



## Disability and Guardianship Project

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

Dear Commission Members,

We commend the Supreme Court of Nevada for creating a commission to study the administration of guardianships. A commission on this topic will assist the court in fulfilling its administrative oversight responsibilities and can help ensure that guardianship respondents have access to justice as required by due process and by federal statutes protecting the rights of people with disabilities.

We invite the commission to keep in mind that policies and practices governing guardianship proceedings must provide involuntary litigants with cognitive and communication disabilities *meaningful* access to justice in these proceedings. Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, the judicial branch has a duty, *sua sponte*, to modify policies and procedures to ensure access to justice for such litigants. The courts also have an affirmative duty to provide accommodations for this purpose.

One such accommodation is the appointment of an attorney to assist the litigant to defend his or her rights from unnecessary encroachment and to insist that statutory procedures are followed and evidentiary standards are met. It is obvious that litigants with such disabilities cannot defend their own rights from being infringed. They need the help of a properly trained lawyer – an advocate whose loyalty is to the client, not just a guardian ad litem who is promoting “best interests.”

If there were a cadre of well-trained attorneys, who knew that someone was monitoring their advocacy activities, most other problems with the guardianship system would be corrected through the normal litigation process. Motions, objections, and appeals would bring appellate court oversight and judicial correction of systemic flaws would prompt improvement in the system. But such objections and appeals rarely occur. Further, to our knowledge Nevada, like most states, does not have training and performance standards for such attorneys. There is no system of accountability. Judges hope that court-appointed attorneys are doing a good job. But hope is not a method that satisfies due process or ADA requirements. There must be specific pro-active measures taken to ensure access to justice.

We direct your attention to a White Paper on this subject and invite you to review it. Perhaps the Legal Representation Subcommittee of the Commission would welcome input from our organization prior to developing your final report to the Supreme Court. I would be pleased to assist you, or the subcommittee, if you are open to that.

Respectfully submitted:

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