judge William Voy
Senator Becky Harris
Assemblyman Michael C. Sprinkle
Assemblyman Glenn E. Trowbridge
Julie Arnold
Kathleen Buchanan
Rana Goodman
Susan Hoy

Jay P. Raman
Sally Ramm
Kim Rowe
Terri Russell
David Spitzer
Kim Spoon
Timothy Sutton
Susan Sweikert
Elyse Tyrell
Christine Smith

AOC Staff

Stephanie Heying
Raquel Rodriguez

I. Call to Order

a. Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Creation and Administration of Guardianships (Commission) to order at 1:35 p.m. A quorum was present.

Chief Justice Hardesty let members know a number of matters on the agenda extended from the last meeting. In addition, Chief Justice Hardesty asked Mr. David Slayton, Administrative Director of the Texas Office of Court Administration, to provide a presentation on the guardianship reform efforts in Texas.

b. Approval of Meeting Summary from September 16, 2015, meeting.

Members provided edits to the September 16 meeting summary. Ms. Kim Spoon noted page 15, second to the last paragraph states, in the north and by State law, a guardian is required to have the Ward present for all guardianship hearings. Guardianships are established under traceable evidence... What Ms. Spoon had said was they try having Wards present for all hearings because the law does not state that. The only one that is required is for the General Guardianship. Ms. Spoon stated they try to have Wards present for all hearings. Judge Nancy Porter had a correction on page 11 under the hearing Rural Public Guardian. Five lines up from the bottom of the paragraph, the language should read the Public Guardian is limited by the county to 25 Wards. Ms. Stephanie Heying made a note of the edits for the record. The September 16 meeting summary was unanimously approved with edits.

II. Public Comment

Public Comments were transcribed verbatim and are included as a separate attachment to the meeting summary.

III. Presentations

Presentations were taken out of order based on the availability of the presenters.

a. Texas Guardianship Laws 2015 (David Slayton, Administrative Director, Texas Office of Court Administration)

Mr. David Slayton, Administrative Director, Texas Office of Court Administration (OCA), provided a presentation on guardianship reforms in Texas. The Texas Judicial Council is the policy making body for the Judicial Branch in Texas. An Elders Committee was formed under the leadership of previous Chief Justice Wallace Jefferson. In addition to the Elders Committee the Texas Supreme Court and the OCA formed a Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) group. The WINGS group is a collaborative effort that pulls together stakeholders to look at guardianships from all different perspectives. The WINGS group works collaboratively with the Judicial Council's Elder Committee.

The 65 and over population in Texas is expected to more than double by 2040. Texas has a state law that requires private professional guardians and state provided guardians to be certified and license by the state. The OCA handles the licensing and certification process as well as complaints. Texas currently has just over 400 state-certified guardians that handled 5,000 of the more than 50,000 active guardianships cases. There are 254 counties in Texas and only 10 of those counties have statutory probate courts so it is important to have a system that is clear and easy to use.

The WINGS goals include:

- A review of the state's strengths and weaknesses of the guardianship system;
- Making sure the state is encouraging the least restrictive alternative, which was already included in Texas statute;
- Addressing key policy and practice issues;
- Engaging in outreach, education and training; and
- Serving as an ongoing problem solving mechanism to enhance the quality of care and life of adults in, or potentially in, guardianship by providing alternative systems and ongoing collaboration amongst all the different stakeholders.

In September 2013, a Texas Guardianship Assessment Survey was sent to judges, medical professional, mental health professionals, self-advocates, advocacy groups, attorneys, certified guardians, court visitors, state legislators, and other interested stakeholders. Responses were received representing every county in Texas. The results of the survey were gathered and a list 26 issues were narrowed down to 8, and the WINGS group narrowed it down to three areas to focus: (1) Alternatives to Guardianships (2) Support Services (3) Person-Centered Assessments.

Priorities discussed with the WINGS and Elders Committee:

1. Services to coordinate alternatives to guardianship. This was a huge issue and the group found that many times people did not feel like the alternatives were being explored first. This was the key part that was ultimately recommended.
2. Support services to assist family/friends who want to become guardians.
3. Support services to assist family/friend (non-professional) guardians to complete their legally mandated duties. This provides support and services to families and friends on how to become a guardian and how to assist family and friends in complying with their duties.
4. Court visitor qualifications, standards and procedures. Provided requirements for a court visitor and the standards and procedures once becoming a court visitor.
5. A standardized form for courts to obtain an accurate and detailed assessment of a proposed protected person's functional limitations. Texas does not have standardized forms for the assessment of the functional limitations so the WINGS group did some work on this.
6. Created a template to assist guardians in developing person-centered plans.

The recommendations became a part of Texas House Bill 39 (HB 39), which was unanimously passed by the House and the Senate. The bill was signed into law and became effective September 1, 2015. The House Speaker designated HB 39 as one of his priority bills which helped the bill pass.

Recommendation 1: Strengthen Guardianship Alternatives and Improve Guardianships

The first issue identified was the location of alternatives to guardianships. Alternatives to guardianships were spread throughout the Estate Codes, Health and Safety Codes, and Civil Practices and Remedies making it difficult for anyone in the system to figure out what the alternatives to guardianship were. HB 39 simplified the process by providing a condensed list of alternatives to guardianship at the beginning of the Estate Codes, and provided cross references to the codes. The bill required judges, attorneys, and applicants to explore alternatives to guardianship prior to the filing and granting of a guardianship and to consider whether supports and services could be put into place that would prevent the need for a guardianship. The alternative decisions are explored throughout the entire process. The applicant filing the Application for Guardianship has to make that statement in the application. The applicant has to state that they have explored all alternatives and there are none. Once an attorney ad litem becomes involved in the case, they are required to do their due diligence to see if there is a more appropriate alternative. A judge, at the point of the hearing, has to make a similar finding. There are multiple reviews of alternatives to guardianship that are required to occur from the beginning and all the way through the process. These are some items that were included in the bill to ensure guardianships are truly the final option. A continuum of care listing the less restrictive alternatives to the more restrictive alternatives was included in the meeting materials.

Recommendation 2: Certificate of Medical Examination Modification

A physician is required to evaluate the Ward to determine their capacity and that report is sent to the court. There was no common form so doctors often reported this information differently. One commonality of the physician reports was they lacked any information as to whether or not there was potential for improvement of the Ward's capacity or condition. Example, a stroke victim might have a serious impairment and incapacity today, but might have significant improvement over time. Courts were often not made aware of the improvement therefore a Ward could remain under guardianship even though their capacity has improved to a point where the Ward did not need to be under a full guardianship. HB 39 requires the physician examination letter/certificate to state whether improvement in the proposed Ward's condition is possible, and to state a time period after which the individual should be re-evaluated to determine if guardianship is necessary. If a physician indicates a Ward's condition might improve then the case is set for review and the court would order a re-evaluation of the Ward. Depending on the results of the re-evaluation the court would determine whether or not the Ward would continue to be under the guardianship in the same manner based upon the results of the re-evaluation. This is a new concept in the law.

Recommendation 3: Guardianship Decisions about Residence

The third issue identified was significant, especially to those individuals in the guardianship system. Texas law did not include a consideration about a Ward's preference to their residence. Wards were being placed in facilities that the Ward did not want to be placed in, which may or may not be in the Ward's best interest. There were some cases in which Wards were also being moved, after the legal guardianship was established, to a more restrictive facility. The law now requires the court to consider the Ward's right to make personal decisions about residence and whether or not the Ward has the capacity to make that decision. Now, before a guardian can move a Ward to a more restrictive living facility, the guardian has to provide motive to all the interested stakeholders in the case, as well as the judge. The guardian must give seven days' notice before moving a Ward, unless it is an emergency. Any of the parties can object to the move, including the Ward, and request a hearing, and the judge can approve the motion, object or request a hearing.

Recommendation 4: Applicant Attorney Training Requirement

In the survey that was conducted judges identified lack of attorney training and attorneys identified lack of judicial training as an area of concern. In order to be an ad litem in a guardianship case, the attorney must have previous judicial law experience and three hours of training in guardianship law on how to be an ad litem in a guardianship case. The applicant's attorney was not required to have similar training. HB 39 increased the hours of training from three to four and requires the applicant's attorney to be certified by the State Bar as completing a course study in guardianship law and procedure. The intent of the law is to have individuals, filing guardianship cases, to have some understanding on how the guardianship system works. This item was probably the most controversial of all the requirements.

Recommendation 5: Supported Decision-Making Framework

The last item, and perhaps the most groundbreaking of the proposals, is the emerging alternative to guardianship - Supported Decision-Making Framework. In their research, the groups found several other countries around the world who have implemented Supported Decision-Making. Mr. Slayton did not think there was any other legal framework, outside of Texas at this time, for Supported Decision-Making. In this arrangement, an adult with a disability enters into some sort of an arrangement with another individual to assist them in making life decisions; such as where they are going to live, what supports and services are available, what type of medical care they will need, who they want to live with, where they want work, these types of things. The individual retains that decision making ability. It is a least restrictive type of assistance. The law provides a legal framework for the Supported Decision-Making and lays out a template of how the Supported Decision-Making agreement should be worded. Texas is seeing these used in the disability community where a child has transitioned from a minor to an adult as a viable alternative to a guardianship.

All legislative proposals on guardianship were passed this session. There is more work to be done and this is a complicated issue that Texas has made significant progress on. HB 39 was the first bill in several legislative sessions that focused on the needs of the Ward and not as much on the needs of the

guardians or attorneys involved.

Items Texas is looking into for the future:

- Changing the term "Ward." There was legislation to change language in the 2014 session to a 'person under guardianship' but there was a concern that the abbreviation (PUG) would not be appropriate so they are continuing to explore other terms.
- How Texas can best interact with individuals who are not certified guardians. Roughly 45,000 cases are handled by family members, friends, or attorneys but Texas does not have insight or oversight of these types of guardianships. The OAC receives complaints daily from family members, friends, and interested individuals about abuse or exploitation but they cannot do anything about that. The OAC responds via a letter and notifies the complainant that they are sorry but they cannot help. The working groups are looking into a process to change this. Additionally, family members and friends are not required to receive any training or any oversight regarding their responsibilities. Texas is looking into a registration process where all guardians would register with the state and agree to listen to/watch a 45 – 60 minute webinar. They are working on making it the least imposing as possible while still being able to have some oversight.

Additional bills unrelated to HB 39 that were passed during the 2014 legislative session:

- A law was passed, mirroring a Supreme Court Rule, requiring the clerk of the court to report all fees paid to guardians and other attorneys to the state. The law addressed concerns regarding transparency in guardianship cases. There had been concern that judges were appointing the same guardian and paying them exorbitant fees. Information is now included in an OAC database which provides transparency.
- Bill of Rights for Wards was passed.

There was a discussion as to how Texas coordinated the handling of minor guardianships with adult guardianships. The Elder Committee did not address minors under the age of 18 in any of the proposals. The committee did ask how the proposals would impact minors and elders throughout the process. In the study conducted in Texas, about 51% of the cases involved minors so they kept that in mind as they developed the proposals. Additionally, throughout the process the committee had individuals at the table including Disability Rights of Texas.

The Commission discussed when a petition is filed and the attorney or guardian ad litem have convinced the court that wrap around services would serve the needs of the proposed Ward, would those services have to be supplied and would they be subject to a court order saying the services have to be supplied. It was noted that it would seem if the petition is not granted, the court would not have any jurisdiction to order anything. Mr. Slayton noted he would check into this and get back to the Commission. Additionally, there was a question about whether the Supported Decision-Making agreements would have the force of a contract between the proposed Ward and the supplier of the services. Mr. Slayton said he believes it would have the force of a contract. The statute allows

termination at any point by either party. It is pretty loose framework. If they do not go to court on an issue, then the law gives the court some framework for how to handle those cases.

Mr. Slayton was asked if Texas had a provision to certify attorneys in certain areas of practice. Mr. Slayton responded Texas has a Board Certification. There is a great deal of certification and requirements for getting a specific amount of training for court appointed counsel, whether it is in on the criminal side, child protection/child welfare side, or the guardianship side. When the court is appointing someone to that position, they are required to have a certain amount of training before—to be eligible for that. This is the first time in Texas history where the state has imposed upon a non-appointed attorney a requirement for training or a requirement for certification. This is perhaps the most controversial piece of this law because it is a certain shift from where Texas had been in the past. There is no enforcement mechanism in the law for the training. That was somewhat intentional because they did not want some piece to get held up in an emergency because somebody did not receive their four hours of training.

Chief Justice Hardesty noted there is not any reason why the approval of alternative supports could not be the subject of a court order. Mr. Slayton said he was not sure where the courts would invoke their jurisdiction but he would get clarification on this.

The Commission discussed attorney representation, the process if a dispute amongst the parties occurs, and the use of investigators. In Texas, an attorney for a proposed Ward is appointed upon filing of the application and every proposed Ward is entitled to counsel. Counsel is either paid by the state or by county funds. The proposed Ward is also entitled to an attorney ad litem and a guardian ad litem. Each has a distinct role under Texas law. If there is a dispute amongst the different parties as to the need for wrap around services or a full blown guardianship there could be a jury trial. The proposed Ward is entitled to a jury trial if they so wish, to a degree. Whether one of the parties or the applicant or someone else that is stating that full guardianship is necessary and another one is saying that a limited guardianship or even less restrictive alternatives would be appropriate, then a trial might be necessary. Investigators are provided for under Texas law. In the 10 counties with the Statutory Probate Court, both the court auditor and court investigators are employees of the court. In the more rural areas of Texas, the investigators are appointed privately by the judge. The investigators are paid similar to the payment of the attorney. If there are funds in the estate, the court could pay the investigator out of the estate. If not, the county would pay the investigator.

The Commission discussed the physician certificates and whether or not the WINGS group had a dialogue about the subject of capacity i.e., what and how is that determined and how do physicians respond to the certification of capacity. The WINGS group did discuss this issue, which is part of what led to the discussion about residence. Texas law has a few very specific requirements where the attorneys in the case and the judge have to find as to capacity in those certain areas; the right to vote, the right to marry, the right to residence, the right to make financial decisions. Part of the discussion included standardized forms because it is difficult to have different physicians filling out different forms. The judges and attorneys found differences in the evaluations and the forms being provided by

the physicians, which makes things difficult. Mr. Slayton would encourage the Commission to review this as well. What are the different things that physicians seem to be finding and what are the different factors regarding capacity. Texas found you could have someone under full guardianship in one area and then all the other four either have no guardianship—basically a limited guardianship based upon that, having one area in and the other four out. That is something that is being asked in physician's report.

There was a discussion about supervision for the people/organizations that are providing the support and services. Have there been discussions about supervision and how do they address possible elder abuse or exploitation. Mr. Slayton noted the Supported Decision-Making Agreement is a wraparound service, in a sense, and the bill speaks to that. For instance, a bank or any other financial entity or medical care facilities or others need to be on guard regarding potential exploitation or abuse. Texas has been conducting training and has already had some outreach to those different groups to talk about what a Supported Decision-Making Agreement is. At this point, awareness is how this is being dealt with. The courts would be ordering the supports and services be put in place, but there would probably not be any court involvement in the oversight of the supports and services. Social services agencies, i.e., Adult Protective Services would address elder abuse or exploitation.

Mr. Slayton noted Texas is kicking off a pilot program in the 244 counties where there are no on-staff investigators or primarily no on-staff auditors, which is the bigger issue. Judges in these counties report that they do not have capacity to be overseeing these cases once they enter a guardianship. Texas had 50,000 active guardianships in 2014 and 9,000 annual accounting files. This would indicate there is either serious underreporting at the local level, or courts are not reporting the right stats at the state level. Either way this is an issue. The pilot program is state funded. People from the state level will assist the judges in reviewing cases and providing information back to the courts on the annual reports. Mr. Slayton mentioned Minnesota work in this area. Minnesota found 14% of the cases reviewed indicated serious financial exploitation was going on.

The Commission discussed whether there was an individual responsible for ascertaining and accessing which wraparound services an individual would qualify for and if the adequacy of those services factor into the court's analysis with regard to the guardianship. Texas law requires the attorney to explore what supports and services might be available to decrease the need for a guardianship. The fourth hour of training that is now required includes alternatives to guardianship and support and services. This is an effort to educate attorneys involved in guardianship cases to the supports and services available. Once the case gets to the judge, the judge would ask similar questions about whether or not programs could help the proposed Ward based on information the judge is provided. The physician should also be looking into whether there are alternatives while completing their evaluation and report and that information should be provided to the attorneys and judges. Senator Harris asked if Texas had thought about putting a master list of resources together or some kind of accountability that courts could ask counsel for, as opposed to being reliant upon counsel for the representation. Mr. Slayton responded they do have court investigators in the more urban counties. The court investigators are doing some of this work as well from the court side. The court investigators are working with partners

in the community regarding supports and services that are available. One of the things they need to be working on is to identify the various alternatives and supports and services. A master checklist that would identify whether certain services are available in the area or if they would be appropriate would be a good idea.

The court investigators in the 10 counties where there is a Statutory Probate Court are employees of the court and they report administratively in those 10 courts. The court investigator reports to the judge who is handling the case. There are 18 court investigators for the 10 counties. Each judge employs their own investigator and auditor or team of investigators and auditors.

Judge Doherty asked what criteria Texas would be looking at in the data to determine if these modifications are successful. Mr. Slayton responded Texas has seen a 60% increase in the number of guardianship cases in the last four years. They will be looking at the percentage of full guardianships that are granted, and might see that percentage come down as judges and attorneys begin to look at alternatives to full guardianships. The two primary measures will be whether or not they see a growth or a reduction in the number of full guardianships. The other item they would be reviewing is the number of accountings that are being filed annually. They have a series of measures when they examine the annual accounting reports.

Judge Doherty noted Judge Walker had asked what Texas does for children transitioning from the adult system. Texas is trying to divert developmentally delayed or challenged young adults out of the system through supported agreements. Mr. Slayton stated Texas is trying to educate parents and schools about the fact that there are alternatives to full guardianships for children who are aging into the majority. Schools are often telling parents they have to get a guardianship before the child turns 18 so they are trying to educate parents and schools on the alternatives and Supported Decision-Making Agreements.

Chief Justice Hardesty thanked Mr. Slayton for his presentation and noted the Commission would have some follow-up request for information. Chief Justice Hardesty noted he liked the term person-centered evaluation; which seems to be the focal point of what Texas has been initiating.

b. Law Enforcement/Prosecution Response to Guardianships (Jay Raman)

Mr. Jay Raman provided a presentation on Elder/Vulnerable Exploitation – Law Enforcement and District Attorney Perspectives. Mr. Raman reviewed the law, perspectives, private professional guardianship exploitation, and family member guardianship exploitation.

Elder abuse statutes are included in Nevada Revised Statute (NRS) 200.5091 to 200.5099. The statutes include definitions, whose duty it is to mandatory report, crimes, penalties, and the policy of the State.

Mr. Raman reviewed his perspective, as a district attorney, and noted many older victims will fall into both categories of victim: (1) older (60 years or older) and (2) vulnerable. A vulnerable person means a

person 18 years of age or older who: (a) suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or (b) has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living. The law does not make a distinction in what is happening to people, whether they are older or vulnerable. Mr. Raman said in his opinion, there is a recognized gray area of where vulnerable starts. A lot of people who are older and end up as victims may have undiagnosed mental conditions, e.g., early onset Alzheimer's, dementia, etc. There is a significant broadness within the statute to address those conditions and there are other conditions an older person may be suffering from e.g., loss of a spouse, chronic loneliness, or other things that might make a person vulnerable to victimization. The penalties and elements are basically the same; it does not have to be both. The district attorney's (DA's) office does not need to prove both.

Exploitation of vulnerable or older person cases would likely be proved circumstantially. If the victim is suffering from a mental condition that is severe enough to classify them as 'vulnerable', it is possible they may not be competent to be a witness. The cases have to be put together from many different sources, and you have to weigh the admissibility of the evidence to see if that will hold up in court. The types of cases Mr. Raman has worked on for exploitation theft and fraud have included professional guardianship and family members. There have been situations where caregivers are knowingly taking advantage of somebody who is under guardianship and there have been cases where attorneys have been involved.

Law Enforcement's Perspectives include:

- Elder/Vulnerable Person cases are difficult cases to investigate
 - Unique issues present in these cases
 - Cases come from multiple departments within the same police department, i.e., cases from patrol, from financial crimes unit, from abuse and neglect unit, and from Metro Intel.
 - Varying levels of expertise on how to investigate, what to look for, and who to talk to.
- Suggestions from law enforcement on how to prevent crime or improve the ability to investigate:
 - Asking the court to examine the fees that the guardians charge.
 - Property scrutiny of the invoices could and would prevent theft.
 - A requirement of sufficiently detailed explanation of actual activity being billed for, including if the service was provided by a person other than the guardian.
 - If law enforcement is relying on a provider but it is not clear within the invoice that a provider provided the service, not the guardian, then that would be helpful in the investigation if there are allegations that something has been done that has not benefited the Ward.
 - Enforcement of time frames for filing of documents, the inventory, the annual accounting. If that standard was held it would reduce the window for theft from Wards,

- and also presents more evidence if those filings were falsified to cover up the nature of what was happening.
- Court enforcement of required blocked of accounts or having bonds in place is definitely important.
 - Within the proposed budget for Ward's expenses, more attention should be paid to things classified as 'miscellaneous' expenses and fees. Expenses and fees that fall into miscellaneous might lack the normal oversight and paper trail you would expect on other kinds of line item expenditures and obviously wrapping everything up into a miscellaneous column could be a place for fraud to occur.
 - Notification of interested party family members be investigated and verified. What has been seen are generic examples that have been entered into guardianship court stating basically they could not identify any family members to notify, but it does not reveal the length to which whoever is seeking guardianship has actually pursued searching for family members.
 - Standards to be set up to show what length a guardian or somebody seeking guardianship should search for family members.
 - Standards should be set up on what occurs with a Ward of the State once they pass away if there are no heirs.

Mr. Raman provided an actual case study of private professional guardianship exploitation and provided information on the victims of private professional guardian Patience Bristol. Ms. Bristol's criminal case involved Wards in both categories, older and vulnerable persons. When Ms. Bristol was interviewed, she admitted she had a gambling problem and had spent much of her Ward's monies at bars around the Valley. She also presented that she falsely took the money that should have gone to funeral expenses for one of the victims. Ms. Bristol was charged with exploitation of elderly, exploitation of vulnerable, burglary, obtaining money under false pretenses. The burglary and obtaining money under false pretenses charge relate to the conduct at the pawn shops. In a relatively quick fashion, she pled guilty to exploitation of elderly/vulnerable person. She's currently serving 3-8 years in prison.

Exploitation cases might also involve family members e.g., Kasey Kasem's case. Family member exploitation cases are more difficult to prove under Nevada's exploitation statute due to some ambiguity in the 'undue Influence' term, but that does not present itself in guardianship cases. With a guardianship case, you do not have to prove a person obtained control through deception, intimidation or undue influence. None of those things apply when you go to a court and legally obtain the ability to manage another person's affairs. If you simply take the Wards money with the point of permanently depriving the Ward then there is a crime.

There was a discussion about grants or law enforcement funding sources. Mr. Raman noted he has seen grants for elder and vulnerable person exploitation but he does not know if there is anything guardian specific.

The Commission discussed how many cases are initiated by Mr. Raman's Division and whether or not they are a special unit. Mr. Raman only deals with cases that are submitted by law enforcement; his office does not internally develop a case. The cases are not quick; it takes a long time to develop a case. Many different factors have to be corroborated and the office has to subpoena records.

Mr. Raman was asked how many of these people have gambling problems and how many plead out. Mr. Raman stated there are a high percentage of people who embezzle and do things like this which do have a gambling problem. You cannot commit elder and vulnerable person abuse and say, I have a gambling problem and I need to be diverted from punishment. That does not exist in the law. Mr. Raman has not had to take any cases to trial so all of them have pleaded out.

The Commission discussed ways to get law enforcement engaged in these types of cases. Efforts might include members of the Commission reaching out to law enforcement and discussing the importance of these cases. Mr. Raman hopes getting investigators in the court would assist in identifying cases where exploitation or elder abuse might be happening and submitting these cases to law enforcement to conduct further investigations and prosecute if warranted. Law enforcement is required to investigate any case brought forward. Training and staffing departments to identify these issues is important. Ms. Ramm noted that although attorneys are not mandated reporters, attorneys could still report to Elder Protective Services (EPS). EPS have a relationship with law enforcement that is sometimes more effective than just trying to go there yourself. Members discussed the lack of training at POST in elder exploitation and elder abuse. EPS's Elder Rights Unit provides four-hour training for POST-certificates, in some counties, when invited.

The Commission discussed child abuse cases and possible implementation of a Guardianship Review Team. Child Death Review Teams have been very successful in enhancing dialogue between law enforcement, social services, and the courts and have built interest and accountability into the system. The trigger for a Guardianship Review Team could include a number of circumstances. As an example, the high profile case highlighted by Mr. Raman could be reviewed by a Guardianship Review Team to see if there were gaps in the reporting, in information sharing, how the system could be designed to identify and catch those who are exploiting or abusing Wards, etc. It could benefit the system to review these cases and identify what could be done differently and how the process could be improved.

There are enhanced penalties when someone has committed elder/older abuse or exploitation. The age enhancement is 60 years of age or older. Only certain crimes are enhanceable with an age or vulnerable person enhancement outside of abuse. There is financial and physical abuse, isolation and abandonment that are contained within the enhanceable offenses. Areas that can be age enhanced within the property arena include obtaining money under false pretenses and embezzlement. Theft is not included as an age enhancement. Penalties range from a category B felony (1-6 years in prison), embezzlement is a category C felony (1 – 5 years in prison), and elder abuse crimes start at one to two years up to 20 years in prison. The penalties are not mandatory prison offenses and all offenses allow probation.

c. Medical versus Legal Terminology (Kim Rowe & Elyse Tyrell)

During the September 16 meeting the Commission discussed the differences that exist in the terminology in Nevada statutes and the terminology used by physicians in reporting on potential Wards. Mr. Kim Row and Ms. Elyse Tyrell, with the assistance of Ms. Julie Arnold provided an overview of the terminology.

There are a number of different definitions and statutes that deal with capacity and competence in Nevada. The underlying issues are really raised in the context of the medical community versus the legal community and the concepts dealt with. The issue of capacity is a medical decision that is typically made. The materials included a one-page summary that deals with the capacity concept. Essentially, there are three different types of capacity; path specific, situational, and contextual. It is not necessarily any one thing. A person might be capable in one area and lacking capacity in another. Physicians are typically trained in this regard, they understand that, but in the legal community, that is a distinction that is sometimes missed because attorneys deal in the context of competency. Essentially, once the physician gets to the capacity issues, the legal arena turns to the question of whether or not someone is incompetent, using the different layers of capacity to make that determination. This ties in to the Texas concepts and the notion that capacity, from a physician's perspective, is path specific. This is represented in some of the materials, including the materials from Texas and the *Judicial Determination of Capacity for Older Adults in Guardianship Proceedings, A Handbook for Judges* (Handbook). The *Handbook* recognizes the different layers of capacity and context for capacity. The emerging concept is rather than general guardians over the person and/or the estate, identify what capacities are missing and leave some of the issues for the person who is subject of the guardian to make their own decisions i.e., limited or special guardianship. The materials also included information from the Social Security Administration, which deals with how determinations are made from their perspective and includes an analysis of all 50 states. Mr. Rowe noted the Handbook is particularly instructive for judges because it makes the distinction between the different types of capacity often identified by physicians.

Mr. Rowe noted the second page of the physician certificates used in Nevada attempts to get at the differences and the types of capacity. It is focusing on financial, medical and/or basic things you would find in an ordinary care plan about what a person can do in a day. In a very brief synopsis, what we discovered is there is a need to differentiate different levels of capacity in order to determine what type of incompetence or incapacity we're dealing with.

Ms. Tyrell noted the biggest problem, as practicing attorneys, is getting doctors who want to participate in the certificate process. Providing better definitions might assist the doctors in identifying if there are certain areas of competency versus incompetency.

Judge Doherty noted the Bench Bar Committee in Washoe County has been generally reviewing the physician certificate and the utilization of the verbiage in the certificate in a manner the committee

thinks is too standardized and not sufficiently specific to break out the various capabilities, in addition to the incapacities of the person the doctor is examining. The point of the committee's discussion has been to review the current certificate and determine if more specific language could be added to allow physicians to more specifically provide information. This is an ongoing project.

There was a discussion that Nevada's current statutes treat capacity as a one-size fits all. The statutes do not recognize that a person could have limited capacity for certain things and be fully capable of handling other things. In a review of how the physicians provide certification to support guardianships now, it is basically an all or nothing proposition. A person may have some limitations in their ability to handle their financial affairs or maybe struggling to keep track of the 22 medications prescribed to them. This somehow translates to incapacity to make decisions about where they want to live or who they want to live with, or other areas where they are fully capable of making those decisions and dealing with those questions.

Chief Justice Hardesty noted his request for this information was to lay the groundwork for what he thinks is an emerging trend across the country; examination of each individual individually. The incapacitation that brings them to the courtroom should be identified, and the focus on what alternatives or steps could be taken to address that incapacity. The Commission should review the contrast between capacity and incompetency and some of the other terms used in Nevada statutes.

The Commission discussed the fact that there are only two different definitions in Nevada's guardianship statutes. Incompetent is defined as an adult person who, by reason of mental illness, mental deficiency, disease, weakness of the mind or any other cause, is unable without assistance, to properly manage or take care of him or herself. Thus, someone who is physically disabled would be under Nevada guardianship statute as being incompetent. There may be people who are physically disabled but are very capable mentally to handle their affairs. This underscores the problem and is a starting point to properly define who should be in this process and what steps have been taken to determine whether they should have been there or whether they could have been somewhere else.

Judge Frances Doherty noted the courts often encounter two dilemmas: (1) is within Nevada statute NRS 159.019. What does it really mean to "properly manage," that is a subjective word describing management of the estate; (2) there is always a challenge within Nevada statute and the justice system between NRS 412.2645, which talks about a person not being tried while they are incompetent and the guardianship statute. There is a concern that guardians are not notified when persons who are under guardianship are charged with a criminal offense. Judge Doherty polled the judges in the Second Judicial District and they do not know whether or not a person in front of them for a criminal offense is in or under a guardianship proceeding. This is another area where the justice system is using words and applying standards but rarely crossing over to have some type of congruent understanding of persons who are kind of afflicted and incapacitated or limited in their abilities. Competency in the criminal sense has a completely different definition and a much more limited definition than statutory definitions of incompetency when used in the context of guardianship. It was noted medical evidence relied on in criminal cases is often similar to the medical evidence courts see in the guardianship cases.

Judge Doherty suggested it would be worth having a conversation, at least between the judges, to understand how judges are applying and interacting with persons in the court system whom have these different labels attached to them. Ms. Julie Arnold added, in discussions in guardianship court, a distinction is made between contractual capacity and testamentary capacity. This can become an issue when decisions need to be made about the management of the property and in dealing with an existing plan or set of documents, plus wills, beneficiaries, etc. When circumstances might change since those documents have been made and now there is the request by the Trustee to change something that is in that document. Discussions come up fairly frequently about whether the Ward has contractual capacity and/or testamentary capacity.

Chief Justice Hardesty noted there is a compilation of definitions using the same terms. The system should look more at the individual first, and whether they need to be under a guardianship, and if so, what is the nature of the incapacity and whether this is a process that is necessary to deal with the incapacity.

d. Overview Revisions to the Uniform Guardianship and Protective Proceeding Act (UGPPA)
(Lora Myles)

Ms. Lora Myles provided a brief overview of the revisions to the Uniform Guardianship and Protective Proceeding Act (UGPPA). Nevada was one of the first states to adopt one of the Uniform Guardianship Acts – Uniform Adult Guardianship and Protective Proceedings Jurisdictional Act. The UGPPA is a separate act which was first approved in 1997 by the Uniform Acts Commission. Revisions to the UGPPA began in 2014 and are moving towards adults with developmental disabilities. UGPPA is trying to change the focus of the Act because adults with developmental disabilities are coming in front of the guardianship courts more often than past decades. Parents had an intrinsic legal control of a child with a disability and now with changes in the laws, including Health Insurance Portability and Accountability Act (HIPAA), that is no longer a fact. In order to handle some of their child's finances or assist in getting them medical care the parent had to have a guardianship. This has been changing across the country and the UGPPA is changing to reflect this.

Revisions include:

- Changing the term 'Ward'. There are two alternate terms that are being reviewed: Person Needing Protection (PNP) and the Person under Guardianship (PUG). Many states do not like the abbreviation PUG.
- Changing the term 'disability' to 'incapacity' and defining what 'incapacity' is. The idea is that the incapacity is when the individual lacks the ability to meet essential requirements for physical health, safety or self-care, even with appropriate technological assistance and appropriate decision making support. That falls in line with earlier discussions about what is incapacity.
- Implementing more language concerning person centered decision making.
- Promoting the use of limited guardianships or least restrictive guardianships as often as

possible.

- There is an emphasis being placed on court visitors for monitoring guardianships.
- The WINGS Provisions are being reviewed as being part of or being incorporated in the Uniform Act.
- Inclusion of guidelines for marriage or divorce of the Ward, as well as voting, owning firearms and other rights that the Ward may or may not be allowed.

The UGPPA revisions would not be finalized or approved by the ABA until sometime in 2016 but there is a good draft out right now. Several people from Nevada will be attending the National Guardianship Association Conference next week where this will be discussed. The President of the National Guardianship Association is a Nevada guardian, Ginny Casazza.

The biggest difference between NRS and the Uniform Act is the Uniform Act does have a separate section regarding guardianships of minors, and that is something that has been discussed for some time. In 2003, several parties got together and did a major revision of NRS 159 and several positions from the Uniform Act were incorporated into NRS 159. Nevada elected not to adopt the entire Uniform Act, in part, because portions of NRS 159 at that time were stronger than similar portions in the Uniform Act.

- e. Second and Eighth Judicial District's Guardianship Working Groups (Judge Doherty and Judge Steel)

Judge Steel provided an update on the working groups in the Eighth Judicial District. The Eighth Judicial District has six committees working on guardianship issues in Clark County.

- Forms Committee chaired by Shelly Krohn

The Forms Committee has been working on forms for temporary guardianships, sale of real property, petitions that are reviewed for general petitions and several bench orders that are issued from the bench to assist people who do not know how to do a guardianship, so the court can do it for the pro pers right from the bench and they can walk out of the courtroom with the letters in their hands.

- Rules Committee chaired by Dara Goldsmith

The Rules Committee is working on temporary guardianships currently. Ms. Goldsmith has some suggestions for rules regarding fees for guardian ad litem, attorneys, and guardians including what aspects to look at when determining whether or not the fees are realistic or reasonable.

- Confidentiality Committee chaired by Homa Woodrum

The Confidentiality Committee is reviewing statutes across the country to see what might be a good fit

for the State. The committee is also reviewing media and the fine balance between privacy rights of a person who is not able to say whether or not they want the media present.

- Practicing Attorney's Perspective/Input Committee

Ms. Elyse Tyrell is on the committee and was asked to provide some of the challenges and concerns that the committee is looking at from an attorney's perspective. A group of regular practicing attorneys were asked to identify their most eminent and important obstacles. The group has identified the differing opinions as to capacity of Wards and is discussing how this could be resolved by developing better definitions and encouraging doctors to participate in the process. The committee has discussed exploitation over income of the Ward. Summary guardianships do not require annual accountings and many of those are the largest exploitation cases. The committee is reviewing different levels of guardianship for different levels of incapacity and assisting the decision making of a Ward or allowing a Ward to participate. A guardianship should be least intrusive but attorneys have not had the definitions or the guidance in Nevada statute to help do that with the clients. Differentiating between personal property of Ward and real property, how to sell or liquidate, how to maintain personal property when it is an expense of the Ward, when not quite ready to sell, or get rid of it (there might be family that might be ultimately interested in preserving it and how do the attorneys deal with that).

- Private Professional Guardians Input Committee chaired by Susan Hoy

Ms. Susan Hoy stated the committee has discussed the referral process and had a very open discussion regarding referrals not coming directly to their offices but initially going through a third-party, such as Elder Protective Services. The private professional guardians would not be the investigators into whether someone needs a guardian or not. The committee is open to other suggestions of what this could look like. The committee discussed fees and has reviewed Arizona's statutes. Ms. Hoy will be meeting with some of her colleagues from Arizona and plans to talk to them about how the fee structure works, what it looks like, how the court has worked with the structure, and what challenges they have faced. The committee is also reviewing Assembly Bill 325 and the licensing process, which becomes effective January 1.

Judge Steel is also working on a committee with former Speaker Barbara Buckley. The committee is reviewing attorney representation and training. Ms. Buckley would be providing a presentation on the committee's work at the next meeting. Judge Steel added Chief Judge Barker also has several members of the court working together on different administrative aspects for the courts, including compliance officers, investigators, IT management, what do the codes look like, how the court can ensure they receive reports, in a timely manner. The court is also working on their case management system. At one time, the Eighth Judicial District had said there were about 8,700 cases but that number has been reduced to 2,500 open and active cases with approximately 3,300 that are on a rotating or adjudicated basis (a decision has been made but they may owe the court a report or some other thing that the court needs to monitor). The court is working very hard to review all the cases.

Judge Doherty reported the Second Judicial District appointed a Data Committee in April of 2013. The

committee meets every other Wednesday. The court has invested a tremendous amount of work and time in tracking guardianships, determining the court's time to disposition, identifying weak areas of service delivery and reducing the court's backlog. The court has closed hundreds of cases through that process and through the data collection process. The court has demographic information of the persons the court serves which provides an idea of where the Ward has been placed, by whom; public or private or family guardians. The information is used to tailor the court's services a little bit better and target the hearings.

The court holds quarterly Bench Bar meetings with the Bar. Those began in January of 2013. The Bench Bar is then combined with a group of other stakeholders, guardians, public guardians, private guardians who meet internally once a month in the Task Force Group. The Task Force Group is similar to the WINGS Group Mr. Slayton was describing. The group selects projects and works on them over the course of time. In the past the group has accomplished and implemented a mandatory mediation program in guardianship cases; established the protocol for appointment of counsel immediately upon filing the petition; and have defined bond protocol. The Task Force is holding their draft rules pending the Committee's outcome, so they can complement and tailor the rules they have already drafted for implementation, at least on a District basis.

The stakeholders are working on a plan of care in their monthly meetings. When an action is filed and the parties appear at the full guardianship hearing or the special guardianship hearing, the Guardian and Counsel for the Guardian will have a plan of care addressing residential placement, medication management, medical oversight, independent criteria to ensure the Ward maintains that. The stakeholders have not perfected that, but they've had at least three or four meetings and have gathered a lot of national data to try to come up with a plan of care.

The stakeholders are working, as a Bench, on least restrictive placements in the court. The court has almost eliminated ex parte applications for temporary emergency guardianships. This is a virtue of the conversations the Bar has had with the court on an ongoing basis and the development of criteria and protocols to avoid the temporary guardianship ex parte requests and get the cases right to the temporary hearing where appropriate notice and evidentiary standards apply.

Stakeholders are working on and have come to a very polished version of a standardized full guardianship order. Stakeholders have taken into consideration the DA's, private attorneys, Washoe Legal Services, guardians and other stakeholder's views on what that order needs to contain. The order is fillable and the group hopes to circulate the form within the district to see how functional it is and then share it with the Committee.

Additionally, Judge Doherty and Judge Steel meet on alternating Fridays, when available, to coordinate the work of their subcommittees and committees in an effort to avoid duplication and to be sure their work is complementary.

Judge Nancy Porter reported the Fourth Judicial District Court secured an attorney to represent adults.

The court is working on a spreadsheet that would be a living document to keep track of all guardianships cases and what needs to be done in each case. The spreadsheets have been completed for 2014-2015. Once the spreadsheets are complete the court will be issuing orders to show cause, which Judge Porter was doing previous to her appointment to the Commission. The court is also providing dates as to when the inventory and first accounting is due. The court is setting the first hearing on the annual accounting at the time of the appointment of guardian and the court is working on a form that can be handed to people prior to them leaving the courtroom that contains all that information.

f. Guardian Ad Litem Requirements Vermont (Kathleen Buchanan)

Ms. Buchanan reviewed Virginia's Guardian Ad Litem (GAL) program and requirements. A link had been provided to members prior to the meeting.

- A GAL is defined as an attorney appointed by a judge to assist the court in determining the circumstances of a matter before the court. It is the fundamental responsibility of the GAL to provide independent recommendations to the court about the the client's best interest, which can be different from advocating for what the client wants. And, to bring balance to the decision making process.
- The GAL may conduct interviews and investigations, make reports to the court and participate in court hearings or mediation sessions.
- The administration is housed with the Executive Secretary of the Supreme Court of Virginia.
- They administer, maintain, and distribute lists of attorneys who are qualified GALs. There are two different programs; one for incapacitated adults and one for minors.
- The lists of attorneys are entered into a database
- Attorneys have to qualify for this by doing six hours of course work. The judge has the ability to eliminate or reduce the payment sought by the GAL for the services rendered and they can remove the lawyer from the case and the list of eligible appointments if an attorney is unsatisfactory in their level of performance, in any given case.
- Standards have been developed for the GALs and are included in the website.
- Frequently Asked Questions page
- Forms held by the Virginia Supreme Court
 - Attorney's name and judge signs off on the fact that the judge knows this person. This attorney has come before the court and they are in good standing. If the judge does not do this an attorney who has another form can vouch for the work of the other attorney.
 - Background check certification
- CLE web-based courts that are required to be considered for the Program
- Program is housed with the Supreme Court of Virginia

Ms. Buchanan noted this Program was appealing to her because when the Commission speaks about

volunteers it is important to know what kind of background we are talking about. There needs to be sustainability and accountability. Ms. Buchanan added you need somebody independent from the other parties, who can be objective about financial or emotional ties to the other parties, who can interview, research and review materials objectively, who has interpersonal skills to obtain as much information as possible from the person who is being presented for guardianship or under guardianship, a person who can articulate recommendations to the court based upon his/her actual findings, not their opinion of an outcome, factual.

IV. Subcommittee Updates

a. Minor Guardianship Statutes

Judge Walker has been working with Judge Voy and Judge Porter on a separate statute for minor guardianships. A draft of Chapter 159A has been circulated to the working group for input. Information was pulled from other states that have separate minor guardianship statutes including West Virginia, Arizona, and New York. The draft is intended to be proactive, interactive and generate conversation about best practices for Nevada. The working group would be seeking input from the Commission. Chief Justice Hardesty asked the working group to review the amendments being considered by the UGPPA that might have an impact on minor guardianships.

There are currently four avenues to guardianships for minors:

1. File Chapter 159 motion for a temporary/emergency guardianship;
2. File a general guardianship under Chapter 159,
3. Chapter 432B process (minor guardianship as a permanency plan for a foster child);
4. Assembly Bill 8 expanded a guardianship by letter and is effective October 1. AB 8 allows parents to designate a family member within the third degree of consanguinity to be a guardian for children and now they can do it indefinitely by petition to the Court through this fourth mechanism.

b. DATA/IT Subcommittee

Ms. Heying reviewed the memo and three recommendations provided by the Data/IT Subcommittee:

1. Requests the State Court Administration require the use of an information sheet to gather necessary guardianship information. The second is using a guardianship information sheet and the Subcommittee included that in the materials as an example of what could be used throughout the state.
2. Recommend courts to create the following reports to be reviewed by each District Administrator or Chief Judge, at least quarterly. The reports would include time to disposition, age of active pending case, and clearance rates. There are definitions included in the memo of how that is defined.
3. Recommend that an educational class or training be created for judges and court staff on what to look for or how to review inventories and accounting.

Ms. Heying noted some members had expressed concerns about the costs of developing these reports

for rural courts. Commission members did not have any questions.

V. Other

Chief Justice Hardesty noted the agenda continued to include the subject of temporary and emergency guardianships, attorney representation, power of attorneys, that is because the Commission would be moving forward to a discussion about each of those items and what recommendations the Commission would ultimately make for each item.

Chief Justice Hardesty noted the Commission has discussed attorney representation and additional materials provided by Ms. Barbara Buckley were sent prior to the meeting. Additional information was provided on Nevada's power of attorney statutes, and the Commission would be discussing this area further.

Chief Justice Hardesty asked Commission members to send Ms. Heying a list of additional information they would like provided on the guardianship reform efforts in Texas by Monday, October 26. Chief Justice Hardesty noted the second area the Commission needs to begin working on is framing recommendations, what the recommendations might look like, so that the Commission could begin to transition this review into some action. Members were asked to go back through their notes and provide recommendations to Ms. Heying by Monday, October 26, so the Commission could begin to compile and catalogue the recommendations in a way that is manageable.

Chief Justice Hardesty noted he was intrigued by the way Texas formulated the framework for some potential statutory changes. The Commission would be getting into that too and Chief Justice Hardesty would want to segregate that in separate areas for discussion.

Mr. Keith Tierney sent comments prior to today's meeting. The comments would be distributed to Commission members.

VI. Future Meeting Dates/Agenda Items

- a. November 4, 2015
- b. November 23, 2015
- c. December 15, 2015

VII. Adjournment

The meeting was adjourned at 4:55 p.m.

ATTORNEY REPRESENTATION



October 16, 2015

ATTORNEYS FOR INDIVIDUALS INVOLVED IN GUARDIANSHIP PROCEEDINGS

Requests have been made for the provision of comprehensive legal services for individuals who are facing proceedings to establish a guardianship over their person/estate in guardianship court. Below are some discussion/decision points.

Statutory Basis for Appointment of Counsel for Guardians

NRS 159.0485 provides that at the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to [NRS 159.0535](#) and is not appearing by videoconference at the hearing, the proposed adult ward must be advised of his or her right to counsel pursuant to subsection 2 of [NRS 159.0535](#).

If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney shall represent the adult ward or proposed adult ward until relieved of the duty by court order. (emphasis added). NRS 159.0485(2).

Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation and expenses. Unless the court determines that the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney. NRS 159.0485(3)

Washoe County Model for the Provision of Legal Services

In Washoe County, legal assistance is provided by Washoe Legal Services (WLS). Two attorneys routinely appear in guardianship proceedings, providing direct representation to wards using a traditional attorney/client model. For proposed wards 60 and over, upon the filing of the petition and before the first hearing, the court issues an order that appoints a WLS attorney to represent the ward and gives the attorney the necessary power to become knowledgeable about the case. This allows the WLS attorney to visit with the proposed ward prior to the hearing and determine: 1) if an attorney-client relationship can be formed and; 2) if it can, what the proposed ward's wishes are concerning the guardianship. This allows the attorney to be prepared at the first hearing and in many cases avoid a second hearing. If the attorney feels that the client can articulate their desires, the attorney represents the ward at the initial proceedings – in determining whether a guardian is needed, the extent of the guardianship needed, and in the development and presentment of a report on the plan for the individual to be placed under a guardianship. Once the guardianship has been ordered, the attorney typically stays on the case in order to monitor the financial and other dealings the guardian engages in and to review annual accountings for accuracy and fairness. WLS's ADSD grant does not allow for direct compensation, but does encourage clients and other participants to donate to WLS in light of the work performed. WLS does not bill the estate of any ward. When the attorney decides that the proposed ward is incapable of entering into an attorney/client relationship, the attorney advises the court of this fact, requests that best practices be followed in the consideration of the request for the guardianship, but does not officially confirm representation.

Facts about Washoe County:

Model utilized:	Traditional attorney/client model
Total funding:	\$200,000 (2 part time attorneys 1 part time staff. Salary, benefits and overhead)
Source of funding:	\$70,000 ADSD Grant (tobacco money) \$40,000 Other Sources \$90,000 filing Fees
#of individuals represented in a year:	120
Estimated caseload of each attorney:	30 current active
Number of cases in jurisdiction	700 cases

Clark County:

In Clark County, there are approximately 8,700 guardianship cases. By one estimate, after the cases are examined and cases no longer needed to be open are closed, the estimated caseload will equal 3,400.

In 2005, at the request of the Eighth Judicial District Court, the Southern Nevada Senior Law Program began assisting individuals in guardianship court. They began with two attorneys and acted pursuant to a guardian ad litem model. In contested cases, they investigated the situations and made recommendations to the Court. Funding was provided by several sources,

including an Independent Living Grant funded by the State of Nevada. In 2014, the State of Nevada Division of Aging and Disability Services requested that the Senior Law Project change its model to a traditional attorney/client model. The Southern Nevada Senior Law Program began operating an attorney/client model and used other funding to continue its Guardian Ad Litem work. In 2015, the Independent Living Grant was ended. At the time, the Southern Nevada Senior Law Program ceased providing legal assistance in the guardianship arena. It is finishing cases already underway; no new appointments are currently being accepted.

To begin to create a comprehensive legal program for individuals over whom a guardianship is sought, the following should be decided:

1. **Model of Representation:** What model of representation should be followed? For all clients with capacity, should the attorney represent the wishes of the ward (direct representation model) or the best interests model (GAL model)? If a person over whom a guardianship is sought is unable to voice a desire to have an attorney, does the attorney represent the client under a “reasonably necessary protective action” standard suggested by the Model Rule? Use a “substituted judgment model? Withdraw? Or use a best interest standard?

Tentative Recommendation:

The traditional attorney/client model is the most supported model. All attorneys should follow this model. If the client does not have the ability to express their wishes, the attorney should follow a legal interest standard, (i.e., expressed wishes of the respondent, including those contained in an advance directive, as to the matter before the court are presented to the court; ensure there is no less restrictive alternative to guardianship or in the matter before the court; proper due process procedure is followed; no substantial rights of the respondent are waived; all allegations are proved by the proper standard of evidence; the proposed guardian is a qualified person, and all orders are least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision).

Vermont’s statute sets forth these elements. (14 V.S. A. sec. 3065). This should be adopted by court rule.

2. **Initial Appointment of an Attorney:** Before any guardian is appointed, the attorney for the individual over whom guardianship is sought should have an opportunity to meet with their client. If the client is not in court, any hearing should be continued to allow the attorney to visit with the client at their place of residence.
3. **Length of Representation:** Should the attorney withdraw after decisions have been reached with regard to whether a guardianship is appropriate, placement review, and a plan of care are developed? If this occurs, who will ensure that the individual’s assets/resources are appropriately spent for the individual’s care? Should appointment

continue in these cases? Does the answer change if a family member is involved versus a private professional guardian?

Tentative Recommendation:

The attorney should remain on the case until the guardianship is terminated so as to handle any issues that the ward desires and to file objections, if necessary, to any accounting irregularities. This model is followed in Washoe County.

4. **Sizeable Estates:** How many individuals involved in guardianship proceedings have the resources in their estate to pay the attorney for the individual? If this is a source of payment, should private attorneys be appointed to represent the ward? If so, what is an appropriate hourly fee for this attorney and should the expenses of this attorney be paid from the estate? If this plan is not thought desirable, would the ward be represented by Legal Aid attorneys? If so, would the legal aid attorney bill the estate at the amount the nonprofit expends?

Tentative Recommendation:

Defer to the Guardianship Commission for their preference. With the large number of individuals in need of help, it seems more logical to have private attorneys be appointed to help individuals with large estates and to have legal aid attorneys assist with the indigent. Legal Aid attorneys would prefer not to bill the estate.

5. **Alternate Program Design:** Could a CASA or SHARE program accompany an attorney program to provide a one-on-one volunteer with an opportunity to check on the individual under a guardianship? If mandatory mediation or other significant changes were made to the system, could the need for legal services be reduced? Could a pro bono program be developed to augment the services of dedicated legal services attorneys?

Tentative Recommendation:

A CASA or SHARE program may have a role in helping individuals. Mandatory mediation seems to be working in Washoe County and should be explored. A pro bono program could be developed to augment the work of Legal Aid attorneys to serve vulnerable seniors. However, since many of the attorneys who practice in this Court may have conflicts of interest, a new group of attorneys would have to be recruited to assist. Using the model successfully employed by the Children's Attorney Project, staff attorneys could assist in training/mentoring pro bono attorneys. A training curriculum and website support would be provided. Trained pro bono attorneys could increase over time to assist with the provision of legal services to individuals in guardianship court.

STATUTES

ATTORNEY REPRESENTATION

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
UGPPA	305(b), 406(b) Alt 1: If requested by respondent, recommended by visitor, or court determines need for representation Alt. 2: Shall appoint		115 If representation is otherwise inadequate	305(a), 406(a) Shall appoint a visitor , training and experience in alleged incapacity 305(c), 406(e) Visit, interview in person; explain petition, proceeding, rights, powers of guardian, determine views, inform of right to counsel, cost paid from estate; visit dwelling; obtain info from physician; investigate; file a report to court	306 May order professional evaluation and shall if respondent demands; must be examine by physician, psychologist or other qualified person, file written report
Alabama: Code	26-2A-135(b) shall appoint attorney	26-2A-135(b), 26-2A-102(b) may be GAL	26-2A-52 26-2A-102(b) court representative	26-2A-102(b) court representative interviews ward and petitioner, visits present and proposed abode	26-2A-102(b) must be examined by a physician or other qualified person and submit a written report
Alaska: Statute	13.26.106(b) entitled, shall appoint Office of Public Advocacy if no funds	13.26.111 represent zealously, determine interest, personally interview, explain rights	13.26.112 upon request, may appoint GAL	13.26.106(c) visitor arranges evaluations, interviews respondent & proposed guardian 13.26.108 visitor's report includes affidavit on process	13.26.106(c) expert has expertise in alleged incapacity
Arizona: Rev. Stat. Ann.	14-5303(C) Shall appoint. May discharge after guardian appointed if no longer necessary based on specific findings	<i>Not stated</i>	14-5303(C) investigator	14-5303 investigator interviews respondent, proposed guardian, visits present, proposed residence, caregiver	14-5303(C) functional assessment by physician, psychologist or RN; if established relationship, court may appoint that professional

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Arkansas: Code Ann.	28-65-213(a)(1) entitled	<i>Not stated</i>	28-65-207(c)(3) GAL not necessary in each case	<i>Not stated</i>	28-65-211(b)(1) sworn statement by 1 or more qualified medical witnesses with expertise in alleged incapacity 28-65-212 professional evaluation
California: Prob. Code	1823(b)(6) entitled; right to	<i>Not stated</i>	1833 1826 court investigator	1826 interview respondent, inform of rights; determine attendance at hearing, if contests or objects, wants counsel; review allegations in petition	1801(e) medical evidence & specific impairments
Colorado: Rev. Stat. Ann.	15-14-305(2) appoint if request 15-14-305(3)(c) Right to lawyer; right to request court-appointed lawyer	<i>Not stated</i>	15-14-115	15-14-305 (1) & (3) meet respondent, explain rights, interview proposed guardian, visit new/old abode, interview dr. or care provider	15-14-306 Court may order evaluation by physician, psychologist, other qualified individual and shall if respondent demands; report contains specific cognitive & functional limitations, evaluation of mental & physical condition, prognosis, recommend treatment plan
Connecticut: Gen. Stat. Ann.	45a-649a(a) Right to be represented 45a-649a(b) if indigent shall appoint	45a-649a(c) Represent, consult on bringing appeal, not obligated to represent on appeal 45a-649a(f) not accept appointment as guardian ad litem or conservator	<i>Not stated</i>	<i>Not stated</i>	45a-650(c) statement by 1 or more physicians who have examined respondent; may also consider summary of functioning, availability of support services, evaluations from other professionals

Commission to Study the Administration of Guardianships in Nevada's Courts
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<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Delaware: Code Ann. tit. 12	12 3901(c) entitled to representation	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>
District of Columbia: Code Ann.	21-2041(h) shall appoint	21-2033(b) Zealously represent interests of individual	21-2033(a) May appoint to assist respondent in determining interest. Not fact finder, investigator or ombudsman	21-2033(c) before hearing	21-2041(d)
Florida: Stat. Ann.	744.331(2)(a), 744.3215(1) shall appoint	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	744.331(3)(a) 3-member examining committee; attending dr. may not be member, each shall examine
Georgia: Code Ann.	29-4-11(c) right to court appointment unless retained	<i>Not stated</i>	29-4-11 upon motion by any interested party or court's own motion	<i>Not stated</i>	29-4-11(d) physician, psychologist or licensed clinical social worker
Hawaii: Rev. Stat.	560:5-305(b) if request, recommended by kokua kanawai, or court determines is needed	<i>Not stated</i>	560:5-115 at any stage if interests inadequately represented	560:5-102, -305(c), -406(c) may appoint kokua kanawai officer to explain, determine views, costs, interview petitioner and proposed guardian, visit dwelling, get information from physician	560:5-306, -406 may request by physician, psychologist & other qualified, shall if demanded by respondent

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Idaho: Code	15-5-303(b) shall appoint attorney	15-5-303(b) attorney with GAL duties	15-5-315 GAL conducts independent investigation, reports results, makes recommendation, acts as advocate, general representation of ward, negotiates, monitors 15-5-308(3) GAL and visitor must be separate and independent	15-5-303(b) visitor shall interview petitioner, respondent, proposed guardian, visit both abodes	15-5-303(b) physician & visitor, mental health professional
Illinois: 75/5 Ill. Comp Stat.	5/11a-10(b) appointed if requested or respondent adverse to GAL 5/11a-11(a) entitled to representation	<i>Not stated</i>	5/11a-10(a) shall appoint, report on best interests, observe, inform of rights		5/11a-11(c) 1 or more independent experts
Indiana: Code Ann.	29-3-5-1(c) may appoint	<i>Not stated</i>	29-3-2-3(a) shall appoint if not represented	<i>Not stated</i>	<i>Not stated</i>
Iowa: Code Ann.	633.561(1)(a); 633.575(1)(a) court shall appoint attorney	<i>Not stated</i>	Iowa R. Civ. Pro. 14	<i>Not stated</i>	<i>Not stated</i>
Kansas: Rev. Stat. Ann.	59-3063(3) shall appoint	<i>Not stated</i>	<i>Not stated</i>	59-3065 may order investigation and report on family relationships, past conduct, nature & extent of property or income, if likely to injure self or others, other matters	59-3064 shall order exam and evaluation at hospital, psychiatric hospital, community mental health, community DD, private physician, psychiatrist, psychologist, other qualified professional

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<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Kentucky: Rev. Stat. Ann.	387.560(1) shall appoint	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	387.540(1) interdisciplinary evaluation by physician, psychologist & social worker
Louisiana Civ. Code Ann.; Code of Civ. Pro.; Rev. Stat. Ann.	CCP Art. 4544 shall appoint	CCP 4544(B) Personally visit respondent; discuss allegations, relevant facts, law, rights & options	<i>Not stated</i>	<i>Not stated</i>	CCP 4545 may appoint examiner with training & experience in type of infirmity alleged
Maine: Me. Rev. Stat. Ann. tit. 18	18-A 5-303(b) shall appoint 1 or more: attorney, GAL or visitor; must appoint attorney if respondent wishes to object	<i>Not stated</i>	18-A 5-303(b) appointment when necessary	18-A 5-303(b) shall interview respondent, proposed guardian; explain petition/proceeding, indicate need for counsel	18-A 5-303(b) physician or licensed psychologist
Maryland: Code Ann., Est. & Trusts; MD Rules	13-705(d) shall appoint	MD Rules Attorney is advocate	<i>Not stated</i>	MD Rules Independent investigator, not an attorney, may be appointed if necessary	R73(b)(1) 2 physicians, or physician and psychologist

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
<p>Massachusetts: Gen. Laws ch. 190B</p>	<p>5-106(a) court shall appoint at any time if requested or determines is inadequately represented</p>	<p><i>Not stated</i></p>	<p>5-106(b) may appoint to investigate condition and report to court</p>	<p><i>Not stated</i></p>	<p>5-303(b)(11) medical certificate signed no more than 30 days prior or why impossible to obtain 5-404(11)(A) For conservatorship, clinical exam must be no more than 180 prior 5-303(c) Physician or psychologist, certified psychiatric nurse or nurse practitioner; if mental retardation by clinical team Contains specific cognitive and functional limitations, evaluation of condition, identification of potential, prognosis, and improvement. 5-303(e) Court can require respondent to submit and require others to submit evidence</p>
<p>Michigan: Comp. Laws Ann.</p>	<p>700.5304(5) entitled to counsel 700.5305(3) &(4) shall appoint if requested, petition contested or proposed guardian, seeks limits on order; or if guardian ad litem recommends</p>	<p>700.5304 Shall present evidence and cross-examine</p>	<p>700.5305(1) Shall be appointed and explain procedure and rights</p>	<p><i>Not stated</i></p>	<p>700.5304(1) physician or mental health professional</p>

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<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Minnesota: Stat. Ann.	524.5-304(b) & 406(b) shall appoint immediately if not provided unless respondent waives right via visitor	524.5-304(b) & 406(b) consult; have time to prepare; representation continues until appeal expires	524.5-115 may appoint at any stage if other representation inadequate	524.5-304(a) & 406(a) may appoint; 404(c) & 406(c) personally serve notice; offer to read petition; interview in person; explain substance, rights; obtain view on guardian, duties, scope; explain right to attorney & that costs come from estate	524.5-304(f) co. social service agency may create screening committee to determine if less restrictive alternative
Mississippi: Code Ann.	<i>Not stated</i>	<i>Not stated</i>	93-13-255 may appoint, shall be present, present interest of respondent	93-13-255 before hearing	93-13-255 2 physicians, personal exam
Missouri: Ann. Stat.	475.075(3) court shall appoint	475.075(3)	<i>Not stated</i>	<i>Not stated</i>	475.075(4) court may direct that respondent be examined
Montana: Code Ann.	72-5-315(2) may have counsel of own choice or appointed counsel; or court may order Public Defender to assign counsel	72-5-315(2) has duties of GAL	72-5-314(2) representation by GAL not necessary	72-5-315(3) special court appointee shall interview respondent, petitioner, proposed guardian, visit present and proposed abode	72-5-315(3) shall be examined by court appointed physician
Nebraska: Rev. Stat.	30-2619(b) court may appoint if person indicates a desire for an attorney	<i>Not stated</i>	30-2619(b) court may appoint, advocates for best interest	30-2619.01 visitor evaluates incapacity, shall interview proposed guardian, service agencies, respondent, visit present and proposed abode	30-2619(c) may be examined by court appointed physician

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Nevada: Rev. Stat.	159.0485 court shall appoint legal aid or private attorney if unable to retain & requests	<i>Not stated</i>	159.0455 may appoint, order sets duties	159.046 may appoint investigator to locate needed services & resources available, competing interests, allegations or claims	159.044(2)(j) certificate by physician, or letter by any govt. agency that does investigations and any other person ct. finds qualified; court form with need for guardian, danger to self or others, if attendance at hearing be detrimental, if able to comprehend or contribute to proceedings, if capable to live independently, limitations and how limitations affect abilities
New Hampshire: Rev. Stat. Ann.	464-A:6 absolute, unconditional right	<i>Not stated</i>	464-A:41 may appoint if rights are not fully represented; shall appoint if requested	<i>Not stated</i>	<i>Not stated</i>
New Jersey: Stat. Ann.	3B:12-24.1(c)(5) attorney appointed by court for temporary guardianship	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	3B:12-24.1(d) Physicians & psychologists
New Mexico: Stat. Ann.	45-5-303(C) 45-5-309(c) court shall appoint if not represented	<i>Not stated</i>	45-5-303.1 shall interview respondents; review medical and visitor reports	45-5-303(E) shall appoint a visitor to interview respondent, proposed guardian, present and proposed abode, evaluate needs	45-5-303(D) shall be examined by qualified health care professional appointed by the court

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
New York: Mental Hyg. Law	81.10 shall have right to chose counsel if choice is freely and independently made; court appoints counsel if requested, contested, need major medical decision, temporary power requested, conflict of interest, if helpful	<i>Not stated</i>	<i>Not stated</i>	81.09 shall appoint court evaluator, interview respondent & petitioner, explain rights, proceeding, evaluate need for counsel, if understands English	81.09 court evaluator, including mental hygiene legal service in the judicial department where the person resides, a not-for-profit corporation, an attorney-at-law, physician, psychologist, accountant, social worker, or nurse
North Carolina: Gen. Stat.	35A-1107 entitled to counsel of own choice; an attorney shall be appointed unless respondent retains own counsel	35A-1107 has duties of GAL	35A-1107 shall personally visit, make every reasonable effort to determine respondent's wishes; present respondent's express wishes; may make recommendations as to best interest if differ from express wishes; shall consider limited guardianship; shall recommend rights, powers, privileges to be retained	<i>Not stated</i>	35A-1111 multi-disciplinary evaluation
North Dakota: Cent. Code	30.1-28-03 shall appoint attorney to act as GAL	30.1-28-03 Act as guardian ad litem, interview, explain rights and proceeding.	<i>Not stated</i>	30.1-28-03(3) shall appoint, Interview proposed guardian and ward, ascertain views, visit present abode, prepare alternative resource plan	30.1-28-03(3) ct appointed physicians or psychologist

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Ohio: Rev. Code Ann.	2111.02(C)(7)(a) right to be represented by counsel of choice 2111.02(C)(7)(d) right to have counsel appointed at court expense if indigent	<i>Not stated</i>	<i>Not stated</i>	2111.041 shall require a probate court investigator; investigate circumstances of alleged incapacity, communicate with alleged incapacitated	2111.031 physicians or other qualified persons
Oklahoma: Stat. Ann. tit. 30	30-3-107 court may appoint attorney; may be public defender; if respondent present & after explanation requests attorney or if court determines in best interest, court shall appoint attorney	<i>Not stated</i>	30- 1-117(B) any person or court on own may file for appointment of GAL 30 3-106.1 ct. may appoint volunteer advocate or GAL who advocates objectively for best interest	<i>Not stated</i>	30 3-108 Court on its own motion or at request of any party where capacity of person is material issue. Physician, psychologist, or social worker.
Oregon: Rev. Stat.	125.070(2)(e)(A) right to be represented by attorney	<i>Not stated</i>	<i>Not stated</i>	125.150 court shall appoint officer of court or special appointee; shall exercise powers of guardian; shall interview proposed guardian, respondent where located; may interview caregiver, physician; must be present at hearing	<i>Not stated</i>
Pennsylvania: Cons. Stat. Ann.	20-5511(a) shall be appointed in appropriate cases	<i>Not stated</i>	20-5511(a)(2) shall not be necessary	20-5511(d) shall on good cause shown have independent evaluation	20-5518 individuals qualified by training & experience in evaluating incapacity

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Rhode Island: Gen. Laws	33-15-7(d), (e) Court shall appoint if wishes to contest, limit powers, object to person nominated as guardian, if requests, if GAL determines in best interest	<i>Not stated</i>	33-15-7(c) shall be appointed, personally visit, explain purpose and effect, explain procedure and rights, name of petitioner, review decision making assessment tool, petition and notice; interview proposed guardian; make determinations on wishes as to presence, object, limits, and counsel.	<i>Not stated</i>	33-15-4 physician must complete decision making assessment tool found in 33-15-47
South Carolina: Code Ann.	62-5-303(6) court shall appoint unless has own counsel	62-5-303(b) has duties of guardian ad litem	<i>Not stated</i>	62-5-303(b) court shall send visitor to observe conditions 62-5-308	62-5-303(b) shall be examined by 2 examiners; one of which shall be a physician
South Dakota: Codified Laws Ann.	29A-5-309 court shall appoint if requested, contested, needed	<i>Not stated</i>	<i>Not stated</i>	29A-5-309 If no counsel, shall appoint court representative to investigate and make recommendation on or order person to attend. 29A-5-310 shall interview petitioner, proposed guardian, respondent; explain notice and make report to court on need for protection	29A-5-306 evaluation of mental and physical condition

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
<p>Tennessee: Code Ann.</p>	<p>34-3-106 Right to have attorney ad litem appointed</p>	<p>34-1-101 Attorney ad litem acts as counsel</p>	<p>34-1-107 court shall appoint unless represented by adversary counsel, waive if best interest, verify notice, consult in person, explain rights, determine if proposed guardian is appropriate, investigate capability, if property guardianship investigate nature of property, financial capacity of proposed fiduciary, credit report, fiduciary, and management plan 34-1-101 Investigate and report</p>	<p><i>Not stated</i></p>	<p>34-3-105 Physician, psychologist or senior psychological examiner who examined 90 days before filing; if not examined, can't get out, or refuses, ct. shall order to submit; examiners report is prima facie evidence of disability and need for appointment</p>

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
<p>Texas: Estate Code Ann.</p>	<p>1054.001 shall appoint attorney ad litem to represent the interests of the respondent, may appoint in other context 1054.006 Respondent may retain an attorney if have capacity to contract and court may remove attorney ad litem</p>	<p>1054.004 interview proposed ward, discuss laws and legal options, review application, certificates, and medical records</p>	<p>1054.051 may be appointed by judge to represent interests of incapacitated person and protect the best interest of the person; is officer of the court; same person may be attorney ad litem and guardian ad litem</p>	<p>1054.102 Each statutory court shall operate court visitor program; use volunteers to greatest extent possible 1054.151 Court may appoint court investigator to investigate circumstances to determine if least restrictive alternative is appropriate, investigate complaints and report to court</p>	<p>1101.053 medical, psychological, intellectual test records; are not binding buy may be sufficient 1101.103; 1101.104 Physician (physician or psychologist if intellectual disability) who has examined within 120 days prior. Certificate includes nature, degree and severity of condition; functional deficits; ability to handle business, manage financial affairs, operate car; make decision on placement, voting, marriage; consent to medical treatment; if medications affect demeanor; how benefit from supports and services</p>
<p>Utah: Code Ann.</p>	<p>75-5-7(3) Not required to appoint if uncontested and incapacity not at issues</p>	<p>75-5-303(4) has powers of GAL</p>	<p><i>Not stated</i></p>	<p>75-5-303(4) may appoint, may be GAL; visit current and proposed residence; interview petitioner and incapacitated person; not required if 4th stage Alzheimer's or IQ under 20-25</p>	<p>75-5-303(3) may be examined by physician</p>

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Vermont: Stat. Ann. tit. 14	14-3065(a) shall appoint; may appoint in any subsequent proceeding	14-3065(b) consult and explain meaning of proceeding; act as advocate; may not substitute own judgment for that of respondent; distinct from role of GAL; endeavor that wishes of respondent are heard; show that no least restrictive alternative; make sure proper due process is followed, no rights waived without consent	14-3066 on motion by counsel or court may on its own motion	<i>Not stated</i>	14-3067(b) Shall order assessment by person with specific training and demonstrated competence 14-3067(c) Specific content of assessment
Virginia: Code Ann.	64.2-2006 right to representation, may appoint on request of GAL, respondent or if court determines is needed	64.2-2006 Protect respondent's interest	64.2-2003(B) shall appoint, personally visit, advise of rights, investigate petition	<i>Not stated</i>	64.2-2005 physician or psychologist; professionals skilled in assessment & treatment of alleged conditions
Washington: Rev. Code Ann.	11.88.045(1)(a) right to be represented by willing counsel of choice, shall appoint when cannot afford	11.88.045(1)(b) advocate; shall act of distinct from GAL	11.88.090(2) expected to promote best interests	<i>Not stated</i>	11.88.045(4) physician or psychologist
West Virginia: Code	44A-2-7(a) shall appoint	44A-2-7(b) extensive list of duties	<i>Not stated</i>	<i>Not stated</i>	44A-2-3 Physician or psychologist

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
Wisconsin: Stat. Ann.	54.42(1)(c) Shall appoint if proposed ward requests, ward opposes petition or court determines required	54.42(1)(b) advocate for expressed wishes of proposed ward	54.40(i) court shall appoint GAL	<i>Not stated</i>	54.36 licensed physician or psychologist
Wyoming: Stat.	3-1-205(a)(iv) if ordered by court	<i>Not stated</i>	3-1-205(a)(iv) right to GAL	<i>Not stated</i>	<i>Not stated</i>

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West's Vermont Statutes Annotated
Title Fourteen. Decedents' Estates and Fiduciary Relations
Part 4. Fiduciary Relations
Chapter 111. Guardianship
Subchapter 12. Persons in Need of Guardianship

14 V.S.A. § 3065

§ 3065. Counsel

Currentness

(a)(1) The respondent shall have the right to be represented by counsel of his or her own choosing at any stage of a guardianship proceeding. Unless a respondent is already represented, the court:

(A) shall appoint counsel for the respondent when an initial petition for guardianship is filed;

(B) shall appoint counsel for the respondent in any subsequent proceeding if the respondent or a party requests appointment in writing; and

(C) may appoint counsel for the respondent on the court's initiative in any subsequent proceeding.

(2) Appointed counsel shall have the right to withdraw upon conclusion of the proceeding for which he or she has been appointed.

(b) Counsel shall receive a copy of the petition upon appointment and copies of all other documents upon filing with the court. Counsel shall consult with the respondent prior to any hearing and, to the maximum extent possible, explain to the respondent the meaning of the proceedings and of all relevant documents. Counsel for the respondent shall act as an advocate for the respondent and shall not substitute counsel's own judgment for that of the respondent on the subject of what may be in the best interest of the respondent. Counsel's role shall be distinct from that of a guardian ad litem if one is appointed. At a minimum, counsel shall endeavor to ensure that:

(1) the wishes of the respondent, including those contained in an advance directive, as to the matter before the court are presented to the court;

(2) there is no less restrictive alternative to guardianship or to the matter before the court;

(3) proper due process procedure is followed;

(4) no substantial rights of the respondent are waived, except with the respondent's consent and the court's approval, provided that the evaluation and report required under [section 3067](#) of this title and the hearing required under [section 3068](#) of this title may not be waived;

(5) the petitioner proves allegations in the petition by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in subsequent proceedings;

(6) the proposed guardian is a qualified person to serve or to continue to serve, consistent with [section 3072](#) of this title; and

(7) if a guardian is appointed, the initial order or any subsequent order is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.

(c) Respondent's counsel shall be compensated from the respondent's estate unless the respondent is found indigent in accordance with Rule 3.1 of the Rules of Civil Procedure. For indigent respondents, the court shall maintain a list of pro bono counsel from the private bar to be used before appointing nonprofit legal services organizations to serve as counsel.

Credits

1979, No. 76, § 15; [1991, No. 38](#), § 1; [2005, Adj. Sess., No. 198](#), § 10; [2007, Adj. Sess., No. 186](#), § 1, eff. July 1, 2008.

14 V.S.A. § 3065, VT ST T. 14 § 3065

The statutes are current through Law No. 50 with the exception of Laws No. 38, 46, 48, and 49 of the First Session of the 2015-2016 Vermont General Assembly (2015).

Arizona Statute

14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person

A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.

B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, at a minimum and to the extent known, all of the following:

1. The interest of the petitioner.
2. The name, age, residence and address of the alleged incapacitated person.
3. The name, address and priority for appointment of the person whose appointment is sought.
4. The name and address of the conservator, if any, of the alleged incapacitated person.
5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.
6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.
7. The reason why appointment of a guardian or any other protective order is necessary.
8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.
9. If a custodial order was previously entered regarding an alleged incapacitated person in a child custody action or similar proceeding in this state or another jurisdiction and the petitioner or proposed guardian is a parent or nonparent custodian of the alleged incapacitated person, the court and case number for that action or proceeding.
10. If the appointment of a guardian is necessary due solely to the physical incapacity of the alleged incapacitated person.

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. **Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding.** The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence

bearing on that person's condition. **The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury.** The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.
2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.
3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.
4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.
5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.
6. Other information the physician, psychologist or registered nurse deems appropriate.

WASHINGTON STATE

RCW 11.88.045

Legal counsel and jury trial — Proof — Medical report — Examinations — Waiver.

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW [11.92.180](#).

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter [18.71](#) or

18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;
- (b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;
- (e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;
- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any

alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter [7.40](#) RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

[2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Notes:

Intent -- 1996 c 249: See note following RCW [2.56.030](#).

Effective date -- 1990 c 122: See note following RCW [11.88.005](#).

Severability -- 1977 ex.s. c 309: See note following RCW [11.88.005](#).

Texas Statute

Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.002. TERM OF APPOINTMENT. (a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward's best interests, the attorney's term of appointment expires, without a court order, on the date the court:

- (1) appoints a guardian in accordance with Subchapter D, Chapter 1101;
- (2) appoints a successor guardian; or
- (3) denies the application for appointment of a guardian.

(b) The term of appointment of an attorney ad litem appointed under Section 1054.001 continues after the court appoints a temporary guardian under Chapter 1251 unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.029, eff. January 1, 2014.

Sec. 1054.003. ACCESS TO RECORDS. An attorney ad litem appointed under Section 1054.001 shall be provided copies of all of the current records in the guardianship case. The attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 39, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 1054.004. DUTIES. (a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

- (1) the law and facts of the case;
- (2) the proposed ward's legal options regarding disposition of the case; and
- (3) the grounds on which guardianship is sought.

(b) Before the hearing, the attorney ad litem shall review:

- (1) the application for guardianship;
- (2) certificates of current physical, medical, and intellectual examinations; and

(3) all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.005. APPOINTMENT OF INTERPRETER. At the time the court appoints the attorney ad litem under Section [1054.001](#), the court shall appoint a language interpreter or sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.006. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY. (a) The following persons may at any time retain an attorney who holds a certificate required by Subchapter E to represent the person's interests in a guardianship proceeding instead of having those interests represented by an attorney ad litem appointed under Section [1054.001](#) or another provision of this title:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section [1202.103](#); and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may remove an attorney ad litem appointed under Section [1054.001](#) or any other provision of this title that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

Added by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 6.030, eff. January 1, 2014.

Sec. 1054.007. ATTORNEYS AD LITEM. (a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;

(2) a proposed ward;

(3) a nonresident;

(4) an unborn or unascertained person; or

(5) an unknown or missing potential heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

Added by Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. [2080](#)), Sec. 6, eff. January 1, 2014.

NEVADA STATUTE

NRS 159.0485 Proposed adult ward advised of right to counsel; appointment, duties and compensation of attorney for adult ward or proposed adult ward.

1. At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to [NRS 159.0535](#) and is not appearing by videoconference at the hearing, the proposed adult ward must be advised of his or her right to counsel pursuant to subsection 2 of [NRS 159.0535](#).

2. If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney shall represent the adult ward or proposed adult ward until relieved of the duty by court order.

3. Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation and expenses. Unless the court determines that the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

(Added to NRS by [1999, 1396](#); A [2003, 1776](#); [2009, 2521](#); [2013, 910](#))

GUARDIANSHIP REFERRAL PROCESS RECOMMENDATIONS

INVOLUNTARY GUARDIANSHIP REFERRAL PROCESS CLARK COUNTY NEVADA AND NEVADA REFORM PROPOSAL

RICHARD BLACK – NOVEMBER 4, 2015

WITH INPUT FROM THE FOLLOWING:

SUSAN HOY - PRIVATE PROFESSIONAL GUARDIAN AND COMMISSION MEMBER

KATHLEEN BUCHANAN – CLARK COUNTY PUBLIC GUARDIAN AND COMMISSION MEMBER

RANA GOODMAN – MEDIA REPRESENTATIVE AND COMMISSION MEMBER

SUSAN SWEIKERT – VICTIM ADVOCATE AND COMMISSION MEMBER

**SALLY RAMM – ELDER LAW ATTORNEY NEVADA AGED AND DISABILITY SERVICES AND
COMMISSION MEMBER**

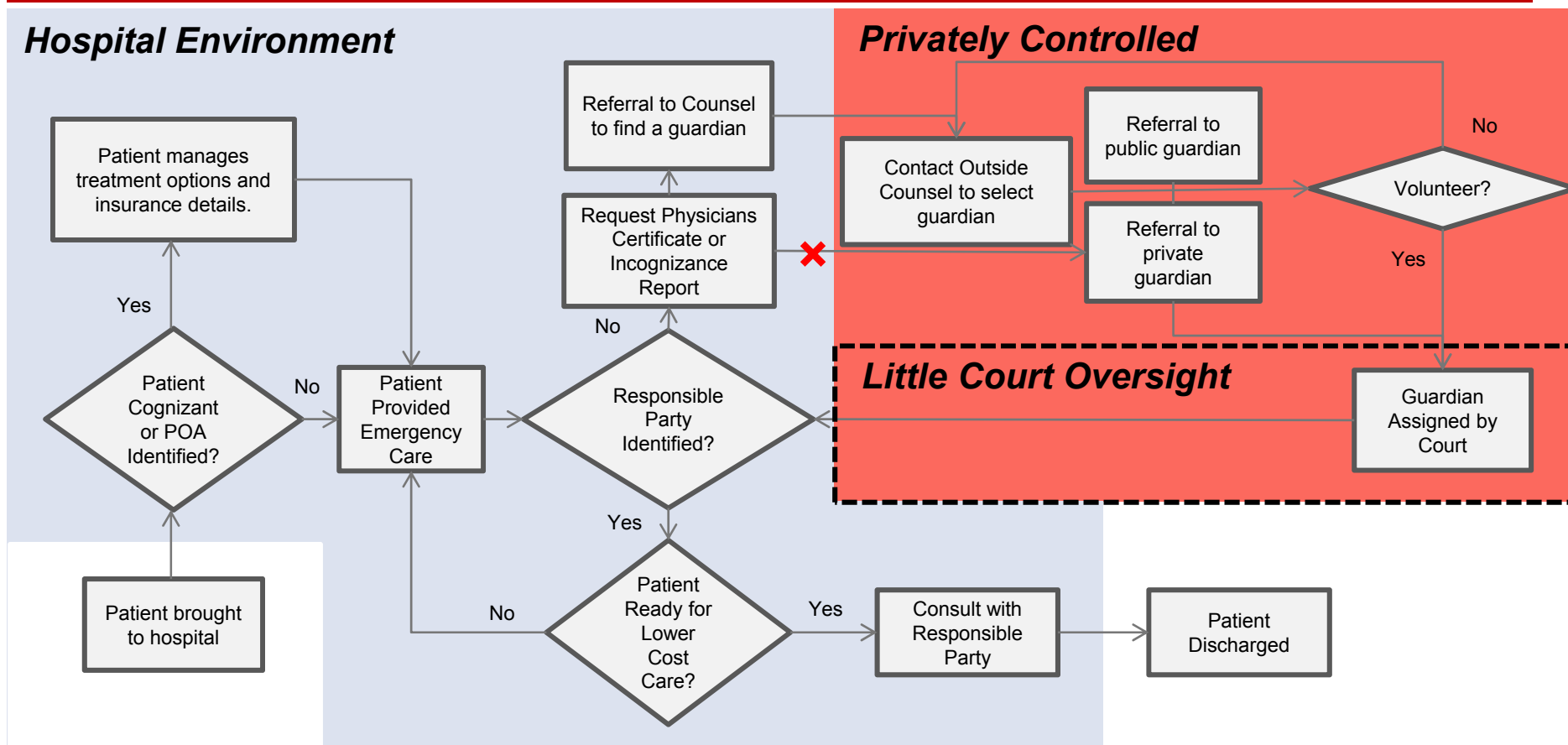
**GINNY CASAZZA – PRESIDENT NATIONAL GUARDIANSHIP ASSOCIATION, 2015 AND
WASHOE COUNTY RESIDENT**

TAMMY SEVER – ELDER PROTECTIVE SERVICES MANAGER, CLARK COUNTY

Introduction

- This document defines the current process for **involuntary** guardianship referrals and the obligations to HIPAA and proposed changes to be considered by the Nevada Guardianship Reform Commission.
 - Current Process Map
 - Proposed Process Map
 - Risks and Issues
 - Impacted Organizations
 - Benefits

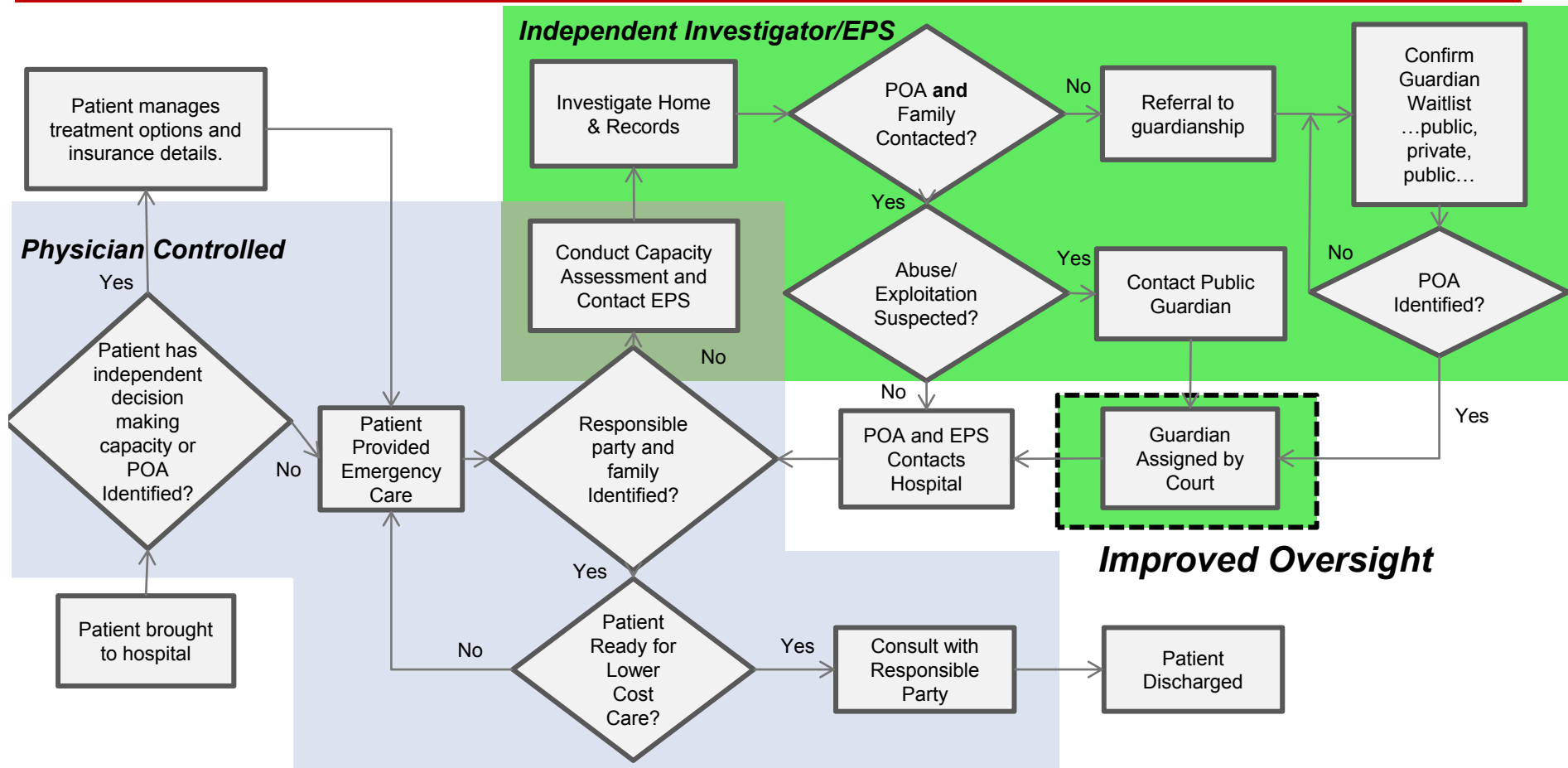
Current Guardianship Referral Process



Issues

- Ad hoc...no formal process for healthcare professionals to depend on.
- **Likely violations of HIPAA** between physicians, lawyers, and guardians.
- No independent or trained investigator to confirm need or directives.
- Excess private control of the process...no independent investigator, too many lawyers.
- Lack of transparency...**X** referrals with rewards suspected.
- Does not address hospital bed-day priorities and lower cost care options

Proposed Guardianship Referral Process



Benefits

- Formalizes healthcare and professional investigator's roles...Elder Protective Services
- Supports "least restrictive alternative" and protects civil rights.
- Private guardians and attorneys not involved until court petitioning is required.
- Addresses hospital bed-day priorities.
- Eliminates conflict of interest with guardian or attorneys and guardianship rewards.
- Significantly reduces HIPAA violation concerns.

Healthcare and APS Impact

Healthcare Providers

- Insures HIPAA compliance.
- Formalizes family notification and guardianship referral process.
 - Healthcare providers required to notify family if a caregiver presents a person with suspect cognizance and no POA.
 - Removes attorney involvement in identifying a guardian.
- Eliminates need to solicit private guardians directly.
- Insures transparent publicly controlled process to protect civil rights.
- Formalizes family court relationship with healthcare providers and investigators.

Elder Protective Services (EPS)

- Formalizes EPS investigative authority to confirm residence, finances, insurance and family notified.
- Independently validates caregiver representations.
- Manages a transparent guardianship referral process.
- Manages a waitlist process to insure timely referral *if family cannot be identified.*

Proposed Guardianship Referral Process Benefits

Proposed Benefits

- Streamlines and improves transparency of the process.
- Insures a thorough medical and neurological assessment from the onset to help define least restrictive care requirements.
- Insures HIPAA compliance.
- Insures timely identification of appropriate party to support hospital needs.
- Integrates Elder Protective Services to conduct independent investigations.
- Improves protection of civil rights of the elderly and their estates.
- Removes attorney involvement in routine cases.
- Insures notification of family.
- Insures law enforcement referral if abuse/neglect is suspected.
- Removes financial conflict of interest with private guardians.
- Fairly distributes balance between public and private guardian assignment.

DATA/IT SUBCOMMITTEE MEMO

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEMORANDUM

TO: Guardianship Commission

FROM: Hans Jessup, Chair of the Guardianship Data and Technology Workgroup

DATE: October 15, 2015

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

The Guardianship Data and Technology Workgroup (GDT) met on October 1, 2015 and October 15, 2015. During these meetings the GDT reviewed best practices of other states, national standards, and local court processes for managing guardianship matters. Through our review of this issue, we narrowed our initial approach to determine what the GDT would recommend the Nevada Judiciary begin doing now. This approach was used primarily to identify the information needed for Guardianship matters as the GDT begins considering what data and technology should be used to better manage these cases going forward. Accordingly, the GDT has the following recommendations:

1. The Guardianship Commission requests the State Court Administrator require the use of an information sheet to gather necessary guardianship information, which may then be used by the court to manage guardianship cases throughout the life of the case. A draft data information sheet used in the Second Judicial District Court is attached for your consideration and review. If there are more than one requested guardian on a case, then each potential guardian should submit a separate information sheet. Nevada Revised Statute (NRS) 3.275 allows for the use of a form approved by the State Court Administrator for obtaining information regarding the nature of each civil case filed in the district court. Accordingly, we feel that this form could be approved specifically for use in filing guardianship related matters.
2. It is also recommended that courts create the following reports to be reviewed by each District's Administrator or Chief Judge at least quarterly. District Courts throughout the state need to administratively review guardianship cases and determine if files need to be cleaned up or addressed. These reports will assist in their management of this task.
 - a. Time to Disposition – A report that shows the average amount of time (days) in which a guardianship matter is being disposed. This is necessary, as national standards suggest guardianship matters should be disposed, by the appointment of a guardian, within 90 days of filing. Cases undisposed after 90 days should warrant additional court attention.
 - b. Age of Active Pending Case - This report is used to determine the age of active cases pending disposition before the court. Timeframes should be used to determine the age of current cases pending adjudication (e.g., 0-30 days, 30-60 days, 60-90 days, and 90-120). Understanding the magnitude of filings within these time frames will help determine where court resources should be focused.

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

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

- c. Clearance Rates – A court should strive to dispose of as many cases as are filed. Clearance rates can be used to determine if additional resources or staff are needed to ensure the court is able to keep up with the cases being filed in the court.

It should be noted that some GDT members expressed concerns about the costs of developing these reports for rural courts. While limited funds are available through the Administrative Office of the Courts, courts can contact the Nevada Supreme Court, Research and Statistics Unit to receive technical assistance on how best to capture and report this information.

3. It is recommended that an educational class or training regimen be created for judges, and if appropriate court staff, on what to look for or how to review inventories and accountings.

Future GDT meetings will consider best practices and what measures should be established for post adjudication activity. Additionally, court system capabilities will be reviewed. Together this information will assist the GDT and this Commission in developing a road map and reasonable standards that the Nevada Judiciary can use to develop systems that better manage guardianship cases going forward.

Attachments

Information Sheet

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Guardianship of the Person,
the Estate, or the Person and Estate of:

REQUIRED IDENTIFICATION SHEET
ADULT GUARDIANSHIP

_____ /

An Adult

Case No. _____

Dept. No. _____

I. You must attach a copy of ONE of the following forms of identification for each of the guardian(s) and the adult subject to guardianship proceedings. Check the correct box for the identification filed.

Guardian: Social Security No. / Taxpayer Identification No. /
 Valid Passport No. / Valid Driver's License No. /
 Valid Identification Card No.

Second Social Security No. / Taxpayer Identification No. /
Guardian: Valid Passport No. / Valid Driver's License No. /
 Valid Identification Card No.

Adult subject to Social Security No. / Taxpayer Identification No. /
Guardianship Valid Passport No. / Valid Driver's License No. /
Proceedings: Valid Identification Card No.

II. Please fill out the information requested for the Guardianship

<p>A. Placement Of Adult subject to Guardianship Proceedings</p> <p><input type="checkbox"/> Group Home <input type="checkbox"/> Out of State <input type="checkbox"/> Secured Facility <input type="checkbox"/> Family/Friends <input type="checkbox"/> Guardian <input type="checkbox"/> Independently <input type="checkbox"/> Host Family <input type="checkbox"/> Support Adult Residence <input type="checkbox"/> Skilled Nursing Home <input type="checkbox"/> Other _____</p>	<p>C. Location Of Guardian(s):</p> <p><input type="checkbox"/> Nevada <input type="checkbox"/> Other State (please provide): _____</p>
<p>B. Type Of Guardianship:</p> <p><input type="checkbox"/> Person <input type="checkbox"/> Person and Estate <input type="checkbox"/> Estate <input type="checkbox"/> Limited</p>	<p>D. Type Of Guardian(s):</p> <p><input type="checkbox"/> Spouse <input type="checkbox"/> Other Relative <input type="checkbox"/> Public <input type="checkbox"/> Private: License Number: _____ <input type="checkbox"/> Other _____</p>
<p>E. Gender And Date Of Birth Of Adult subject to Guardianship Proceedings:</p> <p><input type="checkbox"/> Male <input type="checkbox"/> Female Date of Birth: _____</p>	

III. Affirmation: This document **DOES** –OR– **DOES NOT** contain the social security number of a person as required by NRS 159.044.

INFORMATION FROM TEXAS HB 39

H.B. No. 39

1 AN ACT
2 relating to guardianships for incapacitated persons and to
3 substitutes for guardianships for certain adults with
4 disabilities.

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

6 SECTION 1. Section 1001.001(b), Estates Code, is amended to
7 read as follows:

8 (b) In creating a guardianship that gives a guardian limited
9 authority over an incapacitated person, the court shall design the
10 guardianship to encourage the development or maintenance of maximum
11 self-reliance and independence in the incapacitated person,
12 including by presuming that the incapacitated person retains
13 capacity to make personal decisions regarding the person's
14 residence.

15 SECTION 2. Chapter 1002, Estates Code, is amended by adding
16 Sections 1002.0015 and 1002.031 to read as follows:

17 Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.

18 "Alternatives to guardianship" includes the:

19 (1) execution of a medical power of attorney under
20 Chapter 166, Health and Safety Code;

21 (2) appointment of an attorney in fact or agent under a
22 durable power of attorney as provided by Subtitle P, Title 2;

23 (3) execution of a declaration for mental health
24 treatment under Chapter 137, Civil Practice and Remedies Code;

H.B. No. 39

- 1 (4) appointment of a representative payee to manage
2 public benefits;
3 (5) establishment of a joint bank account;
4 (6) creation of a management trust under Chapter 1301;
5 (7) creation of a special needs trust;
6 (8) designation of a guardian before the need arises
7 under Subchapter E, Chapter 1104; and
8 (9) establishment of alternate forms of
9 decision-making based on person-centered planning.

10 Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and
11 services" means available formal and informal resources and
12 assistance that enable an individual to:

- 13 (1) meet the individual's needs for food, clothing, or
14 shelter;
15 (2) care for the individual's physical or mental
16 health;
17 (3) manage the individual's financial affairs; or
18 (4) make personal decisions regarding residence,
19 voting, operating a motor vehicle, and marriage.

20 SECTION 3. Section 1002.015, Estates Code, is amended to
21 read as follows:

22 Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term
23 "guardianship proceeding" means a matter or proceeding related to a
24 guardianship or any other matter covered by this title, including:

- 25 (1) the appointment of a guardian of a minor or other
26 incapacitated person, including an incapacitated adult for whom
27 another court obtained continuing, exclusive jurisdiction in a suit

H.B. No. 39

1 affecting the parent-child relationship when the person was a
2 child;

3 (2) an application, petition, or motion regarding
4 guardianship or a substitute for [~~an alternative to~~] guardianship
5 under this title;

6 (3) a mental health action; and

7 (4) an application, petition, or motion regarding a
8 trust created under Chapter 1301.

9 SECTION 4. Section 1054.004, Estates Code, is amended by
10 amending Subsection (a) and adding Subsection (c) to read as
11 follows:

12 (a) An attorney ad litem appointed under Section 1054.001
13 shall interview the proposed ward within a reasonable time before
14 the hearing in the proceeding for the appointment of a
15 guardian. To the greatest extent possible, the attorney shall
16 discuss with the proposed ward:

17 (1) the law and facts of the case;

18 (2) the proposed ward's legal options regarding
19 disposition of the case; [~~and~~]

20 (3) the grounds on which guardianship is sought; and

21 (4) whether alternatives to guardianship would meet
22 the needs of the proposed ward and avoid the need for the
23 appointment of a guardian.

24 (c) Before the hearing, the attorney ad litem shall discuss
25 with the proposed ward the attorney ad litem's opinion regarding:

26 (1) whether a guardianship is necessary for the
27 proposed ward; and

H.B. No. 39

1 (2) if a guardianship is necessary, the specific
2 powers or duties of the guardian that should be limited if the
3 proposed ward receives supports and services.

4 SECTION 5. Section 1054.054, Estates Code, is amended by
5 adding Subsections (c) and (d) to read as follows:

6 (c) The guardian ad litem shall:

7 (1) investigate whether a guardianship is necessary
8 for the proposed ward; and

9 (2) evaluate alternatives to guardianship and
10 supports and services available to the proposed ward that would
11 avoid the need for appointment of a guardian.

12 (d) The information gathered by the guardian ad litem under
13 Subsection (c) is subject to examination by the court.

14 SECTION 6. Sections 1054.201(a) and (b), Estates Code, are
15 amended to read as follows:

16 (a) An attorney for an applicant for guardianship and a [A]
17 court-appointed attorney in a guardianship proceeding, including
18 an attorney ad litem, must be certified by the State Bar of Texas,
19 or a person or other entity designated by the state bar, as having
20 successfully completed a course of study in guardianship law and
21 procedure sponsored by the state bar or the state bar's designee.

22 (b) The State Bar of Texas shall require four [~~three~~] hours
23 of credit for certification under this subchapter, including one
24 hour on alternatives to guardianship and supports and services
25 available to proposed wards.

26 SECTION 7. Section 1101.001(b), Estates Code, is amended to
27 read as follows:

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1 (b) The application must be sworn to by the applicant and
2 state:

3 (1) the proposed ward's name, sex, date of birth, and
4 address;

5 (2) the name, relationship, and address of the person
6 the applicant seeks to have appointed as guardian;

7 (3) whether guardianship of the person or estate, or
8 both, is sought;

9 (3-a) whether alternatives to guardianship and
10 available supports and services to avoid guardianship were
11 considered;

12 (3-b) whether any alternatives to guardianship and
13 supports and services available to the proposed ward considered are
14 feasible and would avoid the need for a guardianship;

15 (4) the nature and degree of the alleged incapacity,
16 the specific areas of protection and assistance requested, and the
17 limitation or termination of rights requested to be included in the
18 court's order of appointment, including a termination of:

19 (A) the right of a proposed ward who is 18 years
20 of age or older to vote in a public election; ~~and~~

21 (B) the proposed ward's eligibility to hold or
22 obtain a license to operate a motor vehicle under Chapter 521,
23 Transportation Code; and

24 (C) the right of a proposed ward to make personal
25 decisions regarding residence;

26 (5) the facts requiring the appointment of a guardian;

27 (6) the interest of the applicant in the appointment

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1 of a guardian;

2 (7) the nature and description of any kind of
3 guardianship existing for the proposed ward in any other state;

4 (8) the name and address of any person or institution
5 having the care and custody of the proposed ward;

6 (9) the approximate value and description of the
7 proposed ward's property, including any compensation, pension,
8 insurance, or allowance to which the proposed ward may be entitled;

9 (10) the name and address of any person whom the
10 applicant knows to hold a power of attorney signed by the proposed
11 ward and a description of the type of power of attorney;

12 (11) for a proposed ward who is a minor, the following
13 information if known by the applicant:

14 (A) the name of each of the proposed ward's
15 parents and either the parent's address or that the parent is
16 deceased;

17 (B) the name and age of each of the proposed
18 ward's siblings, if any, and either the sibling's address or that
19 the sibling is deceased; and

20 (C) if each of the proposed ward's parents and
21 adult siblings are deceased, the names and addresses of the
22 proposed ward's other living relatives who are related to the
23 proposed ward within the third degree by consanguinity and who are
24 adults;

25 (12) for a proposed ward who is a minor, whether the
26 minor was the subject of a legal or conservatorship proceeding in
27 the preceding two years and, if so:

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- 1 (A) the court involved;
- 2 (B) the nature of the proceeding; and
- 3 (C) any final disposition of the proceeding;
- 4 (13) for a proposed ward who is an adult, the following
- 5 information if known by the applicant:
- 6 (A) the name of the proposed ward's spouse, if
- 7 any, and either the spouse's address or that the spouse is deceased;
- 8 (B) the name of each of the proposed ward's
- 9 parents and either the parent's address or that the parent is
- 10 deceased;
- 11 (C) the name and age of each of the proposed
- 12 ward's siblings, if any, and either the sibling's address or that
- 13 the sibling is deceased;
- 14 (D) the name and age of each of the proposed
- 15 ward's children, if any, and either the child's address or that the
- 16 child is deceased; and
- 17 (E) if there is no living spouse, parent, adult
- 18 sibling, or adult child of the proposed ward, the names and
- 19 addresses of the proposed ward's other living relatives who are
- 20 related to the proposed ward within the third degree by
- 21 consanguinity and who are adults;
- 22 (14) facts showing that the court has venue of the
- 23 proceeding; and
- 24 (15) if applicable, that the person whom the applicant
- 25 seeks to have appointed as a guardian is a private professional
- 26 guardian who is certified under Subchapter C, Chapter 155,
- 27 Government Code, and has complied with the requirements of

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1 Subchapter G, Chapter 1104.

2 SECTION 8. Section 1101.101, Estates Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) Before appointing a guardian for a proposed ward, the
6 court must:

7 (1) find by clear and convincing evidence that:

8 (A) the proposed ward is an incapacitated person;

9 (B) it is in the proposed ward's best interest to
10 have the court appoint a person as the proposed ward's guardian;
11 ~~and~~

12 (C) the proposed ward's rights or property will
13 be protected by the appointment of a guardian;

14 (D) alternatives to guardianship that would
15 avoid the need for the appointment of a guardian have been
16 considered and determined not to be feasible; and

17 (E) supports and services available to the
18 proposed ward that would avoid the need for the appointment of a
19 guardian have been considered and determined not to be feasible;
20 and

21 (2) find by a preponderance of the evidence that:

22 (A) the court has venue of the case;

23 (B) the person to be appointed guardian is
24 eligible to act as guardian and is entitled to appointment, or, if
25 no eligible person entitled to appointment applies, the person
26 appointed is a proper person to act as guardian;

27 (C) if a guardian is appointed for a minor, the

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1 guardianship is not created for the primary purpose of enabling the
2 minor to establish residency for enrollment in a school or school
3 district for which the minor is not otherwise eligible for
4 enrollment; and

5 (D) the proposed ward:

6 (i) is totally without capacity as provided
7 by this title to care for himself or herself and to manage his or her
8 property; or

9 (ii) lacks the capacity to do some, but not
10 all, of the tasks necessary to care for himself or herself or to
11 manage his or her property.

12 (c) A finding under Subsection (a)(2)(D)(ii) must
13 specifically state whether the proposed ward lacks the capacity, or
14 lacks sufficient capacity with supports and services, to make
15 personal decisions regarding residence, voting, operating a motor
16 vehicle, and marriage.

17 SECTION 9. Section [1101.103](#)(b), Estates Code, is amended to
18 read as follows:

19 (b) The letter or certificate must:

20 (1) describe the nature, degree, and severity of the
21 proposed ward's incapacity, including any functional deficits
22 regarding the proposed ward's ability to:

23 (A) handle business and managerial matters;

24 (B) manage financial matters;

25 (C) operate a motor vehicle;

26 (D) make personal decisions regarding residence,
27 voting, and marriage; and

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1 (E) consent to medical, dental, psychological,
2 or psychiatric treatment;

3 (2) in providing a description under Subdivision (1)
4 regarding the proposed ward's ability to operate a motor vehicle
5 and make personal decisions regarding voting, state whether in the
6 physician's opinion the proposed ward:

7 (A) has the mental capacity to vote in a public
8 election; and

9 (B) has the ability to safely operate a motor
10 vehicle;

11 (3) provide an evaluation of the proposed ward's
12 physical condition and mental functioning [~~function~~] and summarize
13 the proposed ward's medical history if reasonably available;

14 (3-a) in providing an evaluation under Subdivision
15 (3), state whether improvement in the proposed ward's physical
16 condition and mental functioning is possible and, if so, state the
17 period after which the proposed ward should be reevaluated to
18 determine whether a guardianship continues to be necessary;

19 (4) state how or in what manner the proposed ward's
20 ability to make or communicate responsible decisions concerning
21 himself or herself is affected by the proposed ward's physical or
22 mental health, including the proposed ward's ability to:

23 (A) understand or communicate;

24 (B) recognize familiar objects and individuals;

25 (C) solve problems [~~perform simple~~
26 ~~calculations~~];

27 (D) reason logically; and

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1 (E) administer to daily life activities with and
2 without supports and services;

3 (5) state whether any current medication affects the
4 proposed ward's demeanor or the proposed ward's ability to
5 participate fully in a court proceeding;

6 (6) describe the precise physical and mental
7 conditions underlying a diagnosis of a mental disability, and state
8 whether the proposed ward would benefit from supports and services
9 that would allow the individual to live in the least restrictive
10 setting;

11 (6-a) state whether a guardianship is necessary for
12 the proposed ward and, if so, whether specific powers or duties of
13 the guardian should be limited if the proposed ward receives
14 supports and services; and

15 (7) include any other information required by the
16 court.

17 SECTION 10. Sections 1101.151(a) and (b), Estates Code, are
18 amended to read as follows:

19 (a) If it is found that the proposed ward is totally without
20 capacity to care for himself or herself, manage his or her property,
21 operate a motor vehicle, make personal decisions regarding
22 residence, and vote in a public election, the court may appoint a
23 guardian of the proposed ward's person or estate, or both, with full
24 authority over the incapacitated person except as provided by law.

25 (b) An order appointing a guardian under this section must
26 contain findings of fact and specify:

27 (1) the information required by Section 1101.153(a);

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1 (2) that the guardian has full authority over the
2 incapacitated person;

3 (3) if necessary, the amount of funds from the corpus
4 of the person's estate the court will allow the guardian to spend
5 for the education and maintenance of the person under Subchapter A,
6 Chapter 1156;

7 (4) whether the person is totally incapacitated
8 because of a mental condition;

9 (5) that the person does not have the capacity to
10 operate a motor vehicle, make personal decisions regarding
11 residence, and [~~to~~] vote in a public election; and

12 (6) if it is a guardianship of the person of the ward
13 or of both the person and the estate of the ward, the rights of the
14 guardian with respect to the person as specified in Section
15 [1151.051\(c\)\(1\)](#).

16 SECTION 11. Sections [1101.152\(a\)](#) and (b), Estates Code, are
17 amended to read as follows:

18 (a) If it is found that the proposed ward lacks the capacity
19 to do some, but not all, of the tasks necessary to care for himself
20 or herself or to manage his or her property with or without supports
21 and services, the court may appoint a guardian with limited powers
22 and permit the proposed ward to care for himself or herself,
23 including making personal decisions regarding residence, or to
24 manage his or her property commensurate with the proposed ward's
25 ability.

26 (b) An order appointing a guardian under this section must
27 contain findings of fact and specify:

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1 (1) the information required by Section 1101.153(a);

2 (2) the specific powers, limitations, or duties of the
3 guardian with respect to the person's care or the management of the
4 person's property by the guardian;

5 (2-a) the specific rights and powers retained by the
6 person:

7 (A) with the necessity for supports and services;

8 and

9 (B) without the necessity for supports and
10 services;

11 (3) if necessary, the amount of funds from the corpus
12 of the person's estate the court will allow the guardian to spend
13 for the education and maintenance of the person under Subchapter A,
14 Chapter 1156; and

15 (4) whether the person is incapacitated because of a
16 mental condition and, if so, whether the person:

17 (A) retains the right to make personal decisions
18 regarding residence or vote in a public election; or

19 (B) maintains eligibility to hold or obtain a
20 license to operate a motor vehicle under Chapter 521,
21 Transportation Code.

22 SECTION 12. Section 1101.153, Estates Code, is amended by
23 adding Subsection (a-1) to read as follows:

24 (a-1) If the letter or certificate under Section
25 1101.103(b)(3-a) stated that improvement in the ward's physical
26 condition or mental functioning is possible and specified a period
27 of less than a year after which the ward should be reevaluated to

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1 determine continued necessity for the guardianship, an order
2 appointing a guardian must include the date by which the guardian
3 must submit to the court an updated letter or certificate
4 containing the requirements of Section 1101.103(b).

5 SECTION 13. Section 1104.002, Estates Code, is amended to
6 read as follows:

7 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before
8 appointing a guardian, the court shall make a reasonable effort to
9 consider the incapacitated person's preference of the person to be
10 appointed guardian and, to the extent consistent with other
11 provisions of this title, shall give due consideration to the
12 preference indicated by the incapacitated person, regardless of
13 whether the person has designated by declaration a guardian before
14 the need arises under Subchapter E.

15 SECTION 14. Section 1151.051, Estates Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Notwithstanding Subsection (c)(1) and except in cases
18 of emergency, a guardian of the person of a ward may only place the
19 ward in a more restrictive care facility if the guardian provides
20 notice of the proposed placement to the court, the ward, and any
21 person who has requested notice and after:

22 (1) the court orders the placement at a hearing on the
23 matter, if the ward or another person objects to the proposed
24 placement before the eighth business day after the person's receipt
25 of the notice; or

26 (2) the seventh business day after the court's receipt
27 of the notice, if the court does not schedule a hearing, on its own

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1 motion, on the proposed placement before that day.

2 SECTION 15. Sections 1202.001(b) and (c), Estates Code, are
3 amended to read as follows:

4 (b) A guardianship shall be settled and closed when the
5 ward:

6 (1) dies and, if the ward was married, the ward's
7 spouse qualifies as survivor in community;

8 (2) is found by the court to have full capacity, or
9 sufficient capacity with supports and services, to care for himself
10 or herself and to manage the ward's property;

11 (3) is no longer a minor; or

12 (4) no longer must have a guardian appointed to
13 receive funds due the ward from any governmental source.

14 (c) Except for an order issued under Section 1101.153(a-1),
15 an [An] order appointing a guardian or a successor guardian may
16 specify a period of not more than one year during which a petition
17 for adjudication that the ward no longer requires the guardianship
18 may not be filed without special leave.

19 SECTION 16. Section 1202.051, Estates Code, is amended to
20 read as follows:

21 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any
22 person interested in the ward's welfare may file a written
23 application with the court for an order:

24 (1) finding that the ward is no longer an
25 incapacitated person and ordering the settlement and closing of the
26 guardianship;

27 (2) finding that the ward lacks the capacity, or lacks

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1 sufficient capacity with supports and services, to do some or all of
2 the tasks necessary to provide food, clothing, or shelter for
3 himself or herself, to care for the ward's own physical health, or
4 to manage the ward's own financial affairs and granting additional
5 powers or duties to the guardian; or

6 (3) finding that the ward has the capacity, or
7 sufficient capacity with supports and services, to do some, but not
8 all, of the tasks necessary to provide food, clothing, or shelter
9 for himself or herself, to care for the ward's own physical health,
10 or to manage the ward's own financial affairs and:

11 (A) limiting the guardian's powers or duties; and

12 (B) permitting the ward to care for himself or
13 herself, make personal decisions regarding residence, or [~~to~~]
14 manage the ward's own financial affairs commensurate with the
15 ward's ability, with or without supports and services.

16 SECTION 17. Section 1202.151(a), Estates Code, is amended
17 to read as follows:

18 (a) Except as provided by Section 1202.201, at a hearing on
19 an application filed under Section 1202.051, the court shall
20 consider only evidence regarding the ward's mental or physical
21 capacity at the time of the hearing that is relevant to the complete
22 restoration of the ward's capacity or modification of the ward's
23 guardianship, including whether:

24 (1) the guardianship is necessary; and

25 (2) specific powers or duties of the guardian should
26 be limited if the ward receives supports and services.

27 SECTION 18. Section 1202.152(b), Estates Code, is amended

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1 to read as follows:

2 (b) A letter or certificate presented under Subsection (a)
3 must:

4 (1) describe the nature and degree of incapacity,
5 including the medical history if reasonably available, or state
6 that, in the physician's opinion, the ward has the capacity, or
7 sufficient capacity with supports and services, to:

8 (A) provide food, clothing, and shelter for
9 himself or herself;

10 (B) care for the ward's own physical health; and

11 (C) manage the ward's financial affairs;

12 (2) provide a medical prognosis specifying the
13 estimated severity of any incapacity;

14 (3) state how or in what manner the ward's ability to
15 make or communicate responsible decisions concerning himself or
16 herself is affected by the ward's physical or mental health;

17 (4) state whether any current medication affects the
18 ward's demeanor or the ward's ability to participate fully in a
19 court proceeding;

20 (5) describe the precise physical and mental
21 conditions underlying a diagnosis of senility, if applicable; and

22 (6) include any other information required by the
23 court.

24 SECTION 19. Section [1202.153\(c\)](#), Estates Code, is amended
25 to read as follows:

26 (c) Before limiting the powers granted to or duties required
27 to be performed by the guardian under an application filed under

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1 Section 1202.051, the court must find by a preponderance of the
2 evidence that the current nature and degree of the ward's
3 incapacity, with or without supports and services, warrants a
4 modification of the guardianship and that some of the ward's rights
5 need to be restored, with or without supports and services.

6 SECTION 20. Section 1202.154(a), Estates Code, is amended
7 to read as follows:

8 (a) A court order entered with respect to an application
9 filed under Section 1202.051 to completely restore a ward's
10 capacity or modify a ward's guardianship must state:

- 11 (1) the guardian's name;
12 (2) the ward's name; ~~and~~
13 (3) whether the type of guardianship being addressed

14 at the proceeding is a:

- 15 (A) guardianship of the person;
16 (B) guardianship of the estate; or
17 (C) guardianship of both the person and the
18 estate; and

19 (4) if applicable, any necessary supports and services
20 for the restoration of the ward's capacity or modification of the
21 guardianship.

22 SECTION 21. Section 1202.156, Estates Code, is amended to
23 read as follows:

24 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING
25 GUARDIANSHIP. If the court finds that a guardian's powers or
26 duties should be expanded or limited, the order modifying the
27 guardianship must contain findings of fact and specify, in addition

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1 to the information required by Section 1202.154:

2 (1) the specific powers, limitations, or duties of the
3 guardian with respect to the care of the ward or the management of
4 the ward's property, as appropriate;

5 (2) the specific areas of protection and assistance to
6 be provided to the ward;

7 (3) any limitation of the ward's rights;

8 (4) if the ward's incapacity resulted from a mental
9 condition, whether the ward retains the right to vote and make
10 personal decisions regarding residence; and

11 (5) that the clerk shall modify the letters of
12 guardianship to the extent applicable to conform to the order.

13 SECTION 22. The heading to Subtitle I, Title 3, Estates
14 Code, is amended to read as follows:

15 SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
16 [~~ALTERNATIVES TO~~] GUARDIANSHIP

17 SECTION 23. Subtitle I, Title 3, Estates Code, is amended by
18 adding Chapter 1357 to read as follows:

19 CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT
20 SUBCHAPTER A. GENERAL PROVISIONS

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

23 Sec. 1357.002. DEFINITIONS. In this chapter:

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

27 (2) "Disability" means, with respect to an individual,

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1 a physical or mental impairment that substantially limits one or
2 more major life activities.

3 (3) "Supported decision-making" means a process of
4 supporting and accommodating an adult with a disability to enable
5 the adult to make life decisions, including decisions related to
6 where the adult wants to live, the services, supports, and medical
7 care the adult wants to receive, whom the adult wants to live with,
8 and where the adult wants to work, without impeding the
9 self-determination of the adult.

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

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

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

21 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

22 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING
23 AGREEMENT. An adult with a disability may voluntarily, without
24 undue influence or coercion, enter into a supported decision-making
25 agreement with a supporter under which the adult with a disability
26 authorizes the supporter to do any or all of the following:

27 (1) provide supported decision-making, including

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1 assistance in understanding the options, responsibilities, and
2 consequences of the adult's life decisions, without making those
3 decisions on behalf of the adult with a disability;

4 (2) subject to Section 1357.054, assist the adult in
5 accessing, collecting, and obtaining information that is relevant
6 to a given life decision, including medical, psychological,
7 financial, educational, or treatment records, from any person;

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

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

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

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

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

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

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

25 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A
26 supporter is only authorized to assist the adult with a disability
27 in accessing, collecting, or obtaining information that is relevant

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1 to a decision authorized under the supported decision-making
2 agreement.

3 (b) If a supporter assists an adult with a disability in
4 accessing, collecting, or obtaining personal information,
5 including protected health information under the Health Insurance
6 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or
7 educational records under the Family Educational Rights and Privacy
8 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure
9 the information is kept privileged and confidential, as applicable,
10 and is not subject to unauthorized access, use, or disclosure.

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

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

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

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

25 SUPPORTED DECISION-MAKING AGREEMENT

26 Appointment of Supporter

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

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1 will.

2 I agree and designate that: _____

3 Name: _____

4 Address: _____

5 Phone Number: _____

6 E-mail Address: _____

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

9 Y/N obtaining food, clothing, and shelter

10 Y/N taking care of my physical health

11 Y/N managing my financial affairs.

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

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

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

19 3. Help me communicate my decision to appropriate persons.

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

23 Y/N A release allowing my supporter to see educational
24 records under the Family Educational Rights and Privacy Act of 1974
25 (20 U.S.C. Section 1232g) is attached.

26 Effective Date of Supported Decision-Making Agreement

27 This supported decision-making agreement is effective

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1 immediately and will continue until (insert date) or until the
2 agreement is terminated by my supporter or me or by operation of
3 law.

4 Signed this _____ day of _____, 20_____

5 Consent of Supporter

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

8 _____
9 (signature of supporter) (printed name of supporter)

10 Signature

11 _____
12 (my signature) (my printed name)

13 _____
14 (witness 1 signature) (printed name of witness 1)

15 _____
16 (witness 2 signature) (printed name of witness 2)

17 State of _____

18 County of _____

19 This document was acknowledged before me
20 on _____ (date)

21 by _____ and _____
22 (name of adult with a disability) (name of supporter)

23 _____
24 (signature of notarial officer)

25 (Seal, if any, of notary) _____
26 (printed name)

27 My commission expires: _____

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1 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

2 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
3 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE
4 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY
5 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,
6 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
7 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT
8 WWW.TXABUSEHOTLINE.ORG.

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

12 SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

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

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

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

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1 SECTION 24. (a) Except as otherwise provided by this
2 section, the changes in law made by this Act apply to:

3 (1) a guardianship created before, on, or after the
4 effective date of this Act; and

5 (2) an application for a guardianship pending on, or
6 filed on or after, the effective date of this Act.

7 (b) Sections 1054.004 and 1054.054, Estates Code, as
8 amended by this Act, apply only to a guardianship proceeding for
9 which a court has appointed a guardian ad litem or attorney ad litem
10 to represent the interests of a proposed ward on or after the
11 effective date of this Act.

12 (c) Sections 1054.201, 1101.101, 1101.103, 1101.151,
13 1101.152, and 1101.153, Estates Code, as amended by this Act, apply
14 only to a guardianship proceeding filed on or after the effective
15 date of this Act. A guardianship proceeding filed before the
16 effective date of this Act is governed by the law in effect on the
17 date the proceeding was filed, and the former law is continued in
18 effect for that purpose.

19 (d) Section 1101.001, Estates Code, as amended by this Act,
20 applies only to an application for the appointment of a guardian
21 filed on or after the effective date of this Act. An application
22 for the appointment of a guardian filed before the effective date of
23 this Act is governed by the law in effect on the date the
24 application was filed, and the former law is continued in effect for
25 that purpose.

26 (e) Section 1202.051, Estates Code, as amended by this Act,
27 applies only to an application for the restoration of a ward's

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1 capacity or the modification of a ward's guardianship that is filed
2 on or after the effective date of this Act. An application for the
3 restoration of a ward's capacity or the modification of a ward's
4 guardianship that is filed before the effective date of this Act is
5 governed by the law in effect on the date the application was filed,
6 and the former law is continued in effect for that purpose.

7 (f) Sections [1202.151](#), [1202.152](#), [1202.153](#), [1202.154](#), and
8 [1202.156](#), Estates Code, as amended by this Act, apply only to a
9 proceeding for the restoration of a ward's capacity or the
10 modification of a ward's guardianship that is filed on or after the
11 effective date of this Act. An application for the restoration of a
12 ward's capacity or the modification of a ward's guardianship that is
13 filed before the effective date of this Act is governed by the law
14 in effect on the date the application was filed, and the former law
15 is continued in effect for that purpose.

16 SECTION 25. This Act takes effect September 1, 2015.

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President of the Senate

Speaker of the House

I certify that H.B. No. 39 was passed by the House on April 21, 2015, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 39 on May 18, 2015, by the following vote: Yeas 129, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 39 was passed by the Senate, with amendments, on May 11, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

SB 1882
BILL OF RIGHTS FOR WARDS

S.B. No. 1882

1 AN ACT

2 relating to a bill of rights for wards under guardianship.

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

4 SECTION 1. Chapter 1151, Estates Code, is amended by adding
5 Subchapter H to read as follows:

6 SUBCHAPTER H. RIGHTS OF WARDS

7 Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) A ward has
8 all the rights, benefits, responsibilities, and privileges granted
9 by the constitution and laws of this state and the United States,
10 except where specifically limited by a court-ordered guardianship
11 or where otherwise lawfully restricted.

12 (b) Unless limited by a court or otherwise restricted by
13 law, a ward is authorized to the following:

14 (1) to have a copy of the guardianship order and
15 letters of guardianship and contact information for the probate
16 court that issued the order and letters;

17 (2) to have a guardianship that encourages the
18 development or maintenance of maximum self-reliance and
19 independence in the ward with the eventual goal, if possible, of
20 self-sufficiency;

21 (3) to be treated with respect, consideration, and
22 recognition of the ward's dignity and individuality;

23 (4) to reside and receive support services in the most
24 integrated setting, including home-based or other community-based

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1 settings, as required by Title II of the Americans with
2 Disabilities Act (42 U.S.C. Section 12131 et seq.);
3 (5) to consideration of the ward's current and
4 previously stated personal preferences, desires, medical and
5 psychiatric treatment preferences, religious beliefs, living
6 arrangements, and other preferences and opinions;
7 (6) to financial self-determination for all public
8 benefits after essential living expenses and health needs are met
9 and to have access to a monthly personal allowance;
10 (7) to receive timely and appropriate health care and
11 medical treatment that does not violate the ward's rights granted
12 by the constitution and laws of this state and the United States;
13 (8) to exercise full control of all aspects of life not
14 specifically granted by the court to the guardian;
15 (9) to control the ward's personal environment based
16 on the ward's preferences;
17 (10) to complain or raise concerns regarding the
18 guardian or guardianship to the court, including living
19 arrangements, retaliation by the guardian, conflicts of interest
20 between the guardian and service providers, or a violation of any
21 rights under this section;
22 (11) to receive notice in the ward's native language,
23 or preferred mode of communication, and in a manner accessible to
24 the ward, of a court proceeding to continue, modify, or terminate
25 the guardianship and the opportunity to appear before the court to
26 express the ward's preferences and concerns regarding whether the
27 guardianship should be continued, modified, or terminated;

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1 (12) to have a court investigator, guardian ad litem,
2 or attorney ad litem appointed by the court to investigate a
3 complaint received by the court from the ward or any person about
4 the guardianship;

5 (13) to participate in social, religious, and
6 recreational activities, training, employment, education,
7 habilitation, and rehabilitation of the ward's choice in the most
8 integrated setting;

9 (14) to self-determination in the substantial
10 maintenance, disposition, and management of real and personal
11 property after essential living expenses and health needs are met,
12 including the right to receive notice and object about the
13 substantial maintenance, disposition, or management of clothing,
14 furniture, vehicles, and other personal effects;

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

17 (16) to unimpeded, private, and uncensored
18 communication and visitation with persons of the ward's choice,
19 except that if the guardian determines that certain communication
20 or visitation causes substantial harm to the ward:

21 (A) the guardian may limit, supervise, or
22 restrict communication or visitation, but only to the extent
23 necessary to protect the ward from substantial harm; and

24 (B) the ward may request a hearing to remove any
25 restrictions on communication or visitation imposed by the guardian
26 under Paragraph (A);

27 (17) to petition the court and retain counsel of the

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1 ward's choice who holds a certificate required by Subchapter E,
2 Chapter 1054, to represent the ward's interest for capacity
3 restoration, modification of the guardianship, the appointment of a
4 different guardian, or for other appropriate relief under this
5 subchapter, including a transition to a supported decision-making
6 agreement, except as limited by Section 1054.006;

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

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

12 (20) to be informed of the name, address, phone
13 number, and purpose of Disability Rights Texas, an organization
14 whose mission is to protect the rights of, and advocate for, persons
15 with disabilities, and to communicate and meet with representatives
16 of that organization;

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

23 (22) to be informed of the name, address, phone
24 number, and purpose of the Judicial Branch Certification Commission
25 and the procedure for filing a complaint against a certified
26 guardian;

27 (23) to contact the Department of Family and

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1 Protective Services to report abuse, neglect, exploitation, or
2 violation of personal rights without fear of punishment,
3 interference, coercion, or retaliation; and

4 (24) to have the guardian, on appointment and on
5 annual renewal of the guardianship, explain the rights delineated
6 in this subsection in the ward's native language, or preferred mode
7 of communication, and in a manner accessible to the ward.

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

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1882 passed the Senate on May 12, 2015, by the following vote: Yeas 30, Nays 0; May 29, 2015, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 29, 2015, House granted request of the Senate; May 31, 2015, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1882 passed the House, with amendment, on May 22, 2015, by the following vote: Yeas 138, Nays 2, two present not voting; May 29, 2015, House granted request of the Senate for appointment of Conference Committee; May 31, 2015, House adopted Conference Committee Report by the following vote: Yeas 141, Nays 1, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

RECOMMENDATIONS

Recommendations:

Judge Steel:

1. Areas where Commission recommendations would be appreciated. Pursuant to committee meetings from our jurisdiction.
 - a. Confidentiality. Would the Courts be interested in designating all/or a portion of the case as automatically sealed?
 - i. Where the Ward's personal information, estate records and medical reports are filed under seal?
 - ii. Could the guardian provide confidential information under seal about the Guardian to avoid identity fraud on the Guardian?
 - iii. To insure that social security information does not get disseminated, could there be an averment by the filing party that specific information is not reflected in the motion/objection/response?
 - b. Media. Could the Rules require more time for notice to guardianship participants prior to a hearing to permit a meaningful opportunity to support or object to the Media in the courtroom?
 - i. Suggested 10 days, with the Court administration to serve parties and those with a right to be noticed.
 - ii. Time to appoint counsel/ guardian ad litem, where necessary
 - iii. Restrict images of the Ward from final edit of the materials collected
 - c. Statutory definition for incompetent.
 - d. Budgets –
 - i. Mandated, or requested by jurisdiction
 - ii. Forms
 - iii. Pursuant to noticed hearing or approved unless challenged?
 - e. Parties with Right to Notice:
 - i. Mailing Matrix
 - ii. IT data screen for purpose of court notices
 - iii. Affidavit regarding what was done to discover parties with right to notice
 - f. Senior Abuse/Neglect:
 - i. Direction in statute regarding agency with responsibility to investigate allegations
 - ii. Whether a negotiated "recovery" action mitigates against the criminal allegations
 - g. Resident Agent: More clarity and expectations
 - h. Define the interaction between Probate/guardianship/trust matters.

Judge Porter:

Here are some issues that I would like the Commission to consider:

1. Separate the guardianship statutes for minors and adults by creating NRS 159A and NRS 159B.
2. Focus on issues for minors (1) regarding temporary guardianship by removing the requirement of an agency letter or police report (perhaps a standard of reasonableness

and/or best interest of the child would be appropriate); (2) creation of a presumption in favor of guardianship if the parents have been absent from the child's life for a year or more; (3) creation of an omnibus department for the rural counties; (4) application of the UCCJEA to minor guardianships; and (5) a provision regarding the award of visitation and child support. Judge Walker and I have been working on entirely new statutes for minors, but I feel that is too large a project for the limited time we have. Additionally, there are good, workable provisions in the current statutes, so a complete overhaul is probably unnecessary.

3. Focus on issues for adults (1) by separating the investigation function from the guardianship function, including money for the court to pay for investigators; (2) mandatory POST training for elder abuse and neglect including financial abuse; and (3) a fee schedule for guardians.
4. Both NRS 159A and 159B should require a hearing on the annual statement of condition of the ward, with the ward present unless the court orders otherwise. Additionally, proposed guardians should be required to undergo a background check including fingerprinting. Public and professional private guardians should be required to report their annual certification to a state agency.

Judge Doherty:

Listed below are additional areas of consideration for the Guardianship Commission's work. I have noted when the recommendation is specifically consistent with that of the National Probate Court Standards (NPCS) and the applicable section or sections. The first suggestion addresses statewide IT proposals which were developed with the assistance of Craig Franden and are consistent with some, although not all of the practices we have implemented. The IT proposals are not in any particular order of priority. My suggestions are reflective of my views and not necessarily of the entire District since limited time has prevented my review of all suggestions with my colleagues. Most of my suggestions address adult guardianship matters but have substantial crossover to minor guardianship cases. Thank you for this opportunity. Frances

I. DEVELOP STANDARDIZED DATA OUTSIDE OF THE USJR TO INCLUDE REFLECTION OF BEST PRACTICES:

- A. Record and report data regarding use of alternative dispute resolution. (See NPCS 2.5, 3.3.2, 3.3.10)
 - A monthly count of mediation and settlement conferences. Count each scheduled proceeding once, regardless of the duration of days.
- B. Record and report statewide data on entry of orders regarding least restrictive oversight including nature and extent of guardianship order: person, person & estate or limited guardianship. (See NPCS 3.3.2, 3.3.10)
- C. A monthly count of the distinct order types by the following:
 - Order Appointing Guardian of the Estate and Person
 - Order Appointing Guardian of the Estate
 - Order Appointing Guardian of the Person
 - Order Appointing Guardian – Limited
 - Order Appointing Guardian - Special

- D. Record and report entry of orders denying guardianship and diverting or redirecting guardianship petitions to less restrictive plan of care(See NPC 3.3.2, 3.3.10);
- E. Record and report data on cases in which incapacitated person has counsel, and/or when orders enter appointing court appointed counsel, guardian ad litem and/or investigators. (See NPC 3.3.5 & NRS 159.0455, NRS 159.046, NRS 159.0483, NRS159.0485) (This one should be handled some type of 'order appointing special party' or similar. This should be a count of the number of cases where a separate order is filed appointing. May need a separate order code for each party type.)
- F. Record and report data on clearance rate for newly filed cases from date of filing to date of entry of dispositional order. (See NPC 3.3.3). (This would involve a calculation of by the number of distinct cases disposed, divided by the number of new cases/petitions filed. This will result in a clearance rate percentage).
- G. Record and report of entry of ex parte orders and temporary orders prior to adjudicatory hearing (See NPC 3.3.6) (Report the monthly number of temporary guardianships ordered).
- H. Record and report hearing data on filings and dispositions of temporary and permanent guardianship petitions. (This may also be a milestone tracking mechanism). (See NPC 3.3.8)
- I. Monthly count of the initial permanent hearing after petition filed. According to best practice, the hearing should be held 'expeditiously'. (See NPC 3.3.8(A))
- J. Monthly report on presence/absence of Respondent (ward/proposed incapacitated person) (See NPC 3.3.8(B))
- K. Monthly report on presence of proposed guardian at hearing. (See NPC 3.3.8(C))
- L. Record and report relevant demographic data to assist Court in managing overarching matters effecting incapacitated persons, i.e.:
 - Report type of placement of incapacitated person: locked facility, acute care facility, skilled care facility, assisted living, group home, relative care, independent living;
 - Report type of guardian: relative/spouse; private guardian; public guardian; institutional fiduciary;
 - Report age of incapacitated person, broken into 10 year increments;
 - Incapacitated persons (ward) residing out of state;
 - One or more guardians residing out of state.
- M. Consider recording and reporting assumption of jurisdiction over private trusts.

II. DEFINE METHODS FOR JURISDICTIONS TO MEET AND TRACK "MILESTONES" IN GUARDIANSHIP CASES CONSISTENT WITH BEST PRACTICES AND FOR PURPOSES OF COURT MANAGEMENT - POTENTIAL STATUTORY MILESTONES LISTED BELOW:

A. PREDISPOSITION:

- i. Citation issued and appropriately noticed prior to Hearing on Petition – NRS 159.034, NRS 159.047, and NRS 159.0475.
- ii. Proof of Notice of Hearing filed 10 days prior to hearing by Petitioner - NRS 159.034.
- iii. Nevada is Respondent's (proposed ward's) home state or has property here - NRS 159.1998
- iv. Petition filed in county where Respondent (proposed ward) resides - NRS 159.037

- v. 10 day extension hearing conducted on all ex parte ordered temporary guardianships - NRS 159.052
- vi. Permanent hearing conducted and Respondent (proposed ward) present or excused - NRS 159.0535
 - a. Respondent (ward) advised of right to counsel - NRS 159.0535
 - b. investigator appointed
 - c. Guardian ad Litem appointed
- vii. Order dismissing, granting, limiting guardianship entered
 - a. Bond addressed
 - b. Firearms addressed
 - c. Voting privileges addressed
 - d. Summary estate addressed
 - e. Incapacitated person served within 5 days - NRS 159.074
 - f. Notice of Entry of Order filed with Court - NRS 159.074
 - g. Order contains names, addresses and telephone number of guardian, incapacitated person's (ward's) attorney and investigator. - NRS 159.074
 - h. Appeal filed within 30 days of entry of order - NRS 159.325.

B. POST DISPOSITION:

- i. Acknowledgement of Receipt of Instructions filed (Washoe County)
- ii. Letters issued
 - Required Bond posted
- iii. Letters filed with Office of Recorder in real estate cases - NRS 159.087(1)
- iv. Initial Inventory filed 60 days from order - NRS159-085
- v. Annual Report of Person filed within 60 days of anniversary of order appointing - NRS 159.081(1)(a)
- vi. Annual Accounting filed on non-summary estates within 60 days of anniversary of order appointing - NRS 159.177, NRS 159.081(5)
- vii. Hearing conducted on non-summary annual accountings - NRS 159.181.

C. REMOVAL/RESIGNATION OF GUARDIAN/TERMINATION OF GUARDIANSHIP:

- i. Petition to Remove
 - Citation issued NRS 159.1855
- ii. Petition to Resign
- iii. Citation issued pursuant to NRS 159.1873(2)
- iv. Successor guardian appointed prior to discharge - NRS 159.1875(1)
- v. Accounting and hearing by resigning guardian must be completed - NRS 159.1877(1)
- vi. Petition to Terminate Guardianship
 - If incapacitated person (ward) dies, interested parties must be informed within 30 days - NRS 159.073(1)(c)(V)
 - Order terminating guardianship entered - NRS 159.1855(2) & 159.187(2)
 - Final accounting filed
 - Hearing conducted - NRS 159.1855(2) & 159.187(2)

- Winding up of affairs within 180 days of termination or, 90 days of appointment of successor trustee - 159.193
- Order discharging guardian and exonerating bond upon verification and completion of winding up of affairs. NRS 159.199

III. SUBSTANTIVE LAW PROPOSALS:

- A. Eliminate use of terms "ward", "incompetent" and "insane" in adult guardianship cases and replace with more commonly acceptable terms as "Respondent" (prior to disposition) (See NPC 3.3.1(c)(1)), "incapacitated person" or "person under a guardianship" or other more neutralized terms after guardianship issues.
- B. Appoint counsel for all adult Respondents who cannot afford representation or who otherwise cannot access their own attorney. (See NPC 3.3, NPC 3.3.5; NRS 159.0535)
- C. Require training for all non-professional guardians and regulate training for professional guardians. (See NPC 3.3.11, NPC 3.3.14)
- D. Confirm rules of evidence apply in contested guardianship hearings including right to confront witnesses and challenge evidence. (See 14 Amendment to U.S. Constitution, NPC 3.3.9)
- E. Confirm which standard of evidence applies to matters outside determination of whether Respondent meets criteria for a guardianship and guardianship is necessary to protect Respondent or Respondent's estate.
- F. Improve substantive requirements of Physicians Certificate. (See NPC 3.3.9 narrative)
- G. Require background checks for all guardians. (See NPC 3.3.12)
- H. Require appointment of court investigator, third party investigator or court visitor upon filing of all petitions for guardianships. (See NPC 3.3.4; NRS 159)
- I. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPC 3.3.6)
- J. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPC 3.3.10)
- K. Mandate bond and set standardized protocols for determining the amount of bond on all cases - require specific findings of fact and conclusions of law if bond is not imposed or is smaller than standardized amount. (See NPC 3.3.15)
- L. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPC 3.3.18)
- M. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.
- N. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- O. Review and implement NPC protocols for proceedings regarding guardianships for minors at NPC 3.5.

IV. ADMINISTRATIVE PROPOSALS

- A. Identify reasonable caseload for judicial officer overseeing guardianship cases and enforce such caseload limitations statewide. (Suggestion: at this time one judicial officer for every 500 cases)

- B. Ensure judicial court clerk staff ratio is in conformity with guardianship workload assignment. (Suggestion at this time one court clerk for every 500 cases.)
- C. Ensure each jurisdiction's IT Department is adequately staffed and trained to accommodate significant workload and management load responsibilities of guardianship cases.
- D. Ensure each jurisdiction is staffed with sufficient ratio of case compliance officers capable of supporting judicial responsibilities for review, management and competent oversight of guardianship caseload. (Suggestion at this time one case compliance officer for every 500 cases).
- E. Ensure guardianship stakeholders are financially supported to execute necessary responsibilities (i.e. Elder Protective Service, Child Protective Services, Office of Public Guardian, Office of District Attorney and Court Appointed Counsel) to perform statutorily required functions.
- F. Require statewide standardized forms in guardianship matters to ensure conformity with statutory requirements and consistency of oversight.

Christine Smith:

- 1. Develop legislation and process for appointment of counsel for adults and minors
- 2. Revise relevant statutes to address minor guardianships
- 3. Develop curriculum and method for educating parents and schools on alternatives to guardianships
- 4. Develop and adopt a "person-centered" evaluation to incorporate levels of capacity.
- 5. Change the term "ward".
- 6. Research to determine if there are grants for law enforcement of guardianship exploitation.
- 7. Develop curriculum and method for training law enforcement on elder/vulnerable exploitation.
- 8. Create a guardianship review team to determine the gaps in reporting.
- 9. Conduct two round tables a year including guardians, law enforcement, and attorneys.
- 10. Develop a statewide data base system for tracking and reporting.
- 11. Create a committee of guardians, attorneys, law enforcement, judges, and law school representative(s) to develop the educational program and plan for ongoing education.
- 12. Create a standard fee structure.
- 13. Develop current standardized forms and appoint an office responsible for regular review and to update as needed.
- 14. Develop an evaluation system to measure the court's efficiency.
- 15. Have bonded/certified independent investigators.
- 16. Require certification of guardians and require annual continuing education standard.

Jay Raman:

- 1. Discuss and provide guidance on the court's duties to the ward. (Much of the discussion has been focused on what rules/standards we are going to apply to guardians, but if the court is not going to fulfill its duty to the ward; it is largely fruitless effort.
- 2. Court must look out for the ward when it comes to whether they need guardianship or not.
- 3. Court must look out for the ward when it comes to costs incurred by the ward at the direction of the guardian.
- 4. Need to determine:

- a. Whether a ward should have a guardianship;
 - b. The necessity of services
 - c. Excessiveness of fees, which is only addressed by the court if someone complains
 - d. Scrutinize billings -The current guardianship system is set up in a way where, if the court is not examining fees and questioning things, sua sponte, it is the wolf guarding the hen house. It is implicit that when the court is looking at 'reasonable fees' that not only the money, but the services charged for must be actually reasonable and necessary.
 - i. Court must scrutinize billings
5. The Court needs to be much more of an advocate of what is in the best interest of the ward when it comes to their
- a. Health;
 - b. Placement; and
 - c. Finances.

This is obviously a much different job assignment than most judges have – but it is an extremely necessary view or temperament, when it comes to people who are unable to speak up for themselves and are reasonably relying on others to protect them and their affairs.

6. Court scrutinize fiscal appropriateness of the performance of services
- a. Whether an attorney needed in a real estate transaction
 - b. Whether the Guardian should have tasked a PCA with doing something, rather than charging the full guardian's hourly rate.

Those decisions are just as important if the fiduciary is being a good steward of the wards assets, and the court should scrutinize these matters.

Sally Ramm:

Following are my recommendations for priority reforms in Nevada's guardianship structure.

1. Representation for people facing guardianship is essential and should not depend on the inconsistent funding sources of grants and donations.

Actual legal counsel for adults requires the formation of an attorney-client relationship, which is not always possible for adults who have severe cognitive capabilities. A relationship of a client and lawyer arises when, "a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either the lawyer manifests to the person consent to do so, or ... a tribunal with power to do so appoints the lawyer to provide the services."¹ If the client cannot communicate with the lawyer, appointing a guardian ad litem can protect the adult's best interests. This does not have to be an attorney.

¹ The Restatement (Third) of the Law of Lawyers (Hofstra University School of Law) Cited by Nevada Supreme Court Formal Opinion #32, 3/25/2005

2. Investigations prior to granting guardianships are a best practice in all cases, and essential in contested cases.
 - a. Guardians ad litem (GAL) would be effective in providing this service, as well as trained investigators who are not appointed as guardian ad litem. Appointing an attorney to do this work is not necessary, and is not a good expenditure of legal resources.
 - b. Volunteer GAL programs work. They must be supervised. Training is critical. And, the court order giving them authority to act must delineate clearly the boundaries of the work they do. The GAL work should terminate when the guardianship begins, unless the court determines otherwise as an exception.
 - c. Who should the GAL volunteers report to? Perhaps a paid leader of the organization who then interfaces with the court. The volunteers themselves should have no ex-parte discussions with the court.
 - d. Again, funding should not depend on the inconsistent sources of grants and donations.
3. Person-centered planning includes rules, statutes, and care-planning that puts the wishes, needs, values, and life-experience of the person facing guardianship before the efficiency of the court or the convenience of the guardian.
 - e. Included in this, as stated in the Texas revisions to their guardianship law, should be supported decision-making. This is especially important for juvenile guardianships where young people with developmental disabilities are often placed under plenary guardianship when they have the ability to participate in decisions about their lives, while needing the support of their parents to do so.
4. Recommended changes in statutes:
 - a. Separate statutes governing guardianship over minors and those governing guardianship over adults. Consider adding someone from the Governor's Council on Developmental Disabilities to the work group for statutes on guardianship over minors. Contact is Sherry Manning, Executive Director, at smanning@dhhs.nv.gov.
 - b. NRS Chapter 159: (Based on statutes that do not include changes from 2015 Legislature)
 - i. Add definitions of guardians ad litem and investigators.(See 159.033, 433B.505)
 - ii. 159.019, 159.025, 159.027 – Definitions of "incompetent," "proposed ward," and "ward." Should be updated to reflect more person-centered language.
 - iii. 159.034, 0345: Providing notice. Statue should be reviewed to include privacy issues and timing.
 - iv. 159.044: Is it good practice to allow the guardian 120 days after appointment to provide information that should be included in the petition?
 - v. 159.0487: Change the word "incompetents."
 - vi. 159.0523, 159.0235: Temporary guardianship. Review statutes to address timing of hearings, notice, duties of guardian, and level of proof.
 - vii. 159.054: Include alternatives to guardianship in the statutes, possibly here.

- viii. 159.062: Guardian nominated by will. Add other advance directives documents, e.g. trust, power of attorney. (See 162A.250)
 - ix. 159.065, 067, 069, 071: Bonds. Review for amounts, and to insure that all people under guardianship are properly protected.
 - x. 159.074: Copy of order of appointment to be served upon ward. Include people on whom the notice of the hearing is served.
 - xi. 159.0755: Administration of Smaller Estates: Review for amount and types of assets covered and for the level of vulnerability of the person under guardianship.
 - xii. 159.0755 – 159.111: Powers and Duties of Guardian: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian.
 - xiii. 159.113 – 159.125: Management of Estate: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian.
 - xiv. 159.1535 – 159.156: Sale of Personal Property: Include a provision that the property of the person under guardianship may not be purchased by the guardian or by anybody related to or in business with the guardian.
 - xv. 159.176 – 159.184: Accountings: Review for length of time between accountings, requiring hearings regarding the accountings, and when the hearings should be noticed and held. Also review “Compensation and expenses of guardian.”
 - xvi. 159.1853: Petition for removal. Add that the person under guardianship may hire their own attorney, or ask for the appointment of an attorney, regardless of having been judged to need a guardian.
- c. NRS Chapter 253 – Public Guardians
- i. 253.250 allows the public guardian to refuse to accept a person needing guardianship if they cannot find a source to pay for the care of that person. This leaves the most vulnerable people without any assistance. While it is understood that the public guardian’s office cannot take the responsibility to pay for the care of people in this situation, a solution must be found for vulnerable and older people who are left out of any public services.

Susan Sweikert: Regarding Chief Justice Hardesty asking members to provide information on areas where we would like to see recommendations made by the Commission, in addition to the excellent recommendations already made by Judges Steele and Doherty I am making the following suggestions:

1. Define a grievance/complaint procedure and dispute resolution process for family members and citizens who have concerns about guardianship issues. Identify a contact person to which a family member/concerned citizen could report urgent concerns about the ward/guardian.
2. Establish a guardianship education/training program for family members and concerned citizens. This alone might eliminate some grievances and concerns.
3. Establish a statewide web-based guardianship accounting program with receipt logging and auditing capability.
4. Establish procedure for having family review/verify ward's initial inventory to insure accuracy.
5. Establish a formal assessment procedure to be conducted by Senior Protective Services, Children's Protective Services, or a court-appointed investigator for each involuntary guardianship.
6. Define a formal notification process and assure that all interested family members are notified and that ward or an advocate for the ward is present for all court hearings. Ward should be present for at least the initial hearing (in person or by Skype).
7. Define a formal incognizance assessment for proposed ward by a certified neurologist/psychiatrist and the ward's primary care physician.
8. Publish a standard fee schedule for professional Guardian, Guardian Ad Litem and Attorney.
9. Establish procedure for court to appoint Guardian, Guardian Ad Litem, and Attorney on a rotational basis.
10. Establish a limitation of caseload per private professional guardian.
11. Prohibit the appointment of guardians over a specific age (i.e. Mancarelli case).
12. Prohibit guardians/attorneys from using the ward's estate to pay for their own personal legal fees. This is a business expense, not the ward's responsibility.
13. Establish an independent compliance office with the ability/responsibility to report to Family Court/law enforcement and file charges if NRS is not being adhered to by guardians/attorneys.
14. Formalize Family Court's role/responsibility in reporting and supporting criminal prosecution of identified exploitation by private professional guardians. Sanctions and misdemeanor charges are inadequate when the ward's estate has been fraudulently taken or misused.

Rana Goodman

1. Treatment of the treatment of the "ward", what, why, how, and how is the treatment of the wards in the facilities they are currently in.
2. All veterans should first be being taken to the VA for treatment when they are entitled to it. This is a benefit they earned and is not deducted from their estate. Some are not taken by their guardian because the location is not convenient, that is unacceptable.
3. Some are being denied visitors where the law says that cannot be denied.
4. Some group homes are not providing sanitary conditions, sufficient food, etc. Calls to the ombudsman help a little, but they are short staffed. Basically these wards overall are warehoused and no one seems to care.

5. The guardian has the fiduciary responsibility to care for the ward and the ward's estate. If he/she is not going to do that, they have failed in their fiduciary duty and should not be paid for failure. If the guardian has left bills unpaid for the ward for family to pay, while charging the estate excessive fees for administrative duties, those bills should be charged back and deducted from the accounting.
6. Each side, ward and guardian pays their own legal fees.
7. Accounting's *that were un-challenged*, yet no one seems to understand that they were not challenged due to the cost to the ward of doing so.
8. Very little discussion has focused on care of the senior BEFORE they become wards in the first place. Last month, one of the judges from up north made a great point about guardians who search the home, purse or other personal items to garner information about a POTENTIAL ward. She stated that "this act is violating their civil rights." I would also suggest that doctors signing the "check the box" diagnosis prior to temporary guardianship also violate HIPPA laws. Therefore no guardianship, temporary or other should be effective for 48 hours and notification of family should be proven & mandatory.
9. No attorney should be allowed to withdraw from a case when representing a ward unless another attorney is available to replace him/her. It leaves a ward, already in a vulnerable position, totally in a helpless state.

Kathleen Buchanan:

1. GAL Program: Virginia Court System has a viable model program.
 - a. Create a Guardian or Attorney Ad Litem for Incapacitated Persons (Adults)
 - b. Create a Guardian or Attorney Ad Litem for Children
2. Guardians should not serve as guardian and as trustee. This is a clear conflict of interest.
3. Fees: Private Guardian fees should be standardized throughout the State of Nevada. Public Guardian fees determined by their operational budget.
4. Billing: Appropriate billing practices:
 - a. Best Interest, best practice, by utilizing cost effective services when appropriate. This would include billing at a tiered rate depending on the complexity of the task.
For example: Purchasing personal items would not be appropriate by the guardian when contract services can be utilized at a reduced rate.
 - b. Duplication of service is not appropriate:
For example: Multiple visits during a month would not be appropriate unless significant issues warrant the activity.
5. Reduction of Caseloads: No guardian should have more cases than they are capable of managing. Therefore, if resources prohibit appropriate staffing levels, a wait list should be implemented, whether it is a governmental agency or a private practitioner. A person centered approach for those under guardianship is critical in delivering services to meet mandated laws their best interest.
6. Attorneys should not be allowed to represent a client in a lawsuit, or any action, and then turn around and be named as a beneficiary of the client's estate. This gives the appearance of undue influence. This becomes even more concerning when their client is referred over for guardianship when the case settles.

7. Contacting Family Members prior to establishing Guardianship: Petitioners should detail the steps they have taken to locate family members in their petition.
8. An attorney who represents a guardianship should not also serve as counsel for the trustee of the trust. This is a conflict of interest.
9. Compliance Officers/Investigators assigned to each court to ensure timelines defined by NRS are complied with in accordance with law.
10. Public Guardians should never be challenged by Private Guardians to assume a case because the funds have been depleted. In the event, a Private Guardian closes their practice, the decision for the Public Guardian to inherit their cases should be mutually agreed upon. The Public Guardian must be able to effectively and efficiently manage an influx of cases to serve the individuals best interest.
11. Private Professional Guardians should be degreed and hold the appropriate certifications. I can think of no other profession that we would allow a person in a power position over medical, financial and social that does not require these qualifications.

Non-Commission Members

Lora Myles:

1. Ward's Bill of Rights - One of the ideas that came out of the two conferences was to incorporate the NGA Standards of Practice in a new Ward's Bill of Rights.
 - a. Something along the line of: "A Ward has the right to have a guardian who complies with the following standards...." Something we will have to work on and probably easier than codifying the Standards. It was mentioned that too many objections could be raised to codifying the standards, but no one really wants to object to a Bill of Rights! The Bill of Rights could come from the Supreme Court, as in Texas, or from the Legislature.
2. New definition of incapacity or incompetency based upon several ideas from the conferences and recent re-review of Scottish guardianship laws. **I will have some verbiage ideas by next week for you to disseminate.**

Actually, **Nevada's guardianship laws are some of the best nationwide.** We are one of only a very few states which have Public Guardians. We are one of ten states which required fingerprinting and background checks of all employees in assisted living facilities, nursing homes, and hospitals.

In the area of **supportive decision-making as an alternative to guardianship**, Canada and most states are realizing without court involvement or government monitoring, there is no check on what the 'supportive person' can do. This is leading to a rise in criminal financial abuse of developmentally and mentally ill adults between 18 and 60. I have attached a recent study done in Canada on supported decision-making.

Many states are looking at **expanding the use of limited guardianships rather than the less-formal alternatives or creating a monitoring system to oversee supported decision-making agencies and NGOs.** Oversight of these agencies and NGOs is an area where Nevada is lacking. Eg. SLAs (group homes) for developmentally disabled adults or mentally ill adults are exempted from the licensing provisions and staff background checks in NRS 449.

Rick Black: Below is a summary of other desired reforms as voiced by many of the families involved.

1. Insure process pursues the “least restrictive alternative” to guardianship and protects the vulnerable person’s civil rights, estate, and estate directives.
2. Mandatory mediation in contested guardianship cases and before assignment of a guardian ad litem or temporary guardian. Educate the parties on process and costs of private guardianship outside the court and objectively seek a resolution directly between the parties petitioning. Remove the attorneys from this process.
3. Formal needs assessment and notification process (including having the ward presented to the court) before an involuntary temporary guardianship is established.
 - a. Mandatory and well defined capacity assessments by a certified neurologist/psychiatrist, the Ward’s primary care physician, and family.
 - b. Integrate an independent investigator, preferably Elder Protective Services as part of the needs assessment, investigation, and guardian nomination.
 - c. Signed USPS receipts for notices of hearings presented to the court guaranteeing family was identified and formally notified.
4. Independent family court compliance officers with the obligation to file complaints to law enforcement of NRS violations by guardians and their attorneys.
5. Statewide web-based guardianship accounting software with expense reporting, receipt logging and auditing capability. Continue with integration of Dept. of Business and Industry as defined in the new licensing law.
6. Eliminate guardian’s ability to access estate funds to pay for litigation defending their position. Legal fees should be an overhead expense not a specific Ward paid expense.
7. Formalize Family Court's role or obligation to support criminal prosecution of suspected exploitation.

STANDING COMMITTEE ON JUDICIAL ETHICS OPINION

FILED

JUL 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: July 23, 2015

ADVISORY OPINION: JE15-002

PROPRIETY OF A JUDGE
CONSIDERING NON-PARTY
COMMUNICATIONS DURING
ADMINISTRATION AND OVERSIGHT
OF ADULT GUARDIANSHIPS
PROCEEDINGS

recently formed Commission to Study the
Creation and Administration of
Guardianships.

FACTS

ISSUE

During administration of
guardianship proceedings and oversight of
the guardian, may a judge (1) consider non-
party communications concerning a
guardian's conduct or the ward's welfare;
and (2) initiate, permit, and consider an
investigation based upon a citizen's
complaint or upon information received in an
investigation conducted by court officers.

A judge has presented two questions
arising from the administration of adult
guardianship proceedings and judicial
oversight of guardians. The request informs
the Committee about both the extreme
vulnerability of elderly wards to abuse and
neglect by guardians with the power to
control all aspects of a ward's existence and
also Nevada's lack of a statutory scheme for
reporting such conduct to the presiding judge
responsible for monitoring the ward's
welfare and the guardian's conduct.

ANSWER

No. A judge administering a
guardianship proceeding must adhere to the
NCJC's general proscription against ex parte
communications. Although cognizant that
there is an urgent and growing need for
consistent and effective monitoring of
guardians in order to protect vulnerable
wards from abuse and exploitation, the
Committee also recognizes that the questions
addressed in this advisory opinion arise
chiefly from omissions in Nevada law. The
Committee therefore believes that the issues
require a statewide solution and that the
better forum for examining and
implementing changes in guardianship
proceedings is the Nevada Supreme Court's

Due to the nature of guardianship
proceedings, it is uncertain that information
most relevant to protecting vulnerable wards
will be brought before the court by parties to
the proceeding. Because wards are rarely
represented independently by counsel, it is
often family members, friends, neighbors,
and community volunteers who come
forward with information relevant to a
guardian's abuse and neglect of a ward and
depletion of a ward's estate. In the absence of
specific statutory authority, the judge
requests this Committee to advise whether
the Nevada Code of Judicial Conduct
("NCJC") would permit the judge to consider
communications from a non-party which
raise concerns about a guardian's compliance
with statutory duties and responsibilities, or



the welfare of the ward or the ward's estate. The judge also asks whether the NCJC permits a judge to initiate, permit, and consider an investigation, or the result thereof, based upon a citizen complaint or information received in an investigation conducted by court officers.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope of the NCJC. *Rule 5 Governing the Standing Committee On Judicial Ethics*. Accordingly, this opinion is limited by the authority granted in Rule 5.

Canon 2 states “[a] judge shall perform the duties of judicial office impartially, competently, and diligently.” *See Nev. Code Jud. Conduct, Canon 2*. Rule 2.9 proscribes ex parte communications with a judge concerning a pending matter and delineates limited exceptions to the prohibition. Rule 2.9(A) states, in pertinent part:

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a

procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(5) A judge may initiate, permit, or consider any ex parte communication when authorized by law to do so.

See Nev. Code Jud. Conduct, Rule 2.9(A).

Comment [3] to the Rule clarifies that “[t]he proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.” *See Nev. Code Jud. Conduct, Comment [3], Rule 2.9*.

In *Matter of Fine*, the Nevada Supreme Court held that a judge violates Canon 3B(7) by engaging in ex parte discussions with non-parties on substantive matters even if the judge later informs the parties of the ex parte

communications. See *Matter of Fine*, 116 Nev. 1001, 1016 (2000) (Canon 3B(7) is now codified in part as Rule 2.9). The court further admonished Judge Fine for acting “as an advocate for a particular position” in discussing substantive matters with a court-appointed expert outside the presence of the parties. 116 Nev. at 1023.

The requesting judge has raised an important and urgent issue respecting the protection of adult wards who are often unable to defend themselves against their guardians’ exploitation or mistreatment. Friends, family, neighbors, and others concerned for a ward’s welfare are to be commended and encouraged for coming forward with information relevant to a guardian’s possible abuse and neglect, and presiding judges should be able to act upon such information forcefully and expeditiously. Nevertheless, where Nevada’s statutory scheme provides no specific procedure for bringing such information before the presiding judge, or for the judge to consider communications from non-parties relevant to a guardian’s compliance with statutory duties and responsibilities, the Committee believes that the NCJC does not except these ex parte communications from the proscription of Rule 2.9 and, therefore, can offer only general guidance on the subject.

As ex parte communications are particularly pernicious, a judge must act with great care when a non-party communicates or attempts to communicate with the judge on substantive matters in a pending proceeding. Receiving or acting on such communications may not only impact a judge’s impartiality in deciding the matter, but may also place the

judge in the untenable position of advocating for one of the parties or allowing one party to gain an advantage over another party. Even if the judge notifies all parties of the substance of the communication and allows them an opportunity to respond, *Matter of Fine* makes clear that a judge who initiates or willingly participates in ex parte discussions of substantive matters has violated the NCJC.

The recently revised NCJC recognizes that there are some instances when a judge may properly assume a more interactive role in a proceeding. Comment [4] to Rule 2.9 states “[a] judge may initiate, permit, or consider ex parte communications authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.” See *Nev. Code Jud. Conduct, Comment [4], Rule 2.9*.

It appears to the Committee that a judge administering guardianship proceedings may very well be serving in the same role as a judge in a recognized therapeutic or problem-solving court – such as drug or mental health court – and that both the ward and guardian may be better served if the judge more directly interacted with family members, service providers, and others interested in the ward’s welfare. Rule 2.9(A)(5) and Comment [4], however, make it very clear that before a judge may initiate, permit or consider any ex parte communication that such communications must first be authorized by law. Here, as the requesting judge has pointed out, Nevada’s statutory scheme is silent and offers no

avenue for communications relevant to abuse and neglect which may be considered *ex parte* under the NCJC.

Given this omission in Nevada's statutory scheme, the Committee must advise that the NCJC prohibits non-party communications with a judge in guardianship proceedings. Despite the good intentions of those providing information pertinent to a judge's oversight of the guardian, and the often urgent need to protect wards from mistreatment, the NCJC does not allow a judge to solicit or consider such information *ex parte* under the present state of Nevada law.

The second question regarding whether a judge may initiate, permit, and consider an investigation, or result thereof, raises many of the same issues discussed above. Even though Nevada law authorizes a judge to appoint investigators, the central issue here is whether the judge may make such an appointment based on *ex parte* information obtained either through a citizen complaint or information received in an investigation conducted by court officers.

The Committee believes that Rule 2.9's proscription on *ex parte* communications would bar a judge from acting on information obtained in this manner. A judge cannot receive or discuss substantive information about a guardianship proceeding unless expressly authorized by law. As with the first question, Nevada law is silent on the issue and a judge may not receive or act on such information without running afoul of the NCJC.

In addition, the NCJC obligates a judge to ensure the right to be heard. Rule 2.6(A) states "[a] judge shall accord to every

person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." As emphasized in Comment [1] to this rule "[t]he right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed." *See Nev. Code Jud. Conduct, Comment [1], Rule 2.6.*

Again, as the requesting judge notes, Nevada law is silent on the procedures a judge is to follow in order to determine whether an investigation of a ward's situation or a guardian's actions is warranted. Given most guardians' plenary power over a ward and the ward's estate, it seems to the Committee that such investigations may indeed be a critical component in protecting a ward from exploitation and mistreatment, and that a judge ought to have as many tools as possible to ensure that guardians are held accountable for their actions. It is equally critical, however, that a judge protect the parties' right to be heard and adhere to procedures designed to ensure a fair and impartial process.

The Committee notes that this request for an advisory opinion raises issues of statewide concern that are better addressed in another forum. Although this advisory opinion provides general guidance on the subjects raised, the Committee believes that the formulation of a particular procedure to deal with guardianship abuse and overreaching needs to be vetted by those most familiar with the issues and adopted only after consideration of all competing interests. The Committee therefore respectfully refers these issues to the Nevada

Supreme Court Commission to Study the Creation and Administration of Guardianships for consideration as it deems appropriate. *See In the Matter of the Creation of a Commission to Study the Creation and Administration of Guardianships, ADKT No. 0507, Order dated June 8, 2015.*

CONCLUSION

The Committee concludes that Rule 2.9's prohibition against ex parte communications precludes a judge from considering non-party communications relating to a guardian's compliance with statutory duties and responsibilities or the welfare of the ward or the ward's estate. Although guardianship proceedings are akin to recognized therapeutic or problem-solving courts, Nevada law does not at present authorize a judge to initiate, permit, or consider any ex parte communication in a guardianship proceeding.

Further, Rule 2.6 obligates a judge to ensure the parties' right to be heard. Nevada law is again silent on the procedure a judge is to follow when determining whether to investigate a guardian's actions or ward's situation. The Committee therefore concludes that the NCJC does not allow a judge to consider information transmitted ex parte in determining whether to appoint

investigators in a guardianship action. The requesting judge has raised critical issues that are better resolved by the Nevada Supreme Court's Commission to Study the Creation and Administration of Guardianships. Accordingly, this Committee refers this request for an advisory opinion to the Commission for its consideration.

REFERENCES

Nev. Code Jud. Conduct, Canon 2; Rule 2.6 and 2.9; Commentary [1] to Rule 2.6 and Commentary [3] and [4] to Rule 2.9; Rule 5 Governing the Standing Committee On Judicial Ethics

This opinion is issued by the Standing Committee on Judicial Ethics. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.



Janette Bloom
Vice-Chairperson

West's Idaho Code Annotated
Idaho Court Rules
Idaho Court Administrative Rules
Rules Governing the Administration and Supervision of the Unified and Integrated Idaho Judicial System
Part V. Other Court Standards and Procedures

Administrative Rule 54.1

Rule 54.1. Ex Parte Communication

Currentness

A. In order to carry out the court's oversight role in monitoring compliance in conservatorship or guardianship proceedings, communications which might be considered ex parte communications under [Canon 3\(B\) of the Code of Judicial Conduct](#), may be received and reviewed by the court under the provisions of this rule.

B. If the communication raises a concern about a guardian or conservator's compliance with their statutory duties and responsibilities, the court may:

1. Review the court file and take any action that is supported by the record, including ordering a status report, inventory, or accounting;
2. Appoint a Guardian ad Litem;
3. Refer the communication to a court investigator, visitor, attorney, or Guardian ad Litem for further action;
4. Refer the matter to the appropriate law enforcement agency or prosecutor's office;
5. Refer the matter to the appropriate licensing agency;
6. Refer the matter to appropriate agencies, including but not limited to child or adult protective services;
7. Set a hearing regarding the communication, compel the guardian or conservator's attendance, and/or require a response from the guardian or conservator concerning the issues raised by the communication;
8. Decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person.

C. If the communication does not raise issues of compliance and would otherwise be prohibited ex-parte communication under [Canon 3\(b\) of the Code of Judicial Conduct](#), the court shall:

1. Return the written communication to the sender, if known; and
2. Disclose the communication to the guardian or conservator, Guardian ad Litem, and all parties and their attorneys.

D. The court shall disclose any ex parte communication reviewed under section 2 of this rule, and any action taken by the court, to the guardian or conservator, Guardian ad Litem, and all parties and their attorneys, unless the court finds good cause to dispense with disclosure. If the court dispenses with disclosure, it must make written findings in support of its determination of good cause and preserve the communication received and any response made by the court. The court may place its findings and the preserved communication under seal or otherwise secure their confidentiality.

Credits

[Adopted May 15, 2013, effective July 1, 2013.]

Administrative Rule 54.1, ID R ADMIN Rule 54.1
Current with amendments received through 6/15/15

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