



FILED

SEP 29 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Final Report
Nevada Supreme Court's Commission to
Study the Administration of
Guardianships in Nevada's Courts
[Administrative Docket Number 507]
September 2016

16-30330

Table of Contents

- SUMMARY OF RECOMMENDATIONS 2**
 - Court Rule Recommendations 2**
 - Legislative Recommendations 3**
 - Policy Statement of Support 5**
 - Interim Actions by the Commission 6**
- I. INTRODUCTION 8**
- II. GUARDIANSHIP COMMISSION MEMBERS 10**
- III. GUARDIANSHIP COMMISSION MEETINGS 11**
 - A. FIRST MEETING 11**
 - B. SECOND MEETING 18**
 - C. THIRD MEETING 20**
 - D. FOURTH MEETING 33**
 - E. FIFTH MEETING 47**
 - F. SIXTH MEETING 57**
 - G. SEVENTH MEETING 62**
 - H. EIGHTH MEETING 66**
 - I. NINTH MEETING 78**
 - J. TENTH MEETING 81**
 - K. ELEVENTH MEETING 91**
 - L. TWELFTH MEETING 104**
 - M. THIRTEENTH MEETING 106**
 - N. FOURTEENTH MEETING 107**
 - O. FIFTEENTH MEETING 108**
- IV. DISCUSSION AND RECOMMENDATIONS 110**
 - A. COURT RULES 110**
 - B. LEGISLATIVE RECOMMENDATIONS 130**
 - C. POLICY STATEMENT OF SUPPORT 211**

NEVADA SUPREME COURT
COMMISSION TO STUDY THE ADMINISTRATION OF
GUARDIANSHIPS IN NEVADA’S COURTS
FINAL REPORT¹

The “Final Report” of the Nevada Supreme Court’s Commission to Study the Administration of Guardianships in Nevada’s Courts (Guardianship Commission or Commission) was prepared by staff of the Administrative Office of the Courts.²

A petition was filed under Administrative Docket Number 507 (ADKT 507)³ by the Honorable James W. Hardesty, Chief Justice of the Nevada Supreme Court, the Honorable David Barker, Chief Judge of the Eighth Judicial District Court, and the Honorable David A. Hardy, Chief Judge of the Second Judicial District Court to consider the formation of a Commission to Study the Creation and Administration of Guardianships in Nevada’s Courts. The Nevada Supreme Court issued an order on June 8, 2015, concluding that such a commission should be appointed and the commission should file a report with the Supreme Court of its findings and recommendations by December 31, 2015.⁴

This report is intended to provide the Nevada Supreme Court an overview of the work of the Guardianship Commission and its recommendations to improve the Administration of Guardianships in Nevada’s Courts. The report provides a summary of its recommendations, a summary report of each meeting held since July 15, 2015, and details of each action taken by the Commission.

The final recommendations of the Guardianship Commission have been organized by category. Each recommendation falls within a request to: (1) draft court rules, (2) draft legislation to amend or add to Nevada Revised Statutes (NRS), (3) policy statements of support, and (4) interim actions.

¹ By a unanimous vote of the Commissioners present at the September 26, 2016, meeting, the Commission approved the final report to be a fair and accurate representation of its deliberations and recommendations.

² The Nevada Supreme Court and the Guardianship Commission would like to commend and thank Stephanie Heying for her extraordinary contribution as staff consultant to the Commission.

³ A link to the Nevada Supreme Court’s administrative dockets filed under ADKT 507 can be found on the Reference and Resource Page.

⁴ The deadline for the final report was extended to June 30, 2016, and again to September 30, 2016, to allow the Commission time to vet all the issues.

NEVADA SUPREME COURT
COMMISSION TO STUDY THE ADMINISTRATION OF
GUARDIANSHIPS IN NEVADA'S COURTS
SUMMARY OF RECOMMENDATIONS

The Guardianship Commission held fifteen meetings between July 15, 2015, and September 30, 2016. During the meetings, the Guardianship Commission received presentations from both local and national experts on the subject of guardianships. The Commission also heard extensive testimony from members of the public.⁵ Based on the information received during the first five meetings, Chair Justice James W. Hardesty posed a list of 30 General Policy Questions (Policy Questions) for the Commission to vet and vote on in subsequent meetings. Additional Policy Questions⁶ were added to the list as the Commission discussed each issue.

Court Rule Recommendations

1. The Commission recommends establishing a permanent Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules, and processes in Nevada.
2. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney for a Proposed Protected Person or Protected Person. **(Exhibit A)**
3. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney guardian ad litem for a proposed protected person or protected person. **(Exhibit A)**
4. The Commission urges the Supreme Court to develop procedures or court rules to require mediations in all contested guardianship proceedings.
5. The Commission urges the Supreme Court to adopt court rules to evaluate Court supervision of guardianships including training, staffing, scheduling, and caseload limits.
6. The Commission urges the Supreme Court to adopt court rules appropriate to designate training and caseloads for professional guardians, both private and public.
7. The Commission urges the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts.
8. The Commission urges the Supreme Court to adopt a court rule to require a Court to make specific findings if the Court does not order a bond or blocked account.
9. The Commission urges the Supreme Court to adopt a court rule regarding NRS 159.057.⁷ The rule would require the Court to create and maintain a separate case for each individual protected person regardless of whether one petition was filed for two or more Protected Persons. **(Exhibit B)**
10. The Commission urges the State Court Administrator to adopt a uniform Guardianship Information Sheet to be used by all Nevada District Courts pursuant to NRS 3.275. **(Exhibit C)**

⁵ The Commission heard over 9 hours of public comment.

⁶ A list of the General Policy Questions the Commission vetted can be found in **Appendix A**.

⁷ NRS 159.057 allows a single petition to be filed for two or more wards under certain circumstances.

11. The Commission urges the use of court performance measures in all District Courts. Measures would include age of pending case, time to disposition, and clearance rates for guardianship cases.
12. The Commission urges the Supreme Court to adopt court rules for the qualifications of Non-Attorney Guardian ad Litem or Advocate. **(Exhibit D)**
13. The Commission urges the Supreme Court to adopt court rules outlining the initial plan for guardianship. **(Exhibit E)**
 - a. The Commission approved offering recommendations concerning the fee structure to compensate guardians and others they hire.
 - b. The Commission approved making recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire.
 - c. The Commission approved making recommendations concerning the process, timing, notice, and findings the Court must make concerning accountings of the Protected Person's estate.
14. The Commission urges the Supreme Court to adopt a modification to the Judicial Code, as necessary, to accommodate the judge's ability to address ex parte communications that deal with the welfare of the Protected Person. **(Exhibit F)**⁸

Legislative Recommendations

1. The Commission recommends NRS 159.0485 make clear that legal counsel be appointed for every Proposed Protected Person, regardless of means.⁹
2. The Commission urges the Legislature to approve an increase in recording fees of \$1.50, pursuant to NRS 247.305, for funds to be distributed in each county to legal aid organizations to provide legal counsel for all Proposed Protected Persons and Protected Minors in guardianship proceedings. In the absence of a legal aid organization in a given judicial district, the Court may appoint counsel to provide legal services with those funds. The funds for the legal aid organization, in a given judicial district, will be set aside by the Access to Justice Commission of the Nevada Supreme Court.
3. The Commission recommends replacing the term "Ward"¹⁰ as defined in NRS 159.027 with the term "Proposed Protected Person" or "Proposed Protected Minor" preadjudication and "Protected Person" or "Protected Minor" post-adjudication. This will require amendments to multiple statutes where the term "Ward" is used. In addition, the Commission recommends changing the statutory title to "In the Matter of the Guardianship of _____, Protected Person."
4. The Commission recommends revising NRS Chapter 159 to incorporate the concept of "Incapacitated Person." **(Exhibit G)**

⁸ **Exhibit F** includes a copy of the State of Nevada, Standing Committee on Judicial Ethics Advisory Opinion: JE15-002, and the position statement from the Florida Clerk of the Court, Sharon R. Bock, on Clerk's Guardianship Duties and Ex Parte Communication.

⁹ See also Legislative Recommendation number 2 and Policy Statement number 1 and 2.

¹⁰ The terms Proposed Protected Person/Minor, and Protected Person/Minor have replaced the term Ward throughout this document. Exceptions: Language in the original ADKT 507 orders, where statutory language is referenced, and in presentations by other states that still use the term Ward when referring to a Proposed Protected Person/Minor or Protected Person/Minor.