LEGAL AID CENTER OF SOUTHERN NEVADA
GUARDIANSHIP ADVOCACY PROGRAM

REPRESENTING THE ELDERLY AND ADULTS WITH DISABILITIES WHO ARE FACING OR UNDER GUARDIANSHIP

INTRODUCTION

- This Manual is drafted to provide general information to pro bono attorneys on handling a guardianship case. It is not intended to provide legal advice on a specific matter involving a specific case.
- The legal information is believed to be current as of the last revision date.
- Nothing in this manual should substitute for reference to Nevada statutory or case law. When in doubt, please contact one of Legal Aid Center's guardianship attorneys for information concerning current law or current court practice.

WHAT AM I GETTING MYSELF INTO?

Representing a senior or adult with a disability who is facing or under guardianship can be a frustrating and time-consuming, yet very rewarding, experience. Depending on your client's condition, the client's ability to recount history or relate preferences may be limited. Sometimes the facts surrounding the client's history and current situation will be appalling or heartbreaking Your client might have been taken from home and placed into an institution or unfamiliar care setting, without fully understanding what is happening or why. Your client might be confused and disoriented, angry and resentful, depressed and uncommunicative – all of which could be appropriate responses given the client's situation.

Accepting this senior or adult with disability as a client means you must advocate for what the client wants – not what any other person or professional, including you, thinks ought to happen or is in the client's best interests. (Leave that for the other parties, the guardian ad litem, and, ultimately, the judge.) Your job is to promote what your client wants to the guardian and to the court and to work to make that happen, which might require you to confront uncaring guardians or family members and a sometimes inefficient and impersonal legal system. There is also no telling what your client might want. Your client's wishes might not make sense to you and might not be what you believe to be the logical choice. They might not even be feasible, in which case your job is to explore viable alternatives with your client and work to achieve a result that is closest to your client's wishes, one that employs least-restrictive means and protects and preserves your client's rights, dignity, and decision-making power to the greatest extent possible.

This manual describes the legal process that is initiated by a guardianship petition. However, the issues affecting the senior or adult with disability you have been asked to represent are unlikely to be limited to those typical to standard court proceedings. There might well be other issues – appropriate medical care or therapeutic services, changes in housing or placement, arguments over visitation and access, disputes over personal or real property, and the like – that will require your intervention on your client's behalf. An in-depth discussion of every potential issue is beyond the scope of this manual. Therefore, Legal Aid Center's guardianship attorneys are available to brainstorm and assist you with the many issues that can arise beyond the usual task of ensuring that the guardianship is necessary and the guardian's actions appropriate. Please feel free to contact them for assistance.

Right now, the legal requirement that seniors and adults with disabilities facing guardianship be provided with an attorney is fairly new. For the hundreds of people already under guardianship, that means the court never heard their voices and now never hears their wants or needs – even though they are permanently affected by every decision the court makes. It also means that the demand for attorneys to fight for proposed protected persons in newly filed guardianship cases will quickly outstrip all available resources. (In fact, it already has.) Your willingness to advocate for a vulnerable senior or adult with disability means there is one fewer who will be potentially victimized – either by the legal process or by an unscrupulous guardian – and one fewer whose voice will go unheard.

We are happy you have chosen to attend this legal education class and hope you will gain valuable information.

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CHAPTER 1: BASIC ANATOMY OF A GUARDIANSHIP CASE

A. OVERVIEW

Guardianship means obtaining the legal authority to make decisions for another person. Under normal circumstances, adults have the legal right to make decisions for themselves. Sometimes, however, that is not possible due to any number of reasons, and someone else needs to step in to make decisions for the adult until the adult is able to do so once more. When that need arises, a guardianship case can be initiated. Any such case should be approached with great care and only under the appropriate circumstances given the significant impact it can impose on the civil rights and liberties of the adult (who, under Nevada law, is referred to as the "proposed protected person" before a guardianship is granted and as the "protected person" once a guardianship is in place).[1]

Adult guardianships are governed by Chapter 159 of the Nevada Revised Statutes. Chapter 159 not only sets forth the substantive law relating to guardianships, it also details many of the court procedures to be followed in a guardianship case. Additionally, the Nevada Supreme Court has made clear that the Nevada Rules of Civil Procedure and the Nevada Rules of Evidence apply in guardianship cases.[2] Presumably, local rules of practice similarly apply; however, the application of those rules sometimes make little sense in the context of a guardianship case, and the determination of which procedural rules to follow and how those rules interplay can be confusing at times.

Since the needs, resources, and circumstances of the protected person under guardianship are not static, once a guardianship is granted, the court maintains oversight of the guardianship's administration for its duration.

Each courtroom is staffed with a court clerk and a marshal. As a pro bono attorney, you should check in with the court clerk or marshal, as appropriate, and let the marshal know that you are representing the protected person pro bono. This might get you priority on the hearing calendar as the judges recognize that you are a volunteer donating your time.

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[1] NRS 159.025 (defining "proposed protected person"); NRS 159.0253 (defining "protected person").

[2] *See* ADKT 0507 (Nev. S. Ct. July 22, 2016). In ADKT 0507, the Nevada Supreme Court reasoned that the Nevada Rules of Civil Procedure apply in guardianship cases pursuant to NRCP 1 and NRCP 81(a) unless there is a specific statute in NRS Chapter 159 regarding a procedure or practice that conflicts with the NRCP. The Court further concluded that the Nevada rules regarding evidence and witnesses contained in Title 4 of the NRS similarly apply in guardianship matters unless there is a specific statute or procedural rule in NRS Chapter 159 that applies. The Court made clear that its order "does not preclude a challenge to the procedure or evidence in a guardianship matter based, for example, on a conflicting statute or general concerns about admissibility such as relevant or probative value."

B. VENUE AND JURISDICTION

A Nevada court has jurisdiction over a proposed protected person if Nevada is the person's "home state"[3]– meaning the proposed protected person has been present in Nevada for at least six consecutive months[4] – or the person has no home state.[5] If the proposed protected person's home state is not Nevada (and the home state has declined jurisdiction), a Nevada court has jurisdiction if the proposed protected person owns property in Nevada or has a significant connection with Nevada.[6] A Nevada court might also have special jurisdiction to appoint a temporary guardian to facilitate transfer of the guardianship from another state or in an emergency if the protected person is physically present in the state.[7]

Venue for a guardianship case is appropriate where the proposed protected person resides.[8] If venue is appropriate in more than one county, it can be transferred if another of those other counties is more convenient.[9] The case can also be transferred to a different county in the interest of the protected person or for the convenience of the guardian.[10]

If guardianship cases are filed in two different counties relating to the same proposed protected person, the courts will stay all cases except the first filed until proper venue is determined and the cases are transferred to that court.[11]

Nevada has adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.[12] If there are competing petitions for guardianship in two different states, the provisions of the uniform act determine which state has jurisdiction over the proceedings.

C. TYPES OF GUARDIANSHIP

Chapter 159 provides a number of different types of guardianship. Which type, if any, might be appropriate depends on the needs and limitations of the proposed protected person.

1. GENERAL GUARDIANSHIPS

In a "general guardianship," a guardian is appointed to have general care and control over a protected person's person, the protected person's estate, or both.

If a general guardianship is granted over the "person," the guardian is responsible for the care, maintenance, education, and support of the protected person.[13] The guardian can make

[3] NRS 159.1998(1)(a).
[4] NRS 159.018 (defining "home state").
[5] NRS 159.1998(1)(d).
[6] NRS 159.1998(1)(b)-(c).
[7] NRS 159.1998(2).
[8] NRS 159.037(1).
[9] NRS 159.037(2)-(3).
[10] NRS 159.041.
[11] NRS 159.039.
[12] NRS 159.1991 to .2029.
[13] NRS 159.079(1).

personal and medical decisions for the protected person, decisions about where the protected person will live, and so on.

If a general guardianship is granted over the "estate," the guardian can make financial decisions for the protected person (although the court must first approve certain types of decisions).[14] Amongst the guardian's other duties, the guardian must apply the protected person's estate to the protected person's care, maintenance, education, and support.[15] (If no guardian of the estate has been appointed, the guardian of the person can, subject to some restrictions, institute actions for support of the protected person and receive the protected person's property and money to apply to the protected person's support, care, and education.)[16]

If a general guardianship is granted over the "person and estate," the guardian is allowed to make both personal and financial decisions for the protected person.[17]

A general guardianship is appropriate only when the protected person is "incapacitated," meaning the protected person is "unable to receive and evaluate information or make or communicate decisions to such an extent that [he] lacks the ability to meet essential requirements for physical health, safety, or self-care without appropriate assistance."[18]

A general guardianship over the person lasts until the guardianship is terminated, the protected person's domicile changes and jurisdiction is transferred to a different state, or the protected person dies.[19] A guardianship over the estate ends if the guardianship is terminated, the court removes the guardian or accepts the guardian's resignation and does not appoint a successor, or the protected person dies.[20]

2. SPECIAL GUARDIANSHIPS

In a "special guardianship," a special guardian is appointed over a protected person who has limited capacity. In other words, the protected person is able to make some but not all of the decisions necessary to manage the protected person's own self-care and property.[21]

The special guardian's powers and duties are limited to those specified in the court order granting the guardianship.[22] The court can also grant the special guardian powers in an emergency to address the emergency situation or protect the protected person from imminent harm.[23]

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[14] For example, those in NRS 159.113 and NRS 159.117.
[15] NRS 159.083.
[16] NRS 159.112.
[17] NRS 159.077.
[18] NRS 159.019 (defining "incapacitated").
[19] NRS 159.191(1).
[20] NRS 159.191(3).
[21] NRS 159.022 (defining "limited capacity"); NRS 159.026 (defining "special guardian").
[22] NRS 159.054(2); 159.0795(2).
[23] NRS 159.0795(2).

Absent an emergency situation, the guardian must obtain the court's permission before commencing any act relating to the protected person's person or estate.[24] At all times, a special guardian must exercise granted authority in the manner least restrictive to the protected person's freedom consistent with the protected person's need for supervision and protection.[25]

Like a general guardianship, a special guardianship generally lasts until the guardianship is terminated, the protected person's domicile changes, the court removes the guardian without a successor, or the protected person dies.[26]

3. TEMPORARY GUARDIANSHIPS

A "temporary guardianship" is authorized when an emergency situation exists that involves a substantial and immediate risk of financial loss, risk of physical harm, or a need for medical attention that the protected person lacks the capacity to respond to or authorize.[27] A temporary guardianship can be granted over the protected person's person, estate, or both.[28]

To obtain a temporary guardianship, the petitioner must present facts to the court that explain the emergency that requires immediate action.[29] The petitioner must also produce a physician's certification, a letter from an investigative agency, or a police report evidencing the need for a temporary guardianship and the proposed protected person's inability to respond to the risk or obtain the needed medical attention.

A temporary guardianship expires in ten days and, within that time, the court must conduct a hearing to determine the necessity of extending the temporary guardianship for thirty days.[30] The court can extend a temporary guardianship for two sixty-day periods, but no longer than five months absent extraordinary circumstances.[31]

D. QUALIFICATIONS AND ELIGIBILITY OF GUARDIANS

1. OVERVIEW

NRS 159.0613 sets out various criteria and preferences that guide the court's determination of who should serve as guardian. Generally, the court is granted substantial discretion in its ultimate decision and can appoint anyone as a guardian who is qualified, suitable, and willing to serve.[32]

A guardian does not have to be related to the protected person, although when multiple people petition the court to be appointed as guardian, the court gives preference to suitable

[24] NRS 159.0801.
[25] NRS 159.0795(1).
[26] NRS 159.191(1), (3).
[27] NRS 159.0523(1)-(2); NRS 159.0525(1)-(2).
[28] NRS 159.0523; NRS 159.0525.
[29] NRS 159.0523(1); NRS 159.0525(1).
[30] NRS 159.0523(5); NRS 159.0525(5).
[31] NRS 159.0523(8); NRS 159.0525(8).
[32] NRS 159.0613(4).

relatives and persons nominated by the protected person.[33] If multiple relatives file competing petitions, the court will consider them in a certain order of preference, starting with the spouse or domestic partner, then a child, followed by a parent, and so on.[34]

In determining whether any nominated person, relative, or other person is qualified and suitable to be appointed as guardian, the court will consider, without limitation, (a) the ability of the person to provide for the proposed protected person; (b) whether the person has engaged in the habitual use of alcohol or drugs in the previous six months; (c) whether the person has been judicially determined to have committed abuse or neglect of a child, spouse, parent, or other adult; (d) whether the person is incompetent or disabled; and (e) whether the person has been convicted of a felony.[35] The court may also consider whether the proposed guardian has previously filed for bankruptcy.[36] The court will also consider, among other things, the protected person's request for appointment, any request of a relative, and any recommendation made by a special master.[37]

A person is not qualified to be appointed as guardian if the person has been suspended for misconduct or disbarred from the practice of law, accounting, or any other profession that requires a license and involves the management of money, investments, or real property.[38]

2. NON-RESIDENT GUARDIANS

Non-Nevada residents can apply to be a guardian.[39] However, there are extra requirements and considerations for non-resident guardians to ensure the safety of the protected person.[40] Additionally, non-resident guardians must designate a "registered agent" in Nevada to accept service of legal documents.[41]

3. THE PUBLIC GUARDIAN

If the court finds there is no other suitable person to appoint as guardian, the court can appoint the public guardian.[42] The public guardian is sometimes thought of as the "guardian of last resort." The office of the public guardian is created and governed by Nevada statute.[43]

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[33] NRS 159.0613(1), (4).
[34] NRS 159.0613(4)(c).
[35] NRS 159.0613(2).
[36] NRS 159.044(2)(s); *see also* NRS 159.185(c) (bankruptcy as grounds for removal of guardian).
[37] NRS 159.0613(4).
[38] NRS 159.0613(8).
[39] NRS 159.0613(5).
[40] NRS 159.0613(5).
[41] NRS 159.0613(6).
[42] NRS 159.0613(7)(a).
[43] NRS 253.150 to 253.250. In Clark County, Karen Kelly was appointed as public guardian by the Clark County Commission in 2017. Information about the public guardian's office can be found at http://www.clarkcountynv.gov/public-guardian.

4. PRIVATE PROFESSIONAL GUARDIANS

If the court finds there is no other suitable person to appoint, the court can appoint a private professional guardian.[44] A "private professional guardian" is "a person who receives compensation for services as a guardian to three or more protected persons who are not related to the guardian by blood or marriage."[45] Chapter 628B of the Nevada Revised Statutes governs the licensing and operation of private professional guardians.

5. PRIVATE FIDUCIARIES

If the court finds there is no other suitable person to appoint, the court can appoint a private fiduciary who obtains a bond and resides in Nevada.[46] The court will appoint a private fiduciary only if the interests of the protected person will be served by the appointment.[47]

E. THE INITIAL GUARDIANSHIP PROCEEDINGS

1. THE PETITION

A proposed protected person, a governmental agency, a nonprofit corporation, or any other interested person can petition the court for the appointment of a guardian.[48] The petition's caption must indicate whether it is seeking guardianship of the person, estate, or both.[49] The petition must also state whether the petitioner is seeking a general guardianship or a special guardianship.[50]

The required contents of the petition is spelled out in NRS 159.044(2), which directs the petitioner to provide, among other things, various information about the petitioner, various information about the proposed protected person, and the names and addresses of the proposed protected person's spouse and relatives within the second degree of consanguinity.[51] If the petition is for the appointment of a guardian of the estate or a special guardianship, it must provide a general description of the probable value of the proposed protected person's property and income.[52] The petition must also state whether the proposed protected person has executed a durable power of attorney for healthcare, a durable power of attorney for financial matters, or a written nomination of guardian and, if so, who is named in each.[53]

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[44] NRS 159.0613(7)(c).
[45] NRS 159.024.
[46] NRS 159.0613(7)(b).
[47] NRS 159.0613(7)(b).
[48] NRS 159.044(1).
[49] NRS 159.043(2).
[50] NRS 15.044(2)(j).
[51] NRS 159.044(2). The "second degree of consanguinity" includes the proposed protected person's parents, children, spouse, siblings, grandparents, grandchildren, and parents- and daughters/sons-in-law.
[52] NRS 159.044(2)(k).
[53] NRS 159.044(2)(r).

Importantly, the petitioner must summarize in the petition the reasons why a guardian is needed and must provide recent documentation demonstrating the need for a guardianship.[54] That documentation must include a certificate of a physician who is licensed in Nevada or employed by the VA, a letter signed by a governmental agency that conducts investigations, or a certificate signed by any other person whom the court finds to be qualified.[55] The certificate must state, at a minimum, (a) the need for a guardian, (b) whether the proposed protected person presents a risk of self-harm or a danger to others, (c) whether the proposed protected person's attendance at a hearing would be detrimental to the proposed protected person, (d) whether the proposed protected person would comprehend the reason for a hearing or contribute to the proceeding, and (e) whether the proposed protected person is capable of living independently with or without assistance.[56]

Additionally, before the court can rule on a petition for guardianship, the petitioner must provide the court with an assessment of the needs of the proposed protected person, completed by a licensed physician, that identifies the limitations of capacity of the proposed protected person and how such limitations affect the ability of the proposed protected person to maintain safety and basic needs.[57]

If the proposed protected person has limited capacity to consent to the appointment of a special guardian, the petition must provide a written consent from the proposed protected person to the appointment.[58]

Upon the filing of a petition for appointment of a guardian, the court must appoint an attorney for the proposed protected person.[59]

2. THE CARE PLAN AND BUDGET

The court can also require the petitioner to file a proposed preliminary care plan and budget, the format and timing of which can be set by court rule.[60]

3. THE NOTICE OF HEARING

Once the petition is filed, the petitioner must give notice of the date, time, place, and nature of the hearing to the proposed protected person's spouse and all other known relatives within the second degree of consanguinity, any interested person who has filed a request for notice, any person or provider who is providing the proposed protected person's care, the

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[54] NRS 159.044(2)(i).

[55] NRS 159.044(2)(i)(1).

[56] NRS 159.044(2)(i)(1).

[57] NRS 159.044(3). Notice that while the physician's certificate required by NRS 159.044(2)(j)(1) can be signed by a physician licensed in Nevada, a VA physician, an employee of a state agency that performs investigations, or any other "qualified person," the functional assessment required by NRS 159.044(3) must be conducted by a "physician."

[58] NRS 159.044(2)(i)(2).

[59] NRS 159.0485(1); *see also* NRS 159.328(1)(a) (Protected Person's Bill of Rights).

[60] NRS 159.0445.

Department of Veterans Affairs if the proposed protected person is receiving VA benefits, and the Department of Health and Human Services if the proposed protected person is receiving Medicaid.[61]

The petitioner must give the notice at least ten days before the hearing by mailing a copy, by personal service, or as otherwise ordered by the court.[62] If the petitioner demonstrates that none of the people entitled to notice can be served, the petitioner may be able to serve by publication or as directed by the court under NRS 159.0345.[63] On or before the date of the hearing, the petitioner must file proof that notice has been given.[64]

Upon a showing of good cause, the court can waive the notice requirement.[65] A person entitled to notice can also waive notice in writing.[66]

4. THE CITATION

The citation is a document issued by the court clerk when a petition for guardianship is filed that includes language commanding a person to appear or act in a specific way or notifying a person of a hearing.[67] When a petition for guardianship is filed, the court clerk issues the citation, stating the date, time, and place of the hearing on the petition, and directing the persons entitled to service to appear and show cause why a guardian should not be appointed over the proposed protected person.[68]

A guardianship citation must state that (a) the proposed protected person may be adjudged incapacitated or of limited capacity and a guardian may be appointed for the proposed protected person, (b) the proposed protected person's right may be affected as specified in the petition, (c) the proposed protected person has the right to appear at the hearing and oppose the petition, and (d) the proposed protected person has the right to be represented by an attorney.[69]

The citation and a copy of the petition must be served on (a) the proposed protected person; (b) the proposed protected person's spouse and relatives within the second degree of consanguinity who are over fourteen years old; (c) the parents and custodian of the proposed protected person; (d) any person or care provider who has care, custody, or control of the proposed protected person (unless they have signed the petition or a waiver of service per NRS

[61] NRS 159.034(1). In practice, the petitioner frequently will not file and serve a notice of hearing because notice of the hearing is already being provided to all parties via service of the citation discussed in the next section. Nonetheless, NRS 159.034(1) technically requires a notice of hearing "on any petition filed in the guardianship proceedings."

[62] NRS 159.034(2).

[63] NRS 159.034(3).

[64] NRS 159.034(6).

[65] NRS 159.034(4).

[66] NRS 159.034(5).

[67] NRS 159.0145.

[68] NRS 159.047(1).

[69] NRS 159.048.

159.0475(3)); (e) the proposed guardian (if not the actual petitioner); (f) the Department of Veterans Affairs if the proposed protected person is receiving VA benefits; (g) and the Department of Health and Human Services if the proposed protected person is receiving Medicaid benefits.[70]

The citation and petition must be served on the proposed protected person by personal service at least ten days before the hearing.[71] The citation and petition must be served on all other persons required to be served either by certified mail (at least twenty days before the hearing) or personal service (at least ten days before the hearing).[72] If none of the people entitled to notice can be served, and that fact is proved to the court's satisfaction, the citation can be served by publication at least twenty days before the hearing.[73]

The court can find that sufficient notice was given if the citation and petition were personally served on the protected person and were served by certified mail or personal service on at least one of the proposed protected person's relatives and the proposed protected person's care provider or public guardian.[74]

5. THE HEARING

Normally, the proposed protected person is required to attend the hearing on the petition (sometimes called the "citation hearing"). However, the court can excuse the proposed protected person's attendance if presented with a certificate signed by a physician licensed in Nevada or employed by the VA (or signed by "any other person the court finds qualified") that specifically states (a) the condition of the proposed protected person, (b) the reasons why the proposed protected person is unable to appear in court, and (c) whether the proposed protected person's attendance would be detrimental to the proposed protected person's physical or mental health.[75] A proposed protected person who cannot attend the hearing in person can appear by videoconference.[76] If the proposed protected person is not in Nevada, the proposed protected person must attend the hearing only if the court deems it necessary in the interests of justice.[77]

If the proposed protected person is unable to appear in person or by videoconference, the person who signed the certificate excusing the proposed protected person's attendance must (a) inform the proposed protected person that the petitioner is requesting a guardian be appointed, (b) ask for the proposed protected person's response to the petition, and (c) ask for the proposed protected person's preference regarding the appointment of any particular person as guardian.[78]

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[70] NRS 159.047(2).
[71] NRS 159.0475(1)(a).
[72] NRS 159.0475(1)(b).
[73] NRS 159.0475(2).
[74] NRS 159.0475(4).
[75] NRS 159.0535(1).
[76] NRS 159.0535(2).
[77] NRS 159.0535(5).
[78] NRS 159.0535(2).

That person must then sign a certificate verifying the information has been conveyed to the proposed protected person and stating proposed protected person's responses and any conditions that might have limited those responses.[79]

At the hearing, the petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, the estate, or both is necessary.[80]

If after the hearing the court finds that the proposed protected person is not incapacitated and not in need of a guardian, it must dismiss the petition.[81] If the court finds the proposed protected person to be of limited capacity and in need of a special guardian, it must order accordingly and specify the powers and duties of the special guardian.[82] If the court finds the appointment of a general guardian is required, it will appoint a general guardian over the proposed protected person's person, estate, or both.[83]

6. THE ORDER

If the court grants a guardianship, the court's order must contain the information detailed in NRS 159.055(2). Specifically, the order must state (a) whether the guardian is appointed over the person, the estate, or both; (b) whether the protected person is a resident of Nevada; (c) the amount of the bond the guardian must file; and (d) the names and addresses of the protected person's relatives and other interested persons upon whom notice must be served.[84] The order must also contain the names, addresses, and telephone numbers of the guardian, the protected person's attorney, and the investigator, if any.[85]

A copy of the order appointing the guardian must be served personally or by mail upon the protected person no later than five days after the date the guardian is appointed.[86] A notice of entry of the order must be served to the protected person's relatives entitled to notice and any other interested person.[87] Notice of entry of order must be filed with the court.[88]

7. THE BOND OR BLOCKED ACCOUNT

Generally, before a guardian can be appointed, the proposed guardian must execute and file a bond in the guardianship case in an amount the court determines necessary to protect the protected person and the guardianship estate.[89] EDCR 5.96 provides that the bond should be

[79] NRS 159.0535(3).
[80] NRS 159.055(1).
[81] NRS 159.054(1).
[82] NRS 159.054(2).
[83] NRS 159.054(3).
[84] NRS 159.055(2).
[85] NRS 159.074(2).
[86] NRS 159.074(1).
[87] NRS 159.055(3).
[88] NRS 159.074(3).
[89] NRS 159.065(1).

equal to the total value of the personal property on hand plus one year's estimated annual income from real and personal property.

If the protected person has no assets, no bond is required of the guardian.[90] However, the court has the power to increase (or decrease) the amount of bond required at any time upon a showing of good cause and notice to the guardian.[91]

Once the bond is filed with the clerk, the protected person or any interested person can maintain an action on the bond.[92] However, any action on the bond must be commenced within three years after the guardian is discharged or, if the person entitled to bring the action is under a legal disability, within three years after the disability is removed.[93]

In lieu of filing a bond, the guardian can request that access to certain of the protected person's assets be blocked.[94] The court can grant the request and order letters of guardianship to issue only if the guardian files evidence that the protected person's assets are being held in a manner that prevents the guardian from accessing the assets without a court order (this is sometimes called placing the assets in a "blocked account").[95]

8. THE LETTERS OF GUARDIANSHIP

The letters of guardianship memorialize the legal authority of the guardian to act on behalf of the protected person. The form of the letters can be found in NRS 159.075. Before the letters of guardianship can issue, the guardian must take the official oath, file documents that include the guardian's full legal name and address, and make and file a verified acknowledgement of the guardian's duties and responsibilities.[96]

F. PROCEEDINGS ONCE THE GUARDIANSHIP IS IN PLACE

The court's grant of a guardianship by no means ends the guardianship proceedings, the guardian's obligations, the attorney's role, or the court's involvement.

Many of the guardian's ongoing general duties are outlined in the oath of office the guardian takes when the guardianship is granted.[97] Under Chapter 159, the guardian is free to perform some of the guardian's ongoing duties and responsibilities without obtaining prior court approval; however, others require approval of the court before the guardian takes any action.

The general functions of the guardian of the person are outlined in NRS 159.079. In addition to these and other duties, the guardian of the person must

[90] NRS 159.065(4).
[91] NRS 159.067(1).
[92] NRS 159.069.
[93] NRS 159.071.
[94] NRS 159.065(6).
[95] NRS 159.065(6).
[96] NRS 159.073(1), 159.075.
[97] NRS 159.073(1)
(c).

- File and serve every year (or within ten days of moving the protected person to a secured residential long-term care facility) a written report with the court regarding the protected person's condition and the performance of the guardian's duties, which must include the protected person's physical condition, place of residence, the names of all persons living with the protected person (unless the protected person resides in a group home or care facility), and any other information required by the court.[98]
- Immediately notify all interested persons and persons of natural affection if the guardian reasonably believes the protected person is likely to die within the next thirty days based on information from a health care provider, or if the protected person has died, or if arrangements have been made for the protected person's burial or cremation.[99]

The specific duties and obligations of the guardian of the person are discussed in more detail in later chapters of this manual.

The general functions of the guardian of the estate are outlined in NRS 159.083. Additionally, the guardian of the estate is required to, among other things,

- Take possession of the protected person's property and income and secure the protected person's personal property.[100]
- Cause an appraisal or valuation of protected person's assets to be conducted.[101]
- File and serve an inventory of the protected person's property within sixty days after the guardian is appointed, which must be supplemented if additional property is discovered.[102]
- Record the letters of guardianship with the county recorder where the protected person's property is located within sixty days after appointment.[103]
- Secure the originals of any of protected person's contracts, powers of attorney, estate planning documents, and trusts.[104]
- Demand all debts and "choses in action" (rights to sue) due the protected person and, with prior approval of the court, settle them or sue to recover them.[105]
- Evaluate and pay all claims made against the protected person's estate, including the guardian's own claims.[106]

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[98] NRS 159.081.
[99] NRS 159.0809.
[100] NRS 159.089(3).
[101] NRS 159.086, .0865.
[102] NRS 159.085
[103] NRS 159.087.
[104] NRS 159.089(4).
[105] NRS 159.093.
[106] NRS 159.103; NRS 159.105; NRS 159.107; NRS 159.109.

The specific duties and functions of the guardian of the estate are discussed in more detail in later chapters of this manual.

It is not uncommon when representing a protected person that the guardian's performance of various duties becomes a point of contention and the subject of scrutiny. These possible points of contention (for example, accountings, budgets, care plans, visitation, sales of personal and real property, requests for attorney's fees, and others), along with other issues that might arise during the course of a guardianship, are addressed in more detail in other chapters of this manual.

G. TERMINATION, REMOVAL, RESIGNATION, AND DISCHARGE

Generally speaking, a guardianship over the person lasts until the guardianship is terminated, the protected person's domicile changes and jurisdiction is transferred to a different state, or the protected person dies.[107] A guardianship over the estate ends if the guardianship is terminated, the court removes the guardian or accepts the guardian's resignation and does not appoint a successor, or the protected person dies.[108]

1. PETITION FOR TERMINATION

A protected person, guardian, or any other person can petition the court to terminate or modify a guardianship.[109] Among other things, the petition must state the reason for termination or modification and whether the termination or modification is sought for a guardianship of the person, estate, or both.[110]

The petitioner has the burden of proving by clear and convincing evidence that the termination of modification is in the protected person's best interests.[111] When the petition is filed, the court will issue a citation requiring the guardian and all interested persons to appear and show cause why the termination of modification should not be granted.[112]

If the court finds the petitioner filed the petition in bad faith and not to further protected person's best interests, the court can sanction the petitioner and preclude the petitioner from seeking attorney's fees.[113]

2. DEATH OF THE PROTECTED PERSON

Upon the protected person's death, the guardian must give notice of the death to the court, all interested persons, any trustee, and the protected person's named executor or appointed personal representative within 30 days.[114] Immediately upon the protected person's death, the

[107] NRS 159.191(1).
[108] NRS 159.191(2).
[109] NRS 159.1905(1).
[110] NRS 159.1905(e)-(f).
[111] NRS 159.1905(3).
[112] NRS 159.1905(4).
[113] NRS 159.1905(5).
[114] NRS 159.191(4).

guardian loses all authority other than to wrap up the affairs of the guardianship and distribute the guardianship estate.[115]

When the guardianship terminates due to the protected person's death, the guardian must report unpaid claims to the personal representative, except those incurred in winding up or administering the guardianship.[116] Claims that the guardian has allowed, but not paid, must be paid by the personal representative in the probate according to priority.[117] The personal representative will act on claims that the guardian has not allowed or rejected like any other claim against a decedent.[118]

In winding up the affairs of a deceased protected person, the guardian is entitled to possession of the deceased protected person's property for a reasonable period not to exceed 180 days after the guardianship is terminated (or not more than ninety days after a personal representative is appointed), unless the court extends the time so that tax liability can be determined.[119]

3. REMOVAL OF THE GUARDIAN

The court can remove a guardian if the court determines that (a) the guardian has become mentally incompetent, unsuitable, or otherwise incapable of exercising authority and performing the guardian's duties; (b) the guardian is no longer qualified to act as a guardian under NRS 159.0613; (c) the guardian has filed for bankruptcy within the previous five years; (d) the guardian has mismanaged the protected person's estate; (e) the guardian has negligently failed to perform any duty under the law or court order and the negligence has resulted (or likely could have resulted) in injury to the protected person or the protected person's estate; (f) the guardian has intentionally failed to perform any duty as provided by law or court order, regardless of injury; (g) the guardian has violated any of protected person's rights in Chapter 159; (h) the guardian has violated a court order or committed an abuse of discretion regarding restricting communication or visitation; (i) protected person's best interests will be served by the appointment of a different guardian; or (h) the guardian is a private professional who is no longer qualified.[120] However, the guardian may not be removed if the sole reason is the lack of money to pay the guardian's fees.[121]

A petition for removal of a guardian can be brought by the protected person, the protected person's spouse, any relative within the second degree of consanguinity, the public guardian, or

[115] NRS 159.191(a).
[116] NRS 159.195(1)(a).
[117] NRS 159.195(1)(b).
[118] NRS 159.195(1)(c).
[119] NRS 159.193(1).
[120] NRS 159.185(1).
[121] NRS 159.185(2).

any other interested person.[122] The petition must state the reason for removing the guardian and show cause for the removal.[123]

When the petition is filed, the court will issue and serve a citation on the guardian and all interested persons directing them to appear and show cause why the court should not remove the guardian.[124] If it appears the protected person or estate could suffer loss or injury before the hearing, the court can suspend the powers of the guardian and compel the guardian to surrender the protected person and the protected person's assets.[125] If the guardian fails to appear at the hearing, the court can hold the guardian in contempt, require the guardian to appear, issue a bench warrant for the guardian, and issue an order addressing any harm the guardian has caused.[126]

If the court grants the petition and removes the guardian, it can appoint another guardian in the same manner and subject to the same requirements as the original appointment.[127] If the court appoints a new guardian of the person, the protected person must be served with the petition; however, if the protected person does not object to the appointment, the protected person need not attend the hearing.[128]

If the court denies the petition, the petitioner cannot file another petition unless warranted by materially changed circumstances.[129] If the court finds the petitioner filed in bad faith or not in the protected person's best interests, the court can sanction the petitioner and preclude the petitioner from seeking attorney's fees.[130]

4. RESIGNATION OF THE GUARDIAN

If a guardian wants to resign, the guardian must file a petition tendering the guardian's resignation, which the court will notice to all persons entitled to notice under NRS 159.047.[131] Before the court approves the resignation, it must appoint a successor guardian, unless the protected person has multiple guardians and one is remaining and qualified to act alone.[132]

Before approval, the court will also require the guardian to submit an accounting of the estate through the end of the guardian's term.[133] However, this requirement can be waived if there is another guardian remaining who can file the annual accounting and be responsible for

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[122] NRS 159.1853(1).
[123] NRS 159.1853(2).
[124] NRS 159.1855(1)-(2).
[125] NRS 159.1855(3).
[126] NRS 159.1857.
[127] NRS 159.187(1).
[128] NRS 159.187(2).
[129] NRS 159.1853(3).
[130] NRS 159.1853(4).
[131] NRS 159.1873.
[132] NRS 159.1875.
[133] NRS 159.1877(1).

any discrepancies.[134] If the guardian fails to file the accounting, the court can impose sanctions.[135]

5. WINDING UP THE GUARDIANSHIP

To wind up the affairs of the guardianship, the guardian must pay all expenses of the estate's administration, including those incurred in winding it up.[136] The guardian must also complete performance of the estate's contractual obligations.[137] With the court's permission, the guardian can continue any activity believed to be appropriate or necessary or commenced before the termination.[138] If the guardianship is terminated for some reason other than the protected person's death, the guardian must examine and pay or reject all claims presented to the guardian for obligations incurred prior to the termination.[139]

After the guardianship's affairs are wound up, the guardian must deliver the protected person's property to the protected person, the protected person's personal representative, or the successor guardian, and obtain a receipt of delivery.[140] If necessary, the guardian can ask the court to modify the title to protected person's property, on a pro rata basis, to reflect how the title was held before the guardianship so that the property is distributed to the intended beneficiary or former joint owner.[141]

Once the guardian files receipts that show compliance with the court's orders, the court will enter an order discharging the guardian and exonerating the guardian's bond.[142] A guardian is not relieved of liability until an order discharging the guardian has been entered and filed with the court.[143]

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[134] NRS 159.1877(3).
[135] NRS 159.1877(2).
[136] NRS 159.193(2)(a).
[137] NRS 159.193(2)(b).
[138] NRS 159.193(2)(c).
[139] NRS 159.193(2)(d).
[140] NRS 159.197(1).
[141] NRS 159.197(2).
[142] NRS 159.199(1).
[143] NRS 159.199(2).

CHAPTER 2: THE LAWYER'S ROLE AND ETHICAL OBLIGATIONS

A. OVERVIEW[1]

The Fourteenth Amendment to the U.S. Constitution requires that due-process protections be afforded to anyone who is threatened with loss of liberty or property. This is the case in guardianship proceedings. A respondent in a guardianship case can lose the right to vote, marry, contract, determine where to live, choose the kind of health care to be received, and decide how to manage finances and assets, among other things.

Nevada law affords due-process protections in guardianship matters, in part, by requiring that every person facing or under guardianship be appointed an attorney. It is the attorney's job to protect the due-process rights of the alleged incapacitated individual and advocate strenuously for the client's wishes. If the attorney does not do this, or ignores what the client is saying, the alleged incapacitated person has no voice in the proceedings at all. This zealous advocacy is the obligation of the attorney as an officer of the court and under the Nevada Rules of Professional Conduct.

B. THE STATUTORY BASIS FOR APPOINTMENT OF COUNSEL

Under Nevada law, when a petition for guardianship is filed, the court will appoint an attorney for the PPP unless the PPP wishes to retain an attorney or has already done so.[2]

If Legal Aid Center of Southern Nevada is able to accept the case, the court will appoint a Legal Aid Center attorney to represent the PPP.[3] The Legal Aid Center attorney will represent the PPP until relieved of that duty by court order. The PPP always has the right to substitute private counsel for an appointed Legal Aid Center attorney.

If Legal Aid Center is unable to accept the court's appointment, the court will decide whether the PPP can afford to pay for an attorney and, if the client can, will order an attorney to represent the PPP for compensation from the PPP's estate.[4] If the PPP cannot afford an attorney,

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[1] This chapter relies heavily upon – and, indeed, borrows shamelessly from – two well-researched and persuasive articles, both of which are highly recommended reading: Joan L. O'Sullivan, *Role of the Attorney for the Alleged Incapacitated Person*, 31 Stetson L. Rev. 687 (2002), and Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 Wash. L. Rev. 581 (2016).

[2] NRS 159.0485(1).

[3] NRS 159.0485(2)(a). If the guardianship case was filed outside Clark County, an attorney for another legal aid organization that provides services for PPs (such as Washoe Legal Services) could be appointed.

[4] NRS 159.0485(2)(b)(1). The court might similarly appoint an attorney who is to be paid from the PPP's estate if the case is filed in a county where there is no program that provides legal services to PPPs. *See id.*

the court can appoint an attorney who will be paid from a court fund.[5]

If a Legal Aid Center attorney is initially appointed to represent the PPP, but it is later learned that the PPP has the money to pay for a private attorney, Legal Aid Center can ask the court to appoint a private attorney in its place.[6]

C. THE "TRADITIONAL" MODEL OF REPRESENTATION

There are three primary models of representation that could potentially be utilized when representing a client subject to a guardianship:

(1) "Derivative" representation, in which the guardian is considered the primary client and the person subject to guardianship is considered the derivative client;

(2) "Best interest" representation, in which the attorney's obligation is to assess and advocate for the best interests of the person subject to guardianship; and

(3) "Traditional" representation (sometimes also called "expressed interest," "normal relationship," or "client-directed" representation), in which the attorney maintains the traditional advocacy role even when a client is subject to a guardianship.

Legal Aid Center of Southern Nevada adheres to the "traditional" representation model, which finds support not only in the Nevada Rules of Professional Conduct (as discussed more fully below) but also in the case and statutory law of other jurisdictions[7] and a substantial body of authoritative and scholarly commentary.[8]

Under the "traditional" representation model, the attorney shall maintain a normal attorney-client relationship with the client to the greatest extent possible. The attorney shall meet

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[5] NRS 159.0485(2)(b)(2).

[6] NRS 159.0485(3).

[7] *See, e.g.,* Vt. Stat. Ann. tit. 14, § 3065; *see also, e.g., In re Lee*, 754 A.2d 426, 438-439 (Md. Ct. Spec. App. 2000) ("It is the role of an attorney to explain the proceedings to his client and advise him of his rights, keep his confidences, advocate his position, and protect his interests. Due process demands nothing less, particularly, as here, when the alleged disabled person faces significant and usually permanent loss of his basic rights and liberties"); *In re Guardianship of L.H.*, 3 N.E.3d 92, 106 (Mass. App. Ct. 2014) ("The adversarial model does not place counsel for a mentally ill or even incompetent client in an ethical quandary. In the adversarial model, there will be a decision by a neutral and detached judge that is the product of evidence produced with the aid of vigorous advocacy from a petitioner's counsel and a client's counsel . . . . It is simply not the role of the client's counsel to assume responsibilities that belong to others."); *In re Guardianship of Henderson*, 838 A.2d 1277 (N.H. 2003) ("Even when representing a client with a disability, legal counsel must, as far as reasonably possible, carry out the client's decisions."); *In* re *M.R.*, 638 A.2d 1274 (N.J. 1994) ("Advocacy that is diluted by excessive concern for the client's best interests would raise troubling questions for attorneys in an adversarial system. An attorney proceeds without well-defined standards if he or she forsakes a client's instructions for the attorney's perception of the client's best interests."). For a relevant ethics opinion, see Alaska Bar Assoc. Ethics Op. 94-3 (1994), available at https://www.alaskabar.org/servlet/content/indexes_aoet__94_3.html.

[8] *See, e.g., supra* note 1. "The American Bar Association has stated that the role of counsel for the alleged incapacitated person should be to act as an advocate. A Report to the House of Delegates from the ABA's Commission on legal Problems of the Elderly reflected this position, which the House of Delegates approved at the ABA's 1988 Annual Meeting. Likewise, the National Conference of Commissions on Uniform State Laws, which published the Uniform Guardianship and Protective Proceedings Act (UGPPA) in 1982, already supports this right to an attorney who acts as an advocate." O'Sullivan, *supra* note 1, at 719 (footnotes omitted).

with the client and, if the client is able to communicate the client's wishes, shall comply with the client's directions regarding the objectives of the representation and consult with the client regarding the means of achieving those objectives. The attorney shall, at all times, keep communications confidential, ensure that the client stays reasonably informed about the status of the matter, and provide competent legal advice and services. Unless the client instructs the attorney to take action that is unlawful or frivolous, the attorney shall advocate for the client's stated preferences regardless of whether they correspond with the attorney's or others' perceptions of what might be in the client's best interest.

If, after meeting with the client, the attorney determines that the client does not have the ability to express the client's wishes or an attorney-client relationship cannot otherwise be formed, the attorney shall work to protect the client's legal interests, including, among other things, ensuring there is no less restrictive alternative to guardianship; that the client's expressed wishes, including those contained in any advance directive or other estate planning documents, are presented to the court for consideration; that proper due-process procedure is followed and Nevada law is adhered to; that no substantial rights of the clients are waived; that the petitioner proves the allegations in any petition by clear and convincing evidence (or the applicable standard of proof governing the matter currently before the court); that the proposed guardian is (and remains) a suitable person and qualified to serve; that all orders are least restrictive under the circumstances and leave the client with as much autonomy and personal freedom as possible consistent with the need for supervision; that appropriate safeguards are ordered to protect the client's assets and guardianship estate; and that all requests for fees or other expenditures from the client's assets and guardianship estate are reasonable, verifiable, and appropriate.

Representing a person of questionable capacity can be a challenge because determining the client's wishes is often difficult. The client may be confused about some things, but not about others. The client may make bad decisions and insist that the lawyer advocate for those decisions, or the client may demand that the lawyer defend a seemingly indefensible position. But defending an alleged incapacitated person does not mean that all of the attorney's usual resources are not in play. The attorney can use any of the tools in the attorney's arsenal to achieve a favorable settlement or outcome for the client or to limit the guardianship to the least-restrictive alternative. When the attorney has no doctor's reports, favorable testimony, or any other evidence to support the client's position, one of the best things to do is bring the client to the hearing so that the client can speak to the judge. Some clients want this opportunity to make their case, believing that if the judge hears them, the judge would rule in their favor.

Even if the client does not have the ability to express the client's wishes, the attorney can work to protect the client's "legal interests." The attorney's way becomes clearer if the attorney treats this client and case as any other. The attorney, even with little or no guidance from the client, can ensure, among numerous other things, that the client's legal interests are protected.

When the attorney assumes this role, the client receives the due-process protection promised the client by the Constitution. The client has a zealous advocate who can speak knowledgeably for the client, put the client on the stand if willing, cross-examine expert and other witnesses, ensure that the evidence proves incapacity under a clear and convincing standard, ensure the guardian is fit to handle the tasks of being a guardian, and encourage the court to impose the least-restrictive guardianship possible so the autonomy of the person alleged to be incapacitated is retained to the greatest extent possible.

The specifics of a lawyer's duties and special issues facing the lawyer are covered in more detail in later chapters of this manual.

D. NEVADA ETHICAL RULES

Broadly speaking, every lawyer is a representative of the client. As such, the lawyer has a duty to explain to the client the client's legal rights and obligations; represent the client zealously and assert the client's position under the rules of the adversary system; be competent, prompt, and diligent; maintain open communication with the client; and maintain the client's confidences.[9]

More specifically, there are a number or ethical rules in the Nevada Rules of Professional Conduct ("NRPC") to help guide your representation of a person facing or under guardianship.[10]

1. RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

The Nevada Rules of Professional Conduct address the question of how an attorney is to act when a client is under a disability. Rule 1.14(a) says that, when a client's decision-making ability is impaired due to "minority, mental impairment[,] or for some other reason," an attorney must, "as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

In addition, an attorney "may take reasonably necessary protective action" with respect to a client only when the lawyer reasonably believes that the client "has diminished capacity, is at risk of substantial physical, financial[,] or other harm unless action is taken[,]" and that the client "cannot adequately act in the client's own interest."[11] Even when taking protective action, the lawyer must keep information relating to the representation confidential and can reveal information only to the extent reasonably necessary to protect the client's interest.[12]

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[9] *See* ABA Model R. Prof Conduct preamble 1-21. "The preamble and comments to the ABA Model Rules of Professional Conduct are not enacted by the [Nevada Rules of Professional Conduct] but may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there is a conflict between the Nevada Rules and the preamble or comments." NRPC 1.0A.

[10] Appendix C to this manual contains select rules from the Nevada Rules of Professional Conduct.

[11] NRPC 1.14(b).

[12] NRPC 1.14(c).

Typically, in a guardianship case, because a petitioner already has filed for guardianship, the attorney need not "take other protective action." The role of the attorney is to maintain, to the greatest extent possible, the normal client-lawyer relationship, keep the client's confidences, and treat the client with attention and respect.[13]

The comment to the ABA Model Rule 1.14 says that the normal client-lawyer relationship is based on the fact that, when the client is advised about the client's rights and obligations, the client can make a decision about the course of the representation.[14] When the client suffers from a mental or physical disability, maintaining the ordinary client-lawyer relationship might become difficult. However, a client who lacks legal capacity might still be able "to understand, deliberate upon, and reach conclusions about" the client's own well-being.[15]

Thus, the primary role of the attorney for the alleged incapacitated person in a guardianship action is to treat the client as any other client, to try to maintain a normal client-lawyer relationship, and to keep the client's confidences that would injure the client if disclosed.[16]

2. RULE 1.2: SCOPE OF REPRESENTATION

NRPC 1.2(a) says that "a lawyer shall abide by a client's decision concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued." The lawyer must also "abide by a client's decision whether to settle a matter."

However, the lawyer can limit the scope of representation if the limitation is "reasonable under the circumstances" and the client gives "informed consent."[17] Additionally, the lawyer cannot assist a client in fraudulent or criminal behavior.[18]

Importantly, representation of a client, "including representation by appointment, does not constitute an endorsement of the client's political, economic, social[,] or moral views or activities."[19] The comment to ABA Model Rule 1.2 emphasizes that a lawyer's representation of a client does not signify that the lawyer agrees with what the client is saying.[20] Especially in guardianship cases, when the client claims and maintains the ability to handle all financial affairs and personal decision, the lawyer who represents the client does not need to agree with the

[13] ABA Model R. Prof. Conduct cmt. 1-2.
[14] ABA Model R. Prof. Conduct cmt. 1.
[15] *Id.*
[16] NRPC 1.14.
[17] NRPC 1.2(c).
[18] NRPC 1.2(d).
[19] NRPC 1.2(b).
[20] ABA Model R. Prof. Conduct cmt. 3.

client's position.[21] For the attorney to represent the client, the attorney must make the best case for the client, even if the only evidence of the client's ability is the client's own opinion.

3. RULE 1.3: DILIGENCE

The rule regarding diligence in representation requires that an attorney "shall act with reasonable diligence and promptness in representing a client."[22] A client's interests can be adversely affected by a lawyer's delay in handling a case. This is especially true in guardianship cases when medical needs may be on the horizon, a move to a different or more restrictive facility might be at issue, or family assets might be in danger of being (or might need to be) sold, and the like. Unreasonable delay can undermine the client's confidence in the attorney and might cause the client needless anxiety.

4. RULE 1.4: COMMUNICATION

NRPC 1.4(a) requires, among other things, that the attorney "[k]eep the client reasonably informed about the status of the matter [and] promptly comply with reasonable requests for information." Moreover, attorneys should "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[23]

Communication with an alleged incapacitated person is essential in representing the client. Fully informing the client may be difficult when the client has a mental disability. Communication may have to be in the simplest of terms. The attorney should speak to those who care for the person and find the time of day when the person is most cogent. For example, a person with Alzheimer's disease may experience a syndrome called "sundowner" syndrome. When dusk falls, the person may become more confused. Therefore, the best time of day to speak to that person might be early in the morning.

When the attorney explains the guardianship, this should be done in simplified terms to clearly communicate the possibility that another person could make decisions about the client's life and property. The client should have enough information so that the client can participate fully in the representation.

Even in cases in which the person has some mental incapacity, the lawyer should inform the client of any hearing and determine whether the client wants to attend and speak to the judge. Speaking to the judge gives the client the sought-after day in court and allows the judge to assess the need for a guardianship.

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[21] *Id.*
[22] NRPC 1.3.
[23] NRPC 1.4(b).

5. RULE 1.6: CONFIDENTIALITY OF INFORMATION

Under NRPC 1.6(a), "[a] lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation," or the disclosure is reasonably necessary to prevent a criminal act that is likely to result in death or bodily harm.

In guardianship cases, where the attorney may be court appointed, the attorney should tell the client that the attorney is on the client's side and will defend the client against the guardianship if that is what the client wishes. The attorney must make clear that the client's confidences will be kept secret unless the client wishes to reveal them. This encourages the client to reveal even embarrassing information that can facilitate proper representation.

In some instances, even disclosing the client's attitude, eccentric behavior, or manner of dress can betray a client's confidence and convey an impression to the judge that could be detrimental to the client.

6. RULE 1.7: CONFLICT OF INTEREST

NRPC 1.7 prohibits the attorney from representing an alleged incapacitated person who has a conflicting interest with another client. This means that the attorney should not represent both the petitioner and the alleged incapacitated person. Additionally, if an attorney has represented the family of the alleged incapacitated person in the past, the attorney should not represent the alleged incapacitated person in a guardianship proceeding.

CHAPTER 3: HANDLING YOUR GUARDIANSHIP CASE

A. OVERVIEW[1]

Your advocacy duties begin when you receive notification that you have been assigned to represent a particular client in a guardianship proceeding. Upon receipt of such notification, an attorney-client relationship begins – with all of the ethical and advocacy obligations associated with representation of a client who may have special needs.

You should keep in mind that your role is that of an advocate and defender. At the time the petition is filed, the client has a wide range of existing constitutional and statutory rights that are being placed at risk by the petition. Even if your investigation reveals that the allegations in the petition are potentially true and the requests in the petition possibly justified, the client is still entitled to your defense of the client's rights. There remain numerous issues for you to explore and resolve, such as for example:

- What is the client's position with respect to the guardianship and what strategies might be employed to achieve the client's goals?
- Is the person who is seeking to be guardian qualified to serve in that capacity? Is there anyone else the client would prefer or who is better qualified?

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[1] A number of articles, white papers, and state statutes provided source material for the information contained in this chapter, including the following:

- Thomas F. Coleman, *Due Process Plus: ADA Advocacy and Training Standards for Appointed Attorneys in Adult Guardianship Cases*, Spectrum Institute (Oct. 1, 2015), available at http://spectruminstitute.org/white-paper/white-paper.pdf (a user's guide to the reference materials cited in this white paper is available at http://spectruminstitute.org/white-paper/users-guide.pdf);
- Joan L. O'Sullivan, *Role of the Attorney for the Alleged Incapacitated Person*, 31 Stetson L. Rev. 687 (2002);
- Vicki Gottlich, *The Role of the Attorney for the Defendant in Adult Guardianship Cases: An Advocate's Perspective,* 7 Md. J. Contemp. Legal Issues 191 (Fall/Winter 1995-96);
- David A. Green, "*I'm OK – You're OK": Educating Lawyers to "Maintain a Normal Client-Lawyer Relationship" with a Client with a Mental Disability*, Journal of the Legal Profession (28 J. Legal Prof. 65 (2003-2004);
- 14 Vt. Stat. Ann. tit. 14, § 3065 (2012) (setting forth duties of court appointed counsel in Vermont guardianship cases).
- Commonwealth of Massachusetts Committee for Public Counsel Services, *Assigned Counsel Manual Policies and Procedures* (Oct. 24, 2011), available at https://www.publiccounsel.net/assigned-counsel-manual/ (Chapter 4 contains performance standards for the representation of indigent adults in guardianship cases, available at https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2012/MANUALChap4CriminalStandards.pdf);
- Stan Goldman, *CPCS Mental Health Proceedings in Massachusetts: A Manual for Defense Counsel* (6th ed. 2015) (Chapter 4 contains a discussion of guardianship procedures and the role of appointed counsel in Massachusetts).

- Are there any less restrictive means of protecting the client? Have alternatives to guardianship been explored?
- How can a guardianship, if required, be tailored to the client's specific needs so as to retain as much autonomy as possible?

This chapter discusses the lawyer's general duties when the lawyer is appointed to defend a protected person or proposed protected person. Obviously, every case is different. As with any other case, you will need to use your best judgment to determine what steps and actions are warranted and necessary to defend the case and achieve your client's objectives. The following steps are provided to guide you in a typical guardianship case.

B. PRELIMINARY STEPS

There are a couple of steps you will need to take immediately upon receiving notice that you have been appointed as counsel in a guardianship case.

1. OBTAIN AN ORDER APPOINTING COUNSEL

Immediately submit an Order Appointing Counsel ("OAC") to the judge for signature.[2] A sample form Order Appointing Counsel is provided in Appendix E.[3]

After the OAC has been signed by the judge, file a notice of entry of order and serve it on all of the parties and relatives identified in the petition to let them know of your appointment.

It is imperative that you obtain a signed OAC as quickly as possible because without it your initial investigation is largely at a standstill. The OAC authorizes you to, among other things, obtain access to your client at any care facility or residence, discuss your client's care and treatment with any medical providers, obtain copies of medical and financial records (without charge), and obtain reports and information from law enforcement and other investigatory agencies.

You may want to keep multiple copies of the OAC in the client's file, readily accessible. Be sure to take copies of the OAC with you whenever you visit your client. Without the OAC's authorization, caregivers might refuse to let you visit with your client (especially if your client is in a locked facility) and medical providers might be reluctant to discuss your client's condition

[2] Before you submit the OAC for signature, it is always a good idea to check the case docket to ensure no other attorney has already appeared on behalf of the proposed protected person. If you have some indication that the proposed protected person already has counsel, contact that attorney to verify the representation.

[3] Depending on the judge to which your case is assigned, you might need to submit an ex parte petition asking to be appointed as counsel along with your OAC. The procedure for appointment varies by judicial department. Check with your GAP contact if you have any questions. An example of an ex parte petition requesting appointment is included in Appendix E.

for fear of violating the federal Health Insurance Portability and Accountability Act ("HIIPA"). Provide a copy of the OAC and ask that it be included in your client's record.

2. DOWNLOAD ALL CASE FILINGS AND REQUEST ALL CONFIDENTIAL DOCUMENTS

Access and download all documents, hearing minutes, and the like, that have been filed in the guardianship case from the court's website or other documents access program. Some of the documents (such as the physician's certification of incapacity) will likely have been filed confidentially and, therefore, will not be accessible online. You will need to obtain those documents directly from the court clerk.

To obtain the confidential filings in the case, provide a copy of the OAC to the court clerk along with a cover letter asking that the clerk release the documents to your runner or other employee. A sample form letter to the court clerk is included in Appendix E.

3. REVIEW THE CASE FILE

Once you have obtained all the case filings, review the documents and any minutes from hearings that have been conducted. Glean whatever information you can from the filings and familiarize yourself with your client's situation to the extent possible. Make sure all statutorily required documents have been filed and that the relatives identified in the petition who are entitled to service have, in fact, been served.

If the case was only recently filed, the documentation might be fairly sparse and include only the initial petition, a confidential information sheet, a citation to appear and show cause, and the physician's certificate of incapacity. The file should also contain documentation verifying that service has been made, which could include affidavits of service, certificates of mailing, consents and waivers of service, and possibly motions and orders relating to service by publication. There might also be an objection filed to the petition for guardianship.

If the petitioner has requested a temporary guardianship, the file could contain a separate ex parte petition for the temporary appointment (or the request might be included in the initial petition), an ex parte order appointing temporary guardian, and temporary letters of guardianship, along with notice of entry of the ex parte order and appropriate verifications of service.

If the case has been ongoing for some time, there could be substantial documentation in the file to review, including inventories, annual accountings, and the like. You might also be able to order videos of the hearings that have been conducted from the court. These can be a great way to get a feeling for the parties and the issues in the case.

4. SEND AN INTRODUCTORY LETTER TO RELATIVES REQUESTING THEIR INPUT

The petition for guardianship will typically identify a number of your client's relatives and their addresses. Prepare and send a letter to the listed relatives (excluding the actual petitioner and any relatives who have appeared in the case and who are represented by counsel), asking them to contact you and provide any input they have (whether positive and negative) regarding the guardianship. A sample form letter to relatives is included in Appendix E.

Speaking with your client's relatives can help you understand the family's dynamics and identify potential issues and concerns. Encourage the relatives to speak freely and let them know your goal is to gather as much information as possible; but make clear that you are not their attorney, that information discussed is not privileged or confidential, and that you cannot discuss information you have learned from your client.

5. SEEK PERMISSION TO CONTACT THE PETITIONER DIRECTLY IF REPRESENTED

One of the most valuable sources of information is, of course, the person who is petitioning for guardianship over your client. Remember, though, that you cannot contact a petitioner directly if the petitioner is represented by counsel.

If the petitioner is represented by counsel, send a written request (email or letter) to the petitioner's attorney asking for permission to speak with the petitioner directly. Make clear that you will not speak to the petitioner regarding any legal issues related to the court case but would like to speak with the petitioner directly regarding background information and your client's current condition, location, and the like, so as to avoid incurring additional attorney's fees simply to pass information back and forth.

Your request could look something like the following:

> Good afternoon, Ms. Brown:
>
> I have been appointed by the court to represent Betty Becker, the proposed protected person, in the guardianship proceeding filed by your client, Debbie Deitz, Case No. G-17-051963-A.
>
> To help familiarize myself with Ms. Becker's situation, I'd like to speak with Ms. Deitz regarding Ms. Becker's background and current circumstances, as well as Ms. Deitz's plan with respect to Ms. Becker's future care. Ideally, and with your permission, I'd like to contact Ms. Deitz directly in order to avoid incurring attorney's fees unnecessarily. I will, of course, refrain from discussing any legal issues relating to the guardianship case with Ms. Deitz.
>
> Please let me know whether I have your permission to contact Ms. Deitz directly and the best telephone number at which to reach her.
>
> I look forward to working with you.
>
> June

If the petitioner's attorney agrees, ask the attorney to confirm the same in writing and keep the confirmation in your file. If the attorney refuses, put the attorney on notice that you will object to any request for fees incurred as the result of the guardian and attorney conveying information back and forth simply to respond to your inquiries.

6. CONTACT THE PETITIONER TO GATHER INFORMATION AND VERIFY THE CLIENT'S LOCATION

Before you try to visit your client, make sure to verify your client's current location. Guardianship clients are sometimes relocated frequently (from home, to hospital, to rehab facility, to long-term care), so do not venture out on a client visit without confirming where your client is currently residing.

If you are able to contact the petitioner directly (either because the petitioner is unrepresented or because you have obtained permission from the petitioner's attorney), call the petitioner to verify your client's current location. Also try to engage the petitioner in a discussion about your client, including your client's background and family history, current medical condition, current need for assistance and care, and petitioner's plan for future care. Just make sure to clearly identify yourself as the proposed protected person's attorney and describe your role in the case, something like

> "The court has appointed me as Ms. Becker's attorney. My job is to find out what Ms. Becker wants and to try to make that happen if at all possible. Right now, I'm trying to find out as much information about Ms. Becker and her situation as I can, so whatever you can tell me about her background, her current condition, and your plan for her care would be extremely helpful. Just remember that I'm Ms. Becker's attorney, so I can't discuss any legal issues with you and nothing you tell me is confidential."

If you are unable to contact the petitioner directly (because petitioner's attorney has refused), verify your client's location and contact information through petitioner's counsel before you attempt a client visit.

7. IDENTIFY ANY IMPEDIMENTS TO COMMUNICATION WITH CLIENT

Before you have an initial interview with your client, determine what methods will be used to maximize the effectiveness of communications. A variety of facts regarding communication and comprehension need to be obtained from multiple sources if possible:

- Is the client verbal or nonverbal?
- If verbal, what is the client's primary language? Will a language interpreter be needed?
- Is the client blind? If so, does the client use braille?
- Is the client deaf or hard of hearing? Will a sign language interpreter be needed?

- Does the client read and write, and if so, at what grade level?
- Does the client have an intellectual disability? If so, to what extent does the client comprehend?
- In what environment does the client communicate the best – home, work, school, or other?
- What is the length of the client's attention span?

These and other facts should be ascertained, from reliable sources, in order to develop a communication plan for the client. The plan will inform how, when, and where to communicate with the client. A good starting point is to contact individuals who are familiar with the client. The petitioner is probably the first person to consult. A medical provider or an agency that coordinates services is another likely source of reliable information.

You will use the communication plan throughout the proceedings, both for interactions with the client outside of the courthouse and to enhance the client's participation in court hearings. In most cases, the communication plan will be refined over time as you gather additional information and become more familiar with the client and the client's needs.

C. MEET WITH THE CLIENT

The initial client interview with a proposed protected person may be one of your most challenging. The client may be in a nursing home, in a mental institution, or at home in difficult conditions. As with any client, your goal is to communicate with the proposed protected person as clearly, fully, and openly as possible.

The skeleton of a client interview outline, which you can use as a starting point and tweak for your own needs, is included at the end of this chapter.

1. USE APPROPRIATE TECHNIQUES TO IMPROVE COMMUNICATION

Utilize appropriate techniques to improve communications when interviewing your client. Meet with your client face-to-face and always be cognizant of potential communication problems, such as language barriers, hearing impairments, or aphasia (impairment of language capabilities caused by brain injury or stroke). When communicating with older clients in writing, it is advisable to use plain language and larger-than-normal type.

The environment of the meeting place may cause sensory problems associated with the client's specific disability. Light, noise, and other distractions may affect the client's ability to understand and discuss the issues. If distractions are present, try to remove or lessen them. If the television is on, ask to turn it off. If the client is in a noisy common room, ask if you can go to the client's private room or to a conference room or other quiet space you can use.

If the client appears confused, consider whether the confusion may be due to drugs that the client is taking. Check the client's medical records and speak with the client's doctor to evaluate this possibility.

Utilize any aids that will help the client communicate. If the client uses hearing aids, make sure the client is wearing them and they are turned on. If the client speaks a different language or is deaf, make sure you have arranged for an interpreter. If the client cannot speak but can write, make sure you have an extra writing pad and a large, easy-to-hold pen or marker.

The time of day might also affect the client's ability to participate effectively at interviews and hearings. Consider whether the client does better in the morning or afternoon, or before or after meals. The client's immediate caregiver can likely tell you what time works best, or you can make multiple visits at different times of day to evaluate.

Location of the interview is also important. Even if your office is accessible, the client might be homebound or simply more comfortable at home. Importantly, a home interview or interview at a care facility, as opposed to an in-office interview, also allows you to observe the client's living conditions and care being received.

Always remember to take copies of your Order Appointing Counsel to the client interview. Among other things, the order requires facilities and others to give you access to your client and to provide you with information regarding your client's condition. Ask that a copy of the order be maintained in your client's file.

2. EXPLAIN YOUR ROLE

At the outset of the interview, introduce yourself to the client, explain that you have been appointed by the court to represent the client as the client's attorney in the pending guardianship case.

When the client hears "attorney," the client may immediately think, "I can't afford that!" So make clear that your services are free and that you will not be asking for payment from the client or from anyone else in the case. Explain that Nevada law now requires that every person who is facing or under guardianship must be represented by an attorney, so the judge appointed you.

Then explain what your role is as the client's attorney. Let the client know that you are on the client's side and in the client's corner. Your job is to find out what the client wants to happen in the guardianship case and then do your best to try to make that happen if possible, whatever it might be. If what the client wants is not possible, you will help the client identify, evaluate, and implement possible alternatives and solutions to address the client's concerns. Let the client know that, regardless of what the judge ultimately orders – whether the judge grants or denies

the client's request – you will stay in the case and do your best to make sure no one takes advantage of the client and that the client's rights are protected.

Provide assure that the client has done nothing wrong to cause the court case, and let the client know that you understand that the idea of courts and judges can be scary and intimidating. Explain that you will be going through the process with the client, that you will try to explain what is happening in the case in the simplest terms possible, and that you will do your best to answer any questions the client has at any time.

3. EXPLAIN AND MAINTAIN CONFIDENTIALITY

Explain to your client that you will keep all communications confidential, unless the client gives you specific permission otherwise, and that an open exchange of information will better help you represent the client's interests in the guardianship case. Let the client know that attorney-client discussions in a guardianship case are privileged and are subject to the same respect and confidentiality given to communications with clients in other types of cases.

Create a confidential setting for the interview, away from roommates, nurses, and family members. In a nursing home, there is usually a secluded room in which you and the client can talk privately, even if it is the social worker's office. A confidential setting ensures the client is free to speak openly to you.

4. EXPLAIN YOUR CLIENT'S SITUATION AND RIGHTS

Slowly discuss the nature and consequences of the guardianship case, putting the explanation in simple terms so the client can understand. Paraphrase the allegations of the petition and elicit your client's response.

Explain the client's rights under the law.

Explain the ways to defend against a guardianship and the resources the client can use to counter the allegations. Discuss court procedure, including the client's right to be present at the hearing and to testify.

This portion of the client interview might sound something like this:

> Let me explain what a guardianship is. Normally, all adults have the right to make their own decisions. They can say where they want to live, how they want to spend their time, who they want to see, how they want to spend their money. Sometimes, though, a person may not be able to make those decisions because of some sickness or injury. When that happens, another person – maybe a son or daughter or some other relative – can ask the court for the power to make those decisions for the sick or injured person. The son or daughter can file a court case and ask to be appointed as guardian over

the sick or injured person. If the court grants the request, the son or daughter now has the power to make decisions for the sick or injured person. Does that make sense?

Your son, Jeff, has asked the court to be your guardian. Jeff has filed papers with the court saying that your doctors think you are suffering from dementia and that you are no longer able to make decisions about things like your medical care and your money. Jeff says that you already signed a power of attorney giving him authority over your medical decisions, so you'd probably trust him to have authority over your money now too. Jeff says he is the best person for this job. If the court grants Jeff's request, that means Jeff will have the right to make decisions for you. He'll be able to decide things like where you live, what type of medical care you receive, and how your money is handled – even if those decisions might not be the ones you'd necessarily make yourself. How do you feel about that?

The court has set a hearing in three weeks to decide whether Jeff should be appointed as your guardian. I'll attend the hearing as your attorney, and you absolutely have the right to attend the hearing as well if you want. You also have the right to object to Jeff's request if you do not want a guardian and think you are capable of making your own decisions.

We'll chat today about what you want to happen in the guardianship case – whether you want a guardian, do not want a guardian, or something else – and that's what I'll tell the court. If you do not want a guardian, we'll try to figure out a way to fight Jeff's request, which might mean having a trial where you testify and tell the judge what you want and do not want. We might even need to have other people testify who can support your request – friends, neighbors, maybe even one of your doctors – so we'll talk about that too. If you feel like you need some help and think Jeff is the right person to help you, we'll chat about what type of help you think you need. Maybe we can reach some agreement with Jeff or other arrangement to make sure you get that help you need, maybe without any guardianship or maybe without a full-blown guardianship.

You might want to review the *Protected Person's Bill of Rights* with the client to let the client know what rights they have before and after a guardianship is granted. A handout version of the *Protected Person's Bill of Rights* is included as Appendix D. This handout is in large type for ease of reading and can be copied (double sided, ideally on colored paper) and left with the client, perhaps stapled to one of your business cards.

You may want to meet with the client on two or more occasions – once at home and later in other settings where the client is comfortable. The first meeting may occur before all records are reviewed and may serve as a "getting to know you" session. A subsequent meeting or meetings can occur after the attorney has reviewed all records and interviewed all potential

witnesses. At the subsequent meetings, the attorney can share information with the client, at the client's level of understanding, and receive feedback from the client about that information.

The attorney will need to determine if the client has the ability to participate in decisions regarding whether to support the petition or some of the requests in the petition, or to oppose some or all of these requests. If the client appears not to understand the proceedings and does not have the ability to make decisions about the outcome of the case, the attorney's role will align with a default position. In that mode, the attorney must defend the client's existing constitutional and statutory rights from unnecessary infringement, insist that due process is followed, and decide whether the petition and its significant allegations and requests are supported by clear and convincing evidence. For more information about the attorney's role, review Chapter 2.

5. DETERMINE THE CLIENT'S GOALS, CONCERNS, AND WISHES

At the initial or subsequent interview, the attorney should elicit the client's perception of the circumstances which led to the proceeding and determine, if possible, the client's wishes. For example,

- Ask whether your client wants a guardian.
- Ask the client's opinion of the proposed guardian and whether there is anyone else the client trusts more than that person.
- Ask whether the client has relatives other than those listed as interested persons in the petition.
- Ask the client if the client wants to attend the hearing or talk to the judge.
- Question the client about whether there are witnesses the client might want to call if necessary.
- Ask what concerns the client has.

If the client can communicate and provide direction, the attorney's obligation is to advocate the individual's wishes, regardless of whether the attorney thinks they are in the client's best interests. It is important to remember that being a zealous advocate does not necessarily mean contesting the guardianship if the client does not choose to do so. The client may only be concerned with particular issues, such as limiting the power of the guardian, having a certain friend or relative appointed guardian, or living (or more likely not living) in a particular environment or with a particular person. Some clients are anxious about smaller details. They may want to ensure that their friends will still be able to visit, that they are not placed in one special nursing facility, or that they can still have their daily candy bar or glass of beer in the

nursing facility in which they will be placed. Your job is to listen and engage your client in a frank discussion.

Summarize your client's wishes and concerns and repeat them back to the client to be sure you are both on the same page and that your understanding is clear.

Sometimes it might not be possible to interview your client. The client may be comatose or totally uncomprehending. If this is the case, look for other evidence of what the client may have wanted when the client had capacity that can be presented to the court.

- Ask medical providers whether an advance directive is in the client's file.
- Did the client ever speak to anyone about the client's wishes regarding health care?
- Interview the interested persons listed in the petition to find out how the client felt about the proposed guardian.
- If your client is in a nursing home, ask who visits and who is involved with the client's care. Discovering an interested person willing to take responsibility for your client may eliminate the need for a guardian altogether.

Even if you are unable to communicate with your client, you still have responsibilities as your client's advocate.

6. DISCUSS INITIAL STRATEGY AND NEXT STEPS

Once you have determined your client's wishes, discuss preliminary steps and case strategy with the client. Let the client know, for example, that you will appear at the next hearing and express the client's wishes to the judge, or that you will be filing an objection to the pending petition, or that you will be obtaining and reviewing the client's medical or financial records, or that you will be speaking with witnesses or family members the client has identified, and the like. You may not have a clear picture of the case at this early stage (beyond what your client wants) and may not be able to discuss case strategy in detail, but you can broadly outline the next steps in the case and put the client's mind at ease that you will be working for the client and protecting the client's interests.

7. DISCUSS HOW BEST TO COMMUNICATE AND KEEP THE CLIENT INFORMED

Ongoing communication with your client may need to be tailored to your client's abilities and situation. For example, your client might have only limited access to a telephone, or your client might have memory issues that make verbal communications easily forgotten, or your client might not know how to check the client's voice mail or email. Talk about how best to keep the client informed as the case progresses. You might need to, for example, send updates by regular mail so your client has a hard copy the client can use to refresh the client's memory, set

up a time each week for a status update telephone call, or whatever other arrangement will work for both of you.

D. EXPLORE LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP

Either at the initial client interview or at some later meeting, you need to discuss possible alternatives to guardianship with your client. Guardianship is not always the appropriate tool to address a problem. Indeed, oftentimes petitioning for guardianship is akin to using a sledgehammer on a thumbtack – it is just plain overkill. Not only does guardianship strip a person of all civil rights and involve the court in a person's life in the most intrusive way possible for a potentially extended period, but it also creates numerous obligations and substantial work for the guardian (something most petitioners fail to realize when they file). In reality, guardianship is not necessary in many situations because there are simpler, less-restrictive tools to address whatever problem has arisen.

1. VOLUNTARY COMPLIANCE BY THE CLIENT

Ask if your client would agree voluntarily to proposed medical treatment, to move voluntarily to a nursing home, or to other services that are proposed in the petition. When faced with guardianship, the client that has resisted a move in the past may prefer the move instead of losing autonomy and the right to make decisions. Remember that family disagreements can sometimes escalate to guardianship simply due to lack (or fear) of communication, an unwillingness to relinquish traditional roles and authority, or a plain lack of information. Think, for example, of a situation where daughter thinks mom should move to a care facility, but mom has refused based on her belief that if she moves to a facility she will not be able to see her friends or attend her church. If you work with mom and daughter to find a facility near mom's friends and church, one that mom has visited and finds acceptable, mom might no longer have an objection to moving. A guardianship is now unnecessary.

2. CARE PROGRAMS, IN-HOME SERVICES, ETC.

For a person who has assets and who lives alone, there are geriatric-care managers who can oversee the services to which the person is entitled. You can call the National Association of Professional Geriatric Care Managers at 520-881-8008 or at www.caremanager.org. You can also inquire into which home health services may be covered under Medicare or Medicaid.

There might also be in-home services available through the Nevada Department of Aging and Disability, local governmental or nonprofit organization, or even through your client's private-pay insurance.

If your client needs attention during the day when relatives or friends are working, call Aging and Disability Services to ask about adult day programs. These centers provide transportation, a caring environment, and some nursing needs while caretakers work. There are

also respite-care programs that will provide a care worker to stay with someone who needs attention while the caretaker leaves for a few hours. There are other meal and transportation services available as well.

3. REPRESENTATIVE PAYEE PROGRAMS, BILL PAY SERVICES, JOINT ACCOUNTS

If your client is confused about money management, a representative payee could be appointed for the client's Social Security or other government benefit checks. A representative payee is an alternative to guardianship. Once a representative payee is established, the check goes to someone else who will pay the client's bills and give the client spending money. Be sure that the person selected to be the representative payee is trustworthy and has the best interest of your client at heart.

The Financial Guidance Center (www.FinancialGuidanceCenter.org) has a representative payee service that assists with budgeting and paying monthly bills. You can contact the Financial Guidance Center at 1-800-451-4505 or Payee@FinancialGuidanceCenter.org. The Clark County Public Guardian also has a representative payee program for seniors (http://www.clarkcountynv.gov/public-guardian/Pages/RepresentativePayee.aspx).

If your client is living in a facility, it is possible the facility has been made the "rep payee" and is receiving client's public benefits directly and paying client's monthly bills. If that is the case, there may be no need for a guardianship.

Some utility companies will notify a third person if utility bills of a person are not paid. This contingency will prevent the person's utilities from being turned off.

Many banks have bill pay services that will relieve your client of remembering to write checks to each payee on a monthly basis.

Joint accounts might also be a way to handle money matters if there is someone extremely trustworthy who can have access to your client's account. A joint account must be created when both parties are mentally competent.

4. POWERS OF ATTORNEY FOR HEALTHCARE AND FINANCES

If your client has already executed a power of attorney for healthcare or finances, there may be no need for a guardianship because someone is already authorized to make your client's medical and financial decisions if needed. If your client has not executed powers of attorney, consider whether the client has the capacity to grant a power of attorney for healthcare or finances to a trusted relative or trusted friend, thus alleviating the need for a guardian.

If your client does have capacity to grant a power of attorney, you can have a doctor certify that the client is competent to assent to such a document. Be sure that the letter or document the doctor writes states that the client is capable of informed consent. Because there is

likely a physician's certificate filed with the court, it is especially important that you document the client's capacity. You also may want to video tape or audio tape the interview when the client names the agent to document the fact that you asked the client non-leading questions.

If you client resides in a hospital, group home, skilled nursing facility, or residential care facility, a certification of competency from a physician, psychologist, or psychiatrist must be attached to the power of attorney.[4]

E. OBTAIN AND REVIEW RELEVANT RECORDS

For any type of legal proceeding, but especially in a case where incapacity is alleged and the client likely has special needs or difficulties communicating, one of the most important functions of an attorney is conducting a thorough investigation into all relevant facts. You will need to gather records that will assist in the evaluation of the factual basis for the allegations in the petition and whether the allegations are supported by clear and convincing evidence.

You can request documents by email or letter. Always provide the person, provider, or agency receiving the request with a copy of the court order appointing you as the client's attorney. The OAC requires that the records be provided to you free of charge; it also functions as a HIIPA release for medical records. If there is a resistance to or a delay in providing the documents, you may need to issue a subpoena for the records.

1. MEDICAL AND PSYCHOLOGICAL RECORDS

In addition to any capacity declaration or report that was filed with the petition or that will be filed prior to a hearing, you should obtain and review copies of all medical and psychological records for the client for the preceding several years.

Some medical providers can be identified from the court filings (e.g., the facility or hospital where the client is staying, the physician who signed the certificate of incapacity). You can also ask the petitioner to provide the name and contact information for any hospitals and clinics the client has received services from during the past five years. The names and contact information for any medical, dental, psychological, or therapy service providers (in addition to a hospital or clinic) should also be requested.

These records will give you insights about the extent and nature of the client's disabilities as well as the client's capacity to make various decisions. They may also contain clues about possible abuse or neglect that is happening or has occurred in the past.

Remember that you might need to introduce these records into evidence at some point, so be sure to obtain a completed affidavit from the custodian of records.

[4] NRS 162A.220(2); NRS 162A.790(5).

2. FINANCIAL RECORDS

You might need to obtain records relating to your client's finances, especially if there is any hint in the case that financial abuse or exploitation has occurred. As with medical records, you can request financial records by email or letter directly from the bank or other institution and can obtain the records for free under the terms of the Order Appointing Counsel.

The records you will need will vary depending on your client's assets and the facts and issues in your case. Some financial records that might prove useful could include, for example, your client's monthly bank statements, investment or brokerage account statements, copies of cancelled checks, copies of loan agreements and loan histories, and the like. You might need to introduce these records into evidence at some point, so be sure to obtain a completed affidavit from the custodian of records.

If you need to obtain your client's social security records, your client must sign a Freedom of Information Act request, which you can find at https://www.ssa.gov/foia/request.html. If you want to request copies of your client's tax returns from the IRS, your client will need to submit Form 4506, which is available at https://www.irs.gov/pub/irs-pdf/f4506.pdf.

If you need information about a trust, refer to the recently enacted Assembly Bill 254, which became effective October 2, 2017.

3. SERVICE PROVIDER RECORDS

Many clients who have disabilities will be receiving various types of services. You should obtain contact information from the petitioner for all vendors who are providing services to the client. Contact the service providers to determine what records they have that may be relevant to the case. For example, the provider may have done an evaluation of the client's abilities and needs. Also, there may be "incident reports" that document problems that have occurred in connection with the client.

4. LAW ENFORCEMENT AND APS REPORTS

You will want to know if the client, petitioner, proposed guardian, or members of their households have had previous contact with law enforcement agencies, child welfare agencies, or protective service agencies. Such records will provide clues to whether adults who have been in charge of the client's life, and adults who have lived in the same household, have been accused of or found guilty of abuse or neglect – of the client or of anyone else for that matter.

These records will also show whether the client has ever been removed from the care of the primary custodians and whether the client has been accused of wrongdoing.

F. INTERVIEW WITNESSES

1. OBTAIN CONTACT INFORMATION FOR POTENTIAL WITNESSES

As soon as possible after being appointed to the case, provide the petitioner with a list of individuals and agencies for which you need contact information and for whom that information is not in the petition or supporting documents. If the petitioner does not have the information, the petitioner might know who does. Contact information should be obtained for potential lay witnesses and expert witnesses who may have information that would support or negate allegations in the petition.

2. INTERVIEW PERSONAL SOURCES OF INFORMATION

Interview individuals who can supply reliable information about the client and the client's abilities and disabilities, as well as the client's life history and circle of support. Personal sources might include children, siblings, parents, neighbors adjacent to the client's home, clergy if the client belongs to a particular church, and close friends of the client.

You might want to conduct these interviews after you have done a complete review of all records associated with the case. The records will give you ideas for questions to ask potential witnesses and will give you a sense as to whether the person being interviewed is being honest or maybe withholding or slanting information.

3. INTERVIEW PROFESSIONAL SOURCES OF INFORMATION

Professionals to be interviewed might include support staff, day program staff, other service providers or service coordinators, medical doctors, psychological therapists, and dentists. After reviewing all of the records, decide which interviews can be done by phone and which ones should be done in person.

These professionals can provide information about the client's abilities and disabilities, as well as supply facts or give opinions about whether the person proposed to be guardian is qualified and is the best person for this position. If the professional indicates reluctance to provide negative information, you should decide whether to solicit such information "off the record." It may be better to receive information on a confidential basis than not to receive that information at all.

4. INTERVIEW THE PROPOSED GUARDIAN

If possible, personally interview the individual or individuals who have been nominated to serve as guardian. This could be done after the review of records is complete. It might also wait until the other interviews have occurred since those interviews might give information and insights that will help guide the interview of the proposed guardian.

G. EVALUATE THE EVIDENCE AND DEVELOP YOUR CASE THEORY AND STRATEGY

Once all of the records have been obtained and given a preliminary review, and all of the potential witnesses have been interviewed, the next step is to evaluate the evidence. Although the facts are the facts, they can be viewed and presented differently depending on the perspective of the viewer. The attorney for the proposed protected person should, of course, present the facts in the light most favorable to the client. That being said, the attorney must also critically assess the strength of the body of available evidence.

Ask yourself, for example,

- Are there credibility problems with any of the lay witnesses? Do they have a bias or interest that is influencing their presentation of the facts? Are there internal inconsistencies in their statements, or are their views contradicted by other evidence?
- If any professional witnesses are involved and have rendered opinions, are their opinions supported by evidence? Are they qualified to render such opinions? Are there contrary opinions by other professional witnesses that might help or hurt your position?
- Are there issues with respect to the proposed guardian's background and qualifications (past bankruptcies, loss of professional licenses, financial misdealing, current physical or mental disabilities, accusations or investigations of abuse or exploitation, problems with alcohol, drugs, or gambling) that could be brought to light? Might such revelations help or hurt your client's position?
- Is there documentary evidence available that supports (or undermines) your position? Are there hearsay, authentication, or other evidentiary issues that might preclude the introduction of the documentation?
- Will your client be able to participate, both physically and mentally, to help support the client's position? Can the client express his desires, thoughts, and concerns? If so, can the client express them consistently and with some dependability? Can the client explain the reasoning or justification supporting the client's position?

This assessment will guide your case theory and strategy. For example, if, after a thorough investigation and an honest evaluation of the evidence, you determine that the petition and all allegations and requests are supported by clear and convincing evidence and there are no affirmative defenses or mitigating circumstances, you might decide (after consulting with your client) to proceed directly to negotiations with the petitioner to seek the most reasonable outcome.

If, however, the case is not a clear win for the petitioner because there are factual inconsistencies or disputes, flaws in the petitioner's evidence or defenses, or alternatives that have potential merit, then you should explore those lines of inquiry further. Develop the "story" of your case and marshal all available evidence to paint a compelling picture of your client's position for the judge.

H. ENGAGE IN MOTION PRACTICE, DISCOVERY, SETTLEMENT DISCUSSIONS, AND HEARINGS TO ACHIEVE YOUR CLIENT'S GOALS AND PROTECT YOUR CLIENT'S INTERESTS

In many ways, a guardianship case is like any civil case. And like any other case, all of your various skills as an attorney might well be called upon.

Issues might arise during the course of the case that require you to file motions and appear at hearings to secure court action. You might also need to prepare and file oppositions or objections to requests made by the other side.

If the petition for guardianship is contested, or there are competing petitions for guardianship, you will likely need to engage in discovery to prepare your client's case. Remember that all normal discovery tools are available to you. If warranted, utilize depositions, interrogatories, requests for production, and requests for admission to obtain needed evidence to support your position, test and eliminate opposing theories and evidence, and crystalize the parties' respective positions.

At any time (or possibly at various times) during the case, settlement discussions or a request for a settlement conference might be appropriate after consultation with your client.

If the case is set for an evidentiary hearing, you may be required to prepare a pre-trial memo, evidentiary objections, direct and cross-examinations, and opening and closing statements. As with any other case, you will secure and present evidence, testimony, and other arguments to promote the client's position and protect the client's rights. If there are facts in dispute, or arguably meritorious issues that need testimony to prove, you should demand a trial on those issues.

The attorney should assist the client to preserve the right to appeal if there are any arguably meritorious grounds for doing so. If the client is capable of understanding the right to an appeal and the purposes of an appeal, the attorney should explain these issues to the client.

I. CONTINUE YOUR REPRESENTATION THROUGHOUT THE GUARDIANSHIP

A guardianship case can last for years. Even if a guardianship is granted and your client is living quietly in a care facility, your duties do not end. Indeed, as court-appointed counsel, you

serve as the client's attorney until you are relieved of that obligation by court order or the guardianship is terminated and the case closed.

Every year, the guardian is required to file an annual accounting and a report. You will review these filings and object to them as warranted. The guardian and the guardian's attorney will also likely file requests for fees. You will similarly need to review these and object if needed. Issues might also arise relating to your client's living situation, visitation, or any number of other issues you will need to address. These ongoing requirements are covered in more detail in later chapters of this manual.

Between these yearly filings, try to visit your client at least once every three or four months. Even if, by all appearances, a case is quiet, your client could actually be in some type of distress and be unable to communicate that distress to you or anyone else. Visit your client at the client's current residence and evaluate, among other things, whether your client is receiving the care and attention the client needs; whether your client's environment is habitable, clothes clean, and the like; and whether any signs of abuse or neglect can be detected. Talk to your client in private and update the client on the case; determine whether the client has any questions or concerns; ask whether the client's wishes have changed; find out if there is anything the client needs or wants. Speak with the guardian and get an update on your client's medical condition and care plan.

Remember that you might be your client's only link to help if the client needs it.

J. EXAMPLE CLIENT INTERVIEW OUTLINE

CLIENT INTERVIEW

- Introduce yourself
- Explain your appointment by the court and that you will charge no fee
- Explain your role – you are on client's side, will represent client's interests to the judge and others
- Reassure client that client has done nothing wrong and that you will be with client through the process
- Explain that all communications are confidential
- Explain client's situation and rights
    - Nature and consequences of guardianship
    - Allegations of petition
    - Client's rights under the law
    - Ways to defend against guardianship
    - Court procedure, client's right to be present
    - Review *Protected Person's Bill of Rights*
- Determine client's goals, concerns, and wishes
    - Client's position with respect to guardianship

    - Client's concerns with respect to guardianship
    - Client's response to guardianship petition
    - Client's response to medical certification
    - Client's needs and possible alternative ways to address them
    - Evidence and witnesses to support client's position
- Determine client's opinions on proposed guardian
    - Client's preferred guardian
- Determine whether client has other family or supporters
    - Family, friends, neighbors, social workers, case workers, pastors/priests
    - Status of relationship with each and services or help each provides client
    - Other community, civic, and religious affiliations and involvements
- Determine client's opinion of present living situation
    - Previous living situation
    - Ideal living situation
- Identify estate planning documents
    - Will
    - POAs
    - Trusts
    - Guardian selection
    - Advance directives
- Explore finances
    - Assets
        - Bank accounts
        - Benefits (VA, SS, SSI/disability, Medicaid, SNAP)
        - Income from employment
        - Family financial support
        - Church financial support
        - Other financial income/support
    - Liabilities
        - Loans
        - Mortgage/rent
        - Bills
    - Insurance
        - Health insurance/Medicare
        - Life, disability, long-term care
- Discuss initial strategy and next steps
    - Date and time of next hearing
    - Client's attendance
- Determine best means of future communication

CHAPTER 4: ABUSE OF THE ELDERLY AND VULNERABLE

A. OVERVIEW

Elderly and vulnerable persons who are frail or in poor health, isolated, or physically dependent on another are more vulnerable to abuse and undue influence than the general population. According to the Centers for Disease Control, one out of ten older Americans living at home is subjected to some form of abuse or exploitation.[1] Seniors living in care facilities fare no better, with reports indicating that documented cases of abuse have occurred in thirty percent of the nation's nursing homes.[2] Sadly, studies estimate the number of victims annually to be close to two million nationwide.[3]

To make matters worse, under-reporting is a serious problem. Victims are often reluctant to report abuse because they fear retaliation, the loss of a caretaker or needed services, or the loss of the "love" of a family member. According to the National Elder Abuse Incidence Study, only twenty-one percent of abuse cases nationwide are actually reported to the appropriate authorities.[4]

In Nevada, between 2016 and 2017, the Department of Aging and Disability Services Division closed 6,499 abuse cases statewide.[5] In Clark County alone, there were 5,422 reports of elder abuse (both substantiated and unsubstantiated) for the year ending June 2017.[6] Thirty-three percent of the reports related to senior self-neglect; after that, the most frequent reported abusers were statistically one of the senior's children (22%), the senior's caretaker (11%), some other relative (9%), a spouse or significant other (9%), or a friend or neighbor (5%).[7]

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[1] Center for Disease Control, *Understanding Elder Abuse Fact Sheet* (2016), available at https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf.

[2] U.S. House of Representatives, Minority Staff, Special Investigations Division, Committee on Governmental Reform, *Abuse of Residents is a Major Problem in U.S. Nursing Homes* (July 2001), available at http://www.hospicepatients.org/ilaswan/nursinghomesabuse.pdf.

[3] National Center on Elder Abuse, Reporting of Elder Abuse in Domestic Settings, Elder Abuse Information Series No. 3 (updated Nov. 1997), available at https://ncea.acl.gov/resources/docs/archive/FactSheet-Reporting-EA-Domestic-Settings-1999.pdf.

[4] Administration on Aging, National Center on Elder Abuse, *The National Elder Abuse Incidence Study, Final Report* [hereinafter *Incidence Report*], at 4 (Sept. 1988), available at https://www.acl.gov/sites/default/files/programs/2016-09/ABuseReport_Full.pdf.

[5] Fiscal Year 2017 Elder Abuse Statistics, Nevada Aging and Disability Services Division, available at http://adsd.nv.gov/uploadedFiles/adsdnvgov/content/About/Reports2/EARS/Fiscal%20Year%202017%20Elder%20Abuse%20Statistics.pdf.

[6] *Id.*

[7] *Id.* Nationally, almost 90% of perpetrators are family members of the victim, and two-thirds of the perpetrators are adult children or spouses of the victim. *See Incidence Report*, *supra* note 4, at 1.

In this chapter, you will learn how to spot the signs of abuse, neglect, and exploitation and about Nevada's laws protecting older and vulnerable persons. You will also learn what you can do – and equally important, what you cannot do – if you suspect your client is a victim of abuse.

B. ABUSE OF THE ELDERLY OR VULNERABLE – THE SIGNS TO WATCH FOR

Under Nevada law, it is a crime to abuse, exploit, isolate, or abandon an older or vulnerable person.[8] For purposes of Nevada's criminal statute, an "older person" is someone who is sixty years of age or older.[9] A "vulnerable person" is someone eighteen or older who suffers from a physical or mental incapacitation because of a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.[10]

Nevada also has a statute that allows for civil recovery against someone who abuses, exploits, or neglects an older or vulnerable person.[11] Under that statute, if an older or vulnerable person suffers a personal injury or death caused by abuse or neglect, or suffers a loss of money or property caused by exploitation, the person who caused the injury, death, or loss is liable to the older or vulnerable person for two times the actual damages incurred.[12] If it is shown by a preponderance of the evidence that the person who committed the abuse, neglect, or exploitation acted with recklessness, oppression, fraud, or malice, the court must also order the abuser to pay attorney's fees and costs.[13]

The definitions of "vulnerable person," "abuse," "exploitation," and "neglect" under Nevada's civil statute are slightly different than the definitions contained in Nevada's criminal statute referenced above (and discussed below), so be careful to rely on the correct definition.[14]

No one wants to assume that an older or vulnerable person is being abused. Indeed, people often go to great lengths to avoid thinking about such things. But, as the statistics quoted above show, it happens. As the attorney for someone who might be subject to such abuse, it is important that you are familiar with the law regarding abuse and are able to recognize the signs of abuse so you can take all permissible action to protect your client.

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[8] *See, e.g.,* NRS 200.5099; *see generally* NRS 200.5091 to 200.50995.
[9] NRS 41.1395(d); NRS 200.5092(6).
[10] NRS 200.5092(8).
[11] NRS 41.1395.
[12] NRS 41.1395(1).
[13] NRS 41.1395(2).
[14] *Compare* 41.1395(4)(a)-(c), *with* NRS 200.5092(2), (3), (5).

Below are different types of abuse you might come into contact with and the tell-tale signs to watch for.[15]

1. ABUSE (PHYSICAL, SEXUAL, PSYCHOLOGICAL)

"Abuse," under Nevada's criminal statute, means the willful infliction of pain or injury; the deprivation of food, shelter, clothing, or services needed for physical or mental health; or the infliction of psychological emotional anguish, pain, or distress (which includes threats and isolation, disregard for needs, and harm to property or pets); and nonconsensual sexual contact.[16]

Any person who abuses an older or vulnerable person is guilty of a gross misdemeanor, punishable by a jail term up to one year and/or a fine up to $2,000, or a category C felony, punishable by a jail term of one to five years and a fine up to $10,000, as determined by the court on a first offense.[17] For any subsequent offense, the person is guilty of a category B felony punishable by a prison term between two and six years.[18] If the abuse results in substantial bodily or mental harm or death, the person is guilty of a category B felony punishable by a prison term between two and twenty years unless a more severe penalty exists.[19] The person must also pay restitution.[20]

It is also a crime to permit abuse[21] or to conspire to commit abuse.[22]

Signs of physical, sexual, or psychological abuse might include, for example:

- Unexplained or sudden changes in behavior
- Afraid to speak in the offender's presence
- Signs of being restrained
- Under or overmedication
- Smells of urine or feces
- Unexplained bruises or injuries
- Broken eyeglasses or frames
- Infections, pain, or bleeding of genital areas

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[15] For a more thorough listing of possible signs of abuse, see the Nevada Office of the Attorney General's *Elder Abuse, Neglect and Financial Exploitation: Legal Resources & Remedies Guide*, available at http://ag.nv.gov/uploadedFiles/agnvgov/Content/Hot_Topics/Citizen/Elder%20Abuse%20Neglect%20and%20Exploitation%20Legal%20Resources%20and%20Remedies%20Guide%20(003).pdf

[16] NRS 200.5092(2). For the definition of "abuse" under Nevada's civil recovery statute, see NRS 41.1395(4)(a).

[17] NRS 200.5099(1)(a); *see also* NRS 193.167 (providing for additional consecutive prison term between one and twenty years for person who commits murder, attempted murder, assault, battery, kidnapping, robbery, sexual assault, embezzlement, or obtains or takes money from a person over 60 or a vulnerable person).

[18] NRS 200.5099(1)(b).

[19] NRS 200.5099(6)

[20] NRS 200.5099(8).

[21] NRS 200.5092(2)(e).

[22] NRS 200.50995.

- Bruises around breasts or genitals
- Torn, stained, or bloody undergarments
- Locks on the outside of interior doors (to lock individual's room)
- Unexplained damage to a home caused by abusive behavior
- Extreme withdrawal or agitation
- Lack of food
- Isolation from friends and family

2. NEGLECT

"Neglect," under Nevada's criminal statute, means the failure of a person or facility manager who has assumed responsibility and care of an older or vulnerable person to provide food, shelter, clothing, or services which are necessary to maintain physical or mental health.[23]

Any person who has assumed responsibility for the care of an older or vulnerable person and who, through neglect or otherwise, causes or permits the person to suffer physical pain or mental suffering is guilty of a gross misdemeanor, punishable by a jail term up to one year and/or a fine up to $2,000, or a category C felony, punishable by a jail term of one to five years and a fine up to $10,000, as determined by the court on a first offense.[24] For any subsequent offense, the person is guilty of a category B felony punishable by a prison term between two and six years.[25] If the neglect results in substantial bodily or mental harm or death, the person is guilty of a category B felony punishable by a prison term between two and twenty years unless a more severe penalty exists.[26] The person must also pay restitution.[27]

Signs of neglect might include, for example:

- Prescription bottles are empty or overdue for refill
- Improper clothing, heating/air conditioning
- Dehydration or malnutrition
- Untreated bed sores and poor hygiene
- Untreated health problems
- Hazardous or unsafe living conditions

3. EXPLOITATION

"Exploitation," under Nevada's criminal statute, means any act taken by a person who has the trust and confidence of an older or vulnerable person (or use of a power of attorney or

[23] NRS 200.5092(5). For the definition of "neglect" under Nevada's civil recovery statute, see NRS 41.1395(4)(c).
[24] NRS 200.5099(2)(a).
[25] NRS 200.5099(2)(b).
[26] NRS 200.5099(6)
[27] NRS 200.5099(8).

guardianship) to obtain control over the person's money, assets, or property through deception, intimidation, or undue influence, with the intention of permanently depriving the person of ownership, use, benefit, or possession, or to convert the person's money, assets, and property.[28]

Any person who exploits an older or vulnerable person, depending on the value of the money, assets, or property obtained or used, is guilty of a gross misdemeanor, category B felony, or category C felony, punishable by up to twenty years in jail and a fine up to $25,000.[29] For any subsequent offense, regardless of the value involved, the person is guilty of a category B felony, punishable by a prison term of two to twenty years and/or a fine up to $25,000.[30] The person must also pay restitution.[31]

It is also a crime to conspire to commit exploitation.[32]

Signs of exploitation might include, for example:

- ☐ Important possessions, documents, or credit cards are missing
- ☐ Recently filled medications are already gone (drug diversion)
- ☐ Sudden changes in bank account balances or banking habits
- ☐ Abrupt changes in will or other financial documents
- ☐ Unpaid bills despite financial resources
- ☐ Sudden appearance of previously uninvolved relatives

4. ISOLATION AND ABANDONMENT

"Isolation," under Nevada's criminal statute, means preventing an older or vulnerable person from receiving visitors, mail, or telephone calls or physically restraining the older or vulnerable person to prevent them from meeting visitors.[33] "Abandonment" means desertion of an older or vulnerable person in an unsafe manner or withdrawal of necessary assistance.[34]

Any person who isolates or abandons an older or vulnerable person is guilty of a gross misdemeanor, punishable by a jail term up to one year and/or a fine up to $2,000, or a category C felony, punishable by a jail term of one to five years and a fine up to $10,000, as determined by

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[28] NRS 200.5092(3). For the definition of "exploitation" under Nevada's civil recovery statute, see NRS 41.1395(4)(b). Under Nevada's criminal statute, "undue influence" means the improper use of power or trust in a way that deprives a person of the person's free will and substitutes the objectives of another person. The term does not include the normal influence that one member of a family has over another." NRS 200.5092(3); *see generally Ross v. Giacomo*, 635 P.2d 298, 302-303 (Nev. 1981) (approving civil jury instruction on undue influence).

[29] NRS 200.5099(3)(a), (4); *see also* NRS 193.167 (providing for additional consecutive prison term between one and twenty years for person who, with respect to older or vulnerable person, commits embezzlement, obtains by false pretenses or takes money, or criminally violates Nevada's securities and commodities laws).

[30] NRS 200.599(3)(b), (4).

[31] NRS 200.5099(8).

[32] NRS 200.50995.

[33] NRS 200.5092(4).

[34] NRS 200.5092(1).

the court on a first offense.[35] For any subsequent offense, the person is guilty of a category B felony punishable by a prison term between two and ten years and a fine up to $5,000.[36] The person must also pay restitution.[37]

It is also a crime to permit isolation[38] or to conspire to commit isolation.[39]

Signs of isolation or abandonment might include, for example:

- Physically restraining or otherwise preventing the older person from receiving visitors, mail, or phone calls
- Making false statements contrary to the express wishes of the older person to prevent visitors and callers
- Lack of food
- Lack of or expired prescription medication
- Desertion at a hospital or facility
- Withdrawal of necessary assistance

C. WHAT TO DO IF YOU SUSPECT ABUSE

Under Nevada law, certain people – including doctors, dentists, nurses, social workers, and many others – are "mandatory reporters," meaning they are legally required to report suspected abuse, neglect, exploitation, isolation, or abandonment of an older or vulnerable person to Aging and Disability Services or law enforcement.[40] Even bank employees are required to report known or suspected exploitation.[41] Aging and Disability Services is required to initiate an investigation within three working days of receiving a report of elder abuse,[42] and law enforcement is required to immediately investigate any report of abuse of a vulnerable person.[43] A mandatory reporter who fails to report suspected abuse could be guilty of a misdemeanor.[44]

Attorneys are not mandatory reporters of abuse of older or vulnerable persons under Nevada law.[45] Rather, a lawyer's obligation is governed by the Nevada Rules of Professional Conduct, including:

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[35] NRS 200.5099(5)(a).
[36] NRS 200.5099(5)(b).
[37] NRS 200.5099(8).
[38] NRS 200.5092(4)(c).
[39] NRS 200.50995.
[40] NRS 200.5093 (older person); NRS 200.50935 (vulnerable person).
[41] NRS 657.290.
[42] NRS 200.5093(6).
[43] NRS 200.50935(6).
[44] NRS 200.5093(9); NRS 200.50935(7).
[45] NRS 200.5093(4); NRS 200.50935(3).

- Rule 1.2(a), which states that the lawyer shall abide by a client's decisions concerning the objectives of representation;
- Rule 1.6(a), which states that a lawyer shall not reveal information relating to representation of a client without the client's informed consent; and
- Rule 1.14(a), which states that, if the client's capacity is diminished, the lawyer shall, as far as possible, maintain a normal client-lawyer relationship with the client, but which permits (but does not require) the lawyer to take minimal (think least restrictive) protective action if (1) the client does not have the capacity to direct the lawyer on the issue, (2) the client is at risk of "substantial" physical, financial, or other harm if no action is taken, and (3) the client cannot adequately act to protect themself.

As such, a lawyer representing a protected person in a guardianship case might find him or herself faced with an ethical dilemma if a client discloses that the client is being abused or if the lawyer suspects the client is being abused. If the client affirmatively directs the lawyer to report the abuse, the lawyer's path is probably clear. But what if the client directs the lawyer *not* to report the abuse? Does the lawyer respect the client's wishes? Or does the lawyer breach the client's confidence for the client's "own good" (or what the lawyer believes is in the client's *best interest*)? And what if the client is simply unable to provide any direction at all? What does the lawyer do then?

These are difficult questions, and the answers might frequently lurk in a grey area. As with the totality of your representation, your analysis of these issues must be thoughtful, empathetic, respectful, and client-centered. It should directly involve the client, consider at every step the client's values and goals, and, to the extent possible, be divorced from your personal opinions and preconceived ideas of what the client *should* do. Remember the precept that a client – even one under guardianship – has the right to make decisions about fundamental issues in the client's life and have those decisions respected. In practice, of course, that precept must be carefully balanced against the reality that some clients under guardianship are totally incapable of formulating or communicating their desires and are completely unable to protect themselves. There are no bright-line answers – every case is different and must be evaluated as such.

If you find yourself faced with this situation, the steps below should help you analyze your case and determine how to proceed.

1. INVESTIGATE YOUR SUSPICIONS THOROUGHLY.

If you suspect your client is being abused, or if the client discloses abuse to you, thoroughly investigate your suspicions or the client's report.

Review the most recent medical records from the client's primary care physician – the physician who sees the client most regularly – to see if the doctor has noted any unusual injuries or made any telling notes in the file. If your client has contact with other service providers (daycare programs, in-home care providers, social workers, and the like) obtain and review the records from them as well. (Remember that many service providers are mandatory reporters under Nevada law. If they have seen any signs of abuse, they should have already reported them.)

Place a call to the guardian to "check in" and see how the client is doing. Speak with any medical providers, caregivers, friends, and neighbors – whomever comes into contact with your client regularly. Remember, though, not to divulge or discuss your suspicions; any information relating to your representation is confidential and should not be disclosed without client consent.[46] Instead, try asking more general, open-ended questions about the client's health and current condition, the circumstances surrounding any recent injuries or medical issues, the client's relationship with the suspected abuser, and the like, to steer the conversation in the direction needed.

Once you have gathered all the information you can from third parties and exhausted those avenues, talk to your client if your client is able to communicate. Consider the following questions:

Asking indirectly:

- Do you feel safe where you live?
- Who prepares your food?
- Does someone help you with your medication?
- Who takes care of your checkbook?

Asking directly:

- Does anyone at home hurt you?
- Does anyone scold or threaten you?
- Does anyone touch you without your consent?
- Does anyone make you do things you don't want to do?

[46] NRPC 1.6(a). Even if your client is so incapacitate that the client is unable to give informed consent, respect the confidentiality the client is owed and, to the extent possible, treat the client as you would any other. *See* NRPC 14.1(a). Unless and until you have confirmed that an incapacitated client is actually facing a substantial risk of harm, you are not permitted to take unilateral protective action. *See* NRPC 14.1(b).

- Does anyone take things that are yours without asking?
- Has anyone ever made you sign documents that you did not understand?
- Are you afraid of anyone at home?
- Are you alone a lot?
- Has anyone ever failed to help you take care of yourself when you needed help?

Follow-up questions:

- Explore the mistreatment – what, how, when, how often?
- Who is the perpetrator?
- How does the older or vulnerable person cope?
- Assess the older or vulnerable person's safety.
- What are alternative living options; who are alternative caregivers?
- What can be done to prevent future abuse?[47]

After concluding your investigation, you might be satisfied that no abuse has occurred based on the information you have collected, or you might need to proceed with the analysis below. Either way, make sure to document every aspect of your investigation and client conversations throughout the entire process. As noted above, attorneys are not mandatory reporters of abuse of older or vulnerable persons under Nevada law,[48] and similarly there is no mandatory reporting requirement under the rules of professional conduct.[49] Thus, the recommendation to document does not stem necessarily from liability concerns.[50] Rather, such practice helps focus and engage you in a thoughtful, methodical analysis that will put your mind

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[47] Adapted from Stanford Medicine's guide on how to screen for elder abuse, available at http://elderabuse.stanford.edu/screening/how_screen.html.

[48] NRS 200.5093, 200.50935.

[49] NRPC 1.6(b)(1) (stating lawyer "may" disclose confidential information to prevent "reasonably certain death or substantial bodily harm"); NRPC 1.14(b) (stating lawyer "may" take action to protect client who "has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest").

[50] For an interesting discussion of the notion of common law liability for an attorney's failure to protect client victims of domestic violence, which applies equally to elder abuse situations, see Dana Harrington Conner, *To Protect or to Serve: Confidentiality, Client Protection, and Domestic Violence*, 79 Temp. L. Rev. 877, 906-917 (Fall 2006), wherein the author notes:

> [S]ignificant public policy concerns suggest that attorneys should not be held responsible for failing to act for the protection of their victim-client. Recognizing a duty to protect may result in overreporting by attorneys, thus resulting in a reluctance on the part of victims of domestic violence to seek legal representation for fear that their confidences will be violated. Moreover, . . . sometimes the act of disclosure can put the client at greater risk. . . .

at rest (and anyone else's, should the need arise), knowing all avenues of inquiry ethically open to you were explored and exhausted.

2. IF YOUR SUSPICIONS ARE CONFIRMED, AND YOUR CLIENT HAS THE CAPACITY TO DIRECT YOU, DETERMINE WHETHER YOUR CLIENT WANTS THE ABUSE REPORTED.

If your investigation has confirmed your suspicion that the client has been subjected to abuse, and if your client is able to communicate and has the capacity to direct you on the issue, discuss with the client whether the client wants to report the abuse or, alternatively, authorizes you to report the abuse or take some protective action on the client's behalf.[51] (If your client is not able to communicate and does not have the capacity to direct you, you can skip to the next section below.)

If the client wants the abuse reported, the client is free to report the abuse themself, or, with the client's authorization, you can report the abuse on the client's behalf.

- If your client is sixty years of age or older, report suspected elder abuse, neglect, exploitation, isolation, abandonment, or facility complaints to the Nevada Department of Health and Human Services, Aging and Disability Services Division, Elder Protective Services at (702) 486-6930 (Las Vegas/Clark County) or (888) 729-0571 (statewide).[52] If the older person is in immediate danger, contact the local police, sheriff's office, or emergency medical services.
- If your client is a vulnerable person age eighteen to sixty, report abuse, neglect, exploitation, or isolation to local law enforcement. If the situation is an emergency call 911. You can also contact Metro's Abuse/Neglect Detail at (702) 828-3364.[53]

If the client does not want the abuse reported, an initial rejection of disclosure is not the end of the discussion.[54] Analyze the decision with the client, identify the client's concerns, seek to address those concerns and fears if possible, and strive to gain consent from the client to report the abuse or take other action. In doing so, try to understand the client's goals and values.

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[51] Remember that the objectives of the case are the client's to determine, *see* NRPC 1.2(a), and that you are generally precluded from disclosing information you have learned during your representation without the client's informed consent, *see* NRPC 1.6(a). Therefore, the client needs to understand the ramifications of any decision to report or to withhold.

[52] For information about Elder Protective Services, visit http://adsd.nv.gov/Programs/Seniors/EPS/EPS_Prog/.

[53] For information about Metro's Abuse/Neglect Detail, visit https://www.lvmpd.com/en-us/Pages/AbuseNeglect.aspx.

[54] For a more detailed exposition of the client consultation outlined below and its variations, see Sarah S. Sandusky, *The Lawyer's Role in Combating the Hidden Crime of Elder Abuse*, 11 Elder L. J. 459 (2003); Peter Margulies, *Access, Connection, and Voice: A Contextual Approach to Representing Senior Citizens of Questionable Capacity*, 62 Fordham L. Rev. 1073 (Mar. 1994); and Linda F. Smith, *Representing the Elderly Client and Addressing the Question of Competence*, 14 J. Contemp. L. 61 (1988).

A client's "illogical" decision might be entirely consistent with the values and lifestyle the client has pursued their entire life. For example, it might make little sense to the lawyer that a client does not wish to report a son's theft. However, if the client has a limited life expectancy, minimal need for funds, little attachment to material possessions, or an emotional focus on maintaining familial bonds at the end of life, that client's decision may be quite reasonable.

Ask probing questions into motivations behind nondisclosure. For instance, does the client fear institutionalization if the abuse is reported? Does the client want to protect the abuser and keep the family together? Does the client fear going to court?

Once you have determined the client's dominant values and motivations, address the client's fears and present options for how the client can escape the abuse without those fears becoming a reality. For example, if an abused client has refused to disclose the abuse because the client fears being placed in a nursing home, the lawyer could suggest the possibility of moving into alternative housing instead of just recommending reporting. Or if an exploited client fears a son going to jail because of ongoing theft, the lawyer could suggest negotiation and settlement to recover the money and avoid criminal prosecution. As you describe each option, ask for the client's feelings and thoughts, help the client weigh the pros and cons, and answer any questions the client might have.

In other words, the lawyer does not merely give up when the client refuses to report abuse. Instead, the lawyer walks the client, step-by-step, through an examination of the client's motivations, taking the time to understand the rationale behind the client's decisions and presenting escape options that comport with the client's overall goals and values. Hopefully, as a result of the counseling, the client will be much more likely to consent to disclosure of the abuse or to other protective action.

If after a thorough discussion (perhaps multiple discussions), the client continues to direct you not to disclose the abuse and precludes you from taking other protective action on the client's behalf, and if your client seems able to articulate a coherent rationale for the stated decision (regardless of whether it is a rationale you support), respect your client's wishes and keep the client's confidence, even if you disagree with the decision and even if you think the decision is not in the client's interest.[55] This does not mean, of course, that you are powerless to

[55] NRPC 1.2(a) ("[A] lawyer shall abide by a client's decision concerning the objectives of representation . . . ."); NRPC 1.6(a) ("A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent . . . ."); NRPC 1.14(a) ("When a client's capacity to make adequately considered decisions in connection with a representation is diminished, . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."); *cf.* Los Angeles County Bar Association Formal Opinion 504 (Feb. 2001) (analyzing court-appointed attorney's ethical obligations in dependency proceeding and concluding that "if the attorney reasonably believes that the minor client has made an informed decision not to disclose the client's confidential information, even though the information is that the minor is being sexually assaulted, and even though

help your client. In the normal course of your representation, you must still ensure that the client's statutory rights are enforced and that the Protected Person's Bill of Rights is adhered to by all parties.

3. IF YOUR SUSPICIONS ARE CONFIRMED, BUT YOUR CLIENT DOES NOT HAVE THE CAPACITY TO DIRECT YOU, YOU ARE ETHICALLY PERMITTED TO TAKE PROTECTIVE ACTION ON THE CLIENT'S BEHALF.

If your client is completely unable to direct you, or is incapacitated to such an extent that the client is unable even to articulate a rationale for the refusal to allow you to report the abuse or take other protective action, the ethical rules permit you to take minimal protective action on your client's behalf.[56]

NRPC 1.14(b) permits a lawyer to take protective action only if (1) the client does not have the capacity to direct the lawyer on the issue, (2) the client is at risk of "substantial" physical, financial, or other harm if no action is taken, and (3) the client cannot adequately act to protect themself.

When taking protective action, the lawyer must keep in mind the goal of intruding into the client's decision-making autonomy to the least extent feasible[57] and must advocate for the least restrictive action on the client's behalf.[58] Additionally, the lawyer must attempt to protect the client's confidential information, revealing only that information "reasonably necessary" to protect the client.[59]

What protective action might be appropriate will depend entirely on the particular facts of your case. Remember that the Protected Person's Bill of Rights enumerates a number of rights you can enforce – including your client's right to be treated with respect and dignity, to be treated fairly by the guardian, and to receive prudent financial management of property – all of which may be addressed in the guardianship proceeding.[60] Additionally, all of the mechanisms and remedies contained in Chapter 159 and available under Nevada law are at your disposal.

If your client is suffering financial abuse, you can ensure that the guardian is made to file or update the inventory, budget, and accounting and that all funds are placed into a blocked

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the attorney believes that the decision is not in the best interests of the minor, the attorney is not ethically permitted to disclose the information. . . .).

[56] *E.g.,* Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics – The Lawyer's Deskbook on Professional Responsibility* § 1.14-2 (2018-19 ed.).

[57] Model Rule of Prof'l Conduct R. 1.14 cmt. 5.

[58] Model Rule of Prof'l Conduct R. 1.14 cmt. 7.

[59] NRPC 1.14(c).

[60] S.B. 360, sec. 6, 2017 Leg., 79th Sess. (Nev. 2017).

account.[61] In some cases, the filing of a recovery action within the guardianship case might be called for.[62]

If the client is being physically abused in a facility, it might be appropriate to speak with the guardian about the issue, address the problem with the facility, contact Nevada's Long Term Care Ombudsman Program,[63] or petition to have your client moved. If your client lives with a relative, you might need to encourage a different relative to become guardian or even petition to remove and replace the current guardian with the Clark County Public Guardian. If you feel the problem needs additional or ongoing investigation and monitoring, you could even seek the appointment of a guardian *ad litem*.[64]

Of course, in some cases, especially if your other strategies have failed to resolve the problem, it might also be appropriate to report the abuse, neglect, exploitation, isolation, or abandonment to Elder Protective Services or law enforcement. Again, there is no one-size-fits-all solution and the action you take will depend on your client's situation and needs and the specific facts of the case.

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[61] *E.g.,* NRS 159.065, .085, .177.
[62] NRS 159.305, .315.
[63] For information, visit http://adsd.nv.gov/Programs/Seniors/LTCOmbudsman/LTCOmbudsProg/
[64] *See* NRS 159.0455, .185-.187.

CHAPTER 5: ISSUES RELATING TO GUARDIANSHIP OF THE PERSON

A. OVERVIEW

As the name implies, the guardian of the person is charged with the care, custody, and control of the protected person's "person."[1] Whereas the guardian of the estate is responsible for the protected person's finances, the guardian of the person is responsible for the proper care, maintenance, education, and support of the protected person.[2] This includes providing the protected person with adequate food, clothing, and shelter.[3] It also includes, among numerous other things discussed below, seeing that the protected person is properly trained and educated and that the protected person has the opportunity to learn a trade, occupation, or profession.[4]

Once appointed, the guardian of the person will serve until the guardian resigns, the guardian is removed, or the guardianship is terminated. As with the guardian of the estate, the guardian of the person is required to notify the court immediately (and is subject to removal) if the guardian is convicted of a gross misdemeanor or felony; files for or receives bankruptcy protection (whether individually or as a principal of an entity); has a driver's license suspended, revoked, or cancelled for nonpayment of child support; is suspended for misconduct or disbarred from the practice of law, accounting, or any other profession that involves the management of money or requires a license; or is subject to a judgment for misappropriation of funds or assets.[5]

In fulfilling the guardian's statutory duties, the guardian of the person must at all times act in the best interest of the protected person.[6] The guardian must also, of course, treat the protected person fairly and with respect and dignity.[7]

This chapter discusses some of the more common issues you might encounter when dealing with the guardian the person.

B. PERSONAL PROPERTY AND FINANCES

The guardian of the estate – not the person – is generally charged with the care and custody of the protected person's money and property. But the guardian of the person has some responsibility as well.

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[1] NRS 159.079(1).
[2] NRS 159.079(1).
[3] NRS 159.073(1)(c)(1)(II).
[4] NRS 159.079(1)(d).
[5] NRS 159.1852.
[6] NRS 159.073(1)(c)(1)(I).
[7] NRS 159.328(1)(k)-(l).

The guardian of the person must take reasonable care of any clothing, furniture, vehicles, and other personal effects of the protected person.[8] The guardian of the person must also commence a proceeding if any property of the protected person is in need of protection.[9]

If no guardian of the estate has been appointed, the guardian of the person may take some limited control of the protected person's finances, generally to secure money for the protected person's support and maintenance. For example, when there is no guardian of the estate, the guardian of the person can institute a lawsuit to compel any person under a duty to support the protected person, or to pay for the welfare of the protected person, to perform that duty.[10]

In the absence of a guardian of the estate, the guardian of the person can also receive the protected person's money and property and apply it to the support, care, and education of the protected person.[11] In doing so, the guardian of the person must exercise care to conserve any excess money for the protected person's needs.[12] The guardian is also precluded from using any of the protected person's money to cover the cost of any room and board that the guardian (or the guardian's spouse, parent, or child) furnishes to the protected person unless the court has first approved the charge.[13] (If there is a guardian of the estate, a guardian of the person who supplies the protected person's room and board can present a claim to the guardian of the estate for payment.)[14]

If (or when) a guardian of the estate is appointed, the guardian of the person must account for and turn over any money received in excess of that used to pay for the protected person's support, care, and education.[15]

At all times, the guardian of the person is to give due regard to the estate of the protected person.[16] If there is a guardian of the estate, the guardian of the person can request that the guardian of the estate pay third parties (from the protected person's estate) for services provided for the protected person's care and maintenance.[17] But the guardian of the person is not obligated to pay the protected person's expenses beyond what the protected person's estate can reimburse.[18]

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[8] NRS 159.079(1)(b).
[9] NRS 159.079(1)(b).
[10] NRS 159.112(1)(a).
[11] NRS 159.112(1)(b).
[12] NRS 159.112(1)(b).
[13] NRS 159.112(1)(b).
[14] NRS 159.112(3)
[15] NRS 159.112(2).
[16] NRS 159.079(2).
[17] NRS 159.112(4).
[18] NRS 159.079(2).

C. MEDICAL CARE

The Protected Persons' Bill of Rights makes clear that a protected person has the right to "[r]eceive timely, effective and appropriate health care and medical treatment that does not violate his or her rights."[19] The protected person also has the right to "[h]ave due consideration given to his or her current and previously stated personal desires, preferences for health care and medical treatment and religious and moral beliefs."[20]

The guardian of the person is responsible for authorizing and arranging for the protected person's medical, surgical, dental, psychiatric, psychological, hygienic, and other care and treatment as needed.[21] To that end, the guardian has authority to obtain information from any government agency, medical provider, or other person or entity who has information about the protected person's health care or insurance.[22]

Without first obtaining court approval, the guardian of the person cannot consent to experimental treatments for the protected person, sterilization, or participation in any experiment.[23] And the court can authorize such treatment or experimentation only if it is intended to assist the protected person in developing or regaining abilities or is of direct benefit to the protected person and intended to preserve the protected person's life or prevent serious impairment.[24]

D. RESIDENCE AND LOCATION

Every protected person has the right, if possible, to have their stated preferences followed and age in their own surroundings or, if not possible, in the least restrictive environment suitable to the protected person's unique needs and abilities.[25] As stated in the Protected Persons' Bill of Rights, a protected person has the right to "[r]emain as independent as possible, including, without limitation, to have his or her preference honored regarding his or her residence and standard of living, either as expressed or demonstrated before a determination was made relating to capacity or as currently expressed, if the preference is reasonable under the circumstances."[26]

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[19] NRS 159.328(1)(o).
[20] NRS 159.328(1)(g).
[21] NRS 159.073(1)(c)(1)(II); NRS 159.079(1)(c).
[22] NRS 159.079(3). The guardian of the person is the protected person's personal representative for purposes of the Health Insurance Portability and Accountability Act ("HIPAA") and applicable regulations. NRS 159.079(3).
[23] NRS 159.0805(1)-(2).
[24] NRS 159.0805(3).
[25] NRS 159.0807(1).
[26] NRS 159.328(1)(h).

The guardian of the person is responsible for providing the protected person with safe and appropriate housing.[27] This includes the authority and responsibility to locate an appropriate residence for the protected person.[28]

1. CHANGE OF RESIDENCE OR LOCATION

Unless an emergency exists (which generally means the health and safety of the proposed protected person is at risk of imminent harm), a proposed protected person must not be moved until a guardian is appointed.[29]

Generally speaking, a guardian of the person can establish and change the residence of the protected person at any place within Nevada without court permission.[30] At all times, the guardian must select the least restrictive appropriate residence available and necessary to meet the protected person's needs that is financially feasible.[31]

If the guardian of the person wants to change the protected person's residence to a location outside Nevada, the guardian must ask the court for permission.[32] The guardian must show that the placement outside Nevada is in the best interest of the protected person or that there is no appropriate residence available in Nevada.[33] Even if the protected person moves outside Nevada, the court will retain jurisdiction of the guardianship unless and until the guardianship is terminated or the jurisdiction is transferred to another state.[34]

Except in emergency situations, anytime the guardian intends to change the protected person's residence (or if the protected person will reside at a location other than the protected person's residence for more than three days), the guardian must file a notice of intent to move with the court and, not less than ten days before moving the protected person, serve the notice on all interested persons (unless the interested person has waived notice or the protected person or a court order prohibits the guardian from giving notice).[35] If no objection to the move is received within ten days after the notice, the guardian can move the protected person without court permission.[36]

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[27] NRS 159.073(1)(c)(1)(II).
[28] NRS 159.079(1)(a).
[29] NRS 159.0807(2).
[30] NRS 159.079(4).
[31] NRS 159.079(4).
[32] NRS 159.079(5).
[33] NRS 159.079(5).
[34] NRS 159.079(5).
[35] NRS 159.0807(3)(b); NRS 159.0807(4), (7). The notice must include the current location of the protected person. NRS 159.0807(6).
[36] NRS 159.0807(4).

If an emergency condition exists, the guardian can take any temporary action needed without the court's permission.[37] However, the guardian must file notice with the court and serve it on all interested persons as soon as practicable after the action is taken.[38] An "emergency condition" means, among other situations, that the health or safety of the protected person is at risk of imminent harm or the protected person has been hospitalized and will be unable to return to their residence for more than twenty-four hours.[39]

2. ADMISSION TO A SECURE FACILITY

A "secured residential long-term care facility" means a residential facility that provides long-term care that is designed to restrict a resident from leaving through the use of locks or other mechanical means unless the resident is accompanied by a staff member or other authorized person (but does not include a facility that uses procedures or mechanisms to track the location or action of the resident).[40]

If the guardian of the person intends to move the protected person to a secured residential long-term care facility, the guardian must file a notice of intent to move with the court and, not less than ten days before moving the protected person, serve the notice on all interested persons (unless the interested person has waived notice or the protected person or a court order prohibits the guardian from giving notice).[41] The notice must include the current location of the protected person.[42] If no objection to the move is received within ten days of the notice, the guardian can move the protected person without court permission.[43]

However, the guardian is not required to file and serve such a notice if the facility is in Nevada and (1) an emergency situation exists (generally meaning the health or safety of the protected person is at risk of imminent harm); (2) the court has previously granted the guardian the authority to place the protected person in a secured facility; or (3) the move is made pursuant to the recommendation of a physician, a VA doctor, a licensed social worker, or a protective services employee.[44]

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[37] NRS 159.0807(5).
[38] NRS 159.0807(5).
[39] NRS 159.079(5).
[40] NRS 159.0255.
[41] NRS 159.079(6); NRS 159.0807(3)(a).
[42] NRS 159.0807(6).
[43] NRS 159.0807(4).
[44] NRS 159.079(6). "Protective services" has the meaning ascribed to it in NRS 200.5092. NRS 159.079(8). An "emergency condition" means, among other situations, that the health or safety of the protected person is at risk of imminent harm or the protected person has been hospitalized and will be unable to return to their residence for more than twenty-four hours. NRS 159.0807(5).

If the guardian moves the protected person to a secured long-term care facility in an emergency situation, the guardian must file notice with the court and serve notice on all interested persons as soon as practicable after the move.[45]

Within ten days of moving a protected person to a secured residential long-term care facility, the guardian must also file a report regarding the protected person's condition and the performance of the guardian's duties.[46] That report must include a copy of the written recommendation upon which the transfer was made and be served on the protected person's attorney and the guardian of the estate.[47]

E. VISITATION

As stated in the Protected Person's Bill of Rights, a protected person has the right to "[r]eceive telephone calls and personal mail and have visitors, unless his or her guardian and the court determine that particular correspondence or a particular visitor will cause harm to the protected person."[48]

Generally speaking, a guardian of the person cannot restrict a protected person's right to communicate, visit, or interact with a relative or person of natural affection, including communication by telephone, mail, or other means.[49] A "relative" means a parent, child, or sibling of the protected person.[50] A "person of natural affection" is "a person who is not a family member of a protected person but who shares a relationship with the protected person that is similar to the relationship between family members."[51]

However, under certain circumstances, the guardian is allowed to restrict visitation and communication. Specifically, a guardian can restrict visitation and communication if:

- The protected person tells the guardian (and at least one other independent witness who is not related to or affiliated with the guardian or protected person) that the protected person does not want to visit or communicate with the visitor;[52]
- The visitor is being investigated for alleged abuse of the protected person, and the guardian determines it is in the best interest of the protected person to restrict visitation and communication;[53]

[45] NRS 159.0807(5).
[46] NRS 159.081(1)(b).
[47] NRS 159.081(2), (4).
[48] NRS 159.328(1)(n).
[49] NRS 159.332(1).
[50] NRS 159.331.
[51] NRS 159.0235.
[52] NRS 159.332(1)(a).
[53] NRS 159.332(1)(b).

- A court has authorized restricting the visitor's visitation and communication with the protected person;[54]
- The guardian determines that the protected person is being physically, emotionally, or mentally harmed by the visitor (but, within ten days, the guardian must file a petition asking the court to authorize the restriction unless the visitor is being investigated for abusing the protected person);[55] or
- A care or treatment plan contains a finding that visitation or communication with the visitor is detrimental to the health and well-being of the protected person (and the guardian determines that the restriction is in the protected person's best interests and, within ten days after learning of the restriction, files and serves a notice specifying the restriction).[56]

Additionally, outside the circumstances described above, a guardian can file a petition with the court asking for an order restricting the visitation and communication of particular relatives or persons of natural affection.[57] If a petition is filed, the court can order supervised visitation until all parties (the guardian, the protected person, and the proposed visitor) can be heard.[58] The court can even appoint someone to meet with the protected person to determine the protected person's wishes with respect to visitation.[59]

At the hearing, the court is to consider, among other things, whether any protective orders have been issued against the visitor; whether the visitor has been charged with abuse, neglect, or exploitation; whether the protected person has expressed any preference regarding visitation to the court or the guardian and at least one independent witness; and, if the protected person is unable to communicate, whether the protected person's estate planning or other documents reflect any preferences.[60] If the protected person cannot communicate, the guardian must provide documentation to the court (nurses notes, caregiver or medical records, or witness testimony) describing any signs of the protected person's opposition before a visit or physical reactions, agitation, signs of distress, and the like, during or after a visit.[61]

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[54] NRS 159.332(1)(c).
[55] NRS 159.332(1)(d); NRS 159.332(2).
[56] NRS 159.332(1)(e); NRS 159.332(3).
[57] NRS 159.333(1).
[58] NRS 159.333(2)(b), (d).
[59] NRS 159.333(2)(a). Hearings must be set within sixty-three days after the petition is filed, or within seven days if the protected person's health is in serious decline or death is imminent. NRS 159.336(1)-(2). Notice of an emergency seven-day hearing, along with a copy of the petition and any order issued, must be served personally on the protected person and any other person against whom the petition is filed. NRS 159.336(4).
[60] NRS 159.333(3).
[61] NRS 159.333(4).

If the guardian shows good cause at the hearing, the court can restrict visitation and communication with the protected person.[62] In doing so, the court is to consider, in order of preference, (1) placing reasonable time, manner, and place restrictions on the visitation based on the parties' history and the protected person's wishes; (2) requiring that any visitation or communication be supervised; and (3) denying communication and visitation altogether.[63]

Thereafter, the guardian, protected person, relative, or person of natural affection can petition the court to modify or rescind any order restricting visitation or communication.[64] If a party believes the guardian has committed an abuse of discretion in restricting visitation or communication due to an ongoing investigation of abuse or neglect, or has otherwise violated a court order, the party can petition the court for access to the protected person (or for additional restrictions, modification of the guardian's duties, or removal of the guardian).[65]

A guardian who violates the statutory provisions regarding visitation and communication is subject to removal.[66]

F. ANNUAL REPORT

The guardian of the person is required to file a written report with the court annually regarding the well-being and condition of the protected person and the exercise of the guardian's authority and performance of duties.[67] The report must be filed not later than sixty days after the anniversary date of the guardian's appointment and at such other times as the court orders.[68] The guardian of the person is to provide a copy of the report to the guardian of the estate no later than thirty days after it is filed.[69]

The court can prescribe the form and contents of the report.[70] At a minimum, however, the report must discuss the protected person's physical condition, identify the protected person's place of residence, provide the names of all other persons living with the protected person (unless currently living in a secured residential long-term care facility, group home, supportive

[62] NRS 159.333(3). The guardian has the burden of proof if asking to restrict visitation or communication. NRS 159.337(1)(a).

[63] NRS 159.334(1).

[64] NRS 159.333(5). The guardian has the burden of proof if seeking to modify or rescind an order or oppose a petition alleging abuse of the guardian's discretion. NRS 159.337(1)(b)-(c). A relative or person of natural affection has the burden if petitioning to modify or rescind an order. NRS 159.337(2).

[65] NRS 159.335(1).

[66] NRS 159.335(2).

[67] NRS 159.073(1)(c)(4); NRS 159.081(1).

[68] NRS 159.081(1)(a), (c).

[69] NRS 159.081(4).

[70] NRS 159.081(3).

living facility, assisted living facility, or other long-term care facility), and provide any other information required by the court.[71]

The guardian must also file a report within ten days of moving the protected person to a secured residential long-term care facility.[72] That report must include a copy of the written recommendation upon which the transfer was made and be served on the protected person's attorney.[73]

The court is not required to hold a hearing on the guardian's report.[74]

G. DEATH OR IMPENDING DEATH OF THE PROTECTED PERSON

If the guardian of the person reasonably believes the protected person is likely to die within the next thirty days based on information from a psychologist, physician, health care provider, or other qualified person, the guardian is required to provide notice to all interested persons and persons of natural affection.[75]

When the protected person dies, the guardian is required to provide notice of the death to all interested persons and persons of natural affection.[76] The guardian is to notify the protected person's family members and any designated person of natural affection in person, by telephone, or by electronic communication (if the person has opted to receive electronic communications), and notice to all other interested persons and persons of natural affection is to be in writing.[77]

The guardian must also notify those same individuals about arrangements for the protected person's burial or cremation.[78]

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[71] NRS 159.081(3).
[72] NRS 159.081(1)(b).
[73] NRS 159.081(2).
[74] NRS 159.081(5).
[75] NRS 159.0809(1)(a).
[76] NRS 159.0809(1)(b); *see also* NRS 159.073(1)(c)(1)(V); NRS 159.191(5) ("The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the protected person of the death of the protected person within 30 days after the death.")
[77] NRS 159.0809(2).
[78] NRS 159.0809(1)(c).

CHAPTER 6: ISSUES RELATING TO GUARDIANSHIP OF THE ESTATE

A. OVERVIEW

Whereas the guardian of the person is responsible for the protected person's "person," the guardian of the estate is charged with, among other things, protecting, preserving, managing, and disposing of the protected person's estate and applying it to the protected person's care, maintenance, education, and support.[1] In doing so, the guardian of the estate must at all times act in the protected person's best interest.[2] The guardian must also, to the extent possible, involve the protected person in the development of a plan for the management of the protected person's assets and property.[3]

Once appointed, the guardian of the estate is to take possession of all of the protected person's property of substantial value, as well as all rents, income, and profits from that property and all proceeds from its sale, mortgage, or lease.[4] The guardian can, however, allow the protected person to possess or control personal property and funds as appropriate to the protected person's needs and capacity.[5] Indeed, the Protected Person's Bill of Rights guarantees the protected person's right to "[r]eceive and control his or her salary, maintain a bank account and manage his or her personal money."[6]

At any time during the guardianship, the guardian of the estate can petition the court for advice and instructions regarding administration of the protected person's estate, the priority of paying claims or making disbursements, the exercise of the protected person's property rights, or other similar matters.[7] Any interested person adversely affected by the guardian's proposed action is entitled to notice and the opportunity to object.[8] The court's ultimate approval or instruction to the guardian insulates the guardian from liability and binds the protected person and any person served with notice.[9]

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[1] NRS 159.083.
[2] NRS 159.083(1).
[3] NRS 159.328(1)(f) (Protected Person's Bill of Rights).
[4] NRS 159.089(1). However, the title to all property remains in the protected person's name, not the guardian's. NRS 159.089(3). The court order appointing the guardian of the estate and the letters of guardianship give the guardian complete access to the protected person's bank accounts. NRS 159.0893.
[5] NRS 159.089(2)
[6] NRS 159.328(1)(r).
[7] NRS 159.169(1).
[8] NRS 159.169(3).
[9] NRS 159.169(2)-(3).

Once appointed, the guardian of the estate will serve until the guardian resigns or is removed or the guardianship is terminated.[10] As with the guardian of the person, the guardian of the estate is required to notify the court immediately (and is subject to removal) if the guardian is convicted of a gross misdemeanor or felony; files for or receives bankruptcy protection (whether individually or as a principal of an entity); has a driver's license suspended, revoked, or cancelled for nonpayment of child support; is suspended for misconduct or disbarred from the practice of law, accounting, or any other profession that involves the management of money or requires a license; or becomes subject to a judgment for misappropriation of funds or assets.[11]

This chapter discusses some of the more common issues you might encounter when dealing with the guardian of the estate.

B. ESTATES UNDER $10,000 AND SUMMARY ADMINISTRATION

If the protected person's estate is worth less than $10,000 (after subtracting all claims against the estate and the guardianship's unpaid expenses), the guardian of the estate can ask the court for permission to pay all the claims and turn over whatever is left to some designated third party, who will then hold and invest the remaining property as the court orders.[12] Once the guardian turns over the property and files a receipt verifying the turnover, the guardian is released from all responsibility for the property.[13]

Alternatively, for estate's valued under $10,000 (after the payment of the guardianship's claims and expenses), the court can grant a "summary administration."[14] This can happen at the outset of the guardianship or at any point during the guardianship if the estate's value dips below $10,000.[15]

If the court grants a summary administration, it can authorize the guardian to sell the protected person's property, with or without notice, and convert the property to cash.[16] After paying all claims, the guardian must deposit the remaining funds into a savings account or invest them, using all interest and profits for the protected person's benefit.[17]

In summary administration cases, the court can also waive the requirement that the guardian file an annual accounting of the protected person's property (as well as any other requirement), but the guardian must still file the initial inventory and record of value (discussed

[10] NRS 159.191(3).
[11] NRS 159.1852.
[12] NRS 159.0755
[13] NRS 159.0755.
[14] NRS 159.076(1).
[15] NRS 159.076(1)
[16] NRS 159.076(2).
[17] NRS 159.076(2).

below).[18] If the estate grows above $10,000 at any point during the guardianship, the guardian must then file an amended inventory and the annual accounting and may be required to post a bond.[19]

C. INVENTORY AND APPRAISAL

1. INVENTORY

At the outset of the guardianship, or at least no later than sixty days after being appointed, the guardian of the estate must make and file, under oath, an initial inventory of all the protected person's property, including all property and money in the guardian's possession and all claims the protected person may have against the guardian.[20] In that inventory, the guardian must also identify any trust from which the protected person is receiving, or is entitled to receive, benefits.[21] The guardian must serve a copy of the inventory and a notice of filing on the protected person, the protected person's attorney, and any guardian *ad litem*.[22]

If the guardian learns of property not listed in the initial inventory, the guardian can file a supplemental inventory within thirty days or can include the property in the next accounting (unless the court orders differently).[23]

If the guardian fails to file the inventory within the required time frame, the court can either revoke the letters of guardianship, leaving the guardian's bond liable for any injury to the protected person, or enter a judgment against the guardian for any loss to the estate caused by the guardian's neglect.[24]

2. APPRAISAL OR RECORD OF VALUE

In addition to the inventory, the guardian of the estate must also file an appraisal after having the protected person's assets appraised by a disinterested appraiser, certified public accountant, or expert in valuation.[25] The appraisal or valuation must list each asset worth more than $100 and state its value.[26] It must also contain a certification by the appraiser (or accountant

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[18] NRS 159.076(2)-(3).

[19] NRS 159.076(4).

[20] NRS 159.085(1), (3). A temporary guardian of the estate who is not appointed as general guardian must file an inventory with or before the final accounting is filed in the case. NRS 159.085(2).

[21] NRS 159.085(1).

[22] NRS 159.0805(4).

[23] NRS 159.085(5)-(6).

[24] NRS 159.085(8).

[25] NRS 159.086(1). The court may order all or any part of the protected person's property appraised. NRS 159.085(7).

[26] NRS 159.0865(2).

or other expert) stating that the appraiser has truthfully, honestly, and impartially appraised or valued the property according to their best knowledge and ability.[27]

The guardian can pay the appraiser directly from the protected person's estate at any time after the appraiser's work is completed.[28] If the appraiser (or accountant or other expert) purchases an asset from the estate without full disclosure, the appraiser is guilty of a misdemeanor, the sale is void, and the guardian can recover the asset.[29]

In lieu of an appraisal, the guardian can file a verified record of value if an asset's value can be determined with reasonable certainty (such as bank accounts, bonds, or securities, or personal property that has a combined value of less than $5,000).[30] For real property, the guardian can file a statement of the county assessor's assessed value (unless the property is going to be sold).[31]

D. MANAGEMENT OF THE ESTATE

The Protected Person's Bill of Rights guarantees the protected person's right to "receive prudent financial management of his or her property."[32] The guardian of the estate is charged with managing the protected person's estate.[33] But this is not done without court oversight. The guardian must, for example, obtain the court's permission before

- Selling, leasing, or placing any of the protected person's property into a trust;
- Exchanging or partitioning the protected person's property;
- Releasing the protected person's power as trustee, personal representative, or custodian of a minor or guardian;
- Exercising or releasing the protected person's power as a donee of a power of appointment;
- Exercising the protected person's right to take under a will;
- Transferring unintentionally omitted property to a trust;
- Submitting a revocable or irrevocable trust to the court's jurisdiction; or

[27] NRS 159.0865(1).
[28] NRS 159.0865(3).
[29] NRS 159.0865(4).
[30] NRS 159.086(2)(a).
[31] NRS 159.086(2)(b).
[32] NRS 159.328(1)(q).
[33] NRS 159.083.

- Paying any claim for Medicaid.[34]

Additional situations in which the guardian of the estate must seek court approval are discussed in more detail below.

If the guardian of the estate wants to take some action that does not specifically require court approval, the guardian can file a petition asking the court to authorize the action or to obtain advice, approval, or instruction with respect to the action.[35] The requirements for the content of the guardian's petition are set forth in NRS 159.113(3). Notice of the petition, and any hearing on the petition, must be given to the protected person and all other parties entitled to notice.[36]

1. INVESTING THE PROTECTED PERSON'S PROPERTY

The guardian of the estate must generally obtain court permission before investing the protected person's property.[37] With court approval, the guardian can invest, make loans, and exercise options to purchase or exchange securities or other property.[38] The guardian can even, with court approval, maintain the protected person's assets in the manner in which the protected person had invested them before becoming incapacitated.[39]

The guardian of the estate does not need court approval to invest the protected person's money in a federally insured savings account or any interest-bearing obligation backed by the United States, U.S. Postal Service, Federal National Mortgage Association, State of Nevada, or any county, city, or school district in Nevada (or any money market mutual fund that invests only in those entities).[40]

2. CONTINUING THE PROTECTED PERSON'S BUSINESS

The guardian of the estate must obtain court permission before continuing the protected person's business.[41] If the court allows the business to continue, the court can dictate, among other things, the structure of the business and the parties involved; the extent of the liability the guardian can incur on the protected person's behalf; how the liabilities incurred are to be allocated between the protected person's share of the business and the estate as a whole; and the period of time the business can be conducted.[42]

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[34] NRS 159.113(1).
[35] NRS 159.113(2).
[36] NRS 159.115.
[37] NRS 159.113(1)(a).
[38] NRS 159.117(1).
[39] NRS 159.117(4).
[40] NRS 159.117(2).
[41] NRS 159.113(1)(b).
[42] NRS 159.119.

3. BORROWING MONEY FOR THE PROTECTED PERSON

The guardian of the estate must obtain court permission before borrowing money for the protected person.[43] If the court agrees, the guardian can borrow money to, among other things, continue the protected person's business; pay claims against the protected person, the protected person's estate, or the guardian (acting as guardian); and provide for the protected person's care, maintenance, education, and support.[44] The court's order granting the guardian permission must state the maximum amount of the loan, maximum interest rate, and date of final maturity, and can authorize the guardian to secure the loan by mortgage, deed of trust, pledge, or other security.[45]

4. ENTERING OR PERFORMING CONTRACTS FOR THE PROTECTED PERSON

The estate generally must obtain court permission before entering into any contract for the protected person, except as necessary for the protected person's care, maintenance, and support.[46]

With respect to contracts entered into by the protected person, the guardian of the estate can void any contract (except to the extent it was for necessities) and any transaction relating to the protected person's property that the protected person made while incapacitated.[47]

If the contract was made before the protected person was incapacitated, the guardian of the estate must obtain court permission to complete performance.[48] If required by the contract, the court can authorize the guardian to convey the protected person's estate's interest in real or personal property, and the effect is the same as if the protected person was not currently under a disability.[49] If the contract requires a sale, the normal sale procedures in a guardianship case do not apply unless the court orders otherwise.[50]

The guardian cannot be held personally liable for any contract entered into for or on behalf of the protected person so long as done within the scope of the guardian's authority.[51] The guardian can be sued on such a contract only in the guardian's fiduciary capacity, and any judgment will be satisfied from the protected person's property.[52]

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[43] NRS 159.113(1)(c).
[44] NRS 159.121(1).
[45] NRS 159.121(2).
[46] NRS 159.113(1)(d).
[47] NRS 159.097.
[48] NRS 159.113(1)(a); *see also* NRS 159.123.
[49] NRS 159.123.
[50] NRS 159.123.
[51] NRS 159.099.
[52] NRS 159.099.

5. MAKING GIFTS FROM THE ESTATE OR EXPENDITURES FOR RELATIVES

The guardian of the estate must obtain court permission before making gifts from the protected person's estate or making expenditures for the protected person's relatives.[53] With court approval, the guardian can gift money (that is not otherwise needed for the protected person's support or support of dependents) by making gifts directly to a trust on the protected person's behalf; contributing to the care, maintenance, education, or support of the protected person's relatives; or paying for the care or burial expenses of the protected person's relatives.[54] The guardian's petition requesting permission to make a gift must state whether the purpose of the gift is to deplete the protected person's estate to qualify for Medicaid and whether making the gift will, in fact, qualify the protected person for benefits.[55]

E. PROPERTY

No later than sixty days after appointment, the guardian of the estate must record a certified copy of the letters of guardianship with the county recorder for each county in which the protected person owns real property, specifying the assessor's parcel number or, for a manufactured or mobile home, the serial number.[56]

Generally, with court approval, the guardian of the estate can sell, lease, or place in trust any of the protected person's property in order to pay a claim against the protected person, the protected person's estate, or the guardian (acting as guardian); provide for the protected person's care, maintenance, education, and support; invest the proceeds; obtain rental income; or for any other purpose in the protected person's best interest.[57]

The guardian can also, again with court approval, exchange or partition the protected person's property,[58] lease the protected person's property,[59] or sell or give an option to purchase a protected person's mining claim.[60]

1. SALE OF REAL PROPERTY

The guardian of the estate must file a petition and obtain the court's permission before trying to sell the protected person's land or real property.[61] The protected person, the protected

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[53] NRS 159.113(1)(e).
[54] NRS 159.125(1).
[55] NRS 159.125(2).
[56] NRS 159.095.
[57] NRS 159.127; *see also* NRS 159.132 (specifying that guardian can sell protected person's interest in real or personal property, which includes interest in contracts, choses in action, and partnerships or limited liability companies).
[58] NRS 159.175.
[59] NRS 159.157(2); NRS 159.159; NRS 159.161. Although no court approval is needed to rent the protected person's property from month to month or for a one-year term or less. NRS 159.157(1).
[60] NRS 159.1653-.1667.
[61] NRS 159.1425(1); *see also* NRS 159.113.

person's attorney, and all relatives are entitled to notice of the guardian's petition.[62] At the hearing on the petition, the judge will approve or deny the guardian's request for authority.[63] If the court grants the petition, the guardian is free to retain an agent or broker.[64]

Once the guardian has the court's permission to move forward, the guardian must advertise the property in a newspaper once a week for at least three consecutive weeks (unless the property is worth less than $10,000).[65] For good cause, the judge can reduce the publication time and frequency, but never to less than eight days.[66] The court can also waive the publication requirement if the guardian is the sole heir or all heirs waive publication in writing.[67] A "notice of sale" must include a description of the property (street address, legal description, and assessor's parcel number) and the date, time, and location on or after which an offer will be accepted.[68]

The guardian cannot accept an offer before the date set in the notice.[69] All offers must be made in writing and can be delivered to the place designated in the notice or to the guardian at any time after the date the notice is first published or posted.[70]

When an offer comes in the guardian wants to accept, the guardian must ask the court to confirm the sale before escrow can close and title pass to the purchaser.[71] The guardian has thirty days from the date of the sale (which is the date on which the contract for the sale was signed) to file the petition to confirm.[72] The court will set the petition for hearing.[73] If anyone files a written objection (or makes an oral objection at the hearing if the court allows), the court must conduct a hearing on the objection.[74]

At the hearing, the judge must determine that the sale was properly noticed,[75] that the amount offered represents fair market value, and that the property has been appraised within the

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[62] NRS 159.115(1).

[63] NRS 159.115(2).

[64] NRS 159.1385. If the guardian neglects or refuses to sell property when it is necessary or in the protected person's best interest, any interested person can petition the court for an order requiring the guardian to make the sale. NRS 159.136.

[65] NRS 159.1425(1). If the property is worth less than $10,000, the guardian can post a notices of sale in three public places in the county where the property is located for at least fourteen days before an offer can be accepted. NRS 159.1425(5).

[66] NRS 159.1425(3).

[67] NRS 159.1425(4).

[68] NRS 159.1425(6).

[69] NRS 159.144(1)(a). The sale must occur not later than one year after the date set in the notice. NRS 159.144(1)(c).

[70] NRS 159.144(2).

[71] NRS 159.134(1); *see also* NRS 159.146.

[72] NRS 159.134(2).

[73] NRS 159.134(3).

[74] NRS 159.134(4).

[75] NRS 159.134(5).

last year.[76] The judge must also consider whether the sale is necessary or in the protected person's best interest and examine the return on investment and other evidence submitted regarding the sale.[77]

The court will confirm the sale only if good reason exists for the sale, the sale was conducted in a legal and fair manner, the offer is not disproportionate to the property's value, and it is unlikely a higher bid would be received (one that is at least five percent higher for offers under $100,000, or more than $5,000 for offers above $100,000).[78] If any condition is not met, the court cannot confirm the sale and, instead, can order a new sale or conduct an auction in open court.[79] If an auction is conducted, others may bid on the property during the hearing, and the court can confirm the highest bid.[80]

If the court confirms the sale, the guardian must execute a conveyance to the purchaser that includes a reference to the court order confirming the sale, which must then be recorded with the county recorder.[81] Close of escrow must occur at least ten judicial days after the filing of notice of entry of order confirming the sale (unless the sales contract specifies otherwise or the parties agree in writing to extend).[82]

If the buyer fails to comply with the sale terms, the court can order the property resold and hold the buyer liable for any deficiency if the new sales price does not cover the bid and expenses of the first sale.[83] If the guardian fraudulently sells the protected person's property, the guardian is liable to the estate for double the value of the property sold.[84]

The proceeds of the sale will go first to expenses, then to pay off any mortgage or lien, then to the protected person's estate.[85]

2. DESTRUCTION OR SALE OF PERSONAL PROPERTY

The guardian of the estate can destroy the protected person's personal property (without court approval or other notice) if it is contaminated by vermin or hazardous agents, the cost to

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[76] NRS 159.1455(1). If the property has not been appraised within the last year, the court must require a new appraisal or waive the appraisal upon finding that an additional appraisal would unduly delay the sale, which would impair the protected person's estate. NRS 159.1455(1)(b), (2).

[77] NRS 159.146(1).

[78] NRS 159.146(2).

[79] NRS 159.146(3)-(4).

[80] NRS 159.1415(2). Only the name of the buyer and the sale price can be changed at a public auction in open court, and the order confirming the sale functions as an addendum to the original contract to allow escrow to close. NRS 159.146(7). The title company can also be changed if the seller and buyer agree in writing. NRS 159.146(8).

[81] NRS 159.1465. The guardian must also record a certified copy of any court order authorizing the sale, mortgage, lease surrender, or conveyance of real property with the county recorder. NRS 159.171(1).

[82] NRS 159.146(9).

[83] NRS 159.148.

[84] NRS 159.1495.

[85] NRS 159.1365.

decontaminate makes salvage impractical, the property is an immediate public health threat, its transfer might constitute a threat or exacerbate contamination, and the property is worth less than $100 (or, if more than $100, a health official has endorsed its destruction).[86]

The guardian can sell the protected person's personal property (without the court's permission) if it has a total value of less than $10,000; notice of intent to sell the property has been mailed to the protected person, the protected person's attorney, and all others entitled to notice; and no one has made an objection to the sale within fifteen days.[87]

Otherwise, at least thirty days after the inventory is filed and served, the guardian can sell the protected person's personal property only after giving notice of the sale to the protected person and all relatives entitled to notice and publishing the notice once per week for three weeks (unless the court shortens the time).[88] The notice of sale must include a description of the property to be sold and the date, time, and location offers will be accepted (or, for internet sales, the date of listing and website address).[89]

The guardian is required to give the protected person's family (and any interested person) first right of refusal to buy the protected person's property at fair market value.[90] The guardian can sell the remaining property, for cash or credit, at a sale held at the protected person's residence or any other location so long as the property is made available for inspection (or photographs are provided on an auction website).[91] Within ninety days after the sale, the guardian must file a report with the court to show there was good cause for the sale and the selling price was not disproportionate to the property's value.[92]

The guardian can sell the protected person's interest in a partnership, pledged personal property, and "choses in action" (rights to sue) following the same procedure.[93]

F. ESTATE PLANNING DOCUMENTS AND BENEFICIARIES

Once appointed, the guardian of the estate is required to secure originals (if available) or copies of any estate planning documents prepared by the protected person, including any will, durable power of attorney, revocable trust, and the like.[94]

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[86] NRS 159.1515(2).
[87] NRS 159.1515(1).
[88] NRS 159.1535(1)-(3). But publication is not required if the gross value of the estate is less than $10,000. NRS 159.1535(5).
[89] NRS 159.1535(4)
[90] NRS 159.154(6).
[91] NRS 159.154(1)-(4).
[92] NRS 159.154(5).
[93] NRS 159.156.
[94] NRS 159.089(4)(b)-(c).

The guardian of the estate must get the court's permission before making or changing the protected person's will.[95]

Similarly, the guardian must get the court's permission before making or changing a beneficiary in a trust, insurance policy, bank account, or any other type of asset that has a beneficiary.[96] That does not necessarily mean, however, that the guardian needs the court's permission to use that asset (or close it or discontinue it). The guardian can utilize the asset that has a designated beneficiary for the benefit of the protected person if the asset is the only liquid asset available to pay for the protected person's care, maintenance, education, and support; the asset (or aggregate of all assets) has a value less than $5,000; or the asset is a bank or investment account that must be closed to qualify the protected person for Medicaid or other federal assistance.[97]

Before the court can grant the guardian's request to make or change a will or beneficiary, anyone adversely affected must have the opportunity to be heard, and the court must find by clear and convincing evidence that

- A reasonably prudent person, or the protected person if not incapacitated, would take the same action, and a person who has or is about to commit some act of exploitation or fraud against the protected person is either designated as a beneficiary or stands to gain from the protected person's will or other instrument (or absence of such documents);[98] or
- The action the guardian proposes is, for any other reason, in the best interest of the protected person.[99]

G. TRUSTS

Once appointed, the guardian of the estate is required to secure originals (if available) or copies of any revocable or irrevocable trust in which the protected person has a vested interest as a beneficiary.[100] The guardian is also required to identify any trust from which the protected

[95] NRS 159.078(1)(a)(b).

[96] NRS 159.078(1)(b). Any other interested person can also petition the court for an order authorizing or directing the guardian to make or change a will or beneficiary. NRS 159.078(2).

[97] NRS 159.078(1)(b)(1)-(3).

[98] NRS 159.078(3). "Exploitation" means "any act taken by a person who has the trust and confidence of a protected person or any use of the power of attorney . . . to: (1) obtain control, through deception, intimidation or undue influence, over the money, assets or property of the protected person with the intention of permanently depriving the protected person of . . . ownership, use, benefit or possession [or] (2) Convert money, assets or property of the protected person with the intention of permanently depriving the protected person of . . . ownership, use, benefit or possession . . . ." NRS 159.078(5)(a). "Fraud" means "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the protected person of the rights or property of the protected person or to otherwise injure the protected person." NRS 159.078(5)(b).

[99] NRS 159.078(3).

[100] NRS 159.089(4)(d).

person is receiving, or is entitled to receive, benefits in the guardian's initial inventory of the protected person's property.[101]

1. CREATING OR CHANGING A TRUST

The guardian of the estate must obtain the court's permission before creating a trust (revocable or irrevocable) for the protected person's benefit.[102]

Similarly, the guardian of the estate must get the court's permission before revoking or modifying a revocable trust (or surrendering the right to do so).[103] The court will withhold permission if the trust instrument evidences the protected person's intent to reserve that right exclusively for the protected person; expressly provides that a guardian cannot modify or revoke the trust; or otherwise shows an intent inconsistent with allowing the guardian to take such action.[104]

Before the court can grant the guardian's request to make, change, or revoke a trust, anyone adversely affected must have the opportunity to be heard, and the court must find by clear and convincing evidence that

- A reasonably prudent person, or the protected person if not incapacitated, would have taken the same action, and a person who has or is about to commit some act of exploitation or fraud against the protected person is either designated as a beneficiary or stands to gain the protected person's will or other instrument (or the absence of such documents);[105] or
- The action the guardian proposes is, for any other reason, in the best interest of the protected person.[106]

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[101] NRS 159.085(1).

[102] NRS 159.078(1)(c).

[103] NRS 159.078(1)(d). Any other interested person can also petition the court for an order authorizing or directing the guardian to make, change, or revoke a trust. NRS 159.078(2).

[104] NRS 159.078(1)(d)(1)-(3).

[105] NRS 159.078(3). "Exploitation" means "any act taken by a person who has the trust and confidence of a protected person or any use of the power of attorney . . . to: (1) obtain control, through deception, intimidation or undue influence, over the money, assets or property of the protected person with the intention of permanently depriving the protected person of . . . ownership, use, benefit or possession [or] (2) Convert money, assets or property of the protected person with the intention of permanently depriving the protected person of . . . ownership, use, benefit or possession . . . ." NRS 159.078(5)(a). "Fraud" means "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the protected person of the rights or property of the protected person or to otherwise injure the protected person." NRS 159.078(5)(b).

[106] NRS 159.078(3).

2. OBTAINING TRUST INFORMATION

A protected person or the protected person's attorney is entitled to receive copies of any accountings relating to any trusts created by or for the benefit of the protected person.[107] Indeed, the Protected Person's Bill of Rights guarantees the protected person's right to "receive prudent financial management of his or her property and regular detailed reports of financial accounting, including, without limitation reports on any . . . trusts that are held for his or her benefit."[108]

If the guardian's initial inventory of the protected person's estate identifies a trust held for the protected person's benefit (current or future), the trustee must be served with a copy of the inventory to put the trustee on notice that the court can assume supervision of the trust.[109]

If information about the trust is needed, the guardian or the protected person's attorney can demand a copy of the trust and an accounting of its assets.[110] The demand must be served on all parties and must include notice to the trustee that failure to comply might result in the court assuming jurisdiction over the trust.[111]

The trustee has thirty days to provide the requested information.[112] If the trustee fails to provide the information, the guardian or the protected person's attorney can file a petition asking the court to assume jurisdiction of the trust.[113] If the trustee fails to file an objection within thirty days of the petition, the court can assume jurisdiction of the trust (unless it finds good cause why it should not).[114] If the court assumes jurisdiction, the trustee has thirty days to file the trust documents and an accounting of its assets.[115]

A protected person can also voluntarily submit any trust to the court's jurisdiction if the protected person, the protected person's spouse, or both are grantors and sole beneficiaries of the income of the trust or it was created at the discretion or with the consent of the court.[116]

H. ANNUAL ACCOUNTINGS

The Protected Person's Bill of Rights guarantees the protected person's right to "receive prudent financial management of his or her property and regular detailed reports of financial

[107] NRS 159.3395.
[108] NRS 159.328(1)(q).
[109] NRS 159.339(1).
[110] NRS 159.339(2).
[111] NRS 159.339(2).
[112] NRS 159.339(3).
[113] NRS 159.339(3).
[114] NRS 159.339(4).
[115] NRS 159.339(6).
[116] NRS 159.3395(1)-(2).

accounting, including, without limitation reports on any investments or trusts that are held for his or her benefit and any expenditures or fees charged to his or her estate."[117]

To that end, every year, no later than sixty days after the guardianship's anniversary date, the guardian of the estate must file an accounting of the protected person's estate.[118] The guardian is also required to file an accounting with any petition to resign as guardian, within thirty days after the guardian is removed, and within ninety days after the guardianship is terminated or the protected person dies.[119] The guardian must serve the accounting on the protected person, if living, and the protected person's attorney.[120]

The guardian's accounting must include

- The time period covered;
- The assets and account balances at the beginning and the end of the period;
- All cash receipts and disbursement during the period;
- All claims filed and the action taken on the account;
- Any changes in the protected person's property due to sales, exchanges, investments, acquisitions, gifts, mortgages, or other transactions that have increased or decreased the protected person's property from the initial inventory or last accounting; and
- Any other information necessary to show the condition of the protected person's affairs.[121]

The guardian must retain all receipts for examination by the court or any interested person and must file receipts with the accounting for all expenditures above $250 (or as ordered by the court).[122] The court can order (upon its own motion or on any interested person's petition) that the guardian produce all receipts to support the accounting.[123]

The annual accounting must be set for a hearing.[124] Any interested person can file a written objection to the accounting or appear and object at the hearing.[125] If the interested person

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[117] NRS 159.328(1)(q).

[118] NRS 159.177(1)(a); *see* also NRS 159.176 (requiring annual review by court). However, if the guardianship was granted as a summary administration for an estate under $10,000, the annual accounting requirement might have been waived. NRS 159.076(2).

[119] NRS 159.177(1)(b)-(e); *see also* NRS 159.1877 (resignation of guardian of the estate).

[120] NRS 159.177(2).

[121] NRS 159.179(1).

[122] NRS 159.179(4)

[123] NRS 159.179(5).

[124] NRS 159.181; *see also* NRS 159.176 (court must review guardianship annually).

[125] NRS 159.181(1).

objects in bad faith or not to further the protected person's best interest, however, the court can order the interested person to pay all expenses associated with the objection.[126]

After all objections are resolved (or if there are no objection), the court can enter an order allowing and confirming the accounting.[127] The court's confirmation of the accounting is final and operates against all interested persons (including heirs and assigns).[128] Only the protected person (after any legal disability is removed) can challenge the order and request an examination of any account.[129]

I. CLAIMS BY OR AGAINST THE ESTATE

1. CLAIMS BY THE ESTATE

The guardian of the estate must demand all debts and other "choses in action" (rights to sue) due the protected person and, with the court's approval, can sue to recover those debts and claims.[130] The guardian, again with court approval, can also compromise and settle the claims and provide a release and discharge to the debtor.[131]

If the guardian suspects that any person is indebted to the protected person – or that someone has concealed, embezzled, converted, or disposed of the protected person's property – the guardian can file a petition asking the court to require that person to appear and testify under oath regarding the matter.[132]

In any court case in which the protected person is a party, the guardian of the estate must appear for and represent the protected person, unless the court finds a conflict of interest or deems it appropriate to appoint a guardian *ad litem*.[133] Upon final resolution of the case, the guardian must notify the court of the result.[134]

2. CLAIMS AGAINST THE ESTATE

The guardian of the estate is to pay from the guardianship estate all valid claims, whether tort or contract or otherwise, against the protected person, the protected person's estate, or the

[126] NRS 159.181(4).
[127] NRS 159.181(2).
[128] NRS 159.181(3).
[129] NRS 159.181(3).
[130] NRS 159.093(1).
[131] NRS 159.093(2).
[132] NRS 159.091.
[133] NRS 159.095(1). If the protected person's "person" would be affected by the outcome of the case, the guardian of the person should be joined to represent the protected person. NRS 159.095(4).
[134] NRS 159.095(2).

guardian (acting as guardian), regardless of whether the claim accrued before or after the guardian was appointed.[135]

There are some claims the guardian can pay from the estate without following any statutory procedure, such as the guardian's own claims against the estate and claims arising from contracts the guardian entered into on the protected person's behalf.[136] Of course, the guardian must report those claims in the annual accounting.[137]

All other claims, the guardian can pay (or not pay) only if the claim is presented to the guardian in writing with a description of the claim and amount, along with an affidavit verifying the amount due, any payments made, and that no counterclaim exists.[138] If the claim is based on a contract or writing, the original contract must be attached to the claim.[139]

If the guardian examines the written claim and is satisfied that it is valid, the guardian will write "examined and allowed" on the claim with the date, officially subscribe the notation, and pay the claim.[140] If the guardian is not satisfied that the claim is valid, the guardian will write "examined and rejected" on the claim with the date, officially subscribe the notation, and notify the claimant of the rejection within sixty days by personal service or regular mail.[141]

If the claimant disagrees with the guardian's denial of the claim, the claimant can, before the statute of limitations runs, file a petition for approval in the guardianship case asking the court to summarily determine the claim; alternatively, the claimant can file a lawsuit against the guardian as fiduciary (with any eventual award to be paid from the protected person's estate).[142] If the claimant files a petition for approval, the guardian has twenty days to file an objection.[143] If the guardian objects, the guardianship court will not summarily determine the claim, but the claimant is free to sue.

If the protected person is sued, the guardian of the estate must appear for and represent the protected person in the case, unless the court finds a conflict of interest or deems it

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[135] NRS 159.103. However, the guardian of the estate can void any contract (except to the extent it was for necessities) and any transaction relating to the protected person's property that the protected person made while she was incapacitated. NRS 159.097.

[136] NRS 159.105(1).

[137] NRS 159.105(2).

[138] NRS 159.107.

[139] NRS 159.107. If the contract has been lost or destroyed, that fact must be stated in the affidavit. *Id.*

[140] NRS 159.109(1).

[141] NRS 159.109(2).

[142] NRS 159.111(1). The claimant must serve notice of the petition for approval of the claim on the guardian. NRS 159.111(2).

[143] NRS 159.111(3). If the guardian fails to file or serve a notice of objection to the petition for approval, the court shall hear and determine the claim in a summary manner and enter an order accepting or rejecting the claim, either in whole or in part. NRS 159.111(4).

appropriate to appoint a guardian *ad litem*.[144] Upon final resolution of the case, the guardian must notify the court of the result.[145]

J. DEATH OF THE PROTECTED PERSON

The guardian of the estate can retain the protected person's assets to cover the anticipated expense of the funeral and disposal of the protected person's remains.[146] Up to $3,000 of the retained assets are exempt from all claims.[147]

The guardian of the estate's authority ends immediately upon the protected person's death, except the guardian retains authority to wind up the guardianship's affairs and distribute the protected person's property.[148] The guardian must also file an accounting within ninety days after the protected person dies.[149]

To wind up the affairs, the guardian must pay the guardianship's expenses; complete the performance of the estate's contracts; and, with the court's permission, continue any activity the guardian believes is appropriate and necessary or that was begun before the guardianship's termination.[150] The guardian must also report all presented and unpaid claims to the protected person's personal representative, who will then handle all of the claims (paid and unpaid) through probate like any other estate.[151] The personal representative will also be substituted for the guardian as the party in interest in any pending or future court case.[152]

To distribute the protected person's property, the guardian must deliver physical possession of the property to the protected person's personal representative and obtain a receipt for the delivery.[153]

After the guardian files receipts and vouchers to verify the estate has been wound up (and files the final accounting), the court will enter an order discharging the guardian and exonerating the guardian's bond.[154] Once that order is entered and filed with the court, the guardian is relieved of liability for the guardian's term.[155]

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[144] NRS 159.095(1). If the protected person's "person" would be affected by the outcome of the case, the guardian of the person should be joined to represent the protected person. NRS 159.095(4).

[145] NRS 159.095(2).

[146] NRS 159.0895(1).

[147] NRS 159.0895(1).

[148] NRS 159.191(6).

[149] NRS 159.177(1)(b)-(e); *see also* NRS 159.1877 (resignation of guardian of the estate).

[150] NRS 159.193(2). The guardian must complete the wind-up of the guardianship within certain time limits, which vary depending on the circumstances. NRS 159.193(1).

[151] NRS 159.195(1).

[152] NRS 159.195(2).

[153] NRS 159.197(1). If authorized by the court, the guardian can distribute the property according to Nevada's laws governing distribution of smaller estates, NRS 146.070 and .080. NRS 159.197(3).

[154] NRS 159.199.

[155] NRS 159.199(2).

CHAPTER 7: ANALYZING FEE REQUESTS

A. OVERVIEW

One facet of your role as a protected person's attorney is to function as a sort of watchdog over the protected person's estate to make sure, to the extent possible, that money being requested or expended is reasonable and justified. The approval of improper fee requests or expenses can lead to protected persons being impoverished and unable to use their own money for essential items or being deprived of money they diligently saved to ensure their quality of life in later years. Plus, of course, it is the protected person's money, not the guardian's, the family's, or anyone else's. It should be paid to others only if absolutely necessary and appropriate.

And you will quickly find there is no shortage of people wanting payment from the protected person. Among them are the guardian and any number of attorneys (including the guardian's attorney and possibly attorneys for other parties); guardians *ad litem*; investigators; accountants; court appointed trustees, fiduciaries, or special masters; and the list goes on. There are also, of course, the expenses for your client's medical care, food, lodging, clothing, transportation, and the like.

While, hopefully, all of the people requesting payment from the protected person are actually working for the protected person's benefit, it is important to remember that the protected person had no say in hiring or retaining any of them and typically offered no input or consent to the expenses being incurred. The protected person did not, for example, choose the guardian's attorney or have the opportunity to interview different lawyers, negotiate or agree to the lawyer's fees, or limit the scope of the lawyer's work. In most cases, all of those decisions were made without the protected person's agreement. So do not hesitate to challenge an expense or request for payment on behalf of the protected person when appropriate. You (and ultimately the judge) are the only check on fees and expenses that your client has.

This chapter first outlines the statutory procedure that allows guardians, attorneys, and others to petition the court for payment of their fees from the protected person's estate. It then discusses the factors a court will apply when evaluating a request for fees and provides some tips to help you analyze such a request.

B. THE PROCEDURE FOR RECOVERING FEES

1. RECOVERING GUARDIAN FEES

Generally speaking, a guardian is entitled to reasonable compensation for the guardian's services as well as reimbursement for reasonable expenses incurred in retaining attorneys, accountants, appraisers, and other professionals.[1]

Whether fees are "reasonable" can be gauged by comparing them to what a person (not under a disability) would normally be charged for that service.[2] It also depends on the nature of the guardianship and the type, duration, and complexity of the services provided, among other factors.[3]

Unless the court orders otherwise, the money for the guardian's fees and the services of other professionals comes from the protected person's estate so long as the estate has the funds and ability to pay.[4] In determining the estate's ability to pay, the court will consider, among other things, the nature, extent, and liquidity of the protected person's

SIDEBAR:
Family Guardians

If the guardian in your case is a private professional guardian or the public guardian, chances are you'll see invoices generated by a computerized billing system. The invoices are typically standardized and fairly easy to read. They usually state the date and task performed, the initials of the person who performed the task, the billing rate of that person, and the total amount of time spent on the task – very similar to an attorney's fee statement.

If, however, the guardian is a family member, there's no telling what you might see. Some family guardians do an excellent job recording the time they spend accomplishing guardianship tasks in a journal or by some other method. Others simply guess, which provides little concrete evidence to support a fee application.

For family guardians, you might want to talk to them at the outset about whether they intend to seek fees (many family guardians do not) and how they can track their time to avoid your objection.

You might also talk to them about the difference between "guardian" services and "caregiver" services. There's no reason a family member who provides round-the-clock care for a loved one shouldn't be compensated for that service (after all, if an outside caregiver was hired, there would absolutely be a charge for that). But a caregiver's duties and responsibilities are not quite the same as a guardian's, and what might be a "reasonable" fee for a guardian might not similarly be reasonable for a caregiver. It also can make a difference in how the fees are paid and tracked in the budget and annual accounting. (For example, with the judge's approval, "caregiver" fees might be released on a monthly basis, whereas a guardian's fees are only paid after a petition is filed and approved.)

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[1] NRS 159.183(1)(a), (c). However, a guardian can never recover fees, including attorney's fees, relating to a petition to have the guardian removed if the court does, in fact, remove the guardian. NRS 159.183(5).

[2] NRS 159.183(2).

[3] NRS 159.183(2).

[4] NRS 159.183(3).

assets and the disposable net income of the protected person.[5]

Importantly, no fees can be paid to the guardian (or to a professional the guardian hires) unless the payment of the fees has been approved by the court.[6] What that means in practice is that the guardian will periodically file a petition with the court, asking that the guardian's fees (or fees paid to another professional) be released from the protected person's account and paid to the guardian or professional. Frequently, this petition is filed at the same time as the annual accounting. The petition should contain a breakdown of the fees being requested sufficient to allow you to analyze the services provides and the time spent. If you disagree with the fee request, you can file an opposition and raise your concerns to the court. The petition will be set for hearing, and the judge will determine whether the fees are reasonable and warranted.

Requests for attorney's fees are discussed below, but many of the considerations relative to attorney's fee requests apply equally to fee requests from other professionals.

2. RECOVERING ATTORNEY'S FEES

When it comes to seeking attorney's fees, there are special rules that must be followed. Be sure to study NRS 159.344 when analyzing any attorney's fee request. That statute sets out in detail what fees can and cannot be requested and what factors the court will evaluate in deciding a fee award.

The general rule under Chapter 159 is that any person who retains an attorney in a guardianship case is personally liable for any attorney's fees and costs incurred.[7] There are, however, a number of caveats to that general rule as you will see.

a. THE WRITTEN NOTICE OF INTENT TO SEEK PAYMENT OF FEES

If anyone intends to recover their attorney's fees and costs from the protected person's estate, they must, upon their first appearance in the guardianship case, file a written notice of their intent to seek payment.[8] That written notice must

- Provide a general explanation of the compensation arrangement and how compensation will be computed;

[5] NRS 159.183(2). Not surprisingly, there is not wealth a of Nevada authority on the issue of fee awards in guardianship cases. Although unpublished, *Habtemicael v. Habtemicael*, No. 70377, 2018 WL 3912284 (Nev. Ct. App. Aug. 2, 2018), at least stands for the proposition that a court must consider relevant statutory factors and that an award of fees must be supported by substantial evidence. *Id.* at *2. Note, though, that the dispute in *Habtemicael* arose before Chapter 159 was amended in 2017, so the court did not address the application of the fourteen factors relating to attorney fee awards set forth in NRS 159.344 of the amended statutes.

[6] NRS 159.183(4).

[7] NRS 159.344(1).

[8] NRS 159.344(3).

- Include the hourly rates of all timekeepers, including attorneys, law clerks, and paralegals; and
- Provide a general explanation of the reasons why the services of the attorney are necessary to further the best interest of the protected person.[9]

The person filing the notice of intent to seek payment must serve it on everyone entitled to notice under NRS 159.034 and NRS 159.047, which includes pretty much everybody.

Under NRS 159.344(4), the filing of this notice is a precondition to filing a petition for the payment of fees. In other words, a person can file a petition requesting payment of attorney's fees and costs from the guardianship estate only "[i]f written notice was filed and approved by the court."[10]

SIDEBAR:
The Notice of Intent to seek Payment

The notice of intent to seek payment of fees might not be filed as a separate document. Oftentimes, it is buried somewhere in the initial guardianship petition, so be sure to look for it.

Although NRS 159.344(3)(c) states that the notice must be approved by the court after a hearing, the statute doesn't set out any procedure for that. Therefore, in practice, your objection to the notice might not be addressed until the hearing on the petition seeking attorney's fees.

But you might not want to wait until then to raise your objection. Appendix E contains a sample form called **Notice of Objection to Guardian's Counsel's Written Notice of Intent to Seek Payment of Attorney's Fees and Costs**. You can file this form (tailored to your case, of course) in response to the written notice as a way to preserve your objections and avoid the argument that the party seeking fees is being "blindsided."

b. THE PETITION FOR PAYMENT OF FEES

A person who is personally liable for attorney's fees and costs can petition the court for an order allowing those fees and costs to be paid from the protected person's estate.[11] Remember, though, that no one can petition for fees unless, upon their first appearance in the case, they filed the written notice of intent to seek payment of fees discussed above.[12]

If there were competing petitions for guardianship filed in the case (say, for example, by two family members who each wanted to be guardian), only the prevailing party can file a

[9] NRS 159.344(3)(a)-(c).
[10] NRS 159.344(4).
[11] NRS 159.344(2); *see also* NRS 159.344(8) (allowing the recovery of "ordinary costs and expenses incurred in the scope of the attorney's representation").
[12] NRS 159.344(4).

petition for payment of their attorney's fees and costs from the protected person's estate.[13] This same principle applies to any contested matter in the guardianship case – only the prevailing party can seek fees.[14] If there is no prevailing party, the court can authorize the payment of a portion of each party's fees and costs so long as the fees being sought are just, reasonable, and necessary given the nature of the disputed issue.[15]

Importantly, no attorney's fees or costs can be paid from the guardianship estate until a petition is filed, a hearing is held, and the court authorizes the payment.[16] So, if you see that a guardian has been using the protected person's money to pay an attorney without first getting court approval, those payments are improper and contrary to the statute.

The petition for the payment of attorney's fees and costs must contain certain information required by the NRS 159.344(3). Specifically, the petition must include, in addition to any other relevant information,

- "A detailed statement as to the nature and extent of the services performed by the attorney."[17] In practice, this means that the attorney must attach their billing statements for the period covered by the fee request to the petition for fees. It also means that those statements must contain a clear description of the work the attorney performed. If the statements are so vague you cannot determine what work was being performed, object.[18]
- "An itemization of each task performed by the attorney, with reference to the time spent on each task in an increment to the nearest one-tenth of an hour and with no minimum billing unit in excess

SIDEBAR:
Budgeting for Attorney's Fees

You might sometimes see a line item for "attorney's fees," along with a set monthly amount, stated in the budget submitted by a guardian. It's not necessarily improper to include an estimate for attorney's fees in the protected person's monthly budget (although it can be confusing), but it is absolutely improper to ask that those fees be released on a monthly basis from the protected person's accounts. Attorney's fees can be paid from the guardianship estate only after a petition is filed and you've had the opportunity to review the invoices and object if necessary.

So if you see attorney's fees included in a monthly budget, make sure that any related request for a monthly release of funds from the estate *does not* include the amount budgeted for attorney's fees.

[13] NRS 159.344(9).
[14] NRS 159.344(9).
[15] NRS 159.344(9).
[16] NRS 159.344(2).
[17] NRS 159.344(4)(a).
[18] *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379, at 2-3 (1993) ("At the outset of the representation the lawyer should make disclosure of the basis for two-fold duty, including not only an explanation

of one-tenth of an hour."[19] In other words, the attorney's billing statement attached to the petition for fees must state exactly how much time the attorney spent on each task performed, all billed in one-tenth hour increments. If the attorney "block bills" the time spent or bills in increments other than one-tenth of an hour, object.

- "An indication of whether any time billed, including, without limitation, any time spent traveling or waiting, benefited any [other] clients . . . and, if so, how many."[20] For example, a guardianship attorney can frequently be at court for multiple hearings in different cases all set for the same morning. The attorney's time – the time spent getting to court and waiting – has to be spread over all of those clients and cases.

Nevada law also requires that any fees paid by a third party (including by a trust) must be disclosed to and approved by the court.[21] The purpose of this statutory requirement is twofold: First, it prevents an attorney from "double dipping," requesting payment from the guardianship estate when the attorney's fees have already been paid by some other party (a family member or a trust, for example). Second, it reveals if some undisclosed principle is operating in the case. Perhaps, for example, a guardian's attorney's fees are actually being paid by a family member, or a family member's attorney's fees are actually being paid by a hospital or facility. That information needs to be disclosed so that you

SIDEBAR:
Disclosing Third-Party Payments

In practice, the disclosure of a third-party's payment of attorney's fees might be buried in the initial petition or vaguely stated in a fee application (without actually providing the name of the party making the payments). So you might have to really look for it.

You might also find that attorneys who receive payments from third parties are sometimes reluctant to disclose those relationships. And while there might be some perfectly innocent reason for that reluctance, the very existence of those relationships tends to raise certain questions – like who is the attorney's actual client and whose interests is the attorney actually representing in the case?

Whether you need to explore the specifics of the third-party payments will depend on the specifics of your case. But you can certainly press for information if the case requires it.

at the beginning of engagement of the basis on which fees and other charges will be billed, but also a sufficient explanation in the statement so that the client may reasonably be expected to understand what fees and other charges the client is actually being billed. . . . [A] bill setting out no more than a total dollar figure for unidentified professional services will often be insufficient to tell the client what he or she needs to know in order to understand how the amount was determined.").

[19] NRS 159.344(4)(b).

[20] NRS 159.344(4)(c).

[21] NRS 159.344(7).

can evaluate potential conflicts of interest and identify who might actually be calling the shots and setting the agenda in a case.

SIDEBAR:
The* Brunzell *Factors

Most of the fee petitions you'll see will analyze the factors stated in *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969), which are, not surprisingly, commonly referred to as the "*Brunzell* factors."

In *Brunzell*, the Nevada Supreme Court directed lower courts to consider four factors when determining the reasonable value of an attorney's services: "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required . . . ; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived." *Id.* at 33.

The *Brunzell* case is still good law, and it is wholly appropriate for a fee petition to address its four factors. But the analysis doesn't end there. In guardianship cases, there are also the fourteen statutory factors a judge is to consider. Some of those fourteen factors mirror *Brunzell* and some go beyond *Brunzell*. So don't limit yourself to *Brunzell* – your analysis should also include the fourteen factors stated in NRS 159.344(5), even if the attorney filing the petition neglects that statute.

C. EVALUATION OF REQUESTED FEES

When you receive a petition for payment of attorney's fees, your job will be to review and evaluate the attached attorney's invoice and determine whether payment for each task listed is appropriate and warranted. If it is not, you can object. Fortunately, Chapter 159 sets out fourteen factors, discussed below, to guide your review of the requested fees and, ultimately, allow the court to determine whether the fees are "just, reasonable and necessary" as required by the governing statute.[22]

Here are the fourteen factors a court can consider and some tips on how you might be able to utilize them for your client:

1. Written notice of intent to seek fees: Remember, no one can petition for fees unless, upon their first appearance in the case, they filed a written notice of intent to seek payment.[23] If they did file the required notice, but there is some issue with it or some issue arises out of it, the court can consider the notice in deciding whether to award fees.[24] Think, for example, of a situation where the invoice attached to the fee petition has the attorney billing at

[22] NRS 159.344(5).
[23] NRS 159.344(4).
[24] NRS 159.344(5)(a).

$450 per hour but the notice of intent to seek fees states the attorney will bill at $300 per hour. That could be a basis for an objection.

2. Actual benefit or advancement of best interests: In deciding whether to award fees, the court can look at whether the attorney's work conferred any actual benefit on the protected person or attempted to advance the protected person's best interests.[25] This factor is frequently relevant in contentious family situations, among others. Think, for example, of two sons battling each other over whether mom's house should be sold even though mom is living in a facility where she is happy and there is no chance of mom returning to her house. The sons' war over the house, possibly fueled by their own animosity towards each other, confers no benefit on mom, so why should mom have to pay either son's attorney's fees?

3. Quality of the attorney: The court can also consider "the qualities of the attorney, including, without limitation, his or her ability, training, education, experience, professional standing and skill."[26] (This is also one of the *Brunzell* factors.) This factor is sometimes tough to utilize in your client's favor (because attorney can be great at making themselves sound amazing!). But it could be useful, say, in a situation where a third-year attorney in one of your cases is billing at the same rate as a ten-year attorney in another case (professional standing and experience), or where an attorney who does not practice in guardianship, or even probate or estate planning, is billing your client at the same rate as an attorney who specializes in those areas (ability, training, and skill).

4. Character of the work performed: The court can consider the character of the work performed, including "the difficulty, intricacy and importance of the work, the time and skill required to complete the work, the responsibility imposed and the nature of the proceeding."[27] (This mirrors one of the *Brunzell* factors.) This factor can be of real use in protecting your client from unreasonable fee requests. Legally speaking, guardianship cases are not overly complex. Therefore, barring some unusual circumstances, the cases typically do not require an attorney with any depth of specialized skill, and your client should not be required to pay for such an attorney. As phrased by one court when evaluating a fee request, "The [party against whom fees are sought] should not be required to pay for a limousine when a sedan could have done the job."[28] Unusual circumstances that might require a attorney with specialized expertise could include, for example, where the protected person has a complex estate, owns an ongoing business, or something similar. In complicated situations, an increased fee might be justified.

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[25] NRS 159.344(5)(b).
[26] NRS 159.344(5)(c).
[27] NRS 159.344(5)(d).
[28] *Simmons v. New York Transit Authority*, 575 F.3d 170, 177 (2d Cir. 2009).

Additionally, attorneys who practice in the area tend to create and rely on form pleadings that they utilize again and again. Indeed, once the attorney has a form bank created, most pleadings and other documents could easily be produced by a paralegal with a brief attorney review. Moreover, every document one would need to prosecute a straightforward guardianship

SIDEBAR:
Recycled or "Canned" Work Product

A lawyer can only bill for actual time spent making revisions to a "canned" or recycled document. The lawyer can't bill for the time spent creating that work product over and over. As stated by the ABA,

> [A] lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated. . . . Rather than looking to profit[,] the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. The practice of billing several clients for the same time or work product . . . is contrary to the mandate of the Model Rules.

ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379, at 4-5 (1993)

case from start to finish is available online on the Self-Help Centers' websites for absolutely free, and the cases are frequently handled by pro se litigants who have no legal training whatsoever. Given all of that, any attorney's claim that they should be paid for an excessive number of hours at a high hourly billing rate is certainly suspect and subject to challenge. The character of the work simply does not justify it.

5. Work actually performed: The court can consider the work actually performed, including "the skill, time and attention given to the work."[29] (This is also one of the *Brunzell* factors.) This can be another very useful factor. Evaluating it will require you to analyze the attorney's fee statement and focus on two questions: (1) What was the attorney actually doing? and (2) How much time did the attorney actually spend doing it? In other words, for each task the attorney performed (and remember that each task must be broken out and billed separately in one-tenth hour increments – no block billing!), you must identify the task the attorney was performing and, based on the difficulty of the task and the final product produced, determine whether the time the attorney spent was realistic and reasonable.

It goes without saying that a lawyer can only bill for time the lawyer actually worked. As stated in ABA Formal Ethics Opinion 93-397, "[t]he goal should be solely to compensate the

[29] NRS 159.344(5)(e).

lawyer fully for time reasonably expended, an approach that if followed will not take advantage of the client." Not surprisingly, the ABA determined that a "lawyer who has agreed to bill on the

SIDEBAR:
Analyzing Actual Work Time

To the best of your ability, you'll need to determine whether the attorney's invoices reflect the attorney's actual work time – which can be difficult without a crystal ball.

Sometimes you will just have to make an educated guess based on what you know about how most lawyer's work.

Think of it this way – the average person reads 300 words per minute. A six page double spaced document contains about 1,200 to 1,500 words. That means it should take an average person about 4 to 5 minutes to read that document. If an attorney is billing 15 minutes to "review and evaluate" a six page court filing, that likely means the attorney is just guessing or estimating and is not tracking actual time spent.

Look back at filings and emails and compare them with the time billed on the attorney's invoice. If something looks strange, ask the attorney for an explanation. Most attorneys will understand that you are simply doing your job, and every attorney should be ready and able to justify the time he or she has billed to a client.

basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she actually spent on the client's behalf."[30] Naturally, the same principle applies in guardianship cases.

6. Result of the work: The court can consider the result of the work, including "whether the attorney was successful and any benefits that were derived."[31] (This mirrors one of the *Brunzell* factors. It is also similar to factor 2 above.) Think, for example, of a situation where dad's daughter, an interested party, files a petition to have a guardian *ad litem* appointed in dad's guardianship case because she disagrees with the actions the guardian, her brother, is taking. If the court ultimately denies the daughter's petition and finds that no guardian *ad litem* is needed, the daughter's petition was not successful and it did not benefit dad in any way. As such, there is no reason why dad should have to pay for daughter's attorney's fees.

7. Usual and customary fee charged: The court can consider the usual and customary fees charged in the professional community for each task.[32] Importantly, the statute requires that the work be pushed down to the lowest level. The court can only award

[30] *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379, at 4-5 (1993).
[31] NRS 159.344(5)(f).
[32] NRS 159.344(5)(g).

compensation at an attorney rate for work that requires an attorney and compensation at a paralegal rate for work that requires a paralegal.[33] No compensation can be awarded for time spent performing secretarial or clerical services.[34]

Utilizing this factor for your client's benefit requires that you apply something like the following analysis for each task performed:

(1) What was the task being performed?

(2) Was the task secretarial or clerical?

If secretarial or clerical, no award is allowed.[35] If *not* secretarial or clerical, then

(3) Was the task performed by an attorney or by a paralegal?

(4) Are the rates being charged by the attorney and paralegal usual and customary?

(5) Could the attorney or paralegal have pushed the task down to a lower level given its nature?

Always look for clerical tasks on an attorney invoice because it is highly likely you will find them. What is a clerical or secretarial task? Certainly calendaring, docketing, mailing, word processing, copying, and the like are all clerical.[36] But think more broadly – basically anything that does not require the substantive skill or knowledge of a paralegal or an attorney is probably clerical. Legal secretaries can, and do, prepare notices of entry of order, certificates of mailing, cover sheets to file confidential documents, and the list goes on. Those all should be clerical tasks given to a secretary.

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[33] NRS 159.344(5)(g)(1)-(3).
[34] NRS 159.344(5)(g)(4).
[35] NRS 159.344(5)(g)(4).
[36] *See American Booksellers Ass'n., Inc. v. Hudnut*, 650 F. Supp. 324, 330 (S.D. Ind. 1986) (calendaring, docketing, and word processing are overhead charges not properly passed to client).

Then what is a paralegal task? According to the National Federation of Paralegal Associations' Informal Ethics Opinion No. 95-4, a paralegal task is one that is (1) "substantive and not clerical in nature" and (2) "consists of tasks and services which otherwise would be performed by an attorney."[37] Such "substantive" tasks might include interviewing clients; preparing initial drafts of pleadings, correspondence, affidavits, stipulations, orders, and discovery documents; and performing legal research, among other things.

SIDEBAR:
It's not the "who" -- it's the "what!"

And remember, it doesn't matter who is performing the task, what matters is the nature of the task itself. Focus on what is being done, not on who is doing it. Just because a paralegal is preparing a notice of entry of order doesn't make it a paralegal task. *See Missouri v. Jenkins*, 491 U.S. 274 (1989) ("[P]urely clerical or secretarial tasks should not be billed at a paralegal rate regardless of who performs them."); *Keith v. Volpe*, 644 F. Supp. 1312, 1323 (C.D. Cal. 1986) (rejecting hourly time billed by attorneys and paralegals for secretarial and clerical work such as "pick-up copies," "tag exhibits," "organize files," "reproduce documents," and "distribute memo.").

The issue of whether the attorney and paralegal rates are usual and customary will likely be a matter for debate. With respect to attorney's fees, one recent study found that the average hourly rate for attorneys in Nevada is in the mid-$300 per hour range, which is one of the highest average hourly rates of any state in the country and on par with the average rates charged in New York, California, Connecticut, and D.C.[38] When cost of living is factored into the analysis, the average hourly rate charged by attorneys in Nevada far outstrips any other state in the U.S.[39] However, it is possible a guardianship case could require an attorney with some specialized expertise – say, for example, if the protected person had an incredibly complex estate or owned an ongoing business in a regulated industry. Attorneys with highly specialized expertise typically charge a premium hourly rate.

With respect to paralegal fees, a 2016 report issued by the National Association of Legal Assistants, the leading paralegal association in the U.S., found that "the Far West region continues to report the highest hourly billing rate [for paralegals] averaging $136.00 an hour,

[37] Nat. Federation of Paralegal Assoc., Informal Ethics and Disciplinary Opinion No. 95-4 (Nov. 15, 1995). Indeed, that organization defines a paralegal as "a person qualified through education, training or work experience, to perform *substantive legal work* that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer." The ABA's definition of "paralegal/legal assistant" similarly incorporates the notion of *substantive* work. *See* ABA Standing Comm. on Paralegals, Model Guidelines for the Utilization of Paralegal Services (June 6, 2007).

[38] *See* Clio*, Legal Trends Report 2017*, at 43, available at https://www.clio.com/2017-legal-trends-report/. This report was prepared by Clio, a cloud-based practice management platform for the legal industry, using actual aggregated usage data from approximately 60,000 customers collected from the Clio platform. *See id.* at 46-48.

[39] *See id.* at 44.

which includes states like California, Oregon, and Nevada."[40] The report stated that even paralegals with over twenty-five years of experience bill at a rate of only $145.00 per hour on average.[41]

8. Apportionment among clients: The court can consider whether time billed that benefitted multiple clients was appropriately apportioned and billed.[42] If an attorney has multiple hearings in court on the same day, the time the attorney spends travelling to court and waiting must be spread across all those clients; it cannot be billed to one client only, and it certainly cannot be double-billed to more than one client.[43] (To find out whether an attorney had multiple hearings on a particular day, visit the district court's website and search the attorney's name or bar number for the date.[44])

9. Efficiency, cost-effectiveness, and delegation: The court can consider "[t]he extent to which the services were provided in a reasonable, efficient and cost-effective manner, including . . . whether there was appropriate and prudent delegation of services to others."[45] This factor is similar to factors number 5 and 7 discussed above and the same analyses apply. Make sure that time spent on any task is not excessive and that all tasks are being pushed down to the lowest possible level and performed at the lowest billable rate.

Work should always be delegated if possible. An attorney rate will be paid only for work that requires an attorney, and a paralegal rate will be paid only for work that requires a

SIDEBAR:
Solo Practitioners

If an attorney is a solo practitioner without any support staff, the attorney might need to consider having multiple or variable billable rates based on the work the attorney is actually performing. If the attorney is performing attorney work, the higher "attorney work" rate would be charged. But if the attorney is performing work that is essentially paralegal work (preparing trial binders, for example), the client would be billed at a lower "non-attorney work" rate. Otherwise, the attorney is actually profiting, at your client's expense, from the attorney's decision *not* to hire support staff because no work can be delegated and all work can be billed at the attorney's normal rate.

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[40] *See* National Association of Legal Assistants, *2016 National Utilization & Compensation Survey Report*, at 3, available at https://www.nala.org/sites/default/files/files/banner/2016%20NALA%20Utilization%20Compensation%20Survey%20Report.pdf.

[41] *See id.* at 22 (Hourly Billing Rates by Total Years Legal Experience).

[42] NRS 159.344(5)(h).

[43] *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379, at 4-5 (1993) ("The practice of billing several clients for the same time or work product, since it results in the earning of an unreasonable fee, therefore is contrary to the mandate of the Model Rules."); *see also*

[44] Visit http://www.clarkcountycourts.us/court-finder/.

[45] NRS 159.344(5)(i).

paralegal.[46] Partners should never bill partner rates for associate-level tasks, and lawyers should never bill for paralegal work. The principle is straightforward: "Senior partner rates will be paid only for work that warrants the attention of a senior partner. If a senior partner spends his time reviewing documents or doing research a beginning associate could do, he will be paid at the rate of a beginning associate."[47] Or as eloquently stated by another court:

> Nor do we approve the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates. Routine tasks if performed by senior partners in large firms, should not be billed at their usual rates. *A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn*.[48]

Remember, too, that excessive and unnecessary work is always objectionable. As noted in ABA Formal Ethics Opinion 93-379, "continuous toil on or overstaffing a project for the purpose of churning out hours is not properly considered 'earning' one's fees. One job of a lawyer is to expedite the legal process. . . . Just as a lawyer is expected to discharge a matter on summary judgment if possible rather than proceed to trial, so too is the lawyer expected to complete other projects for a client efficiently." As such, multiple lawyers billing for duplicated effort or for attending the same meeting is objectionable,[49] as is billing for time spent supervising, educating, or instructing staff (all of which is part of the lawyer's overhead).[50]

10. Ability of the estate to pay: The court can consider the estate's ability to pay, including the estate's value; the estate's nature, extent, and liquidity; the estate's disposable net income; the protected person's future needs; and any other foreseeable expenses.[51] This is a critically important factor. If your client's estate is only $60,000, a request for $20,000 in attorney's fees equals one-third of the estate! Is that reasonable? Also factor in the composition of the estate. Is it real property that will have to be sold simply to pay attorney's fees? Is it made up of retirement funds that will incur a penalty if liquidated? Also factor in your client's ongoing and future needs and expenses. Will payment of the attorney's fees drain the estate such that your client's care will suffer or living situation need to be changed?

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[46] NRS 159.344(5)(g)(1)-(3).

[47] *In re Continental Ill. Sec. Litig.*, 572 F. Supp. 931, 933 (N.D. Ill. 1983).

[48] *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3d Cir. 1983) (emphasis added).

[49] *See, e.g.*, *Christian Research Institute v. Alnor*, 165 Cal. App. 4th 1315 (2008) (noting that five attorneys "expended more time telephoning, conferencing and emailing each other than on identifiable legal research"); *Chamberlain Manufacturing Corp. v. Maremont Corp.*, 1995 WL 769782, *9 (N.D. Ill. Dec. 29, 1995) ("Nevertheless, we frown upon regular billing by multiple attorneys for the same conference. Generally speaking, only the attorney most involved in the case should bill for these conferences . . . .").

[50] *See, e.g.*, Restatement (Third) of the Law Governing Lawyers, § 38(3)(a).

[51] NRS 159.344(5)(j).

11. Efforts to minimize issues: The court can consider the efforts made by the attorney and client to reduce and minimize any issues.[52] Guardianship cases can be contentious, especially those involving families that have ongoing animosities and disputes long preceding the guardianship itself. In those situations, the guardianship case can actually magnify the family members' issues with one another. As a result, there are some cases in which every decision becomes a battle and every issue seems to escalate. Your client should not have to pay for those battles. Ask whether the party seeking fees simplified or complicated the guardianship case. If one side of a fight was reasonable and offered ways to resolve an issue, that side should be rewarded for those efforts. Think, for example, of a family member proposing mediation to resolve an issue, or trying to negotiate an issue rather than file a motion, or offering to solve a problem by way of stipulation as opposed to a hearing before the judge, and the like. If, on the other hand, one side of a fight rejects reasonable proposals, refuses to negotiate or cooperate, and generally approaches the case with a scorched-earth strategy, that side should have to bear the exorbitant attorney's fees that inevitably result from such a strategy. The fees should not have to be borne by your client.

12. Actions that expanded issues or caused delay: The court can consider whether the attorney or client took any action that "unnecessarily expanded issues or delayed or hindered the efficient administration of the estate."[53] This factor is the flip-side of factor 11 above and the same questions should be asked and issues considered.

13. Self-serving actions: The court can consider whether the attorney or client took action intended to advance their own interests as opposed to the protected person's.[54] Think, for example, of family members filing an objection to the requested sale of a protected person's assets where the family members are the protected person's beneficiaries and their purpose, although probably unstated, is to preserve the assets for themselves after the protected person dies. Normally, in a guardianship case, everyone involved (the judge, guardian, family members, and guardian *ad litem*) should be looking out for the best interests of the protected person. If any party is causing attorney's fees to be incurred to protect some *other* interest, your client should not be on the hook for those fees.

14. Any other relevant factor: Finally, the court can consider any other factor relevant in determining whether the attorney's fees requested are "just, reasonable and necessary," including whether the fees were incurred in good faith an in furtherance of the protected person's best interests.[55] This catch-all provision allows you to be creative based on the

[52] NRS 159.344(5)(k).
[53] NRS 159.344(5)(l).
[54] NRS 159.344(5)(m).
[55] NRS 159.344(5)(n).

facts of your case and the actions of the parties involved. Just because the objection you have in mind is not one of the thirteen factors above does not mean you should hesitate to raise it.

CHAPTER 8: ANALYZING ACCOUNTINGS

A. OVERVIEW

One of the rights guaranteed by the Protected Person's Bill of Rights is the right to "[r]eceive prudent financial management . . . and regular detailed reports of financial accounting, including, without limitation, reports on any investments or trusts that are held for his or her benefit and any expenditures or fees charged to his or her estate."[1]

One of your jobs as the protected person's attorney is to review those "detailed reports of financial accountings" to ensure, to the extent possible, that the guardian is utilizing the guardianship estate for the protected person's benefit, that all income and assets are accounted for, and that all expenditures are justified and in the protected person's best interest. After all, a guardian's improper use of the protected person's money can, and sometimes does, leave the protected person impoverished without the funds to see themselves through their later years. Plus, it must always be remember that the money at issue is the protected person's. It does not belong to the guardian or anyone else. The guardian is merely the steward of the protected person's money and, as such, owes a fiduciary obligation to the protected person to make sure it is appropriately conserved, managed, and expended.

This chapter first outlines the statutory requirements relating to accountings. It then discusses some "red flags" you will need to watch for when reviewing an accounting. Lastly, it provides a checklist you can use to help you organize your own accounting reviews.

B. THE ANNUAL ACCOUNTING REQUIREMENT

Every year, no later than sixty days after the guardianship's anniversary date, the guardian of the estate must file an accounting of the protected person's estate.[2] The guardian is also required to file an accounting with any petition to resign as guardian, within thirty days after the guardian is removed, and within ninety days after the guardianship is terminated or the protected person dies.[3] The guardian must serve the accounting on the protected person, if living, and the protected person's attorney.[4]

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[1] NRS 159.328(1)(q).

[2] NRS 159.177(1)(a); *see* also NRS 159.176 (requiring annual review by court). However, if the guardianship was granted as a summary administration for an estate under $10,000, the annual accounting requirement might have been waived. NRS 159.076(2).

[3] NRS 159.177(1)(b)-(e); *see also* NRS 159.1877 (resignation of guardian of the estate).

[4] NRS 159.177(2).

The guardian's accounting must include

- The time period covered;
- The assets and account balances at the beginning and the end of the period;
- All cash receipts and disbursement during the period;
- All claims filed and the action taken on the account;
- Any changes in the protected person's property due to sales, exchanges, investments, acquisitions, gifts, mortgages, or other transactions that have increased or decreased the protected person's property from the initial inventory or last accounting; and
- Any other information necessary to show the condition of the protected person's affairs.[5]

The guardian must retain all receipts for examination by the court or any interested person and must file receipts with the accounting for all expenditures above $250 (or as ordered by the court).[6] The court can order (upon

SIDEBAR:
Accounting Forms

What will the accountings you receive look like? That's anybody's guess.

The Nevada Supreme Court has approved a standardized accounting form that is available on the Family Law Self-Help Center's website, www.FamilyLawSelfHelpCenter.org. The approved form is fairly simplified and intended to be used by self-represented litigants (although you might see some attorney's utilizing the form as well).

If you have a case with a pro se guardian, let the guardian know that this accounting form exists. The guardian probably utilized the Self-Help Center forms to get the guardianship in the first place. So emphasize that they'll continue to use those forms as the case moves forward for all the other case requirements.

In those cases where the guardian is represented by an attorney, the forms of the accountings can vary widely. Some attorneys use forms that make sense and are fairly easy to read. Others use forms that require some real patience and effort to decipher.

If you find yourself having trouble figuring out an attorney's accounting, rather than raising your blood pressure and injuring your brain, do yourself a favor and just pick up the phone, call the attorney, and ask the attorney to walk you through the form. To the attorney, it probably makes perfect sense.

[5] NRS 159.179(1).
[6] NRS 159.179(4)

its own motion or on any interested person's petition) that the guardian produce all receipts to support the accounting.[7]

SIDEBAR:
Receipts and Backup Documentation

NRS 159.179(4) requires the guardian to file all receipts above $250 with the accounting. Does this happen in practice? Sometimes. Other times you'll receive accountings with no backup documentation at all – no bank statements, no cancelled checks, no receipts to explain cash withdrawals and transactions, etc. Plus, keep in mind that $250 is actually a fairly large transaction. Most of the transactions in the accounting (other than rent, mortgage, and facility payments) will be much smaller daily sort of expenses for groceries, clothing, and the like.

You'll find, though, that without the necessary backup documentation as support, the numbers reflected in the accounting are really just empty symbols on the page – representations by the guardian that may or may not be true and accurate. It's the backup documentation that gives those numbers meaning. If you don't have that documentation, verifying the numbers can sometimes be near to impossible.

If you receive an accounting without the backup documentation, don't be afraid to ask for it. Ask for the bank statements so you can trace how the money flowed in and out the accounts. Ask for credit card statements to verify charges and payments, receipts to verify unusual or cash transactions, and on and on. The guardian (or the guardian's attorney) should be willing to give you all of this voluntarily. If there's resistance, that could just mean the guardian is really unorganized and bad at recordkeeping, but it also might mean the guardian doesn't have the documentation necessary to support the stated numbers.

If you need it and can't get it any other way, go to the court and ask the judge to order the production of the documentation you need.

The annual accounting must be set for a hearing.[8] Any interested person can file a written objection to the accounting or appear and object at the hearing.[9] If the interested person objects in bad faith or not to further the protected person's best interest, however, the court can order the interested person to pay all expenses associated with the objection.[10]

After all objections are resolved (or if there are no objection), the court can enter an order allowing and confirming the accounting.[11] The court's confirmation of the accounting is final and operates against all interested persons (including heirs and assigns).[12] Only the protected

[7] NRS 159.179(5).
[8] NRS 159.181; *see also* NRS 159.176 (court must review guardianship annually).
[9] NRS 159.181(1).
[10] NRS 159.181(4).
[11] NRS 159.181(2).
[12] NRS 159.181(3).

person (after any legal disability is removed) can challenge the order and request an examination of any account.[13]

C. CONCERNS AND RED FLAGS IN ACCOUNTINGS

The more accountings you see, the more you will become aware of certain red flags that will que you to potential problems. In fact, courts have actually identified certain factors that may indicate the need for additional training for the guardian or closer examination by the court.[14] Some of these factors relate directly to accountings and money. Others might not relate directly to money, but instead highlight circumstances that can indicate ongoing financial pressures; lack of knowledge, care, or concern on the guardian's part; or opportunities for financial exploitation, all things to keep in mind when reviewing an accounting.

Here is the list of concerns and red flags that courts have identified:

1. CONCERNS

- The protected person has no relatives or active friendships. There is no one to ask questions or provide oversight.
- The guardian talks about being exhausted and overwhelmed.
- The estate is large and complicated with significant amounts of cash and securities.
- The guardian keeps changing attorneys or attorneys try to withdraw from representing the guardian.
- The guardian has little knowledge about caring for dependent adults or has minimal experience with financial matters.
- The guardian excessively controls all access to the protected person and insists on being the sole provider of information to friends and family.
- The guardian does not permit the protected person to be interviewed alone.
- The guardian wants to resign.
- The guardian changes the protected person's providers such as physicians, dentist, accountants, and bankers to the guardian's own personal providers.
- The guardian has financial problems such as tax problems, bankruptcy, or personal problems such as illness, divorce, a family member who has a disabling accident or illness.

[13] NRS 159.181(3).
[14] National Probate Court Standards 71 (Nat'l Coll. of Probate Judges 2012).

2. RED FLAGS

- The bills are not being paid or are being paid late or irregularly.
- The protected person lives in a nursing home or assisted living and the guardian does not furnish/pay for clothing.
- The guardian does not arrange for application for Medicaid when needed for skilled nursing home payment.
- The guardian does not cooperate with health or social service providers and is reluctant to spend money on the protected person.
- The guardian is not forthcoming about the services the protected person can afford or says the protected person cannot afford services when that is not true.
- The guardian's lifestyle seems more affluent than before the guardianship.
- Court documents, including accountings are not filed on time.
- Accountings have questionable entries such as:
    - Charges for utilities when the person is not living in the home or the home is standing empty.
    - Television sets or other items appear in the accounting but the protected person does not have them.
    - Numerous checks are written for cash.
    - The guardian reimburses him or herself repeatedly without explanation as to why.
    - An automobile is purchased but the protected person cannot drive or use the car.
    - Use of an ATM without court authorization.
    - Gaps and missing entries for expected income such as pensions, Social Security, rental income.
    - No entries for expected expenses such as insurance for health or real property.
    - Numerous entries for cash given to or spent on the protected person.
    - Charges to casinos.
    - Credit card purchases and payments with no further description.
    - Gifts to family members without court order.

    - Transfers to other bank accounts without explanation

- There are concerns about the quality of care the protected person is receiving.
- There are repeated complaints from family members, neighbors, friends, or the protected person.
- A different living situation is needed, either more protected or less protected.
- Revocation or failure to renew fiduciary bonds.
- Large expenditures in the accounting not appropriate to the protected person's lifestyle or setting.
- The guardian is not visiting or actively overseeing the care the protected person is receiving or not receiving.

If you see any of these concerns or red flags, it by no means guarantees there is something untoward or improper occurring with respect to the protected person's finances. But what it might well mean is that you will need to scrutinize the accounting with a bit more attention to detail and carefully apply the checklist provided at the end of this chapter.

D. HOW TO REVIEW AN ACCOUNTING

The time and effort it takes to review an accounting varies greatly from case to case depending on the protected person's finances and how well the accounting is put together. Many protected persons have little money, receive only Social Security or Medicaid benefits, and maybe have only two or three expenses every month, say a monthly payment to a facility and a small allowance for spending money. Those accountings will be simple to review. Other protected persons might have substantial assets and investments. Reviewing those accountings can sometimes be quite complicated.

Below are some general suggestions on how to approach an accounting followed by a checklist that will help walk through the review.

1. BEFORE YOU BEGIN THE REVIEW

Before you start looking at the accounting, review the case file to refresh your memory about the status of the assets, the expenses, and the like.

Review the inventory: Especially if this is the first annual accounting, look at the inventory to remind yourself about what assets the protected person owns, what income the protected person receives and from what sources, what cash, investments, and accounts need to be accounted for, and the like. Reviewing an accounting is sometimes like following a trail; think of the inventory as the beginning of the trail.

Review the budget: Look at the budget and remind yourself what the expenses are supposed to look like. When you review the accounting, ask whether the expenses shown actually match the budget. Given that the budget is filed at the beginning of the case, the guardian often does not know exactly what the protected person's expenses will be. But are they at least close? Can any variation be explained? If the budget is wildly off without any explanation, either the guardian did a poor job estimating in the first place or the guardian is overspending. Ask that the guardian be required to file a new budget.

Review the care plan: The care plan will give you an overview of what the guardian projected for the protected person's living situation, medical needs, etc. The care plan can give you clues about the protected person's circumstances, which likely have some kind of financial component that will be (or should be) reflected in the accounting. For example, if the care plan states the protected person is in a long-term living situation, but the accounting shows a marked increase in monthly payments to a facility or other increased living expenses, what is the reason for the increase?

Review previous accountings: If this is not the first annual accounting, it might be helpful to lay all previous accountings side by side and track how income, expenses, and assets have increased or decreased over the course of the guardianship. At the very least, the last accounting is critical because the

SIDEBAR:
Talking About Accountings with Your Client
❖ ❖ ❖

One great source of information about your client's finances is your client him or herself! When you receive an accounting, meet with your client and go over it with them. The client might not know all of the ins and outs of the finances, but they at least might have some information about unusual expenditures during the year.

It also might give you a chance to verify independently purchases and expenditures listed in the accounting. (Do you see that new TV that's listed in the accounting anywhere in your client's room? How about that new recliner?)

Of course, depending on your client's health and cognitive abilities, speaking to the client about something as potentially complex as an accounting might be difficult. And if you just hand your client a copy of the accounting and ask, "What do you think?," you'll likely get nothing of use in response.

Instead, before you visit your client, review the accounting as discussed below and complete the checklist at the end of this chapter. That will help you identify any discrepancies or unusual transactions or issues.

Then, when you meet with your client, you can provide your client a broad overview of the accounting (the money that came in and the money that went out during the year), but also explore the discrepancies you've noted to see whether your client has any information.

Also ask your client more generally if they have any concerns about their money or how their money is being handled. If they have questions, answer them frankly and honestly. Remember, they're adults, and they deserve to know where their money is going. If your client has concerns you can't address then and there, assure them you'll look into their concerns.

current account needs to pick up exactly where the last accounting left off and track the same things (the same bank accounts, assets, income, and ongoing expenditures).

Review court orders that impact the protected person's finances: Any major changes in the protected person's finances – the sale of a home, the sale of a business or other asset, the disposal of personal property, the sale of stocks or bonds, etc. – should be authorized by and documented in a court order somewhere in the file. Review these orders to remind yourself what the guardian has (and has not) been authorized to do and to make sure any resulting gain or loss has been accounted for correctly. For example, if the court authorized the sale of the protected person's home, does the profit match that stated in the order, and did the profit make it into the blocked account? If the court authorized the sale of stock, was the sale concluded and for the right price, and is the sale correctly debited and credited in the accounting?

SIDEBAR:
Info from Relatives

If you have questions or concerns about an accounting or certain expenditures, another great source of information might be your client's relatives. Just because Daughter A is mom's guardian doesn't mean that Daughter B doesn't keep her eye on mom's finances (and how Daughter A is handling them).

In any event, Daughter B most likely spends a lot more time with mom than you do and has a better vantage point to gauge whether the numbers in the accounting match what she sees on a day-to-day or week-to-week basis.

If you have a situation where you think a family member can give you some good information, provide them with a copy of the accounting and ask for their feedback.

2. THE REVIEW

The best way to learn how to review an accounting is simply to review one. To that end, the following is a checklist to guide your review. The checklist will help walk you through the accounting in a systematic way and remind you of some of the things you need to verify and mistakes you should watch for.

REVIEW OF ANNUAL ACCOUNTING

(Before beginning your review, search the file for orders that pertain to the accounting and to determine whether the guardian has authority to make the expenditures shown on the accounting.)

If the answer to any questions is "no," note the discrepancy in the space provided at the end of that section.

GENERAL	YES	NO
Guardianship of: Anniversary date:		
Date accounting due: Date accounting filed:		
Stated accounting period: Correct accounting period:		
Are all months accounted for within the accounting period and since the last accounting with no gaps?		
Does the accounting's beginning period match the month/day of the last accounting or inventory?		
Are all summaries and schedules mathematically correct?		
Are the totals of all schedules transferred correctly to any summary page?		
If a bond or blocked account was required by the court, has proof been filed and premiums paid?		
Are all attached account statements titled in the guardian's name in his or her capacity as guardian, and not in the guardian's name individually?		
Do account numbers on attached statements match account numbers on the proof of blocked account filed?		
Has the guardian signed the accounting under penalty of perjury?		
Discrepancies:		

INCOME	YES	NO
Sources of income:		
Does the income schedule list all income sources stated on the inventory and/or the last accounting?		
Is all income shown on attached bank statements or deposit slips reflected on the income schedule?		
If SS and/or VA income is sent directly to a facility, is it properly accounted for?		
Is the income from the dividends, interest, rent, pensions, commensurate with the assets listed in the inventory/asset summary?		
Discrepancies:		

EXPENSES AND DISBURSEMENTS	YES	NO
List all court ordered disbursements: Amount: Frequency:		
Does the expense schedule itemize each disbursement including dates, payee, and amounts?		
Are all court ordered disbursements listed on the disbursements schedule and reflected on bank statements?		
Is every disbursement on the attached bank statements shown on the schedule of disbursements?		
If the PP lives in a facility, are there 12 payments to PP's facility?		
Do the expenses listed this year seem in line with the expenses in last year's accounting (or the budget on file)?		
Are the disbursement schedule and bank statements free from any questionable disbursements? (Questionable disbursement include those that can't be determined to be for PP's benefit, like cash/spending money to PP, cash or reimbursement to guardian, ATM or debit card withdrawals, charges to casinos, credit card purchases and payments with no further description, gifts to family members without court order, transfers to other bank accounts without explanation, among others. See a more detailed list below.)		
Are all cash withdrawals or reimbursements adequately explained and supported by receipts or invoices?		
Are all credit card purchases adequately explained, supported by credit card statements, and paid off?		
Are there disbursements for student loans or other loans?		
If yes, is the loan listed as a liability in the accounting?		
Does the loan reduction since the last accounting correspond to the payments made?		
Are there disbursements for auto/real property related expenses or other repairs?		
If yes, is the auto/real property listed as an asset?		
Is documentation provided to support the expenses?		
Do the expenses appear necessary?		
Do the gas/oil expenses comport with miles normally driven and frequency of fill ups, oil changes, etc.?		
Does the PP still need the vehicle (still driving or need the vehicle to be driven)?		
Does it appear the PP might benefit from the sale of the listed auto/real property?		
Discrepancies and questionable disbursements (including date of payment and amount):		

BANK TRANSFERS	YES	NO
Are account numbers, dates, and amounts provided to allow you to track transfers between accounts?		
Do the transfers in match the transfers out? (Adding the transfers to income or expenses may be necessary to get the accounting to properly balance.)		
Discrepancies:		

GAINS AND LOSSES	YES	NO
If assets have been purchased, is there a court order authorizing the purchase?		
Are related liabilities and loans for the purchases properly recorded?		
If assets have been sold or disposed of, is there a court order authorizing the sale or disposal?		
Is the sales price stated and does it match or exceed the sales price in the court order?		
If the sale or disposal resulted in a loss, is the loss properly recorded?		
Is there a transaction representing the sale or disposal of the asset that corresponds with a receipt of cash to make the transaction a transfer not a false gain (loss)?		
If assets were discovered after the inventory or last accounting, are they properly documented?		
If there is a loss due to damage or theft, is appropriate documented proof of the loss provided?		
Is the summary/recap free from transaction that do not appear in the supporting schedules or documentation?		
Discrepancies:		

CASH ASSETS	YES	NO
Are all accounts from the inventory or last accounting listed?		
Are bank name and at least partial account numbers provided?		
Are bank statements for all listed accounts provided?		
Do the bank balances on the accounts coincide with the bank statements and reconciliations submitted?		
Do the bank statements ending dates match the annual/final accounting ending dates?		
Does any change in value since the last accounting or inventory appear justified and appropriate?		
If there is joint ownership, is the percentage of ownership listed including the amount?		
If the PP owns a prepaid funeral contract or burial savings accounts, is it properly listed?		
Discrepancies:		

REAL ESTATE	YES	NO
Is all real estate from the inventory or last accounting listed (identified by address or parcel number)?		
Do all addresses and identifying information match the inventory or last accounting?		
Does the value on the accounting match the value on the inventory or last accounting?		
Does any change in value since the last accounting or inventory appear justified and appropriate?		
If there is a mortgage or other loan on the real estate, is the liability properly stated in the accounting?		
If there is joint ownership, is the percentage of ownership listed including the amount?		
If there was a sale of real estate, are the gains and losses properly recorded on the accounting?		
If there was a sale of real estate, were the proceeds deposited into the guardianship account?		
Discrepancies:		

PERSONAL PROPERTY	YES	NO
Is listed personal property described?		
Is the personal property value supported by appraisal in this or prior accountings or inventory?		
For automobiles, can the value stated be verified on the Kelly blue book website?		
If there is a loan on the automobile, is the liability properly stated in the accounting?		
If there was a sale or disposal of personal property, are the gains or losses properly recorded in accounting?		
Discrepancies:		

INTANGIBLE ASSETS	YES	NO
Are all intangible assets from the inventory or last accounting listed?		
Does the value listed coincide with prior accountings or inventory?		
Does any change in the value since the last accounting or inventory appear justified and appropriate?		
Are all account statements attached?		
Discrepancies:		

TRUSTS	YES	NO
Was there a trust identified in the inventory or has a trust been created since then?		
Has the court taken jurisdiction of the trust?		
Have you requested or received an accounting of the trust?		
For trusts under the court's control, are all trust assets included in the accounting or separately accounted for?		
Were assets from the PP's estate used to fund the trust?		
Was the trust under the court's jurisdiction when the assets were transferred such that there's no need to ask the court to take jurisdiction?		
If the trust is not under the court's jurisdiction, is there some reason not to bring it under the court's control given it was funded by estate assets?		
Discrepancies:		

APPENDIX A

ACRONYMS AND DEFINITIONS

APPENDIX A

APPENDIX A: ACRONYMS AND DEFINITIONS

The following is a list of terms, abbreviations, and acronyms that you are likely to encounter in your guardianship case:

Accounting: A document that the guardian of the estate is required to prepare and file with the court every year pursuant to NRS 159.177. The guardian must also file the accounting if the guardian resigns or is removed or the guardianship is terminated. The information required in the accounting is stated in NRS 159.179.

Acute care hospital: Refers to the placement of a protected person in a hospital to receive typically brief 24-hour in-patient treatment and recovery care for a serious health condition or trauma.

Aging and Disability Services Division (ADSD): Aging and Disability Services Division (ADSD) is a division of the Nevada Department of Health & Human Services. The mission of ADSD is to ensure the provision of effective supports and services to meet the needs of individuals and families to help them lead independent lives.

Care provider: Includes any public or private institution located within or outside this state which provides facilities for the care or maintenance of persons who are incapacitated, persons of limited capacity or minors. (NRS 159.014.)

Citation: A document issued by the clerk of the court, as authorized by statute or ordered by the court, requiring a person to appear, directing a person to act or conduct himself or herself in a specified way, or notifying a person of a hearing. (NRS 159.0145.)

Court: Any court or judge having jurisdiction of the persons and estates of minors, persons who are incapacitated or persons of limited capacity. (NRS 159.015.)

Desert Regional Center (DRC): A state agency that serves children and adults living in Southern Nevada who have a diagnosis of intellectual disability or closely related developmental disabilities.

Elder protective services (EPS): The State of Nevada, Aging and Disability Services Division provides Elder Protective Services for persons 60 years old and older who may experience abandonment, abuse, neglect, exploitation, or isolation. Elder Protective Services serves all of Nevada.

Group home: Refers to the placement of a protected person in a private home that furnishes food, shelter, assistance, and limited supervision. The term includes an assisted living facility. (NRS 449.017.)

Guardian: Any person appointed under Chapter 159 as guardian of the person, of the estate, or of the person and estate for any other person, and includes an organization under NRS

662.245 and joint appointees. The term includes, without limitation, a special guardian or, if the context so requires, a person appointed in another state who serves in the same capacity as a guardian in this State. (NRS 159.017.)

Guardianship of the estate: A guardianship where the guardian is responsible for the protected person's assets and finances.

Guardianship of the person: A guardianship where the guardian is responsible for the well-being and care of the protected person. The guardian makes decisions about healthcare, education, and day-to-day matters.

Guardianship of the person & estate: A guardianship where the guardian is responsible for financial, medical, and personal decisions about the protected person.

Homes for Individual Residential Care ("HIRC Homes"): A HIRC home, defined in NRS Chapter 449, is the smallest, most versatile and private of all residential care facilities. Located in licensed private residences and limited to two beds, they allow for personal attention and 24/7 care.

Home state: The state in which the proposed protected person was physically present for at least six consecutive months, including any temporary absence from the state, immediately before the filing of a petition for the appointment of a guardian. (NRS 159.018.)

Incapacitated: A person who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety or self-care without appropriate assistance. (NRS 159.019.)

Independent living: Refers to the placement of a protected person in their own home living with or without supportive services.

Individual education plan (IEP): A written statement of the education program designed to meet a child's individual needs. Every child who receives special education services must have an IEP.

Individual support plan (ISP): A written statement that details the supports, activities, and resources that an individual (possibly disabled or suffering from a mental health issue) will need to achieve personal outcomes identified by the individual, service coordinators, and other people.

Intensive supported living arrangement (ISLA): A program or arrangement that provides support services appropriate for individuals who need daily, 24-hour awake supervision in various life areas. A level of support higher than a Supported Living Arrangement (SLA) or a Transitional Supported Living Arrangement (TSLA).

Interested person: A person who is entitled to notice of a guardianship proceeding pursuant to NRS 159.0195.)

Inventory: A document that lists all of the money and property of the protected person, which the guardian of the estate is required to prepare and file within sixty days after being appointed. (NRS 159.085.)

Least restrictive alternative: The course of action or environment in the guardianship context that allows a protected person to live, learn, and work with minimum restrictions and as much freedom of choice as possible.

Limited capacity: A person is of "limited capacity" if (1) the person is able to make independently some but not all of the decisions necessary for the person's own care and the management of the person's property; and (2) the person is not a minor. (NRS 159.022.)

Living will / advance directive: A written document that tells doctors what to do if a person has a terminal condition that will cause death relatively soon. It includes directives as to whether a person wants to be on life support and when to take a person off life support. It must have been signed when the person had decision-making capacity.

Living trust: This is a legal document that states who a person wants to manage their property if they are unable to do so and who receives the property at death. Assets must be titled in the trust's name.

Long term care ombudsman: Acts as an advocate for residents (over 60 years old) of nursing homes, board and care homes, and assisted living facilities, and is trained to resolve problems and represent the perspective of residents in monitoring laws, regulations, and policies. (NRS 427A.125.)

Minor: Any person who is (1) less than 18 years of age; or (2) less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years pursuant to NRS 159.191. (NRS 159.023.)

Patient care assistant (PCA): Patient care assistants (PCAs) work with patients under the direct supervision of health care professionals, such as doctors or nurses. They help patients with daily tasks such as bathing and eating. They also assist with taking patients' temperature, blood pressure, pulse, and preparing and administering medications.

Person of natural affection: A person who is not a family member of a protected person but who shares a relationship with the protected person that is similar to the relationship between family members. (NRS 159.0235.)

Physician's statement or certificate: A document filed with the court to support a petition for guardianship, in which a doctor (or a Nevada investigative agency or other person approved by the court) states the need for a guardianship, whether the proposed protected person presents a danger, whether attending the hearing would be detrimental to their health, whether they would understand the reason for the hearing and be able to participate, and whether they are capable of living independently. (NRS 159.044(2)(i).)

Power of attorney for finances: This is a legal document that gives a person the power to make financial decisions for another. It can take effect immediately or when a certain condition

happens (such as a medical emergency). It must have been signed when the person giving the power had decision-making capacity. For more information, see NRS Chapter 162A.

Power of attorney for health care decisions: This is a legal document that authorizes someone to make health care decisions for another. It can take effect immediately or when a certain condition happens (such as a medical emergency). It must have been signed when the person giving the power had decision-making capacity. For more information, see NRS Chapter 162A.

Private professional guardian: A person who receives compensation for services as a guardian to three or more wards who are not related to the guardian by blood or marriage. The term includes: (a) A person who serves as a private professional guardian and who is required to have a license issued pursuant to chapter 628B of NRS; (b) A person who serves as a private professional guardian but who is exempt pursuant to NRS 159.0595 or 628B.110 from the requirement to have a license issued pursuant to chapter 628B of NRS. But the term does not include: (a) A governmental agency; (b) A public guardian appointed or designated pursuant to the provisions of chapter 253 of NRS. (NRS 159.024.)

Proposed guardian: The person(s) asking the court to be appointed a guardian.

Proposed protected person: Any person for whom proceedings for the appointment of a guardian have been initiated in this State or, if the context so requires, for whom similar proceedings have been initiated in another state. (NRS 159.025.)

Protected person: Any person for whom a guardian has been appointed. (NRS 159.027.)

Public Guardian: If a court finds there is no other suitable person to appoint as guardian, the court can appoint the public guardian. The office of public guardian is created and governed by Nevada statute, NRS 253.150 to 253.250. In Clark County, Karen Kelly was appointed as public guardian by the Clark County Commission in 2017. For more information, visit http://www.clarkcountynv.gov/public-guardian.

Representative payee: A representative payee assists a person in managing their finances. The representative payee makes sure monthly bills are paid. The Clark County Public Guardian and the Financial Guidance Center both offer this service.

Second degree of consanguinity: In relation to a protected person, this refers to and includes the protected person's parents, children, spouse, siblings, grandparents, grandchildren, and daughters/sons-in-law. Step relationships are typically considered to be the same as blood relationships.

Secured residential long-term care facility: (1) A residential facility providing long-term care that is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian. (2) The term does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living. (NRS 159.0255.)

Skilled nursing home: Refers to the placement of a protected person in a nursing home where they can receive continuous 24-hour residential support for activities of daily living and nursing support for challenges associated with disabilities. Skilled nursing homes may also provide transitional rehabilitation and medical services for persons transitioning from hospitalization to a lesser restrictive living circumstances. (NRS 449.0039.)

Special guardian: A guardian of a person of limited capacity, including, without limitation, such a guardian who is appointed because a person of limited capacity has voluntarily petitioned for the appointment and the court has determined that the person has the requisite capacity to make such a petition. (NRS 159.026.)

Special needs trust: This is a special trust that can be used to hold the assets of a disabled person.

Summary administration: If a protected person's guardianship estate does not exceed $10,000, the court can grant a "summary administration," authorize the guardian to liquidate the estate and apply the proceeds to the benefit of the ward, and dispense with the normal accounting and other proceedings typically required under Chapter 159. (NRS 159.0755, .076.)

Supported decision making: An alternative to guardianship commonly used for adults with cognitive or intellectual disabilities where the adult selects trusted people (friends, family members, and professionals) to help them with decision making. The selected "supporters" help the adult understand situations and choices the adult faces, answer questions, explore options, and offer recommendations. This is done so the adult can continue to make his or her own decisions to the greatest extent possible. The supporters are then legally empowered to help the adult carry out his or her wishes when necessary.

Supported living arrangement (SLA): A program or arrangement that provides residential supports to people who require assistance to live in the least restrictive community setting possible (which might include a family home or apartment) to maximize their independence. A level of services lower than a Transitional Supported Living Arrangement (TSLA) or an Intensive Supported Living Arrangement (ISLA).

Supportive adult residence: Refers to the placement of a protected person that maximizes their independence while providing supplemental services as needed, i.e., medication management, meal preparation, transportation, apartment cleaning, general health care services, or 24-hour monitoring. (NRS 449.017.)

Transitional Supported Living Arrangement (TSLA): A program or arrangement that provides services appropriate for individuals (in a home or apartment) who need daily support yet do not require 24-hour assistance. A level of services higher than a Supported Living Arrangement (SLA) but lower than an Intensive Supported Living Arrangement (ISLA).

Trust: A fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when the assets are to be used or passed to the beneficiaries.

APPENDIX B

NEVADA REVISED STATUTES

CHAPTER 159

APPENDIX B

CHAPTER 159

GUARDIANSHIP OF ADULTS

GENERAL PROVISIONS

NRS 159.013	Definitions.
NRS 159.014	"Care provider" defined.
NRS 159.0145	"Citation" defined.
NRS 159.015	"Court" defined.
NRS 159.017	"Guardian" defined.
NRS 159.018	"Home state" defined.
NRS 159.019	"Incapacitated" defined.
NRS 159.0195	"Interested person" defined.
NRS 159.022	"Limited capacity" defined.
NRS 159.023	"Minor" defined.
NRS 159.0235	"Person of natural affection" defined.
NRS 159.024	"Private professional guardian" defined.
NRS 159.025	"Proposed protected person" defined.
NRS 159.0251	"Protected minor" defined.
NRS 159.0253	"Protected person" defined.
NRS 159.0255	"Secured residential long-term care facility" defined.
NRS 159.026	"Special guardian" defined.
NRS 159.0265	"State" defined.
NRS 159.027	"Ward" defined. [Replaced in revision by NRS 159.0253.]
NRS 159.028	Terms: "Writing" or "written."
NRS 159.033	Application to guardians ad litem.

PROCEDURE IN GUARDIANSHIP PROCEEDINGS

NRS 159.034	Notice by petitioner: To whom required; manner for providing; waiver of requirement; proof of giving filed with court.
NRS 159.0345	Court authorized to alter requirements concerning publication of notice or citation.
NRS 159.0355	Facsimile of certain papers may be filed with court.
NRS 159.036	Giving of notices and issuance of citations by clerk of court.
NRS 159.037	Venue for appointment of guardian.
NRS 159.039	Proceedings commenced in more than one county.
NRS 159.041	Transfer of proceedings to another county.
NRS 159.043	Titles of petitions; captions of petitions and other documents.
NRS 159.044	Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed protected person.
NRS 159.0445	Filing of proposed preliminary care plan and budget.
NRS 159.0455	Appointment and duties of guardians ad litem.
NRS 159.046	Appointment, duties and compensation of investigators.
NRS 159.047	Issuance of citation upon filing of petition for appointment of guardian; persons required to be served; filing of affidavit of service.
NRS 159.0475	Manner of serving citation.

NRS 159.048 Contents of citation.
NRS 159.0483 Attorney for minor ward or proposed minor ward. [Repealed.]
NRS 159.0485 Appointment of attorney for proposed protected person.
NRS 159.0486 Finding of vexatious litigant; sanctions.

APPOINTMENT OF GUARDIANS

NRS 159.0487 Types of guardians.
NRS 159.049 Appointment without issuance of citation. [Repealed.]
NRS 159.052 Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers. [Repealed.]
NRS 159.0523 Temporary guardian for proposed protected person who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.
NRS 159.0525 Temporary guardian for protected person who is unable to respond to substantial and immediate risk of financial loss: Petition for appointment; conditions; required notice; extension; limited powers.
NRS 159.0535 Attendance of proposed protected person at hearing.
NRS 159.054 Finding and order of court upon petition: Dismissal of petition; appointment of special or general guardian.
NRS 159.055 Burden of proof; order appointing guardian; notice of entry of order.
NRS 159.057 Appointment of guardian for two or more proposed protected persons; powers, duties and termination of such guardianships.
NRS 159.0592 Court may require guardian to complete training.
NRS 159.0593 Determination of whether proposed protected person is prohibited from possessing firearm under federal law.
NRS 159.0594 Determination of whether proposed protected person lacks mental capacity to vote.
NRS 159.0595 Private professional guardians.
NRS 159.061 Minor wards: Preference for appointment of parent; other considerations in determining qualifications and suitability of guardian. [Repealed.]
NRS 159.0613 Protected persons: Preference for appointment of certain persons; other considerations in determining qualifications and suitability of guardian; appointment of nonresident guardian under certain circumstances; appointment of other persons; disqualifications.
NRS 159.0615 Appointment of master of court or special master to identify person most qualified and suitable to serve as guardian; hearing; recommendation.
NRS 159.0617 Court or master of court or special master authorized to allow certain persons to testify at hearing to determine person most qualified and suitable to serve as guardian.
NRS 159.062 Guardian nominated by will.
NRS 159.065 Bond: General requirements; approval by clerk; liability of sureties; not required under certain circumstances.
NRS 159.067 Bond: Court may require increase, decrease or other change; exoneration of former sureties.

NRS 159.069 Bond: Filing; remedy for breach.
NRS 159.071 Bond: Limitations on action.
NRS 159.073 Taking oath of office; filing appropriate documents and verified acknowledgment; contents of acknowledgment; acknowledgment not required under certain circumstances.
NRS 159.074 Copy of order of appointment to be served upon protected person; notice of entry of order to be filed with court.
NRS 159.075 Letters of guardianship.

REQUEST TO NOMINATE GUARDIAN

NRS 159.0753 Requirements; form; Secretary of State to make form available; regulations.

ADMINISTRATION OF SMALLER ESTATES

NRS 159.0755 Disposition of estate having value not exceeding by more than $10,000 aggregate amount of unpaid expenses of and claims against estate.
NRS 159.076 Summary administration.

POWERS AND DUTIES OF GUARDIANS

NRS 159.077 General functions of guardian of person and estate.
NRS 159.078 Petition by guardian or other interested person for order authorizing or directing guardian to take certain actions.
NRS 159.079 General functions of guardian of person; establishment or change of residence of protected person by guardian.
NRS 159.0795 Supervisory authority and powers of special guardian.
NRS 159.0801 Special guardian of person of limited capacity: Approval of court generally required before commencing act relating to person; grant of certain powers by court.
NRS 159.0805 Approval of court required before guardian may consent to certain treatment of or experiment on protected person; conditions for approval.
NRS 159.0807 Moving location of protected person: Filing and service of notice of intent to move; necessary temporary action authorized for emergency conditions; circumstances in which notice not required.
NRS 159.0809 Notification to interested persons and persons of natural affection required upon impending death or death of protected person or obtaining information concerning burial or cremation of protected person.
NRS 159.081 Reports by guardian of person.
NRS 159.083 General functions of guardian of estate.
NRS 159.085 Inventory, supplemental inventory and appraisal of property of protected person.
NRS 159.086 Guardian of estate to cause appraisal or valuation of assets of guardianship estate; record or statement in lieu of appraisal.
NRS 159.0865 Certification of appraiser, certified public accountant or expert in valuation; form of appraisal or valuation; purchase by appraiser, certified public accountant or expert in valuation without disclosure prohibited; penalties.
NRS 159.087 Recording letters of guardianship.

NRS 159.089 Possession of and title to property of protected person; guardian to secure certain documents.
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NRS 159.0895 Assets retained to pay expenses of funeral and disposal of remains of protected person: Amount exempt from all claims; placement in account or trust; reversion of excess to estate of protected person.
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CHAPTER 159

GUARDIANSHIP OF ADULTS

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REVISER'S NOTE.

Ch. 172, Stats. 2017, which created chapter 159A of NRS that pertains specifically to guardianships of minors and which removed the provisions in chapter 159 of NRS that were applicable to minors, making chapter 159 of NRS applicable to guardianships of adults only, contains the following provision not included in NRS:

"Sec. 219. The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after July 1, 2017."

NEVADA CASES.

Original jurisdiction conferred upon district court not qualified by statutes which regulate appointment of guardians and prescribe their duties. Under RL § 6162 (cf. NRS 159.0487), which authorizes filing with the district court of a petition for the appointment of a guardian of a person or estate of an insane person or person who, for any cause, is incompetent to manage his property, and RL § 4849, which gives district courts general power over the appointment and removal of guardians, the original jurisdiction which is conferred upon district courts by the former provisions of Nev. Art. 6, § 6, and RL § 4840, in all cases relating to estates of insane persons is neither special nor limited, and is not qualified by ch. 55, Stats. 1899 (cf. NRS ch. 159), which regulates the appointment of guardians and prescribes their duties. O'Donnell v. Sixth Judicial Dist. Court, 40 Nev. 428, 165 Pac. 759 (1917)

Family privacy cases involving competing familial interests: Application of more flexible "reasonableness" test for analyzing substantive due process challenges. Although the U.S. Supreme Court has held that the usual standard for analyzing a substantive due process (see Nev. Art. 1, § 8) challenge to the constitutionality of a state statute that impinges on a fundamental constitutional right is whether the statute is narrowly tailored so as to serve a compelling interest, and although the relationship between parent and child is a fundamental liberty interest, in family privacy cases involving competing interests within the family, the U.S. Supreme Court has deviated from the usual test to apply a more flexible "reasonableness" test which implicitly calibrates the level of scrutiny in each case to match the particular degree of intrusion upon the parents' interests. Kirkpatrick v. Eighth Judicial Dist. Court, 119 Nev. 66, 64 P.3d 1056 (2003), cited, In re Guardianship of L.S. & H.S., 120 Nev. 157, at 166, 87 P.3d 521 (2004), but see In re Parental Rights as to D.R.H., 120 Nev. 422, at 427, 92 P.3d 1230 (2004)

The beneficiaries of a trust could not serve as guardians ad litem of the settlor to prosecute an action against the settlor's amendment of the trust. The beneficiaries of a revocable inter vivos trust moved for appointment as guardians ad litem of the settlor to prosecute an action against the trust after it was amended by the settlor. The Nevada Supreme Court upheld the district court's denial of the motion. For the beneficiaries to serve as guardians ad litem in order to challenge the settlor's actions in amending her trust would create a conflict of interest. To the extent that the beneficiaries' concerns centered on the settlor's capacity, those concerns were more appropriately addressed in a separate action brought under the guardianship statutes. (See NRS ch. 159; see also N.R.C.P. 17 and NRS 12.050.) Linthicum v. Rudi, 122 Nev. 1452, 148 P.3d 746 (2006)

A beneficiary of a revocable inter vivos trust lacks standing to challenge the settlor's lifetime amendments of the trust. The beneficiaries of a revocable inter vivos trust filed a complaint challenging amendments to the trust made by the settlor. They also moved for appointment as guardians ad litem of the settlor to challenge the amended trust and its trustee. The district court dismissed the complaint and denied their motion. The Nevada Supreme Court affirmed. Because a beneficiary's interest in a revocable inter vivos trust is contingent, at most, while the settlor is still alive, such a beneficiary is not an "interested person" under NRS 153.031 and 164.015 and generally lacks standing to challenge the settlor's lifetime amendments. Instead, to challenge the settlor's capacity to make amendments, a beneficiary must pursue a separate action pursuant to the procedures set forth in the guardianship statutes. (See NRS ch. 159.) Linthicum v. Rudi, 122 Nev. 1452, 148 P.3d 746 (2006)

GENERAL PROVISIONS

NRS 159.013 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 159.014 to 159.0265, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1969, 412; A 1981, 1933; 2003, 1770; 2005, 815; 2009, 1644, 2519; 2017, 867, 2553)

NRS 159.014 "Care provider" defined. "Care provider" includes any public or private institution located within or outside this state which provides facilities for the care or maintenance of persons who are incapacitated or persons of limited capacity.

(Added to NRS by 1969, 412; A 1981, 1933; 2003, 1771; 2017, 867, 3901)

NRS 159.0145 "Citation" defined. "Citation" means a document issued by the clerk of the court, as authorized by statute or ordered by the court, requiring a person to appear, directing a person to act or conduct himself or herself in a specified way, or notifying a person of a hearing.

(Added to NRS by 2003, 1757)

NRS 159.015 "Court" defined. "Court" means any court or judge having jurisdiction of the persons and estates of persons who are incapacitated or persons of limited capacity.

(Added to NRS by 1969, 412; A 1981, 1933; 2017, 867, 3901)

NRS 159.017 "Guardian" defined. "Guardian" means any person appointed under this chapter as guardian of the person, of the estate, or of the person and estate for any other person, and includes an organization under NRS 662.245 and joint appointees. The term includes, without limitation, a special guardian or, if the context so requires, a person appointed in another state who serves in the same capacity as a guardian in this State.

(Added to NRS by 1969, 412; A 1971, 1010; 1981, 1933; 1999, 849; 2009, 1644)

NRS CROSS REFERENCES.

Trust companies, foreign entity acting as fiduciary, NRS 662.245

NRS 159.018 "Home state" defined. "Home state" means the state in which the proposed protected person was physically present for at least 6 consecutive months, including any temporary absence from the state, immediately before the filing of a petition for the appointment of a guardian.

(Added to NRS by 2009, 1639)

NRS 159.019 "Incapacitated" defined. A person is "incapacitated" if he or she, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety or self-care without appropriate assistance.

(Added to NRS by 1969, 412; A 1999, 1396; 2003, 1770; 2017, 3901)

NEVADA CASES.

Medical testimony sufficient to raise presumption of undue influence and shift burden of proof. In an action by the administrator to recover money claimed to be a gift of the decedent, testimony of the physician that the decedent could not think properly because diabetes was destroying his brain by depriving it of oxygen, rendering him incompetent within the meaning of the former provisions of NRS 159.019, showed mental infirmity sufficient to raise the presumption of undue influence and shift the burden of proof to the recipient to show the gift was freely and voluntarily made. Ross v. Giacomo, 97 Nev. 550, 635 P.2d 298 (1981)

NRS 159.0195 "Interested person" defined. "Interested person" means a person who is entitled to notice of a guardianship proceeding pursuant to NRS 159.034.

(Added to NRS by 2017, 2546)

NRS 159.022 "Limited capacity" defined. A person is of "limited capacity" if:

1. The person is able to make independently some but not all of the decisions necessary for the person's own care and the management of the person's property; and

2. The person is not a minor.
(Added to NRS by 1981, 1931; A 1999, 1396; 2003, 1771)

NEVADA CASES.

Harmless error when petition for guardianship referred to special guardian but guardianship sought did not meet requirements for special guardianship. When a petition for the guardianship of two minor children requested the appointment of a special guardian for the children, but pursuant to the definitions of "special guardian" and "limited capacity" (see NRS 159.022 and 159.026) a special guardianship was inapplicable, it was a harmless error because the error did not affect the substantive rights of the parties or the outcome of the decision. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

NRS 159.023 "Minor" defined. "Minor" means any person who is:
1. Less than 18 years of age; or
2. Less than 19 years of age if guardianship of the person is continued until the person reaches the age of 19 years pursuant to NRS 159A.191.
(Added to NRS by 1969, 412; A 2003, 1771; 2017, 868)

NRS 159.0235 "Person of natural affection" defined. "Person of natural affection" means a person who is not a family member of a protected person but who shares a relationship with the protected person that is similar to the relationship between family members.
(Added to NRS by 2017, 2532, 2546)

NRS 159.024 "Private professional guardian" defined.
1. "Private professional guardian" means a person who receives compensation for services as a guardian to three or more protected persons who are not related to the guardian by blood or marriage and who meets the requirements set forth in NRS 159.0595.
2. For the purposes of this chapter, the term includes an entity that serves as a private professional guardian and is:
(a) Required to have a license issued pursuant to chapter 628B of NRS; or
(b) Exempt pursuant to NRS 159.0595, 159A.0595 or 628B.110 from the requirement to have a license issued pursuant to chapter 628B of NRS.
3. The term does not include:
(a) A governmental agency.
(b) A public guardian appointed or designated pursuant to the provisions of chapter 253 of NRS.
4. As used in this section, "protected person" includes a protected minor.
(Added to NRS by 2005, 814; A 2009, 1644; 2015, 2365; 2017, 868, 2423)

NRS 159.025 "Proposed protected person" defined. "Proposed protected person" means any person, other than a minor, for whom proceedings for the appointment of a guardian have been initiated in this State or, if the context so requires, for whom similar proceedings have been initiated in another state.
(Added to NRS by 1969, 412; A 2009, 1644; 2017, 868, 2553)

NRS 159.0251 "Protected minor" defined. "Protected minor" has the meaning ascribed to it in NRS 159A.0251.
(Added to NRS by 2017, 867)

NRS 159.0253 "Protected person" defined. "Protected person" means any person, other than a minor, for whom a guardian has been appointed.
(Added to NRS by 1969, 412; A 2017, 868, 2553)—(Substituted in revision for NRS 159.027)

NRS 159.0255 "Secured residential long-term care facility" defined.

1. "Secured residential long-term care facility" means a residential facility providing long-term care that is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian.

2. The term does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living.

(Added to NRS by 2009, 2519)

NRS 159.026 "Special guardian" defined. "Special guardian" means a guardian of a person of limited capacity, including, without limitation, such a guardian who is appointed because a person of limited capacity has voluntarily petitioned for the appointment and the court has determined that the person has the requisite capacity to make such a petition.

(Added to NRS by 1981, 1931; A 2003, 1771)

NEVADA CASES.

Harmless error when petition for guardianship referred to special guardian but guardianship sought did not meet requirements for special guardianship. When a petition for the guardianship of two minor children requested the appointment of a special guardian for the children, but pursuant to the definitions of "special guardian" and "limited capacity" (see NRS 159.022 and 159.026) a special guardianship was inapplicable, it was a harmless error because the error did not affect the substantive rights of the parties or the outcome of the decision. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

NRS 159.0265 "State" defined. "State" means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(Added to NRS by 2009, 1639)

NRS 159.027 "Ward" defined. [Replaced in revision by NRS 159.0253.]

NRS 159.028 Terms: "Writing" or "written." As used in this chapter, unless the context otherwise requires, when the term "writing" or "written" is used in reference to a will or instrument, the term includes an electronic will as defined in NRS 132.119 and an electronic trust as defined in NRS 163.0015.

(Added to NRS by 2001, 2350)

NRS 159.033 Application to guardians ad litem. Except as otherwise provided in this chapter, the provisions of this chapter do not apply to guardians ad litem.

(Added to NRS by 1969, 412; A 2003, 1771)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

PROCEDURE IN GUARDIANSHIP PROCEEDINGS

NRS 159.034 Notice by petitioner: To whom required; manner for providing; waiver of requirement; proof of giving filed with court.

1. Except as otherwise provided in this section, by specific statute or as ordered by the court, a petitioner in a guardianship proceeding shall give notice of the time and place of the hearing on any petition filed in the guardianship proceeding to:

(a) The spouse of the protected person and all other known relatives of the protected person who are within the second degree of consanguinity.

(b) Any other interested person or the person's attorney who has filed a request for notice in the guardianship proceedings and has served a copy of the request upon the guardian. The request for notice must state the interest of the person filing the request and the person's name and address, or that of his or her attorney.

(c) The guardian, if the petitioner is not the guardian.

(d) Any person or care provider who is providing care for the protected person, except that if the person or care provider is not related to the protected person, such person or care provider must not receive copies of any inventory or accounting.

(e) Any office of the Department of Veterans Affairs in this State if the protected person is receiving any payments or benefits through the Department of Veterans Affairs.

(f) The Director of the Department of Health and Human Services if the protected person has received or is receiving benefits from Medicaid.

(g) Those persons entitled to notice if a proceeding were brought in the home state of the protected person.

2. The petitioner shall give notice not later than 10 days before the date set for the hearing:

(a) By mailing a copy of the notice by certified, registered or ordinary first-class mail to the residence, office or post office address of each person required to be notified pursuant to this section;

(b) By personal service; or

(c) In any other manner ordered by the court, upon a showing of good cause.

3. Except as otherwise provided in this subsection, if none of the persons entitled to notice of a hearing on a petition pursuant to this section can, after due diligence, be served by certified mail or personal service and this fact is proven by affidavit to the satisfaction of the court, service of the notice must be made by publication in the manner provided by N.R.C.P. 4(e). In all such cases, the notice must be published not later than 10 days before the date set for the hearing. If, after the appointment of a guardian, a search for relatives of the protected person listed in paragraph (a) of subsection 1 fails to find any such relative, the court may waive the notice by publication required by this subsection.

4. For good cause shown, the court may waive the requirement of giving notice.

5. A person entitled to notice pursuant to this section may waive such notice. Such a waiver must be in writing and filed with the court.

6. On or before the date set for the hearing, the petitioner shall file with the court proof of giving notice to each person entitled to notice pursuant to this section.

(Added to NRS by 2003, 1768; A 2009, 1644; 2013, 905; 2017, 868, 3901)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0345 Court authorized to alter requirements concerning publication of notice or citation. If publication of a notice or citation is required pursuant to this chapter, the court may, for good cause shown:

1. Allow fewer publications to be made within the time for publication; and
2. Extend or shorten the time in which the publications must be made.

(Added to NRS by 2003, 1769; A 2013, 906)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0355 Facsimile of certain papers may be filed with court. If a petition, notice, objection, consent, waiver or other paper may be filed, a true and correct facsimile of it may be filed, if the original is filed within a reasonable time or at such time prescribed by the court.

(Added to NRS by 2003, 1769)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.036 Giving of notices and issuance of citations by clerk of court. All notices required to be given by this chapter may be given by the clerk of the court without an order from the court, and when so given, for the time and in the manner required by law, they are legal and valid as though made upon an order from the court. If use of a citation is authorized or required by statute, the citation may be issued by the clerk of the court on the request of a party or the party's attorney without a court order, unless an order is expressly required by statute.

(Added to NRS by 2003, 1769)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.037 Venue for appointment of guardian.

1. The venue for the appointment of a guardian when the home state of the proposed protected person is this State must be the county where the proposed protected person resides.
2. If the proper venue may be in two or more counties, the county in which the proceeding is first commenced is the proper county in which to continue the proceedings.
3. Upon the filing of a petition showing that the proper venue is inconvenient, a venue other than that provided in subsection 1 may accept the proceeding.

(Added to NRS by 1969, 413; A 2003, 1771; 2009, 1645; 2017, 869)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.039 Proceedings commenced in more than one county.

1. If proceedings for the appointment of a guardian for the same proposed protected person are commenced in more than one county in this State, and the home

state of the proposed protected person is this State, they shall be stayed, except in the county where first commenced, until final determination of venue in that county. If the proper venue is finally determined to be in another county, the court shall cause a transcript of the proceedings and all original papers filed therein, all certified by the clerk of the court, to be sent to the clerk of the court of the proper county.

2. A proceeding is considered commenced by the filing of a petition.

3. The proceedings first legally commenced for the appointment of a guardian of the estate or of the person and estate extends to all the property of the proposed protected person which is in this state.

(Added to NRS by 1969, 413; A 2009, 1645; 2017, 869)

NRS 159.041 Transfer of proceedings to another county. A court having before it any guardianship matter for a protected person or proposed protected person whose home state is this State may transfer the matter to another county in the interest of the protected person or proposed protected person or, if not contrary to the interest of the protected person or proposed protected person, for the convenience of the guardian. A petition for the transfer, setting forth the reasons therefor, may be filed in the guardianship proceeding. If the court is satisfied that the transfer is in the interest of the protected person or proposed protected person or, if not contrary to the interest of the protected person or proposed protected person, for the convenience of the guardian, the court shall make an order of transfer and cause a transcript of the proceedings in the matter, all original papers filed in such proceedings and the original bond filed by the guardian, to be certified by the clerk of the court originally hearing the matter and sent to the clerk of the court of the other county. Upon receipt of the transcript, papers and bond, and the filing of them for record, the court of the other county has complete jurisdiction of the matter, and thereafter all proceedings shall be as though they were commenced in that court.

(Added to NRS by 1969, 413; A 2009, 1645; 2017, 870)

NRS 159.043 Titles of petitions; captions of petitions and other documents.

1. All petitions filed in a guardianship proceeding pursuant to this chapter must bear the title of the court and cause.

2. The caption of all petitions and other documents filed in a guardianship proceeding pursuant to this chapter must read, "In The Matter of the Guardianship of ..... (the person, the estate, or the person and estate), ... (the legal name of the person), adult, Protected Person."

(Added to NRS by 1969, 413; A 1981, 1934; 2003, 1772; 2017, 870, 2553)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.044 Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed protected person.

1. A proposed protected person, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

(a) The name and address of the petitioner.

(b) The name, date of birth and current address of the proposed protected person.

(c) A copy of one of the following forms of identification of the proposed protected person which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;
(2) A taxpayer identification number;
(3) A valid driver's license number;
(4) A valid identification card number;
(5) A valid passport number;
(6) A valid permanent resident card number; or
(7) A valid tribal identification card number.

➥ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) Whether the proposed protected person is a resident or nonresident of this State.

(e) The names and addresses of the spouse of the proposed protected person and the relatives of the proposed protected person who are within the second degree of consanguinity.

(f) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595 or 159A.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one protected person who is not related to the person by blood or marriage. As used in this paragraph, "protected person" includes a protected minor.

(g) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;
(2) A taxpayer identification number;
(3) A valid driver's license number;
(4) A valid identification card number;
(5) A valid passport number;
(6) A valid permanent resident card number; or
(7) A valid tribal identification card number.

(h) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.

(i) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. The documentation must include, without limitation:

(1) A certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a certificate signed by any other person whom the court finds qualified to execute a certificate, stating:

(I) The need for a guardian;

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

(III) Whether the attendance of the proposed protected person at a hearing would be detrimental to the proposed protected person;

(IV) Whether the proposed protected person would comprehend the reason for a hearing or contribute to the proceeding; and

(V) Whether the proposed protected person is capable of living independently with or without assistance; and

(2) If the proposed protected person is determined to have the limited capacity to consent to the appointment of a special guardian, a written consent to the appointment of a special guardian from the protected person.

(j) Whether the appointment of a general or a special guardian is sought.

(k) A general description and the probable value of the property of the proposed protected person and any income to which the proposed protected person is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed protected person by the United States through the Department of Veterans Affairs, the petition must so state.

(l) The name and address of any person or care provider having the care, custody or control of the proposed protected person.

(m) If the petitioner is not the spouse or natural child of the proposed protected person, a declaration explaining the relationship of the petitioner to the proposed protected person or to the family or friends of the proposed protected person, if any, and the interest, if any, of the petitioner in the appointment.

(n) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(o) If the guardianship is sought as the result of an investigation of a report of abuse, neglect, exploitation, isolation or abandonment of the proposed protected person, whether the referral was from a law enforcement agency or a state or county agency.

(p) Whether the proposed protected person or the proposed guardian is a party to any pending criminal or civil litigation.

(q) Whether the guardianship is sought for the purpose of initiating litigation.

(r) Whether the proposed protected person has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.

(s) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed protected person must provide the court with an assessment of the needs of the proposed protected person completed by a licensed physician which identifies the limitations of capacity of the proposed protected person and how such limitations affect the ability of the proposed protected person to maintain his or her safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed protected person must be filed.

(Added to NRS by 1981, 1931; A 1989, 533; 1995, 1076, 2771; 1997, 1343; 1999, 1396; 2001 Special Session, 15; 2003, 1772; 2005, 815; 2007, 2025, 2075; 2009, 1646, 2519; 2013, 906; 2015, 818; 2017, 90, 870, 1622, 2271)

NRS CROSS REFERENCES.

Application to court for order allowing inspection or copying of certain records, NRS 239.0115

REVISER'S NOTES.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

Ch. 230, Stats. 2005, which amended paragraph (g) of subsection 2 of this section, contains the following provision not included in NRS:

"1. Except as otherwise provided in this section, the amendatory provisions of this act apply to a person appointed as a guardian pursuant to the provisions of chapter 159 of NRS on or after October 1, 2005.

2. A person who receives compensation for services as a guardian to three or more wards who are not related to the person by blood or marriage on October 1, 2005, and who does not meet the requirements of section 3 of this act [NRS 159.0595] is exempt from those requirements until October 1, 2006.

3. After October 1, 2006, in order to serve as a private professional guardian, a person described in subsection 2 must meet the requirements of section 3 of this act [NRS 159.0595]."

NEVADA CASES.

District judge has no authority to appoint guardian of person or estate of minor except upon written petition and notice to relatives. District judge has no authority to appoint any person guardian of a person or the estate of a minor except upon written petition in his behalf and after notice of his application to relatives. (See former provisions of NRS 159.044 and NRS 159A.044.) In re Estate of Winkleman, 11 Nev. 87 (1876)

"Concerned person" includes former stepparent. A stepfather who sought appointment as guardian for his stepchild residing with him after a divorce from the child's mother was entitled to file a petition for appointment under NRS 159.044 because "concerned person," as used in the statute, includes a former stepparent. Fisher v. Fisher, 99 Nev. 762, 670 P.2d 572 (1983)

Harmless error when district court relied on facts supporting guardianship under one provision but granted guardianship under another provision. When a district court relied on facts which supported granting guardianship pursuant to NRS 159.044 but granted a temporary guardianship pursuant to the provisions of former NRS 159.052, the district court's actions amounted only to harmless error. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

District court did not err in applying temporary guardianship statute where petitioner actually sought temporary guardianship but mistakenly petitioned for both temporary guardianship and general guardianship. A hospital sought temporary guardianship (see former NRS 159.052) of a minor child for the purpose of providing certain medical care to that child. However, in doing so, the hospital submitted petitions for guardianship under both the provisions of former NRS 159.052, the temporary guardianship statute, and NRS 159.044, the general guardianship statute. Despite the multiple petitions, the hospital had in actuality sought only temporary guardianship. Thus, the district court did not err in applying the provisions of former NRS 159.052, the temporary guardianship statute. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

NRS 159.0445 Filing of proposed preliminary care plan and budget. Upon the filing of a petition for the appointment of a guardian, the court may require a proposed guardian to file a proposed preliminary care plan and budget. The format of such a proposed preliminary care plan and budget and the timing of the filing thereof must be specified by a rule approved by the Supreme Court.

(Added to NRS by 2017, 3898)

NRS 159.0455 Appointment and duties of guardians ad litem.

1. On or after the date of the filing of a petition to appoint a guardian:

(a) The court may, in any proceeding, appoint a person to represent the protected person or proposed protected person as a guardian ad litem if the court believes that the protected person or proposed protected person will benefit from the appointment and the services of the guardian ad litem will be beneficial in determining the best interests of the protected person or proposed protected person; and

(b) The guardian ad litem must represent the protected person or proposed protected person as a guardian ad litem until relieved of that duty by court order.

2. Upon the appointment of the guardian ad litem, the court shall set forth in the order of appointment the duties of the guardian ad litem.

3. If a court-approved volunteer advocate program for guardians ad litem has been established in a judicial district, a court may appoint a person who is not an attorney to represent a protected person or proposed protected person as a guardian ad litem. If such a program has been established, all volunteers participating in the program must complete appropriate training, as determined by relevant national or

state sources or as approved by the Supreme Court or the district court in the judicial district, before being appointed to represent a protected person or proposed protected person.

4. A guardian ad litem appointed pursuant to this section is an officer of the court and is not a party to the case. A guardian ad litem appointed pursuant to this section shall not offer legal advice to the protected person or proposed protected person but shall:

(a) Advocate for the best interests of the protected person or proposed protected person in a manner that will enable the court to determine the action that will be the least restrictive and in the best interests of the protected person or proposed protected person; and

(b) Provide any information required by the court.

(Added to NRS by 2003, 1758; A 2017, 2553)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

In approving compromise, district court should have explained allocation of fees between attorney and guardian ad litem. The parties to a medical malpractice action brought on behalf of a minor reached a settlement compromise. The district court approved the overall settlement amount but reduced the fees and costs distributed to the minor's attorney and her guardian ad litem. The attorney and the guardian sought mandamus relief, which the Nevada Supreme Court granted in part. It rejected the argument that the district court was required to hold an evidentiary hearing before approving the compromise; under NRS 41.200 such approval is based upon the filing of a verified petition in writing. Although NRS 41.200 is silent as to the standard for reviewing a petition to approve the compromise of a minor's claim, *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004), applied a fair and reasonable approach in reviewing the approval of a settlement involving incompetent parties. Similarly, a district court's discretion to award attorney fees is tempered only by reason and fairness, so long as the amount is reviewed in light of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). In this case, the district court considered the requisite *Brunzell* factors. It reviewed the attorney's contingency fee agreement and the parties' extensive briefing. It then referenced the attorney's limited experience as a medical malpractice attorney and highlighted his role in complicating the matter, noting the many amended motions, dismissals and time-barred complaints resulting from attorney oversight. Finally, the court balanced the minor's lifelong special needs and potential for a multimillion dollar judgment against the proposed payment. Thus, it acted within its broad discretion by concluding that the proposed allocation to the attorney was unreasonable. However, the district court awarded fees and costs to "attorneys" without further explanation. The guardian ad litem was entitled to reasonable compensation under NRS 159.0455, and it was unclear whether fees for the guardian were included within the allocation of attorney fees and, if so, in what amount. Haley v. Dist. Ct., 128 Nev. 171, 273 P.3d 855 (2012)

NRS 159.046 Appointment, duties and compensation of investigators.

1. Upon filing of the petition, or any time thereafter, the court may appoint one or more investigators to:

(a) Locate persons who perform services needed by the proposed protected person and other public and private resources available to the proposed protected person.

(b) Determine any competing interests in the appointment of a guardian.

(c) Investigate allegations or claims which affect a protected person or proposed protected person.

2. An investigator may be an employee of a social service agency, family service officer of the court, public guardian, physician or other qualified person.

3. An investigator shall file with the court and parties a report concerning the scope of the appointment of the guardian and any special powers which a guardian would need to assist the proposed protected person.

4. An investigator who is appointed pursuant to this section is entitled to reasonable compensation from the estate of the proposed protected person. If the court finds that a person has unnecessarily or unreasonably caused the investigation,

the court may order the person to pay to the estate of the proposed protected person all or part of the expenses associated with the investigation.

(Added to NRS by 1981, 1932; A 2003, 1773)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.047 Issuance of citation upon filing of petition for appointment of guardian; persons required to be served; filing of affidavit of service.

1. Except as otherwise provided in NRS 159.0475, 159.0523 and 159.0525, upon the filing of a petition under NRS 159.044, the clerk shall issue a citation setting forth a time and place for the hearing and directing the persons or care provider referred to in subsection 2 to appear and show cause why a guardian should not be appointed for the proposed protected person.

2. A citation issued under subsection 1, together with a copy of the petition filed under NRS 159.044, must be served upon:

(a) The proposed protected person, regardless of whether the proposed protected person is considered to have the capacity to understand or appreciate the contents of the citation and petition;

(b) The spouse of the proposed protected person and all other known relatives of the proposed protected person who are:

(1) Fourteen years of age or older; and

(2) Within the second degree of consanguinity;

(c) The parents and custodian of the proposed protected person;

(d) Any person or officer of a care provider having the care, custody or control of the proposed protected person;

(e) The proposed guardian, if the petitioner is not the proposed guardian;

(f) Any office of the Department of Veterans Affairs in this State if the proposed protected person is receiving any payments or benefits through the Department of Veterans Affairs; and

(g) The Director of the Department of Health and Human Services if the proposed protected person has received or is receiving any benefits from Medicaid.

3. A person who serves notice upon a proposed protected person pursuant to paragraph (a) of subsection 2 shall file with the court an affidavit stating that he or she served notice upon the proposed protected person in accordance with the provisions of NRS 159.0475.

(Added to NRS by 1969, 414; A 1981, 1934; 1999, 1397; 2001, 870; 2003, 1774; 2013, 909; 2017, 872, 3902)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0475 Manner of serving citation.

1. A copy of the citation issued pursuant to NRS 159.047, together with a copy of the petition filed under NRS 159.044, must be served:

(a) Except as otherwise ordered by the court, on a proposed protected person by personal service in the manner provided pursuant to N.R.C.P. 4(d) at least 10 days before the date set for the hearing; and

(b) On each person required to be served pursuant to NRS 159.047 other than a proposed protected person by:

(1) Certified mail, with a return receipt requested, at least 20 days before the hearing; or

(2) Personal service in the manner provided pursuant to N.R.C.P. 4(d) at least 10 days before the date set for the hearing.

2. If none of the persons on whom the citation and petition is to be served can, after due diligence, be served by certified mail or personal service, as applicable, and this fact is proven by affidavit to the satisfaction of the court, service of the citation must be made by publication in the manner provided by N.R.C.P. 4(e). In all such cases, the citation must be published at least 20 days before the date set for the hearing.

3. A citation and petition need not be served on a person or an officer of the care provider who has signed the petition or a written waiver of service of the citation and petition or who makes a general appearance.

4. The court may find that notice is sufficient if:

(a) The citation and petition have been served by personal service on the proposed protected person and an affidavit of such service has been filed with the court pursuant to subsection 3 of NRS 159.047;

(b) The citation and petition have been served by certified mail, with a return receipt requested, or by personal service on the care provider or public guardian required to be served pursuant to NRS 159.047; and

(c) At least one relative of the proposed protected person who is required to be served pursuant to NRS 159.047 has been served, as evidenced by the return receipt or the certificate of service. If the court finds that at least one relative of the proposed protected person has not received notice that is sufficient, the court will require the citation to be published pursuant to subsection 2.

(Added to NRS by 1969, 414; A 1981, 1935; 1995, 1077; 2003, 1775; 2013, 909; 2017, 3903)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.048 Contents of citation. The citation issued pursuant to NRS 159.047 must state that the:

1. Proposed protected person may be adjudged to be incapacitated or of limited capacity and a guardian may be appointed for the proposed protected person;

2. Rights of the proposed protected person may be affected as specified in the petition;

3. Proposed protected person has the right to appear at the hearing and to oppose the petition; and

4. Proposed protected person has the right to be represented by an attorney, who may be appointed for the proposed protected person by the court if the proposed protected person is unable to retain one.

(Added to NRS by 1981, 1931; A 2003, 1775; 2017, 3904)

NRS 159.0483 Attorney for minor ward or proposed minor ward. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

NRS 159.0485 Appointment of attorney for proposed protected person.

1. Upon the filing of a petition for the appointment of a guardian for a proposed protected person, the court shall appoint an attorney for the proposed protected person unless the proposed protected person wishes to retain or has already retained an attorney of his or her own choice.

2. The court shall:

(a) If the proposed protected person resides in a county that has a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons and the program is able to accept the case, appoint an attorney who works for the organization operating the program to represent the proposed protected person. After such an appointment, if it is ascertained that the proposed protected person wishes to have another attorney represent him or her, the court shall appoint that attorney to represent the proposed protected person. An attorney appointed pursuant to this subsection shall represent the proposed protected person until relieved of the duty by court order.

(b) If the proposed protected person resides in a county that does not have a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons, or if such a program exists but the program is unable to accept the case, the court shall determine whether the proposed protected person has the ability to pay the reasonable compensation and expenses of an attorney from his or her estate. If the proposed protected person:

(1) Has the ability to pay the reasonable compensation and expenses of an attorney, the court shall order an attorney to represent the proposed protected person and require such compensation and expenses of the attorney to be paid from the estate of the proposed protected person.

(2) Does not have the ability to pay the reasonable compensation and expenses of an attorney, the court may use the money retained pursuant to subparagraph (2) of paragraph (a) of subsection 3 of NRS 247.305 to pay for an attorney to represent the proposed protected person.

3. If an attorney is appointed pursuant to paragraph (a) of subsection 2 and the proposed protected person has the ability to pay the compensation and expenses of an attorney, the organization operating the program for legal services may request that the court appoint a private attorney to represent the proposed protected person, to be paid by the proposed protected person.

4. 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 protected person or proposed protected person all or part of the expenses associated with the appointment of the attorney.

5. Any attorney who intends to seek compensation from the estate of the protected person or proposed protected person must follow the procedure established in NRS 159.344.

(Added to NRS by 1999, 1396; A 2003, 1776; 2009, 2521; 2013, 910; 2017, 873, 2554, 3964)

REVISER'S NOTES.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

Ch. 390, Stats. 2017, which amended this section, contains the following provision not included in NRS:

"Sec. 40. The amendatory provisions of section 23 of this act [NRS 159.0485] apply to a petition for the appointment of a guardian for a proposed protected person that is filed on or after July 1, 2017."

NRS 159.0486 Finding of vexatious litigant; sanctions.

1. A court may find that a petitioner is a vexatious litigant if a person, other than the protected person:

(a) Files a petition which is without merit or intended to harass or annoy the guardian; and

(b) Has previously filed pleadings in a guardianship proceeding that were without merit or intended to harass or annoy the guardian.

2. If a court finds a person is a vexatious litigant pursuant to subsection 1, the court may impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the protected person for all or part of the expenses incurred by the estate of the protected person to defend the petition, to respond to the petition and for any other pecuniary losses which are associated with the petition.

(Added to NRS by 2009, 1639)

APPOINTMENT OF GUARDIANS

ATTORNEY GENERAL'S OPINIONS.

Inappropriate for social worker to act as attorney-in-fact, guardian or representative payee for client. It would be inappropriate for a social worker to act as an attorney-in-fact, a guardian or a representative payee for a client (see provisions of former NRS 111.450 et seq., provisions of former NRS 159.035 et seq. (cf. NRS 159.0487 et seq.) and NRS 641B.400) because assuming such a role is contrary to the primary purpose of social work which is to assist the client in becoming more productive by locating and coordinating resources. Acting as an attorney-in-fact, a guardian or a representative payee for a client negates the client's decision making, making the client less productive. AGO 96-03 (3-6-1996)

NRS 159.0487 Types of guardians. Any court of competent jurisdiction may appoint:

1. Guardians of the person, of the estate, or of the person and estate for persons who are incapacitated whose home state is this State.

2. Guardians of the person or of the person and estate for persons who are incapacitated who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment.

3. Guardians of the estate for nonresident persons who are incapacitated who have property within this State.

4. Special guardians.

5. Guardians ad litem.

(Added to NRS by 1969, 412; A 1981, 1934; 2003, 1771; 2009, 1648; 2017, 873, 3905)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Interest of minor is paramount consideration; parental request entitled to great weight. In the appointment of a guardian, interest of the minor is a paramount consideration, although a parental request is entitled to great weight and ought to prevail in the absence of good reasons to the contrary. (See NRS 159A.0487 and former provisions of NRS 159.0487.) In re Estate of Winkleman, 11 Nev. 87 (1876), cited, In re Guardianship & Estate of D.R.G., 119 Nev. 32, at 40, 62 P.3d 1127 (2003)

Issuance of writ of prohibition to restrain enforcement of judgment appointing guardian of estate of mentally incompetent person pending appeal to Supreme Court does not defeat purpose of statute. In a proceeding for writ of prohibition to restrain enforcement of judgment appointing a guardian of the estate of a mentally incompetent person pending an appeal to the Supreme Court from such judgment, where the appeal lay, and had been perfected by the filing of an undertaking, a writ was issued despite the respondent's contentions that the appeal defeated the purpose of RL § 6162 (cf. NRS 159.0487), which provides for the appointment of a guardian of the estate of a person who, for any cause, is incompetent to manage his property, and that it was

against public policy to permit the petitioner to manage his property pending appeal. O'Donnell v. Sixth Judicial Dist. Court, 40 Nev. 428, 165 Pac. 759 (1917), cited, Gottwals v. Rencher, 60 Nev. 35, at 42, 92 P.2d 1000 (1940), Murphy v. Murphy, 64 Nev. 481, at 485, 184 P.2d 1004 (1947), distinguished, Dunphy v. McNamara, 50 Nev. 113, at 119, 252 Pac. 943 (1927)

Filing of undertaking which complied with requirements of general statute governing undertakings stayed proceedings upon judgment. Where statutes which required the giving of various special undertakings to stay the execution of certain types of judgments appealed from did not include a judgment appointing the guardian of an estate of a mentally incompetent person rendered in a proceeding commenced pursuant to RL § 6162 (cf. NRS 159.0487), the perfecting of an appeal from such judgment by filing an undertaking which complied with the requirements of the general statute governing undertakings stayed the proceedings upon judgment under the statute which specifically provided for such a result. O'Donnell v. Sixth Judicial Dist. Court, 40 Nev. 428, 165 Pac. 759 (1917), cited, Gottwals v. Rencher, 60 Nev. 35, at 42, 92 P.2d 1000 (1940), Murphy v. Murphy, 64 Nev. 481, at 485, 184 P.2d 1004 (1947), distinguished, Dunphy v. McNamara, 50 Nev. 113, at 119, 252 Pac. 943 (1927)

Appeal to Supreme Court could be taken from judgment appointing guardian of estate of mentally incompetent person in proceeding commenced in district court because such proceeding was equitable and judgment was final. Under Nev. Art. 6, § 4, and RL § 4832, which give the Supreme Court appellate jurisdiction in equity cases, RL § 4833 (cf. NRS 2.090), which authorizes such Court to review the judgment of a district court rendered in controversy within the jurisdiction of the Supreme Court, and RL § 5329 (cf. NRAP 3A(b)), which authorizes appeal from final judgment in a proceeding commenced in a court where a judgment was rendered, appeal to the Supreme Court could be taken from the judgment appointing a guardian of the estate of a mentally incompetent person in a proceeding commenced in district court under RL § 6162 (cf. NRS 159.0487), because such a proceeding was equitable, and the judgment was final. O'Donnell v. Sixth Judicial Dist. Court, 40 Nev. 428, 165 Pac. 759 (1917), cited, Nevada Tax Comm'n v. Mackie, 74 Nev. 276, at 279, 329 P.2d 448 (1958)

Original jurisdiction of district court not qualified by statutes which regulate appointment of guardians and prescribe their duties. Under RL § 6162 (cf. NRS 159.0487), which authorizes filing with the district court of a petition for the appointment of a guardian of a person or estate of an insane person or person who, for any cause, is incompetent to manage his property, and RL § 4849, which gives district courts general power over the appointment and removal of guardians, the original jurisdiction which is conferred upon district courts by the former provisions of Nev. Art. 6, § 6, and RL § 4840, in all cases relating to estates of insane persons is neither special nor limited, and is not qualified by ch. 55, Stats. 1899 (cf. NRS ch. 159), which regulates the appointment of guardians and prescribes their duties. O'Donnell v. Sixth Judicial Dist. Court, 40 Nev. 428, 165 Pac. 759 (1917)

Words "general guardian" used in court rule refer only to general guardian appointed by Nevada court. The words "general guardian" as used in NCL § 8549 (cf. N.R.C.P. 17(c)), which provide that an infant or an insane or incompetent person must appear, when he is a party, either by his general guardian or by a guardian ad litem, refer only to the general guardian appointed by a Nevada court, whether such appointment is made under the provisions of NCL §§ 9508-9510 (cf. NRS 159.0487 et seq.), which provide generally for the appointment of guardians, or under the provisions of NCL §§ 9533-9535 (cf. former NRS 159.590, 159.600), which provide for the appointment of guardians for out-of-state wards. Baker v. Baker, 59 Nev. 163, 87 P.2d 800 (1939)

Guardian may be appointed by district court of county of infant's residence even though petition for adoption of infant was pending in another district court. The district court of the county where the infant resided had jurisdiction to appoint a custodian of the infant as his legal guardian, despite the fact that a petition for adoption of the infant was pending in another district court, because the court could have found that such appointment was necessary and convenient as required by NCL § 9495 (cf. NRS 159.0487), inasmuch as the adoption statute, 1943 NCL § 1065 (cf. NRS 127.040), requires consent to adoption by the guardian. Mendive v. Third Judicial Dist. Court, 70 Nev. 51, 253 P.2d 884 (1953)

NRS 159.049 Appointment without issuance of citation. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

NRS 159.052 Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Harmless error when district court relied on facts supporting guardianship under one provision but granted guardianship under another provision. When a district court relied on facts which supported granting guardianship pursuant to NRS 159.044 but granted a temporary guardianship pursuant to the provisions of former NRS 159.052, the district court's actions amounted only to harmless error. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

Provisions of section do not govern exclusively in cases involving minors and medical emergencies. The provisions of former NRS 159.052 do not govern exclusively in cases involving minor children and medical emergencies. Thus, where a district court, pursuant to the provisions of former NRS 159.052, appointed a hospital and its administrator as temporary guardians of a minor child who would likely require a blood transfusion or other medical intervention on short notice to survive, the court did not abuse its discretion. Although the district court had apparently not required the petitioner hospital to comply strictly with the notice provisions of former NRS 159.052, the Supreme Court of Nevada concluded that: (1) denial of the petition for guardianship based on lack of notice may have exposed the child to a substantial risk of harm; and (2) if the child's parents had received notice, the parents, who were Jehovah's Witnesses, may have attempted to remove the child from the hospital before the hospital could be appointed as temporary guardian. (See NRS 159A.052.) In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

District court did not err in applying temporary guardianship statute where petitioner actually sought temporary guardianship but mistakenly petitioned for both temporary guardianship and general guardianship. A hospital sought temporary guardianship (see former NRS 159.052) of a minor child for the purpose of providing certain medical care to that child. However, in doing so, the hospital submitted petitions for guardianship under both the provisions of former NRS 159.052, the temporary guardianship statute, and NRS 159.044, the general guardianship statute. Despite the multiple petitions, the hospital had in actuality sought only temporary guardianship. Thus, the district court did not err in applying the provisions of former NRS 159.052, the temporary guardianship statute. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

Harmless error when petition for guardianship referred to special guardian but guardianship sought did not meet requirements for special guardianship. When a petition for the guardianship of two minor children requested the appointment of a special guardian for the children, but pursuant to the definitions of "special guardian" and "limited capacity" (see NRS 159.022 and 159.026) a special guardianship was inapplicable, it was a harmless error because the error did not affect the substantive rights of the parties or the outcome of the decision. In re Guardianship of L.S. & H.S., 120 Nev. 157, 87 P.3d 521 (2004)

ATTORNEY GENERAL'S OPINIONS

Division of child and family services may seek status as a temporary guardian of a terminally ill child in the custody of the division for the purpose of consenting to the placement of a "do not resuscitate" order on the child's medical chart. Where a terminally ill child is in the custody of the division of child and family services, a physician determines that a "do not resuscitate" order is appropriate to place on the medical chart of the child, and no parent of the child can be reached to make the final decision, the court has authority pursuant to NRS 432B.560, if the court determines it to be in the best medical interests of the child, to: (1) order directly the placement on the child's medical chart of such an order; or (2) authorize the division to consent to the physician's decision to place such an order on the child's medical chart, if the division first seeks status as a temporary guardian of the child pursuant to the provisions of former NRS 159.052. The court also has such authority even if the parent of the child objects to the placement of such an order on the child's medical chart. (See NRS 159A.052.) In any case, the division would be immune from liability pursuant to NRS 41.032. AGO 97-08 (2-27-1997)

NRS 159.0523 Temporary guardian for proposed protected person who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

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

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

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

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

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

(b) Facts which show that:

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

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

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

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

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

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

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

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

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

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

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

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

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

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

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

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

(Added to NRS by 2001, 867; A 2003, 1778; 2007, 2028; 2009, 1650; 2013, 912; 2015, 820; 2017, 874)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0525 Temporary guardian for protected person who is unable to respond to substantial and immediate risk of financial loss: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a protected person who is unable to respond to a substantial and immediate risk of financial loss. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed protected person faces a substantial and immediate risk of financial loss and lacks capacity to respond to the risk of loss. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a police report indicating:

(1) That the proposed protected person is unable to respond to a substantial and immediate risk of financial loss;

(2) Whether the proposed protected person can live independently with or without assistance or services; and

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

(b) A detailed explanation of what risks the proposed protected person faces, including, without limitation, termination of utilities or other services because of nonpayment, initiation of eviction or foreclosure proceedings, exploitation or loss of assets as the result of fraud, coercion or undue influence; and

(c) Facts which show that:

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

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

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

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

(a) Finds reasonable cause to believe that the proposed protected person is unable to respond to a substantial and immediate risk of financial loss; and

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

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

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (c) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

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

(a) The court finds by clear and convincing evidence that the proposed protected person is unable to respond to a substantial and immediate risk of financial loss; and

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

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of financial loss, specifically limiting the temporary guardian's authority to take possession of, close or have access to any accounts of the protected person or to sell or dispose of tangible personal property of the protected person to only that authority as needed to provide for the basic living expenses of the protected person until a general or special guardian can be appointed. The court may freeze any or all of the accounts of the protected person to protect such accounts from loss.

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

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

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

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

(Added to NRS by 2001, 869; A 2003, 1779; 2007, 2029; 2009, 1652; 2013, 914; 2015, 822)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0535 Attendance of proposed protected person at hearing.

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

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

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

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

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

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

(c) Ask the preferences of the proposed protected person for the appointment of a particular person as the guardian of the proposed protected person.

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

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

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

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

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

(Added to NRS by 1981, 1932; A 2003, 1781; 2009, 2522; 2013, 915; 2017, 875, 2555)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.054 Finding and order of court upon petition: Dismissal of petition; appointment of special or general guardian.

1. If the court finds that the proposed protected person is not incapacitated and is not in need of a guardian, the court shall dismiss the petition.

2. If the court finds that the proposed protected person is of limited capacity and is in need of a special guardian, the court shall enter an order accordingly and specify the powers and duties of the special guardian.

3. If the court finds that appointment of a general guardian is required, the court shall appoint a general guardian of the person, estate, or person and estate of the proposed protected person.

(Added to NRS by 1981, 1932; A 2003, 1781; 2017, 876, 3905)

NRS 159.055 Burden of proof; order appointing guardian; notice of entry of order.

1. The petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, of the estate, or of the person and estate is necessary.

2. If it appears to the court that the allegations of the petition are sufficient and that a guardian should be appointed for the proposed protected person, the court shall enter an order appointing a guardian. The order must:

(a) Specify whether the guardian appointed is guardian of the person, of the estate, of the person and estate or a special guardian;

(b) Specify whether the proposed protected person is a resident or nonresident of this State;

(c) Specify the amount of the bond to be executed and filed by the guardian; and

(d) Designate the names and addresses, so far as may be determined, of:

(1) The relatives of the proposed protected person upon whom notice must be served pursuant to NRS 159.047; and

(2) Any other interested person.

3. A notice of entry of the court order must be sent to:

(a) The relatives of the proposed protected person upon whom notice must be served pursuant to NRS 159.047; and

(b) Any other interested person.

(Added to NRS by 1969, 415; A 1981, 1936; 2003, 1781; 2017, 876)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.057 Appointment of guardian for two or more proposed protected persons; powers, duties and termination of such guardianships.

1. Where the appointment of a guardian is sought for two or more proposed protected persons who are children of a common parent, parent and child or married couple, it is not necessary that separate petitions, bonds and other papers be filed with respect to each proposed protected person or protected persons.

2. If a guardian is appointed for such protected persons, the guardian:

(a) Shall keep separate accounts of the estate of each protected person;

(b) May make investments for each protected person;

(c) May compromise and settle claims against one or more protected persons; and

(d) May sell, lease, mortgage or otherwise manage the property of one or more protected persons.

3. The guardianship may be terminated with respect to less than all the protected persons in the same manner as provided by law with respect to a guardianship of a single protected person.

(Added to NRS by 1969, 415; A 2003, 1782; 2017, 786)

NRS 159.0592 Court may require guardian to complete training. As a condition of the appointment of a guardian, the court may require the guardian to complete any available training concerning guardianships that the court determines appropriate.

(Added to NRS by 2013, 904)

NRS 159.0593 Determination of whether proposed protected person is prohibited from possessing firearm under federal law.

1. If the court orders a general guardian appointed for a proposed protected person, the court shall determine, by clear and convincing evidence, whether the proposed protected person is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed protected person is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause, within 5 business days after issuing the order, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

(b) "Person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, incapacitation, condition or disease, is:

(1) A danger to himself or herself or others; or

(2) Lacks the capacity to contract or manage his or her own affairs.

(Added to NRS by 2009, 2490; A 2015, 1805; 2017, 3905)

NRS 159.0594 Determination of whether proposed protected person lacks mental capacity to vote.

1. A protected person retains his or her right to vote unless the court specifically finds by clear and convincing evidence that the protected person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process.

2. If the court makes a finding pursuant to subsection 1, the court must include the finding in a court order and provide a certified copy of the order to the county clerk or the registrar of voters, as applicable, of the county in which the protected person resides and to the Office of the Secretary of State, in the manner set forth in NRS 293.542.

(Added to NRS by 2013, 60)

NRS 159.0595 Private professional guardians.

1. In order for a person to serve as a private professional guardian, the person must be:

(a) A natural person who is a certified guardian and is employed by an entity that is licensed pursuant to chapter 628B of NRS, unless the entity is not required to have such a license pursuant to subsection 2; or

(b) An entity that:

(1) Is qualified to serve as a guardian pursuant to NRS 159.0613;

(2) Has a license issued pursuant to chapter 628B of NRS, unless the entity is not required to have such a license pursuant to subsection 2; and

(3) Has a private professional guardian who meets the requirements set forth in paragraph (a) involved in the day-to-day operation or management of the entity.

2. An entity that wishes to serve as a private professional guardian is not required to have a license issued pursuant to chapter 628B of NRS if the entity is exempt from the requirement to have such a license pursuant to NRS 628B.110.

3. As used in this section:

(a) "Certified guardian" means a person who is certified by the Center for Guardianship Certification or any successor organization.

(b) "Entity" includes, without limitation, a corporation, whether or not for profit, a limited-liability company and a partnership.

(Added to NRS by 2005, 814; A 2009, 1655; 2011, 997; 2015, 2365, 2507; 2017, 877, 2424)

NRS 159.061 Minor wards: Preference for appointment of parent; other considerations in determining qualifications and suitability of guardian. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Divorced person may be appointed guardian of minor. The fact that the father is a divorced person is not an insuperable objection to his appointment as guardian of a minor under the standards prescribed by sec. 1, ch. 4, Stats. 1923 (cf. former NRS 159.061), governing such appointments. (See NRS 159A.061.) In re Byran, 48 Nev. 352, 232 Pac. 776 (1925)

Custody of children of divorced parents should be awarded to fit parent as against nonparent. In a habeas corpus proceeding between divorced parents, where the trial court awarded custody of the son to the father and of the daughters to the maternal grandparents, the appellate court awarded custody of the daughters also to the father because the grandparents were not parties and, pursuant to the provisions of former NRS 125.140 (cf. NRS 125C.0035) and the provisions of former NRS 159.050 (cf. former NRS 159.061) on custody and guardianship, custody should be awarded to a fit parent as against a nonparent. (See NRS 159A.061.) McGlone v. McGlone, 86 Nev. 14, 464 P.2d 27 (1970), cited, Cooley v. Cooley, 86 Nev. 220, at 223, 467 P.2d 103 (1970) (dissenting opinion), Hesse v. Ashurst, 86 Nev. 326, at 330, 468 P.2d 343 (1970), McGee v. Sheriff, Clark County, 86 Nev. 421, at 425, 470 P.2d 132 (1970), Lantis v. Lantis, 86 Nev. 885, at 889, 478 P.2d 163 (1970), Johnson v. Johnson, 87 Nev. 244, at 248, 484 P.2d 1072 (1971), Cole v. Dawson, 89 Nev. 14, at 16, 504 P.2d 1314 (1973), Norris v. Graville, 95 Nev. 71, at 73, 589 P.2d 1024 (1979), Litz v. Bennum, 111 Nev. 35, at 38, 888 P.2d 438 (1995), Locklin v. Duka, 112 Nev. 1489, at 1495, 929 P.2d 930 (1996), Hudson v. Jones, 122 Nev. 708, at 711, 138 P.3d 429 (2006), see also In re Guardianship & Estate of D.R.G., 119 Nev. 32, at 37, 62 P.3d 1127 (2003)

Court erred in dismissing without evidentiary hearing petition of stepfather for appointment as guardian for minor residing with him. Where a stepfather's petition for appointment as guardian for a minor residing with him after divorce from the minor's mother was summarily dismissed and custody restored to the mother without adjudication although the stepfather offered to prove the mother had voluntarily relinquished custody, had not communicated with the minor since the divorce and the minor's best interests would be served by his appointment, the case was reversed on appeal and remanded for an evidentiary hearing because it was error for the district court to dismiss the petition without admitting any evidence. Although preference for the appointment of a parent as guardian has been established in the provisions of former NRS 159.061, the court must consider the particular facts of each case and base its determination on the minor's best interests. (See NRS 159A.061.) Fisher v. Fisher, 99 Nev. 762, 670 P.2d 572 (1983), cited, Litz v. Bennum, 111 Nev. 35, at 38, 888 P.2d 438 (1995), In re Guardianship & Estate of D.R.G., 119 Nev. 32, at 38, 62 P.3d 1127 (2003)

Preference of placing child with parent is rebuttable presumption. A mother voluntarily consented to place her infant child under the temporary guardianship of the child's grandparents while the mother was briefly incarcerated. After completing her sentence, the mother remarried and established a stable home environment during which time the child frequently visited the mother but remained under the guardianship of the grandparents. The mother petitioned the court for reunification with the child and dissolution of the guardianship. The district court denied the petition and awarded primary physical custody of the child to the grandparents, finding that, although it was generally preferred to place the child with a parent, such parental preference was only one consideration in the analysis of determining custody based on the best interest of the child and that it was in the best interest of the child to remain with the grandparents. The Supreme Court held that the district court erred in denying the petition of the mother and awarded primary physical custody of the child to the grandparents because: (1) the policy set forth in the provisions of former NRS 159.061 that it is preferred to place a child with a parent is rebuttable presumption that must be overcome either by showing that the parent is unfit or that some other extraordinary circumstance exists; (2) the best interest of the child is usually served if the child is

placed with a fit parent; and (3) in this case, there was no evidence that the mother was unfit or that an extraordinary circumstance existed. (See NRS 159A.061.) Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995), cited, Locklin v. Duka, 112 Nev. 1489, at 1494, 929 P.2d 930 (1996), In re Guardianship & Estate of D.R.G., 119 Nev. 32, at 37, 62 P.3d 1127 (2003), distinguished, Hudson v. Jones, 122 Nev. 708, at 712, 138 P.3d 429 (2006)

District court did not err in appointing maternal aunt as guardian of child instead of child's biological father. Where a child's biological father alleged that the district court had erred in appointing the child's maternal aunt as guardian by failing to observe the parental preference of the provisions of former NRS 159.061, the Supreme Court concluded that the decision of the district court was not erroneous. Although the provisions of former NRS 159.061(1) contains a parental preference, that preference may be rebutted if a parent is not both "qualified and suitable" to serve as guardian at the time the hearing is held to determine guardianship. In this specific case, the child in question had special needs because the child suffered from both cerebral palsy and cystic fibrosis. At the time of the guardianship hearing, the biological father had not demonstrated an ability to adequately adhere to the child's treatment protocol and had, in the past, neglected to give the child all of the required medications. Furthermore, in the time leading up to the guardianship hearing, the biological father had not spent much time with the child. The district court concluded finally, and the Supreme Court agreed, that the issue of guardianship could be revisited if the biological father took steps to become a more qualified and suitable guardian. (See NRS 159A.061.) In re Guardianship & Estate of D.R.G., 119 Nev. 32, 62 P.3d 1127 (2003)

ATTORNEY GENERAL'S OPINIONS.

Regulation requiring attendance of doctor in foster home may be disregarded where inconsistent with child's religious beliefs. Where a foster child is over 14 years of age and the foster home mother and children are Christian Scientists, the State Welfare Department (now the Division of Child and Family Services of the Department of Health and Human Services) may disregard the regulation requiring attendance of a doctor in a foster home when the foster child is ill to determine the existence of a communicable disease, because the provisions of former NRS 159.061 (cf. NRS 159A.061) allow children 14 years of age or over to select their guardians, NCL § 1030 (cf. NRS 62E.130), provides that foster children be placed in homes holding the same religious belief as the parents of the children and NCL § 5276 (cf. NRS 439.530) provides that there will be no interference with treatment by prayer. (See also former NRS 422A.135 and 424.020.) AGO 602 (4-10-1948)

NRS 159.0613 Protected persons: Preference for appointment of certain persons; other considerations in determining qualifications and suitability of guardian; appointment of nonresident guardian under certain circumstances; appointment of other persons; disqualifications.

1. Except as otherwise provided in subsection 3, in a proceeding to appoint a guardian for a protected person or proposed protected person, the court shall give preference to a nominated person or relative, in that order of preference:

(a) Whether or not the nominated person or relative is a resident of this State; and

(b) If the court determines that the nominated person or relative is qualified and suitable to be appointed as guardian for the protected person or proposed protected person.

2. In determining whether any nominated person, relative or other person listed in subsection 4 is qualified and suitable to be appointed as guardian for a protected person or proposed protected person, the court shall consider, if applicable and without limitation:

(a) The ability of the nominated person, relative or other person to provide for the basic needs of the protected person or proposed protected person, including, without limitation, food, shelter, clothing and medical care;

(b) Whether the nominated person, relative or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS;

(c) Whether the nominated person, relative or other person has been judicially determined to have committed abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult, unless the court finds that it is in the best interests of the protected person or proposed protected person to appoint the person as guardian for the protected person or proposed protected person;

(d) Whether the nominated person, relative or other person is incapacitated or has a disability; and

(e) Whether the nominated person, relative or other person has been convicted in this State or any other jurisdiction of a felony, unless the court determines that any such conviction should not disqualify the person from serving as guardian for the protected person or proposed protected person.

3. If the court finds that two or more nominated persons are qualified and suitable to be appointed as guardian for a protected person or proposed protected person, the court may appoint two or more nominated persons as co-guardians or shall give preference among them in the following order of preference:

(a) A person whom the protected person or proposed protected person nominated for the appointment as guardian for the protected person or proposed protected person in a will, trust or other written instrument that is part of the established estate plan of the protected person or proposed protected person and was executed by the protected person or proposed protected person while he or she was not incapacitated.

(b) A person whom the protected person or proposed protected person requested for the appointment as guardian for the protected person or proposed protected person in a request to nominate a guardian that is executed in accordance with NRS 159.0753.

4. Subject to the preferences set forth in subsections 1 and 3, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

(a) Any nomination or request for the appointment as guardian by the protected person or proposed protected person.

(b) Any nomination or request for the appointment as guardian by a relative.

(c) The relationship by blood, adoption, marriage or domestic partnership of the proposed guardian to the protected person or proposed protected person. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider any relative in the following order of preference:

(1) A spouse or domestic partner.

(2) A child.

(3) A parent.

(4) Any relative with whom the protected person or proposed protected person has resided for more than 6 months before the filing of the petition or any relative who has a power of attorney executed by the protected person or proposed protected person while he or she was not incapacitated.

(5) Any relative currently acting as agent.

(6) A sibling.

(7) A grandparent or grandchild.

(8) An uncle, aunt, niece, nephew or cousin.

(9) Any other person recognized to be in a familial relationship with the protected person or proposed protected person.

(d) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(e) Any request for the appointment of any other interested person that the court deems appropriate, including, without limitation, a person who is not a relative and who has a power of attorney executed by the protected person or proposed protected person while he or she was not incapacitated.

5. The court may appoint as guardian any nominated person, relative or other person listed in subsection 4 who is not a resident of this State. The court shall not give preference to a resident of this State over a nonresident if the court determines that:

(a) The nonresident is more qualified and suitable to serve as guardian; and

(b) The distance from the proposed guardian's place of residence and the place of residence of the protected person or proposed protected person will not affect the quality of the guardianship or the ability of the proposed guardian to make decisions and respond quickly to the needs of the protected person or proposed protected person because:

(1) A person or care provider in this State is providing continuing care and supervision for the protected person or proposed protected person;

(2) The protected person or proposed protected person is in a secured residential long-term care facility in this State; or

(3) Within 30 days after the appointment of the proposed guardian, the proposed guardian will move to this State or the protected person or proposed protected person will move to the proposed guardian's state of residence.

6. If the court appoints a nonresident as guardian for the protected person or proposed protected person:

(a) The jurisdictional requirements of NRS 159.1991 to 159.2029, inclusive, must be met.

(b) The court shall order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to chapter 77 of NRS and provide notice of the designation of a registered agent to the court. After the court is provided with such notice, the court shall monitor the information of the registered agent using the records of the Secretary of State.

(c) The court may require the guardian to complete any available training concerning guardianships pursuant to NRS 159.0592, in this State or in the state of residence of the guardian, regarding:

(1) The legal duties and responsibilities of the guardian pursuant to this chapter;

(2) The preparation of records and the filing of annual reports regarding the finances and well-being of the protected person or proposed protected person required pursuant to NRS 159.073;

(3) The rights of the protected person or proposed protected person;

(4) The availability of local resources to aid the protected person or proposed protected person; and

(5) Any other matter the court deems necessary or prudent.

7. If the court finds that there is not any suitable nominated person, relative or other person listed in subsection 4 to appoint as guardian, the court may appoint as guardian:

(a) The public guardian of the county where the protected person or proposed protected person resides if:

(1) There is a public guardian in the county where the protected person or proposed protected person resides; and

(2) The protected person or proposed protected person qualifies for a public guardian pursuant to chapter 253 of NRS;

(b) A private fiduciary who may obtain a bond in this State and who is a resident of this State, if the court finds that the interests of the protected person or proposed protected person will be served appropriately by the appointment of a private fiduciary; or

(c) A private professional guardian who meets the requirements of NRS 159.0595 or 159A.0595.

8. A person is not qualified to be appointed as guardian for a protected person or proposed protected person if the person has been suspended for misconduct or disbarred from any of the professions listed in this subsection, but the disqualification applies only during the period of the suspension or disbarment. This subsection applies to:

(a) The practice of law;

(b) The practice of accounting; or

(c) Any other profession that:

(1) Involves or may involve the management or sale of money, investments, securities or real property; and

(2) Requires licensure in this State or any other state in which the person practices his or her profession.

9. As used in this section:

(a) "Domestic partner" means a person in a domestic partnership.

(b) "Domestic partnership" means a domestic partnership as defined in NRS 122A.040.

(c) "Nominated person" means a person, whether or not a relative, whom a protected person or proposed protected person:

(1) Nominates for the appointment as guardian for the protected person or proposed protected person in a will, trust or other written instrument that is part of the established estate plan of the protected person or proposed protected person and was executed by the protected person or proposed protected person while he or she was not incapacitated.

(2) Requests for the appointment as guardian for the protected person or proposed protected person in a request to nominate a guardian that is executed in accordance with NRS 159.0753.

(d) "Relative" means a person who is 18 years of age or older and who is related to the protected person or proposed protected person by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

(Added to NRS by 2015, 2362, 2504; A 2017, 291, 877, 3905, 4360)

NRS 159.0615 Appointment of master of court or special master to identify person most qualified and suitable to serve as guardian; hearing; recommendation.

1. If the court determines that a person may be in need of a guardian, the court may order the appointment of a master of the court or a special master from among the members of the State Bar of Nevada to conduct a hearing to identify the person most qualified and suitable to serve as guardian for the proposed protected person.

2. Not later than 5 calendar days after the date of the hearing, the master of the court or special master shall prepare and submit to the court a recommendation regarding which person is most qualified and suitable to serve as guardian for the proposed protected person.

(Added to NRS by 1997, 1342; A 2003, 1784)

NRS 159.0617 Court or master of court or special master authorized to allow certain persons to testify at hearing to determine person most qualified and suitable to serve as guardian. If the court or a master of the court or special master appointed pursuant to NRS 159.0615 finds that a parent or other relative, teacher, friend or neighbor of a proposed protected person or any other interested person:

1. Has a personal interest in the well-being of the proposed protected person; or
2. Possesses information that is relevant to the determination of who should serve as guardian for the proposed protected person,

➥ the court or a master of the court or special master appointed pursuant to NRS 159.0615 may allow the person to testify at any hearing held pursuant to this chapter to determine the person most qualified and suitable to serve as guardian for the proposed protected person.

(Added to NRS by 1997, 1343; A 2003, 1784)

NRS 159.062 Guardian nominated by will. A parent or spouse of a person who is incapacitated or person of limited capacity may by will nominate a guardian. The person nominated must file a petition and obtain an appointment from the court before exercising the powers of a guardian.

(Added to NRS by 1981, 1933; A 2017, 881, 3908)

NRS 159.065 Bond: General requirements; approval by clerk; liability of sureties; not required under certain circumstances.

1. Except as otherwise provided by law, every guardian shall, before entering upon his or her duties as guardian, execute and file in the guardianship proceeding a bond, with sufficient surety or sureties, in such amount as the court determines necessary for the protection of the protected person and the estate of the protected person, and conditioned upon the faithful discharge by the guardian of his or her authority and duties according to law. The bond must be approved by the clerk. Sureties must be jointly and severally liable with the guardian and with each other.
2. If a banking corporation, as defined in NRS 657.016, doing business in this state, is appointed guardian of the estate of a protected person, no bond is required of the guardian, unless specifically required by the court.
3. Joint guardians may unite in a bond to the protected person or protected persons, or each may give a separate bond.
4. If there are no assets of the protected person, no bond is required of the guardian.
5. If a person has been nominated to be guardian in a will, power of attorney or other written instrument that has been acknowledged before two disinterested witnesses or acknowledged before a notary public and the will, power of attorney or other written instrument provides that no bond is to be required of the guardian, the court may direct letters of guardianship to issue to the guardian after the guardian:
   (a) Takes and subscribes the oath of office; and
   (b) Files the appropriate documents which contain the full legal name and address of the guardian.
6. In lieu of executing and filing a bond, the guardian may request that access to certain assets be blocked. The court may grant the request and order letters of guardianship to issue to the guardian if sufficient evidence is filed with the court to establish that such assets are being held in a manner that prevents the guardian from accessing the assets without a specific court order.

(Added to NRS by 1969, 416; A 1971, 1010; 1973, 386; 2003, 1784; 2011, 1464)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Law will regard substance, not form, of bonds. There is manifest wisdom in the rule that the law will regard not the form but the substance of such instruments as a guardian's bond. Such a rule is of most worth when employed as a safeguard to persons who must necessarily be represented by agents appointed by the court and designated as guardians. (See also NRS 159.065.) Deegan v. Deegan, 22 Nev. 185, 37 Pac. 360 (1894)

Bond is sufficient to bind obligors even if inartistically drawn or slightly defective. A guardian's bond, though inartistically drawn or slightly defective, will be held sufficient to bind obligors. (See also NRS 159.065.) Deegan v. Deegan, 22 Nev. 185, 37 Pac. 360 (1894)

Effect of slight inaccuracies in bond. A bond given by a guardian cannot be defeated by a slight inaccuracy, such as the addition or omission of a word or sentence. (See also NRS 159.065.) Deegan v. Deegan, 22 Nev. 185, 37 Pac. 360 (1894)

NRS 159.067 Bond: Court may require increase, decrease or other change; exoneration of former sureties.

1. The court may at any time, for good cause and after notice to the guardian, increase or decrease the amount of the bond required of a guardian.

2. The court may at any time, where the bond or the sureties are determined to be insufficient or for other good cause, require a guardian to execute and file a new or additional bond. The court may exonerate the sureties on a former bond from any liabilities thereunder arising from the acts or omissions of their principal after such exoneration.

(Added to NRS by 1969, 417)

NRS 159.069 Bond: Filing; remedy for breach. Every bond given by a guardian shall be filed and preserved in the office of the clerk of the district court of the county in which the guardianship proceeding is conducted. In case of the breach of any condition of such bond, an action may be maintained in behalf of the protected person or protected persons jointly if all are interested, or of any person interested in the estate, and such bond shall not be void on the first recovery. If the action on the bond is in behalf of one protected person on a bond given to more than one protected person, the other protected persons mentioned in the bond need not be united in or made parties to such action. As used in this section, "protected person" includes a protected minor.

(Added to NRS by 1969, 417; A 2017, 881)

NEVADA CASES.

Effect of omission of word "severally" from bond. Even though a guardian is the representative of more than one ward, his duties are several, and several inventory, accounting and payment over to wards as they individually arrive at full age is required, so that omission of the word "severally" does not weaken the guardian's bond, release sureties, or prevent an individual ward from maintaining action against a guardian or sureties. (See also NRS 159.069.) Deegan v. Deegan, 22 Nev. 185, 37 Pac. 360 (1894)

Conversion of money to own use. Where the bond of a guardian provided that he should faithfully execute the duties of his trust according to law, the guardian clearly breached his duty, and consequently a condition of the bond, by converting the money of his ward to his own use. (See also NRS 159.069.) Deegan v. Deegan, 22 Nev. 185, 37 Pac. 360 (1894)

NRS 159.071 Bond: Limitations on action. No action may be maintained against the sureties on any bond given by a guardian unless it is commenced within 3 years from the time the guardian is discharged, unless at the time of such discharge the person entitled to bring the action is under any legal disability to sue, in which case the action may be brought at any time within 3 years after the disability is removed.

(Added to NRS by 1969, 417)

NRS 159.073 Taking oath of office; filing appropriate documents and verified acknowledgment; contents of acknowledgment; acknowledgment not required under certain circumstances.

1. Every guardian, before entering upon his or her duties as guardian and before letters of guardianship may issue, shall:

(a) Take and subscribe the official oath which must:

(1) Be endorsed on the letters of guardianship; and

(2) State that the guardian will well and faithfully perform the duties of guardian according to law.

(b) File in the proceeding the appropriate documents which include, without limitation, the full legal name of the guardian and the residence and post office addresses of the guardian.

(c) Except as otherwise required in subsection 2, make and file in the proceeding a verified acknowledgment of the duties and responsibilities of a guardian. The acknowledgment must set forth:

(1) A summary of the duties, functions and responsibilities of a guardian, including, without limitation, the duty to:

(I) Act in the best interest of the protected person at all times.

(II) Provide the protected person with medical, surgical, dental, psychiatric, psychological, hygienic or other care and treatment as needed, with adequate food and clothing and with safe and appropriate housing.

(III) Protect, preserve and manage the income, assets and estate of the protected person and utilize the income, assets and estate of the protected person solely for the benefit of the protected person.

(IV) Maintain the assets of the protected person in the name of the protected person or the name of the guardianship. Except when the spouse of the protected person is also his or her guardian, the assets of the protected person must not be commingled with the assets of any third party.

(V) Provide notification of the death of the protected person in accordance with NRS 159.0809.

(2) A summary of the statutes, regulations, rules and standards governing the duties of a guardian.

(3) A list of actions regarding the protected person that require the prior approval of the court.

(4) A statement of the need for accurate recordkeeping and the filing of annual reports with the court regarding the finances and well-being of the protected person.

2. The court may exempt a public guardian or private professional guardian from filing an acknowledgment in each case and, in lieu thereof, require the public guardian or private professional guardian to file a general acknowledgment covering all guardianships to which the guardian may be appointed by the court.

(Added to NRS by 1969, 417; A 1999, 1399; 2003, 1785; 2011, 998; 2013, 916; 2017, 2556)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.074 Copy of order of appointment to be served upon protected person; notice of entry of order to be filed with court.

1. A copy of the order appointing the guardian must be served personally or by mail upon the protected person not later than 5 days after the date of the appointment of the guardian.

2. The order must contain the names, addresses and telephone numbers of the guardian, the attorney of the protected person, if any, and the investigator.

3. A notice of entry of the order must be filed with the court.

(Added to NRS by 1981, 1932; A 2003, 1785)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.075 Letters of guardianship. When a guardian has taken the official oath and filed a bond as provided in this chapter, the court shall order letters of guardianship to issue to the guardian. Letters of guardianship may be in the following form:

State of Nevada }
}ss.
County of..... }

On ..... (month) ..... (day) ..... (year) the ..... Judicial District Court, ... County, State of Nevada, appointed..... (name of guardian) .....(guardian of the person or estate or person and estate or special guardian) for ..... (name of protected person), an adult, that the named guardian has qualified and has the authority and shall perform the duties of ..... (guardian of the person or estate or person and estate or special guardian) for the named protected person as provided by law.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the court at my office on ..... (month) ..... (day) ..... (year).

.....
Clerk

(SEAL)

.....
Deputy Clerk

(Added to NRS by 1969, 417; A 1981, 1936; 2001, 35; 2003, 1785; 2017, 881)

REQUEST TO NOMINATE GUARDIAN

NRS 159.0753 Requirements; form; Secretary of State to make form available; regulations.

1. Any person who wishes to request to nominate another person to be appointed as his or her guardian may do so by completing a form requesting to nominate a guardian in accordance with this section.

2. A form requesting to nominate a guardian must be:

(a) Signed by the person requesting to nominate a guardian;

(b) Signed by two impartial adult witnesses who have no interest, financial or otherwise, in the estate of the person requesting to nominate a guardian and who attest that the person has the mental capacity to understand and execute the form; and

(c) Notarized.

3. A request to nominate a guardian may be in substantially the following form, and must be witnessed and executed in the same manner as the following form:

REQUEST TO NOMINATE GUARDIAN

I, ... (insert your name), residing at ..... (insert your address), am executing this notarized document as my written declaration and request for the person(s) designated below to be appointed as my guardian should it become necessary. I am advising the court and all persons and entities as follows:

1. As of the date I am executing this request to nominate a guardian, I have the mental capacity to understand and execute this request.

2. This request pertains to a (circle one): (guardian of the person)/(guardian of the estate)/(guardian of the person and estate).

3. Should the need arise, I request that the court give my preference to the person(s) designated below to serve as my appointed guardian.

4. I request that my ..... (insert relation), ... (insert name), serve as my appointed guardian.

5. If ..... (insert name) is unable or unwilling to serve as my appointed guardian, then I request that my ..... (insert relation), ... (insert name), serve as my appointed guardian.

6. I do not, under any circumstances, desire to have any private, for-profit guardian serve as my appointed guardian.

(YOU MUST DATE AND SIGN THIS DOCUMENT)

I sign my name to this document on ..... (date)

.....

(Signature)

(YOU MUST HAVE TWO QUALIFIED ADULT WITNESSES DATE AND SIGN THIS DOCUMENT)

I declare under penalty of perjury that the principal is personally known to me, that the principal signed this request to nominate a guardian in my presence, that the principal appears to be of sound mind, has the mental capacity to understand and execute this document and is under no duress, fraud or undue influence, and that I have no interest, financial or otherwise, in the estate of the principal.

.....

(Signature of first witness)

.....

(Print name)

.....

(Date)

.....
(Signature of second witness)

.....
(Print name)

.....
(Date)

CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC

State of Nevada }
}
County of .....}

On this ..... day of ....., in the year ....., before me, ... (insert name of notary public), personally appeared ..... (insert name of principal), ... (insert name of first witness) and ..... (insert name of second witness), personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they have signed this instrument. I declare under penalty of perjury that the persons whose names are subscribed to this instrument appear to be of sound mind and under no duress, fraud or undue influence.

.....
(Signature of notarial officer)
(Seal, if any)

4. The Secretary of State shall make the form established in subsection 3 available on the Internet website of the Secretary of State.

5. The Secretary of State may adopt any regulations necessary to carry out the provisions of this section.

(Added to NRS by 2017, 4358)

ADMINISTRATION OF SMALLER ESTATES

NRS 159.0755 Disposition of estate having value not exceeding by more than $10,000 aggregate amount of unpaid expenses of and claims against estate. If, at the time of the appointment of the guardian or thereafter, the estate of a protected person consists of personal property having a value not exceeding by more than $10,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay those expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the proceeding proper receipts or other evidence satisfactory to the court showing the delivery, and the guardian is released from his or her trust and the bond of the guardian is exonerated.

(Added to NRS by 1969, 432; A 1999, 1400; 2009, 1656)—(Substituted in revision for NRS 159.189)

NRS 159.076 Summary administration.

1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the property of the protected person does not exceed $10,000.

2. If the court grants a summary administration, the court may authorize the guardian of the estate or special guardian who is authorized to manage the property of the protected person to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in NRS 159.117, and hold the investment and all interest, issues, dividends and profits for the benefit of the protected person. The court may dispense with annual accountings and all other proceedings required by this chapter.

3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.

4. If, at any time, the net value of the estate of the protected person exceeds $10,000:

(a) The guardian shall file an amended inventory and accounting with the court;

(b) The guardian shall file annual accountings; and

(c) The court may require the guardian to post a bond.

(Added to NRS by 1969, 433; A 1981, 1938; 1999, 1401; 2003, 1801; 2009, 1656; 2017, 881)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

POWERS AND DUTIES OF GUARDIANS

NRS 159.077 General functions of guardian of person and estate. A guardian of the person and estate has the authority and shall perform the duties as provided by law for a guardian of the person and a guardian of the estate.

(Added to NRS by 1969, 418)

NRS 159.078 Petition by guardian or other interested person for order authorizing or directing guardian to take certain actions.

1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:

(a) Make or change the last will and testament of the protected person.

(b) Except as otherwise provided in this paragraph, make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the protected person which includes the designation of a beneficiary. The guardian is not required to petition the court for an order authorizing the guardian to utilize an asset which has a designated beneficiary, including the closure or discontinuance of the asset, for the benefit of a protected person if:

(1) The asset is the only liquid asset available with which to pay for the proper care, maintenance, education and support of the protected person;

(2) The asset, or the aggregate amount of all the assets if there is more than one type of asset, has a value that does not exceed $5,000; or

(3) The asset is a bank account, investment fund or insurance policy and is required to be closed or discontinued in order for the protected person to qualify for a federal program of public assistance.

(c) Create for the benefit of the protected person or others a revocable or irrevocable trust of the property of the estate.

(d) Except as otherwise provided in this paragraph, exercise the right of the protected person to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:

(1) Evidences an intent of the protected person to reserve the right of revocation or modification exclusively to the protected person;

(2) Provides expressly that a guardian may not revoke or modify the trust; or

(3) Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.

2. Any other interested person may also petition the court for an order authorizing or directing the guardian to take any action described in subsection 1.

3. The court may authorize the guardian to take any action described in subsection 1 if, after notice to any person who is adversely affected by the proposed action and an opportunity for a hearing, the court finds by clear and convincing evidence that:

(a) A reasonably prudent person or the protected person, if not incapacitated, would take the proposed action and that a person has committed or is about to commit any act, practice or course of conduct which operates or would operate as a fraud or act of exploitation upon the protected person or estate of the protected person and that person:

(1) Is designated as a beneficiary in or otherwise stands to gain from an instrument which was executed by or on behalf of the protected person; or

(2) Will benefit from the lack of such an instrument; or

(b) The proposed action is otherwise in the best interests of the protected person for any other reason not listed in this section.

4. The petition must contain, to the extent known by the petitioner:

(a) The name, date of birth and current address of the protected person;

(b) A concise statement as to the condition of the estate of the protected person; and

(c) A concise statement as to the necessity for the proposed action.

5. As used in this section:

(a) "Exploitation" means any act taken by a person who has the trust and confidence of a protected person or any use of the power of attorney of a protected person to:

(1) Obtain control, through deception, intimidation or undue influence, over the money, assets or property of the protected person with the intention of permanently depriving the protected person of the ownership, use, benefit or possession of the money, assets or property of the protected person.

(2) Convert money, assets or property of the protected person with the intention of permanently depriving the protected person of the ownership, use, benefit or possession of the money, assets or property of the protected person.

→ As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another.

(b) "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the protected person of the rights or property of the protected person or to otherwise injure the protected person.

(c) "Interested person" has the meaning ascribed to it in NRS 132.185 and also includes a named beneficiary under a trust or other instrument if the validity of the trust or other instrument may be in question.

(Added to NRS by 2003, 1769; A 2007, 2031; 2009, 783; 2017, 3909)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.079 General functions of guardian of person; establishment or change of residence of protected person by guardian.

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

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

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

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

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

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

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

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

5. A guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the protected person to a location outside of this State. The guardian must show that the placement outside of this State is in the best interest of the protected person or that there is no appropriate residence available for the protected person in this State. The court shall retain jurisdiction over the

guardianship unless the guardian files for termination of the guardianship pursuant to NRS 159.1905 or 159.191 or the jurisdiction of the guardianship is transferred to the other state.

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

(a) An emergency condition exists pursuant to subsection 5 of NRS 159.0807;

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

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

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

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

(Added to NRS by 1969, 418; A 1999, 1399; 2003, 1786; 2009, 1656; 2013, 917; 2017, 2557)

NRS 159.0795 Supervisory authority and powers of special guardian.

1. A special guardian shall exercise supervisory authority over the protected person in a manner which is least restrictive of the personal freedom of the protected person and which is consistent with the need of the protected person for supervision and protection.

2. A special guardian has the powers set forth in the order appointing the special guardian and any other powers given to the special guardian in an emergency which are necessary and consistent to resolve the emergency or protect the protected person from imminent harm.

(Added to NRS by 1981, 1933; A 2003, 1786)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0801 Special guardian of person of limited capacity: Approval of court generally required before commencing act relating to person; grant of certain powers by court.

1. Except when responding to an emergency, a special guardian of a person of limited capacity shall apply to the court for instruction or approval before commencing any act relating to the person of limited capacity.

2. The court may grant a special guardian of a person of limited capacity the power to manage and dispose of the estate of the protected person pursuant to NRS 159.117 to 159.175, inclusive, and perform any other act relating to the protected person upon specific instructions or approval of the court.

(Added to NRS by 1981, 1933; A 2003, 1786)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section by adding subsection 1, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0805 Approval of court required before guardian may consent to certain treatment of or experiment on protected person; conditions for approval.

1. Except as otherwise provided in subsection 2, a guardian shall not consent to:

(a) The experimental medical, biomedical or behavioral treatment of a protected person;

(b) The sterilization of a protected person; or

(c) The participation of a protected person in any biomedical or behavioral experiment.

2. The guardian may consent to and commence any treatment or experiment described in subsection 1 if the guardian applies to and obtains from the court authority to consent to and commence the treatment or experiment.

3. The court may authorize the guardian to consent to and commence any treatment or experiment described in subsection 1 only if the treatment or experiment:

(a) Is of direct benefit to, and intended to preserve the life of or prevent serious impairment to the mental or physical health of, the protected person; or

(b) Is intended to assist the protected person to develop or regain the abilities of the protected person.

(Added to NRS by 1981, 1933; A 1999, 1400; 2003, 1786; 2007, 2032)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0807 Moving location of protected person: Filing and service of notice of intent to move; necessary temporary action authorized for emergency conditions; circumstances in which notice not required.

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

(a) Have his or her preferences followed; and

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

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

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

(a) Is admitted to a secured residential long-term care facility;

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

(c) Will reside at a location other than his or her residence for more than 3 days.

4. Except as otherwise provided in this section and subsections 5 and 6 of NRS 159.079, a guardian shall file with the court a notice of his or her intent to move the protected person and shall serve notice upon all interested persons not less than 10 days before moving the protected person. If no objection to the move is received

from any interested person within 10 days after receiving the notice, the guardian may move the protected person without court permission.

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

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

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

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

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

(Added to NRS by 2017, 2550)

NRS 159.0809 Notification to interested persons and persons of natural affection required upon impending death or death of protected person or obtaining information concerning burial or cremation of protected person.

1. Except as otherwise provided in NRS 159.0807, a guardian shall immediately notify all interested persons and persons of natural affection:

(a) If the guardian reasonably believes that the death of the protected person is likely to occur within the next 30 days and such belief is based on information from a psychologist, physician or other health care provider of the protected person or a person otherwise qualified to provide such a medical opinion, including, without limitation, a health care provider employed by a hospice or by a hospital of the Department of Veterans Affairs.

(b) Upon the death of the protected person.

(c) Upon obtaining any information relating to the burial or cremation of the protected person.

2. The guardian shall provide notification pursuant to paragraph (b) of subsection 1:

(a) In person or by telephone to the family members of the protected person or, if the protected person does not have any family members or does not have a relationship with any family members, the person of natural affection designated to receive such notification;

(b) By electronic communication to any family member of the protected person or person of natural affection who has opted to receive notification by electronic communication; and

(c) In writing to all other interested persons and persons of natural affection not given notice pursuant to paragraph (a) or (b).

(Added to NRS by 2017, 2551)

NRS 159.081 Reports by guardian of person.

1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report on the condition of the protected person and the exercise of authority and performance of duties by the guardian:

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

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

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

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

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

(b) Be served, without limitation, on the protected person and any attorney for the protected person.

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

(a) The physical condition of the protected person;

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

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

(d) Any other information required by the court.

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

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

6. As used in this section, "facility for long-term care" has the meaning ascribed to it in NRS 427A.028.

(Added to NRS by 1969, 418; A 2003, 1787; 2009, 2522; 2017, 2558, 3910)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section by adding subsection 3, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.083 General functions of guardian of estate. A guardian of the estate shall:

1. Protect, preserve, manage and dispose of the estate of the protected person according to law and for the best interests of the protected person.

2. Apply the estate of the protected person for the proper care, maintenance, education and support of the protected person and any person to whom the protected person owes a legal duty of support, having due regard for other income or property available to support the protected person or any person to whom the protected person owes a legal duty of support.

3. Have such other authority and perform such other duties as are provided by law.

(Added to NRS by 1969, 418)

NRS 159.085 Inventory, supplemental inventory and appraisal of property of protected person.

1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the protected person which comes to the possession or knowledge of the guardian, including, without limitation, the existence of any trust of which the protected person is currently a beneficiary who is receiving or is entitled to receive distributions.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to NRS 159.177.

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

(a) All of the estate of the protected person which has come into the possession of the guardian;

(b) All of the money that belongs to the protected person; and

(c) All of the just claims of the protected person against the guardian.

4. A copy of the inventory filed with the court and a notice of the filing must be served on the protected person, his or her attorney and any guardian ad litem representing the protected person.

5. Whenever any property of the protected person not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

(b) Include the property in the next accounting.

6. The court may order which of the two methods described in subsection 5 the guardian shall follow.

7. The court may order all or any part of the property of the protected person appraised as provided in NRS 159.0865 and 159.305.

8. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

(b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

(Added to NRS by 1969, 419; A 1997, 1494; 1999, 1400; 2003, 1787; 2017, 1236, 3910)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.086 Guardian of estate to cause appraisal or valuation of assets of guardianship estate; record or statement in lieu of appraisal.

1. Except as otherwise provided in subsection 2, the guardian of an estate shall cause an appraisal or valuation of any asset of a guardianship estate to be conducted by a disinterested appraiser, certified public accountant or expert in valuation and file the appraisal or valuation with the court.

2. In lieu of an appraisal, the guardian may file:

(a) A verified record of value of an asset where the value of the asset can be determined with reasonable certainty, including, without limitation:

(1) Money, deposits in banks, bonds, policies of life insurance or securities for money, when equal in value to cash; and

(2) Personal property, including, without limitation, household goods, if the combined value of the personal property does not exceed $5,000.

(b) A statement of the assessed value of real property as determined by the county assessor for tax purposes, except that if the real property is to be sold, the guardian must file an appraisal.

(Added to NRS by 2003, 1758)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0865 Certification of appraiser, certified public accountant or expert in valuation; form of appraisal or valuation; purchase by appraiser, certified public accountant or expert in valuation without disclosure prohibited; penalties.

1. Before appraising or valuing any asset of the guardianship estate, each appraiser, certified public accountant or expert in valuation shall certify that the appraiser, accountant or expert will truthfully, honestly and impartially appraise or value the property according to the best of his or her knowledge and ability. The certification must be included in the appraisal or valuation and filed with the court.

2. The appraisal or valuation must list each asset that has a value of more than $100 separately with a statement of the value of the asset opposite the asset.

3. An appraiser, certified public accountant or expert in valuation who performs an appraisal or valuation of a guardianship estate is entitled to reasonable compensation for the appraisal or valuation and may be paid by the guardian out of the estate at any time after the appraisal or valuation is completed.

4. An appraiser, certified public accountant or expert in valuation who directly or indirectly purchases any asset of an estate without full disclosure to and approval by the court is guilty of a misdemeanor. A sale made in violation of the provisions of this subsection is void, and the asset sold may be recovered by the guardian, protected person or proposed protected person.

(Added to NRS by 2003, 1758)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.087 Recording letters of guardianship.

1. Not later than 60 days after the date of the appointment of a guardian of the estate, the guardian shall record, or cause to be recorded, in the office of the recorder

of each county in which real property of the protected person is located, a copy, certified by the clerk of the court, of the letters of guardianship.

2. The guardian shall attach, or cause to be attached, to the copy of the letters of guardianship recorded pursuant to subsection 1 a cover sheet containing:

(a) The name, address and telephone number of the guardian;

(b) The assessor's parcel number and the address of the real property of the protected person; and

(c) If the estate of the protected person includes a manufactured home or mobile home, the location and serial number of the manufactured home or mobile home.

3. As used in this section:

(a) "Manufactured home" has the meaning ascribed to it in NRS 489.113.

(b) "Mobile home" has the meaning ascribed to it in NRS 489.120.

(Added to NRS by 1969, 419; A 2003, 1788; 2011, 2410)

NRS 159.089 Possession of and title to property of protected person; guardian to secure certain documents.

1. A guardian of the estate shall take possession of:

(a) All of the property of substantial value of the protected person;

(b) Rents, income, issues and profits from the property, whether accruing before or after the appointment of the guardian; and

(c) The proceeds from the sale, mortgage, lease or other disposition of the property.

2. The guardian may permit the protected person to have possession and control of the personal property and funds as are appropriate to the needs and capacities of the protected person.

3. The title to all property of the protected person is in the protected person and not in the guardian.

4. A guardian shall secure originals, when available, or copies of any:

(a) Contract executed by the protected person;

(b) Power of attorney executed by the protected person;

(c) Estate planning document prepared by the protected person, including, without limitation, a last will and testament, durable power of attorney and revocable trust of the protected person;

(d) Revocable or irrevocable trust in which the protected person has a vested interest as a beneficiary; and

(e) Writing evidencing a present or future vested interest in any real or intangible property.

(Added to NRS by 1969, 419; A 2003, 1788)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section by adding subsection 4, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.0893 Access to account or other assets of protected person.

1. A guardian shall present a copy of the court order appointing the guardian and letters of guardianship to a bank or other financial institution that holds any account or other assets of the protected person before the guardian may access the account or other assets.

2. The bank or other financial institution shall accept the copy of the court order appointing the guardian and letters of guardianship as proof of guardianship

and allow the guardian access to the account or other assets of the protected person, subject to any limitations set forth in the court order.

3. Unless the bank or other financial institution is a party to the guardianship proceeding, the bank or other financial institution is not entitled to a copy of any:

(a) Capacity evaluation of the protected person or any other confidential information concerning the medical condition or the placement of the protected person; or

(b) Inventory or accounting of the estate of the protected person.

(Added to NRS by 2013, 904; A 2017, 3911)

NRS 159.0895 Assets retained to pay expenses of funeral and disposal of remains of protected person: Amount exempt from all claims; placement in account or trust; reversion of excess to estate of protected person.

1. The guardian may retain assets for the anticipated expense of the funeral of the protected person and the disposal of his or her remains. Of the amount so retained, $3,000 is exempt from all claims, including those of this state.

2. The guardian may place assets so retained in a pooled account or trust. If the assets are invested in a savings account or other financial account, they are not subject to disposition as unclaimed property during the lifetime of the protected person.

3. Assets so retained may be disbursed for the funeral of the protected person or the disposal of his or her remains without prior authorization of the court. An amount not so disbursed becomes part of the estate of the protected person.

(Added to NRS by 1999, 1396; A 2009, 1657)

NRS 159.091 Discovery of debts or property. Upon the filing of a petition in the guardianship proceeding by the guardian, the protected person or any other interested person, alleging that any person is indebted to the protected person, has or is suspected of having concealed, embezzled, converted or disposed of any property of the protected person or has possession or knowledge of any such property or of any writing relating to such property, the court may require the person to appear and answer under oath concerning the matter.

(Added to NRS by 1969, 419; A 2003, 1788)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.093 Collecting obligations due protected person.

1. A guardian of the estate:

(a) Shall demand all debts and other choses in action due to the protected person; and

(b) With prior approval of the court, may sue for and receive all debts and other choses in action due to the protected person.

2. A guardian of the estate, with prior approval of the court by order, may compound or compromise any debt or other chose in action due to the protected person and give a release and discharge to the debtor or other obligor.

(Added to NRS by 1969, 419; A 2003, 1789)

NRS 159.095 Representing protected person in legal proceedings.

1. A guardian of the estate shall appear for and represent the protected person in all actions, suits or proceedings to which the protected person is a party, unless the

court finds that the interests of the guardian conflict with the interests of the protected person or it is otherwise appropriate to appoint a guardian ad litem in the action, suit or proceeding.

2. Upon final resolution of the action, suit or proceeding, the guardian of the estate or the guardian ad litem shall notify the court of the outcome of the action, suit or proceeding.

3. If the person of the protected person would be affected by the outcome of any action, suit or proceeding, the guardian of the person, if any, should be joined to represent the protected person in the action, suit or proceeding.

4. If the protected person is a party to any criminal action, the guardian of the estate and the guardian of the person must be notified of the action.

(Added to NRS by 1969, 419; A 2003, 1789; 2013, 918; 2017, 3911)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.097 Voidable contracts and transactions of protected person. Any contract, except to the extent of the reasonable value of necessaries, and any transaction with respect to the property of a protected person made by the protected person are voidable by the guardian of the estate if such contract or transaction was made at any time by the protected person while he or she was incapacitated or a minor.

(Added to NRS by 1969, 419; A 2017, 3912)

NRS 159.099 Liability of guardian of estate on contracts for protected person. A guardian of the estate shall not be personally liable on any written or oral contract entered into for or on behalf of the protected person where the guardian is acting within his or her authority as such guardian. Any action, suit or proceeding on any such contract shall be brought against the guardian in his or her fiduciary capacity only, and any judgment or decree obtained in such action, suit or proceeding shall be satisfied only from property of the protected person.

(Added to NRS by 1969, 420)

NRS 159.101 Exercising rights under stock ownership of protected person.

1. A guardian of the estate may exercise the rights of the protected person which accrue pursuant to the ownership of the protected person of common or preferred stock, including, but not limited to, the right to:

(a) Vote for officers or directors;

(b) Approve or disapprove mergers or consolidations;

(c) Exercise stock options;

(d) Appoint proxies;

(e) Consent to dissolutions; and

(f) Exercise all rights which the protected person might exercise, if legally qualified, regarding the management of the corporation.

➥ If the stock owned by the protected person in a corporation exceeds 20 percent of the total issued and outstanding stock having voting rights, the guardian must have prior approval of the court to consent to any merger, consolidation or dissolution of the corporation or the sale or encumbrance of its assets where the consent of the stockholders is required by law.

2. Whenever the estate of a protected person includes corporate stock, the guardian may hold it in the name of a nominee without mention of the guardianship in the stock certificate, if any, or the stock registration books, if:

(a) The guardian's records and all reports or accounts rendered by the guardian clearly show the ownership of the stock by the estate of the protected person and the facts regarding its holding; and

(b) The nominee deposits with the guardian a signed statement showing ownership of the stock by the estate of the protected person, endorses any stock certificate in blank and does not have possession of the stock certificate or access to the certificate except under the immediate supervision of the guardian.

3. The guardian is personally liable for any loss to the estate of the protected person resulting from any act of the nominee in connection with stock held pursuant to subsection 2.

(Added to NRS by 1969, 420; A 1987, 586)

NRS 159.103 Claims against estate of protected person. A guardian of the estate shall pay from the guardianship estate pursuant to NRS 159.105, 159.107 and 159.109 all just claims against the protected person, the estate or the guardian as such, whether accruing before or after the appointment of the guardian and whether arising in contract, in tort or otherwise.

(Added to NRS by 1969, 420)

NRS 159.105 Payment of claims of guardian and claims arising from contracts of guardian; report of claims and payment.

1. A guardian of the estate may pay from the guardianship estate the following claims without complying with the provisions of this section and NRS 159.107 and 159.109:

(a) The guardian's claims against the protected person or the estate; and

(b) Any claims accruing after the appointment of the guardian which arise from contracts entered into by the guardian on behalf of the protected person.

2. The guardian shall report all claims and the payment of claims made pursuant to subsection 1 in the account that the guardian makes and files in the guardianship proceeding following each payment.

(Added to NRS by 1969, 420; A 2003, 1789; 2017, 3912)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.107 Presentment and verification of claims. Except as provided in NRS 159.105, all claims against the protected person, the guardianship estate or the guardian of the estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount of the claim, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on behalf of the claimant, who has personal knowledge of the fact. The affidavit shall state that within the knowledge of the affiant the amount claimed is justly due, no payments have been made thereon which are not credited and there is no counterclaim thereto, except as stated in the affidavit. If such claim is founded on a written instrument, the original or a copy thereof with all endorsements shall be

attached to the claim. The original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case the fact of its loss or destruction shall be stated in the claim.

(Added to NRS by 1969, 421)

NRS 159.109 Examination and allowance or rejection of claims by guardian.

1. A guardian of the estate shall examine each claim presented to the guardian for payment. If the guardian is satisfied that the claim is appropriate and just, the guardian shall:

(a) Endorse upon the claim the words "examined and allowed" and the date;

(b) Officially subscribe the notation; and

(c) Pay the claim from the guardianship estate.

2. If the guardian is not satisfied that the claim is just, the guardian shall:

(a) Endorse upon the claim the words "examined and rejected" and the date;

(b) Officially subscribe the notation; and

(c) Not later than 60 days after the date the claim was presented to the guardian, notify the claimant by personal service or by mailing a notice by registered or certified mail that the claim was rejected.

(Added to NRS by 1969, 421; A 2003, 1790)

NRS 159.111 Recourse of claimant when claim rejected or not acted upon.

1. If, not later than 60 days after the date the claim was presented to the guardian, a rejected claim is returned to the claimant or the guardian of the estate fails to approve or reject and return a claim, the claimant, before the claim is barred by the statute of limitations, may:

(a) File a petition for approval of the rejected claim in the guardianship proceeding for summary determination by the court; or

(b) Commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity and any judgment or decree obtained must be satisfied only from property of the protected person.

2. If a claimant files a request for approval of a rejected claim or a like claim in the guardianship proceeding for summary determination, the claimant shall serve notice that he or she has filed such a request on the guardian.

3. Not later than 20 days after the date of service, the guardian may serve notice of objection to summary determination on the claimant. If the guardian serves the claimant with notice and files a copy of the notice with the court, the court shall not enter a summary determination and the claimant may commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity as provided in subsection 1.

4. If the guardian fails to serve the claimant with notice of objection to summary determination or file a copy of the notice with the court, the court shall:

(a) Hear the matter and determine the claim or like claim in a summary manner; and

(b) Enter an order allowing or rejecting the claim, either in whole or in part. No appeal may be taken from the order.

(Added to NRS by 1969, 421; A 2003, 1790)

NRS 159.112 Authorized actions by guardian of the person if guardian of the estate has not been appointed; payment of excess money to appointed guardian of the estate; certain compensation authorized.

1. If a guardian of the estate has not been appointed, a guardian of the person may:

(a) Institute proceedings to compel any person under a duty to support the protected person or to pay for the welfare of the protected person to perform that duty; and

(b) Receive money and tangible property deliverable to the protected person and apply such money and property for the support, care and education of the protected person. The guardian shall not use any money from the estate of the protected person to cover the cost of any room and board that the guardian or the spouse, parent or child of the guardian furnishes to the protected person unless a charge for the service is approved by a court order, after notice to at least one adult relative in the nearest degree of consanguinity to the protected person in which there is an adult. The guardian shall exercise care to conserve any excess money for the needs of the protected person.

2. If a guardian of the estate has been appointed, any money received by the guardian of the person that is in excess of the money expended to pay for the support, care and education of the protected person must be paid to the guardian of the estate for management of the estate. The guardian of the person shall account to the guardian of the estate for any money expended.

3. A guardian of the person of a protected person for whom a guardian of the estate also has been appointed may receive reasonable sums for any room and board furnished to the protected person if the guardian of the person presents a claim to the guardian of the estate pursuant to NRS 159.107 and 159.109.

4. A guardian of the person may request the guardian of the estate to make a payment from the estate of the protected person to another person or entity for the care and maintenance of the protected person in accordance with NRS 159.107 and 159.109.

(Added to NRS by 2017, 2551)

MANAGEMENT OF ESTATE

NRS 159.113 Guardian required to petition court before taking certain actions; guardian may petition court before taking certain other actions; content of petition.

1. Before taking any of the following actions, the guardian of the estate shall petition the court for an order authorizing the guardian to:

(a) Invest the property of the protected person pursuant to NRS 159.117.

(b) Continue the business of the protected person pursuant to NRS 159.119.

(c) Borrow money for the protected person pursuant to NRS 159.121.

(d) Except as otherwise provided in NRS 159.079, enter into contracts for the protected person or complete the performance of contracts of the protected person pursuant to NRS 159.123.

(e) Make gifts from the estate of the protected person or make expenditures for the relatives of the protected person pursuant to NRS 159.125.

(f) Sell, lease or place in trust any property of the protected person pursuant to NRS 159.127.

(g) Exchange or partition the property of the protected person pursuant to NRS 159.175.

(h) Release the power of the protected person as trustee, personal representative or custodian for a minor or guardian.

(i) Exercise or release the power of the protected person as a donee of a power of appointment.

(j) Exercise the right of the protected person to take under or against a will.

(k) Transfer to a trust created by the protected person any property unintentionally omitted from the trust.

(l) Submit a revocable trust or an irrevocable trust to the jurisdiction of the court if:

(1) The protected person or the spouse of the protected person, or both, are the grantors and sole beneficiaries of the income of the trust; or

(2) The trust was created by the court.

(m) Pay any claim by the Department of Health and Human Services to recover benefits for Medicaid correctly paid to or on behalf of the protected person.

2. Before taking any of the following actions, unless the guardian has been otherwise ordered by the court to petition the court for permission to take specified actions or make specified decisions in addition to those described in subsection 1, the guardian may petition the court for an order authorizing the guardian to:

(a) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the property of the protected person.

(b) Take any other action which the guardian deems would be in the best interests of the protected person.

3. The petition must be signed by the guardian and contain:

(a) The name, age, residence and address of the protected person.

(b) A concise statement as to the condition of the estate of the protected person.

(c) A concise statement as to the advantage to the protected person of or the necessity for the proposed action.

(d) The terms and conditions of any proposed sale, lease, partition, trust, exchange or investment, and a specific description of any property involved.

4. Any of the matters set forth in subsection 1 may be consolidated in one petition, and the court may enter one order authorizing or directing the guardian to do one or more of those acts.

5. A petition filed pursuant to paragraphs (b) and (d) of subsection 1 may be consolidated in and filed with the petition for the appointment of the guardian, and if the guardian is appointed, the court may enter additional orders authorizing the guardian to continue the business of the protected person, enter contracts for the protected person or complete contracts of the protected person.

(Added to NRS by 1969, 421; A 1979, 589; 2003, 1791; 2007, 2033, 2396; 2009, 1657, 2523; 2013, 918; 2017, 882, 1236)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.115 Notice of hearing of petition or account.

1. Except as otherwise ordered by the court, upon the filing of any petition under NRS 159.078 or 159.113, or any account, notice must be given to the protected person and the persons specified in NRS 159.034 in the manner prescribed by that section.

2. The notice must:

(a) Give the name of the protected person.

(b) Give the name of the petitioner.

(c) Give the date, time and place of the hearing.

(d) State the nature of the petition.

(e) Refer to the petition for further particulars, and notify all persons interested to appear at the time and place mentioned in the notice and show cause why the court order should not be made.

(Added to NRS by 1969, 422; A 1979, 789; 1995, 1077; 2003, 1791; 2007, 2397; 2009, 1659; 2013, 920; 2017, 3912)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.117 Court approval required to make certain investments and loans and to exercise certain options; certain investments authorized without prior approval; investing property of two or more protected persons.

1. Upon approval of the court by order, a guardian of the estate may:

(a) Invest the property of the protected person, make loans and accept security therefor, in the manner and to the extent authorized by the court.

(b) Exercise options of the protected person to purchase or exchange securities or other property.

2. A guardian of the estate may, without securing the prior approval of the court, invest the property of the protected person in the following:

(a) Savings accounts in any bank, credit union, savings and loan association or savings bank in this State, to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

(b) Interest-bearing obligations of or fully guaranteed by the United States.

(c) Interest-bearing obligations of the United States Postal Service.

(d) Interest-bearing obligations of the Federal National Mortgage Association.

(e) Interest-bearing general obligations of this State.

(f) Interest-bearing general obligations of any county, city or school district of this State.

(g) Money market mutual funds which are invested only in those instruments listed in paragraphs (a) to (f), inclusive.

3. A guardian of the estate for two or more protected persons may invest the property of two or more of the protected persons in property in which each protected person whose property is so invested has an undivided interest. The guardian shall keep a separate record showing the interest of each protected person in the investment and in the income, profits or proceeds therefrom. As used in this subsection, "protected person" includes a protected minor.

4. Upon approval of the court, for a period authorized by the court, a guardian of the estate may maintain the assets of the protected person in the manner in which the protected person had invested the assets before the incapacity of the protected person.

5. A guardian of the estate may access or manage a guardianship account via the Internet on a secured website established by the bank, credit union or broker holding the account.

(Added to NRS by 1969, 423; A 1971, 268; 1979, 590; 1993, 2771; 1995, 892; 1999, 1458; 2003, 1792; 2009, 1660; 2017, 883)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section by adding subsection 4, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.119 Continuing business of protected person. A guardian of the estate, with prior approval of the court by order, may continue any business of the protected person. The order may provide for any one or more of the following:

1. The conduct or reorganization of the business solely by the guardian, jointly by the guardian with one or more of the partners, shareholders, members, or joint venturers of the protected person or as a corporation or limited-liability company of which the protected person is or becomes a shareholder or member.

2. The extent to which the guardian may incur liability of the estate of the protected person for obligations arising from the continuation of the business.

3. Whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate of the protected person allocated for use in the business or to the estate as a whole.

4. The period of time during which the business may be conducted.

5. Any other conditions, restrictions, regulations and requirements as the court considers proper.

(Added to NRS by 1969, 423; A 2003, 1793)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.121 Borrowing money for protected person.

1. A guardian of the estate, with prior approval of the court by order, may borrow money for the account of the protected person when necessary:

(a) To continue any business of the protected person.

(b) To pay claims against the protected person, the guardianship estate or the guardian of the estate as such.

(c) To provide for the proper care, maintenance, education and support of the protected person and any person to whom the protected person owes a legal duty of support.

(d) For any other purpose that is in the best interests of the protected person.

2. If the court determines that the borrowing is necessary or proper, the court shall make an order approving the borrowing and may authorize one or more separate loans. The order shall prescribe the maximum amount of each loan, the maximum rate of interest and the date of final maturity of each loan, and may authorize the guardian to secure any loan by mortgage, deed of trust, pledge or other security transaction authorized by the laws of this state. The order shall describe the property, if any, to be given as security for each loan.

(Added to NRS by 1969, 423)

NEVADA CASES.

Guardian who held real property in joint tenancy with minor ward could not validly mortgage property before enactment of statute. Where realty had been conveyed in joint tenancy to the guardian and her minor ward subject to a note secured by a mortgage on the property, the guardian could not validly mortgage property on behalf of the minor to secure sums borrowed to pay such note when due prior to the enactment of RL § 6165 (cf. NRS 159.121), but a new creditor was subrogated to the rights of the mortgagee and was permitted to foreclose. Laffranchini v. Clark, 39 Nev. 48, 153 Pac. 250 (1915), cited, Mort v. United States, 86 F.3d 890, at 893 (9th Cir. 1996)

NRS 159.123 Contracts of protected person. If a protected person for whom a guardian of the estate is appointed was, at the time of the appointment, a party to a contract which has not been fully performed, and which was made by the protected person while not under any legal disability, the guardian of the estate, with prior approval of the court by order, may complete the performance of such contract. If such contract requires the conveyance of any real or personal property, or any interest in such property, the court may authorize the guardian to convey the interest and estate of the protected person in the property, and the effect of such conveyance shall be the same as though made by the protected person while not under legal disability. If the contract requires a sale, no notice of sale is required under this section unless otherwise ordered by the court.

(Added to NRS by 1969, 424; A 2009, 1660)

NRS 159.125 Gifts from estate of protected person; expenditures for relatives of protected person.

1. A guardian of the estate, with prior approval of the court by order, may, from the estate of the protected person which is not necessary for the proper care, maintenance, education and support of the protected person and of persons to whom the protected person owes a legal duty of support:

(a) Make reasonable gifts directly, or into a trust, on behalf of the protected person.

(b) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the protected person by blood, adoption or marriage.

(c) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for and the funeral and burial of persons who are or have been related to the protected person by blood, adoption or marriage.

2. Any petition filed by a guardian pursuant to this section must state whether:

(a) The purpose of the guardian in seeking approval to make the gift, payment or contribution is to dispose of assets to make the protected person eligible for Medicaid; and

(b) Making the gift, payment or contribution will cause the protected person to become eligible for Medicaid.

(Added to NRS by 1969, 424; A 1979, 591; 2003, 1793)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section by adding subsection 2, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

TRANSACTIONS INVOLVING REAL AND PERSONAL PROPERTY

GENERAL PROVISIONS

NRS 159.127 Purposes for which property of protected person may be sold, leased or placed in trust. A guardian of the estate, with prior approval of the court by order, may sell, lease or place in trust any of the property of the protected person:

1. For the purpose of paying claims against the protected person, the guardianship estate or the guardian of the estate.

2. For the purpose of providing for the proper care, maintenance, education and support of the protected person and any person to whom the protected person owes a legal duty of support.

3. For the purpose of investing the proceeds.

4. To obtain income through rentals or royalties.

5. For any other purpose that is in the best interests of the protected person.

(Added to NRS by 1969, 424; A 1979, 591)

NRS 159.132 Property of protected person subject to sale.

1. Any interest of a protected person in real or personal property, including interests in contracts and choses in action, may be sold pursuant to this chapter.

2. The interest of a protected person in a partnership or limited-liability company may be sold as personal property, and another partner or member may be the purchaser.

(Added to NRS by 1979, 788; A 2003, 1794)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

SALE OF REAL PROPERTY

NRS 159.134 Selling real property of protected person.

1. All sales of real property of a protected person must be confirmed by the court pursuant to NRS 159.146 before escrow closes for the sale and title to the real property passes to the purchaser.

2. A petition for confirmation of the sale must be filed with the court not later than 30 days after the date of the sale, which is the date on which the contract for the sale was signed.

3. The court shall set the date of the hearing for confirmation of the sale and give notice of the hearing in the manner required pursuant to NRS 159.115 or as the court may order.

4. An interested person may file written objections to the confirmation of the sale before the hearing for confirmation of the sale. If such objections are filed, the court shall conduct a hearing regarding those objections during which the interested person may offer witnesses in support of the objections. The court may, in its discretion, allow oral objections to the confirmation of the sale on the date of the hearing for confirmation of the sale.

5. Before the court confirms a sale, the court must find that notice of the sale was given in the manner required pursuant to NRS 159.1425 and 159.144, unless the sale was exempt from notice pursuant to NRS 159.123.

(Added to NRS by 1979, 788; A 2003, 1794; 2009, 1660; 2017, 3912)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.136 Order requiring guardian to sell real property of estate. If the guardian neglects or refuses to sell any real property of the estate when it is necessary or in the best interests of the protected person, an interested person may petition the court for an order requiring the guardian to sell the property. The court

shall set the petition for a hearing, and the petitioner shall serve notice on the guardian at least 10 days before the hearing.

(Added to NRS by 2003, 1759)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1365 Application of money from sale of real property of protected person that is subject to mortgage or other lien. If real property of the estate of a protected person is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

1. To pay the necessary expenses of the sale.
2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.
3. To the estate of the protected person, unless the court orders otherwise.

(Added to NRS by 2003, 1760)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1375 Sale of real property of protected person to holder of mortgage or lien on such property. At a sale of real property that is subject to a mortgage or lien, the holder of the mortgage or lien may become the purchaser. The receipt for the amount owed to the holder from the proceeds of the sale is a payment pro tanto.

(Added to NRS by 2003, 1760)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.138 Sale of equity of estate in real property of protected person that is subject to mortgage or lien and of property that is subject to mortgage or lien.

1. In the manner required by this chapter for the sale of like property, a guardian may sell:

(a) The equity of the estate in any real property that is subject to a mortgage or lien; and

(b) The property that is subject to the mortgage or lien.

2. If a claim has been filed upon the debt secured by the mortgage or lien, the court shall not confirm the sale unless the holder of the claim files a signed and acknowledged document which releases the estate from all liability upon the claim.

(Added to NRS by 2003, 1760)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1385 Contract for sale of real property of protected person authorized; limitation on commission; liability of guardian and estate.

1. After the court has granted authority to sell real property of a protected person, a guardian may enter into a written contract with any bona fide agent, broker or multiple agents or brokers to secure a purchaser for such property. Such a contract may grant an exclusive right to sell the property to the agent, broker or multiple agents or brokers.

2. The guardian shall provide for the payment of a commission upon the sale of the real property which:

(a) Must be paid from the proceeds of the sale;

(b) Must be fixed in an amount not to exceed:

(1) Ten percent for unimproved real property; or

(2) Seven percent for real property with any type of improvement; and

(c) Must be authorized by the court by confirmation of the sale.

3. Upon confirmation of the sale by the court, the contract for the sale becomes binding and enforceable against the estate.

4. A guardian may not be held personally liable and the estate is not liable for the payment of any commission set forth in a contract entered into with an agent or broker pursuant to this section until the sale is confirmed by the court, and then is liable only for the amount set forth in the contract.

(Added to NRS by 2003, 1760; A 2017, 3913)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1415 Presentation of offer to purchase real property to court for confirmation; division of commission for sale of such property.

1. Except as otherwise provided in subsection 10 of NRS 159.146, if a contract of sale to purchase real property of a guardianship estate is presented to the court for confirmation:

(a) Other persons may submit higher bids in open court; and

(b) The court may confirm the highest bid.

2. Upon confirmation of a sale of real property by the court, the commission for the sale must be divided between the listing agent or broker and the agent or broker who secured the purchaser to whom the sale was confirmed, if any, in accordance with the contract with the listing agent or broker.

(Added to NRS by 2003, 1760; A 2017, 3913)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.142 Sale of interest of protected person in real property owned jointly with one or more persons.

1. If a protected person owns real property jointly with one or more other persons, after the court grants authority to sell the property, the interest owned by the protected person may be sold to one or more joint owners of the property only if:

(a) All joint owners of the property have been given notice that the court has granted the authority to sell the property;

(b) The guardian files a petition with the court to confirm the sale pursuant to NRS 159.134; and

(c) The court confirms the sale.

2. The court shall confirm the sale only if:

(a) The net amount of the proceeds from the sale to the estate of the protected person is not less than 90 percent of the fair market value of the portion of the property to be sold; and

(b) Upon confirmation, the estate of the protected person will be released from all liability for any mortgage or lien on the property.

(Added to NRS by 2003, 1761; A 2017, 3914)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1425 Notice of sale of real property of protected person: When required; manner of providing; waiver; content.

1. Except as otherwise provided in this section and except for a sale pursuant to NRS 159.123 or 159.142, a guardian may sell the real property of a protected person only after the court grants authority for the sale pursuant to NRS 159.113 and notice of the sale is published:

(a) In a newspaper that is published in the county in which the property, or some portion of the property, is located;

(b) If a newspaper is not published in the county in which the property, or some portion of the property, is located:

(1) In a newspaper of general circulation in the county; or

(2) In such other newspaper as the court orders; or

(c) On a public property listing service for a period of not less than 30 days.

2. Except as otherwise provided in this section and except for a sale of real property pursuant to NRS 159.123 or 159.142, the notice of a sale must be published pursuant to paragraph (a) or (b) of subsection 1 not less than three times before the date on which the sale may be made, over a period of 14 days and 7 days apart.

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The court may waive the requirement of publication pursuant to this section if:

(a) The guardian is the sole devisee or heir of the estate; or

(b) All devisees or heirs of the estate consent to the waiver in writing.

5. Publication for the sale of real property is not required pursuant to this section if the property to be sold is reasonably believed to have a net value of $10,000 or less. In lieu of publication, the guardian shall post notice of the sale in three of the most public places in the county in which the property, or some portion of the property, is located for at least 14 days before the date on or after which an offer will be accepted for a sale.

6. Any notice published or posted pursuant to this section must include, without limitation:

(a) A description of the real property which reasonably identifies the property to be sold; and

(b) The date, time and location on or after which an offer will be accepted.

(Added to NRS by 2003, 1761; A 2009, 1661; 2017, 3914)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1435 Public auction for sale of real property: Where held; postponement. Repealed. (See chapter 552, Statutes of Nevada 2017, at page 3925.)

NRS 159.144 Sale of real property of guardianship estate: Requirements for establishing date; manner of making offers.

1. Except for the sale of real property pursuant to NRS 159.123 or 159.142, a sale of real property of a guardianship estate:

(a) Must not occur before the date stated in the notice.

(b) Except as otherwise provided in this paragraph, must not occur sooner than 14 days after the date of the first publication or posting of the notice. For good cause shown, the court may shorten the time in which the sale may occur to not sooner than 8 days after the date of the first publication or posting of the notice. If the court so orders, the notice of the sale and the sale may be made to correspond with the court order.

(c) Must occur not later than 1 year after the date stated in the notice.

2. The offers made in a sale:

(a) Must be in writing; and

(b) May be delivered to the place designated in the notice or to the guardian at any time after the date of the first publication or posting of the notice.

(Added to NRS by 2003, 1762; A 2009, 1662; 2017, 3915)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1455 Confirmation by court of sale of real property of guardianship estate.

1. Except as otherwise provided in subsection 2, the court shall not confirm a sale of real property of a guardianship estate unless:

(a) The court is satisfied that the amount offered represents the fair market value of the property to be sold; and

(b) Except for a sale of real property pursuant to NRS 159.123, the real property has been appraised within 1 year before the date of the sale. If the real property has not been appraised within this period, a new appraisal must be conducted pursuant to NRS 159.086 and 159.0865 at any time before the sale or confirmation by the court of the sale.

2. The court may waive the requirement of an appraisal upon a showing to and specific findings by the court on the record that:

(a) An additional appraisal will unduly delay the sale; and

(b) The delay will impair the estate of the protected person.

(Added to NRS by 2003, 1762; A 2009, 1662; 2017, 3915)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.146 Hearing to confirm sale of real property: Considerations; conditions for confirmation; actions of court if sale is not confirmed; continuance; circumstances in which sale is confirmed without bidding.

1. At the hearing to confirm the sale of real property, the court shall:

(a) Consider whether the sale is necessary or in the best interest of the estate of the protected person; and

(b) Examine the return on the investment and the evidence submitted in relation to the sale.

2. The court shall confirm the sale and order conveyances to be executed if it appears to the court that:

(a) Good reason existed for the sale;

(b) The sale was conducted in a legal and fair manner;

(c) The amount of the offer is not disproportionate to the value of the property; and

(d) It is unlikely that a bid would be made which exceeds the original offer:

(1) By at least 5 percent if the offer is less than $100,000; or

(2) By at least $5,000 if the offer is $100,000 or more.

3. The court shall not confirm the sale if the conditions in this section are not satisfied.

4. If the court does not confirm the sale, the court:

(a) May order a new sale; or

(b) May conduct a public auction in open court.

5. If the court orders a new sale:

(a) Notice must be given in the manner set forth in NRS 159.1425; and

(b) The sale must be conducted in all other respects as though no previous sale has taken place.

6. If a higher offer is received by the court during the hearing to confirm the sale, the court may continue the hearing if the court determines that the person who made the offer being confirmed was not notified of the hearing and may wish to increase the price of his or her offer. This subsection does not grant a right to a person to have a continuance granted and may not be used as a ground to set aside an order confirming a sale.

7. Except as otherwise provided in this section, only the name of the buyer and the price of the sale may be changed at a public auction in open court. An order confirming the sale is sufficient as an addendum to the original contract to allow escrow to close.

8. The title company may be changed at a public auction in open court if the estate and the buyer have mutually agreed to the change in writing.

9. The date of the close of escrow must be at least 10 judicial days after the date that the notice of the entry of order confirming the sale is filed with the clerk of the court unless the contract specifies a later date. The parties to the sale may extend the date of the close of escrow by mutual agreement in writing.

10. If the estate owes more than the value of the property and the estate has made an agreement with all lienholders to accept the sale price and waive any deficiency between the sale price and the amount owed to all lienholders, the sale must be confirmed without the potential for bidding in court. All other portions of the confirmation of sale must be adhered to. The valuation by the bank shall be deemed to be sufficient to meet the appraisal requirement for the sale, and the date of the sale is the date on which the bank approves the sale.

(Added to NRS by 2003, 1762; A 2013, 921; 2017, 3916)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1465 Conveyance of real property of guardianship estate to purchaser upon confirmation of sale by court.

1. If the court confirms a sale of real property of a guardianship estate, the guardian shall execute a conveyance of the property to the purchaser.

2. The conveyance must include a reference to the court order confirming the sale, and a certified copy of the court order must be recorded in the office of the recorder of the county in which the property, or any portion of the property, is located.

3. A conveyance conveys all the right, title and interest of the protected person in the property on the date of the sale, and if, before the date of the sale, by operation of law or otherwise, the protected person has acquired any right, title or interest in the property other than or in addition to that of the protected person at the time of the sale, that right, title or interest also passes by the conveyance.

(Added to NRS by 2003, 1763)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1475 Sale of real property made upon credit.

1. If a sale of real property is made upon credit, the guardian shall take:

(a) The note or notes of the purchaser for the unpaid portion of the sale; and

(b) A mortgage on the property to secure the payment of the notes.

2. The mortgage may contain a provision for release of any part of the property if the court approves the provision.

(Added to NRS by 2003, 1763)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.148 Neglect or refusal of purchaser of real property to comply with terms of sale.

1. After confirmation of the sale of real property, if the purchaser neglects or refuses to comply with the terms of the sale, the court may set aside the order of confirmation and order the property to be resold:

(a) On motion of the guardian; and

(b) After notice is given to the purchaser.

2. If the amount realized on the resale of the property is insufficient to cover the bid and the expenses of the previous sale, the original purchaser is liable to the estate of the protected person for the deficiency.

(Added to NRS by 2003, 1763)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1495 Fraudulent sale of real property of protected person by guardian. A guardian who fraudulently sells any real property of a protected person in a manner inconsistent with the provisions of this chapter is liable for double the value of the property sold, as liquidated damages, to be recovered in an action by or on behalf of the protected person.

(Added to NRS by 2003, 1764)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1505 Periods of limitation for actions to recover or set aside sale of real property. The periods of limitation prescribed in NRS 11.260 apply to all actions:

1. For the recovery of real property sold by a guardian in accordance with the provisions of this chapter; and
2. To set aside a sale of real property.

(Added to NRS by 2003, 1764)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

SALE OF PERSONAL PROPERTY

NRS 159.1515 Sale of certain personal property of protected person by guardian; destruction of certain personal property of protected person without notice.

1. Except as otherwise provided in subsection 2, a guardian may sell or dispose of personal property of the protected person that has a total value of less than $10,000 if:

(a) A notice of intent to sell or dispose of the property is mailed by certified mail or delivered personally to the protected person, his or her attorney and the persons specified in NRS 159.034; and

(b) No objection to the sale or disposal is made within 15 days after such notice is received.

2. A guardian may authorize the immediate destruction of the personal property of a protected person without notice if:

(a) The guardian determines that the property has been contaminated by vermin or biological or chemical agents;

(b) The expenses related to the decontamination of the property cause salvage to be impractical;

(c) The property constitutes an immediate threat to public health or safety;

(d) The handling, transfer or storage of the property might endanger public health or safety or exacerbate contamination; and

(e) The value of the property is less than $100 or, if the value of the property is $100 or more, a state or local health officer has endorsed the destruction of the property.

(Added to NRS by 2003, 1764; A 2017, 3917)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.152 Sale of security of protected person by guardian. A guardian may sell any security of the protected person if:

1. The guardian petitions the court for confirmation of the sale;
2. The clerk sets the date of the hearing;
3. The guardian gives notice in the manner required pursuant to NRS 159.034 unless, for good cause shown, the court shortens the period within which notice must be given or dispenses with notice; and
4. The court confirms the sale.

(Added to NRS by 2003, 1764)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1535 Notice of sale of personal property of protected person: When required; manner of providing content.

1. Except as otherwise provided in this section and NRS 159.1515 and 159.152, a guardian may sell the personal property of the protected person only after notice of the sale is:

(a) Given to the:

(1) Protected person; and

(2) Spouse of the protected person and all other known relatives of the protected person who are within the second degree of consanguinity; and

(b) Published in:

(1) A newspaper that is published in the county in which the property, or some portion of the property, is located; or

(2) If a newspaper is not published in the county in which the property, or some portion of the property, is located:

(I) In a newspaper of general circulation in the county; or

(II) In such other newspaper as the court orders.

2. Except as otherwise provided in this section, the notice of a sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The notice must include, without limitation:

(a) For a sale other than a sale described in paragraph (b):

(1) A description of the personal property to be sold; and

(2) The date, time and location that offers will be received.

(b) For a sale on an appropriate auction website on the Internet:

(1) A description of the personal property to be sold;

(2) The date the personal property will be listed; and

(3) The Internet address of the website on which the sale will be posted.

5. Notice of a sale is not required to be published pursuant to this section if the gross value of the estate of the protected person is less than $10,000.

(Added to NRS by 2003, 1764; A 2009, 1663; 2017, 3917)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.154 Place and manner of sale of personal property of protected person; report by guardian; first right of refusal of family members.

1. The guardian may sell the personal property of a protected person at:
(a) The residence of the protected person; or
(b) Any other location designated by the guardian.
2. The guardian may sell the personal property only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.
3. Personal property may be sold for cash or upon credit.
4. Except as otherwise provided in NRS 159.1515, a sale or disposition of any personal property of the protected person must not be commenced until 30 days after an inventory of the property is filed with the court and a copy thereof is sent by regular mail to the persons specified in NRS 159.034. An affidavit of mailing must be filed with the court.
5. The guardian is responsible for the actual value of the personal property unless the guardian makes a report to the court, not later than 90 days after the conclusion of the sale, showing that good cause existed for the sale and that the property was sold for a price that was not disproportionate to the value of the property.
6. The family members of the protected person and any interested persons must be offered the first right of refusal to acquire the personal property of the protected person at fair market value.
(Added to NRS by 2003, 1765; A 2009, 1663; 2017, 3918)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.156 Sale of interest in partnership, interest in personal property pledged to protected person and choses in action of estate of protected person. The following interests of the estate of the protected person may be sold in the same manner as other personal property:
1. An interest in a partnership;
2. An interest in personal property that has been pledged to the protected person; and
3. Choses in action.
(Added to NRS by 2003, 1765)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

LEASE OF PROPERTY

NRS 159.157 Lease of property of protected person. A guardian of the estate may lease any real property of the protected person or any interest in real property:

1. Without securing prior court approval, where the tenancy is from month to month or for a term not to exceed 1 year and the reasonable fixed rental for the property or the proportionate interest of the protected person in such rental does not exceed $250 per month.

2. With prior approval of the court by order, for such period of time as may be authorized by the court, not exceeding any time limitation prescribed by law, and upon such terms and conditions as the court may approve.

(Added to NRS by 1969, 428; A 2017, 884)

NRS 159.159 Contract with broker to secure lessee. The court may authorize the guardian to enter into a written contract with one or more licensed real estate brokers to secure a lessee of the property of the protected person, which contract may provide for the payment of a commission, not exceeding 5 percent of the fixed rental for the first 2 years, to be paid out of the proceeds of any such lease.

(Added to NRS by 1969, 428)

NRS 159.161 Petition for approval of lease: Content; conditions for approval.

1. Petitions to secure court approval of any lease:

(a) Must include the parcel number assigned to the property to be leased and the physical address of the property, if any; and

(b) Must set forth the proposed fixed rental, the duration of the lease and a brief description of the duties of the proposed lessor and lessee.

2. Upon the hearing of a petition pursuant to subsection 1, if the court is satisfied that the lease is for the best interests of the protected person and the estate of the protected person, the court shall enter an order authorizing the guardian to enter into the lease.

(Added to NRS by 1969, 428; A 2003, 1794)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.163 Agreement for rental or bailment of personal property. A guardian of the estate, with prior approval of the court by order, may enter into agreements providing for the rental or bailment of the personal property of the protected person. All proceedings to obtain such a court order shall be the same as required for the lease of real property.

(Added to NRS by 1969, 428)

NRS 159.165 Lease of mining claim or mineral rights; option to purchase.

1. If the property to be leased consists of mining claims, an interest in the mining claims, property worked as a mine or lands containing oil, gas, steam, gravel or any minerals, the court may authorize the guardian to enter into a lease which provides for payment by the lessee of a royalty, in money or in kind, in lieu of a fixed rental. The court may also authorize the guardian to enter into a lease which provides for a pooling agreement or authorizes the lessee to enter into pooling or other cooperative agreements with lessees, operators or owners of other lands and minerals for the purpose of bringing about the cooperative development and operation of any mine, oil field or other unit of which the property of the protected person is a part.

2. If the proposed lease contains an option to purchase, and the property to be sold under the option consists of mining claims, property worked as a mine, or interests in oil, gas, steam, gravel or any mineral, which has a speculative or undefined market value, the court may authorize the guardian to enter into such a lease and sales agreement or give an option to purchase without requiring the property to be sold at public auction or by private sale in the manner required by this chapter for sales of other real property.

3. If the petition filed pursuant to this section requests authority to enter into a lease with an option to purchase, in addition to the notice required by NRS 159.034, the guardian shall publish a copy of the notice at least twice, the first publication to be at least 10 days prior to the date set for the hearing and the second publication to be not earlier than 7 days after the date of the first publication. The notice must be published in:

(a) A newspaper that is published in the county where the property is located; or

(b) If no newspaper is published in the county where the property is located, a newspaper of general circulation in that county which is designated by the court.

(Added to NRS by 1969, 429; A 2003, 1794)

AGREEMENT TO SELL OR GIVE OPTION TO PURCHASE MINING CLAIM

NRS 159.1653 Petition to enter into agreement; setting date of hearing; notice.

1. To enter into an agreement to sell or to give an option to purchase a mining claim or real property worked as a mine which belongs to the estate of the protected person, the guardian or an interested person shall file a petition with the court that:

(a) Describes the property or claim;

(b) States the terms and general conditions of the agreement;

(c) Shows any advantage that may accrue to the estate of the protected person from entering into the agreement; and

(d) Requests confirmation by the court of the agreement.

2. The court shall set the date of the hearing on the petition.

3. The petitioner shall give notice in the manner provided in NRS 159.034.

(Added to NRS by 2003, 1765)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1657 Hearing on petition; court order; recording of court order.

1. At the time appointed and if the court finds that due notice of the hearing concerning an agreement has been given, the court shall hear a petition filed pursuant to NRS 159.1653 and any objection to the petition that is filed or presented.

2. After the hearing, if the court is satisfied that the agreement will be to the advantage of the estate of the protected person, the court:

(a) Shall order the guardian to enter into the agreement; and

(b) May prescribe in the order the terms and conditions of the agreement.

3. A certified copy of the court order must be recorded in the office of the county recorder of each county in which the property affected by the agreement, or any portion of the property, is located.

(Added to NRS by 2003, 1765)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.166 Bond and actions required upon court order to enter into agreement.

1. If the court orders the guardian to enter into the agreement pursuant to NRS 159.1657, the court shall order the guardian to provide an additional bond and specify the amount of the bond in the court order.

2. The guardian is not entitled to receive any of the proceeds from the agreement until the guardian provides the bond and the court approves the bond.

3. When the court order is entered, the guardian shall execute, acknowledge and deliver an agreement which:

(a) Contains the conditions specified in the court order;

(b) States that the agreement or option is approved by court order; and

(c) Provides the date of the court order.

(Added to NRS by 2003, 1765)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1663 Neglect or refusal of purchaser of mining claim or of option holder to comply with terms of agreement.

1. If the purchaser or option holder neglects or refuses to comply with the terms of the agreement approved by the court pursuant to NRS 159.1657, the guardian may petition the court to cancel the agreement. The court shall cancel the agreement after notice is given to the purchaser or option holder.

2. The cancellation of an agreement pursuant to this section does not affect any liability created by the agreement.

(Added to NRS by 2003, 1766)

REVISER'S NOTE.
Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:
"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1667 Petition for confirmation of proceedings concerning agreement: When required; notice; hearing.

1. If the purchaser or option holder complies with the terms of an agreement approved by the court pursuant to NRS 159.1657 and has made all payments according to the terms of the agreement, the guardian shall:

(a) Make a return to the court of the proceedings; and

(b) Petition the court for confirmation of the proceedings.

2. Notice must be given to the purchaser or option holder regarding the petition for confirmation.

3. The court:

(a) Shall hold a hearing regarding the petition for confirmation; and

(b) May order or deny confirmation of the proceedings and execution of the conveyances in the same manner and with the same effect as when the court orders or denies a confirmation of a sale of real property.

(Added to NRS by 2003, 1766)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

MISCELLANEOUS PROVISIONS

NRS 159.167 Special sale of property of protected person or surrender of interest therein.

1. A guardian of the estate, with prior approval of the court, may accept an offer for the purchase of the interest or estate of the protected person, in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the protected person in such property is an interest in a partnership, joint venture or closely held corporation, in which the offeror or offerors own the remaining interests in the partnership, joint venture or closely held corporation, or are offering to purchase such remaining interests.

(b) The interest or estate of the protected person in such property is an undivided interest in property in which the offeror or offerors own the remaining interests in such property or are offering to purchase such remaining interests.

(c) The interest or estate of the protected person to be sold or granted is an easement in or creates a servitude upon the property of the protected person.

2. A guardian of the estate, with prior approval of the court, may accept an offer to surrender the interest or estate of the protected person in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the protected person is contingent or dubious.

(b) The interest or estate of the protected person in such property is a servitude upon the property of another.

(Added to NRS by 1969, 429)

NRS 159.169 Advice, instructions and approval of acts of guardian.

1. A guardian of the estate may petition the court for advice and instructions in any matter concerning:

(a) The administration of the estate of the protected person;

(b) The priority of paying claims;

(c) The propriety of making any proposed disbursement of funds;

(d) Elections for or on behalf of the protected person to take under the will of a deceased spouse;

(e) Exercising for or on behalf of the protected person:

(1) Any options or other rights under any policy of insurance or annuity; and

(2) The right to take under a will, trust or other devise;

(f) The propriety of exercising any right exercisable by owners of property; and

(g) Matters of a similar nature.

2. Any act done by a guardian of the estate after securing court approval or instructions with reference to the matters set forth in subsection 1 is binding upon the protected person or those claiming through the protected person, and the guardian is not personally liable for performing any such act.

3. If any interested person may be adversely affected by the proposed act of the guardian, the court shall direct the issuance of a citation to that interested person, to be served upon the person at least 20 days before the hearing on the petition. The citation must be served in the same manner that summons is served in a civil action and must direct the interested person to appear and show cause why the proposed act

of the guardian should not be authorized or approved. All interested persons so served are bound by the order of the court which is final and conclusive, subject to any right of appeal.

(Added to NRS by 1969, 430; A 1979, 591; 2003, 1795)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.171 Executing and recording legal documents.

1. A guardian of the estate shall record a certified copy of any court order authorizing the sale, mortgage, lease, surrender or conveyance of real property in the office of the county recorder of the county in which any portion of the land is located.

2. To carry out effectively any transaction affecting the property of the protected person as authorized by this chapter, the court may authorize the guardian to execute any promissory note, mortgage, deed of trust, deed, lease, security agreement or other legal document or instrument which is reasonably necessary to carry out such transaction.

(Added to NRS by 1969, 430)

NRS 159.173 Transfer of property of protected person not ademption. If a guardian of the estate sells or transfers any real or personal property that is specifically devised or bequeathed by the protected person or which is held by the protected person as a joint tenancy, designated as being held by the protected person in trust for another person or held by the protected person as a revocable trust and the protected person had the capacity to make a will or create the interest at the time the will or interest was created, but did not have the capacity to make a will or create the interest at the time of the sale or transfer and never executed a valid later will or changed the manner in which the protected person held the interest, the devisee, beneficiary or legatee may elect to take the proceeds of the sale or other transfer of the interest, specific devise or bequest.

(Added to NRS by 1969, 430; A 2003, 1796; 2017, 3919)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.175 Exchange or partition of property of protected person.

1. A guardian of the estate, with prior approval of the court by order, where it appears from the petition and the court determines that the best interests of the protected person are served by such action, may:

(a) Accept an offer to exchange all or any interest of the protected person in real or personal property or both real and personal property for real or personal property or both real and personal property of another, and pay or receive any cash or other consideration to equalize the values on such exchange; or

(b) Effect a voluntary partition of real or personal property or both real and personal property in which the protected person owns an undivided interest.

2. Upon hearing the petition, the court shall inquire into the value of the property to be exchanged or partitioned, the rental or income therefrom, and the use for which the property is best suited.

(Added to NRS by 1969, 430)

ACCOUNTINGS

NRS 159.176 Review of guardianship by court. Every guardianship established pursuant to this chapter must be reviewed by the court annually.

(Added to NRS by 1981, 1933; A 2003, 594)

NRS 159.177 Time for filing account; service of account.

1. A guardian of the estate or special guardian who is authorized to manage the property of the protected person shall make and file a verified account in the guardianship proceeding:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian, unless the court orders such an account to be made and filed at a different interval upon a showing of good cause and with the appropriate protection of the interests of the protected person.

(b) Upon filing a petition to resign and before the resignation is accepted by the court.

(c) Within 30 days after the date of his or her removal, unless the court authorizes a longer period.

(d) Within 90 days after the date of termination of the guardianship or the death of the protected person, unless the court authorizes a longer period.

(e) At any other time as required by law or as the court may order.

2. An account filed pursuant to this section must be served on the attorney of the protected person and, if the protected person is living, on the protected person.

(Added to NRS by 1969, 431; A 1981, 1937; 2003, 1796; 2017, 2559)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Guardian must make annual report of condition of estate of ward. It is the duty of a guardian to invest the funds of his ward so as to produce income, and under NCL § 9501 (cf. former NRS 159.160), which enumerates the conditions implied in the bond of a guardian, he must make an annual report of the condition of the estate of the ward. In re Anderson's Guardianship, 54 Nev. 108, 7 P.2d 814 (1931)

Court erred in ordering payment of sum for release of claims to wife as guardian of minor and in her individual capacity because no specific amount was designated to go to ward. Where, before she was appointed the guardian of her minor son, the surviving wife agreed to release her claims and those of her son against the estate of her husband in return for a sum of money, the court erred in ordering the payment of such a sum to the wife as guardian of the minor and in her individual capacity, because no specific amount was designated to go to the ward, and therefore the guardian would be unable to keep his money separate from her own, or, as required by NCL § 9501 (cf. NRS 159.177), to render an annual account of the condition of his estate, and invest the estate to his advantage. In re Anderson's Guardianship, 54 Nev. 108, 7 P.2d 814 (1932)

NRS 159.179 Contents of account; retention of receipts or vouchers for all expenditures; proving payment when receipt or voucher is lost.

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

(a) The period covered by the account.

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

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

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

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

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

(g) Any other information required by the court.

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

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

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

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

(b) The court orders the filing.

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

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

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

6. If a receipt or voucher is lost or for good reason cannot be produced on settlement of an account, payment may be proved by the oath of at least one competent witness. The guardian must be allowed expenditures if it is proven that:

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

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

(Added to NRS by 1969, 431; A 1981, 1937; 1999, 2365; 2003, 1796; 2017, 884, 2559)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.181 Hearing of account.

1. Any interested person may appear at the hearing and object to the account or file written objections to the account prior to the hearing.

2. If there are no objections to the account or if the court overrules any objections, the court may enter an order allowing and confirming the account.

3. Except as otherwise provided in this subsection, the order settling and allowing the account is a final order and is conclusive against all persons interested in the guardianship proceeding, including, without limitation, heirs and assigns. The order is not final against a protected person who requests an examination of any account after the legal disability of the protected person is removed.

4. If the court finds that an interested person who objected to the account did not object in good faith or in furtherance of the best interests of the protected person, the court may order the interested person to pay to the estate of the protected person all or part of the expenses associated with the objection.

(Added to NRS by 1969, 431; A 2003, 1797)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.183 Compensation and expenses of guardian.

1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 5, a guardian must be allowed:

(a) Reasonable compensation for the guardian's services;

(b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and

(c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal disability. In determining whether compensation is reasonable, the court may consider:

(a) The nature of the guardianship;

(b) The type, duration and complexity of the services required; and

(c) Any other relevant factors.

3. In the absence of an order of the court pursuant to this chapter shifting the responsibility of the payment of compensation and expenses, the payment of compensation and expenses must be paid from the estate of the protected person. In evaluating the ability of a protected person to pay such compensation and expenses, the court may consider:

(a) The nature, extent and liquidity of the assets of the protected person;

(b) The disposable net income of the protected person;

(c) Any foreseeable expenses; and

(d) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.

4. Any compensation or expenses, including, without limitation, attorney's fees, must not be paid from the estate of the protected person unless and until the payment of such fees is approved by the court pursuant to this section or NRS 159.344, as applicable.

5. A guardian is not allowed compensation or expenses, including, without limitation, attorney's fees, for services incurred by the guardian as a result of a petition to have him or her removed as guardian if the court removes the guardian.

(Added to NRS by 1969, 431; A 2003, 1797; 2005, 818; 2011, 999; 2017, 2560, 3919)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Guardian of ward's estate personally liable for fee of discharged attorney. A personal judgment against the guardian for the fee of a discharged attorney was proper because the guardian who employs counsel in behalf of the ward's estate is personally liable although the expense if necessary and reasonable is reimbursable under the provisions of former NRS 159.570 (cf. NRS 159.183). The attorney-client relationship is between the guardian and counsel, not the ward and counsel. Sarman v. Goldwater, Taber & Hill, 80 Nev. 536, 396 P.2d 847 (1964), cited, Ross v. Estate of Wells, 94 Nev. 314, at 317, 579 P.2d 782 (1978)

District court erred in ruling guardianship fees were properly waived without taking evidence. In an action against a law firm by a former partner of the firm in which the former partner claimed that the firm spent a significant number of hours of work on the guardianship which were never billed or collected, and therefore the former partner's share of the fees was waived without his consent, the district court erred in ruling, without taking evidence, that the guardianship fees were properly waived. Guardianship fees are generally considered personal compensation, and the attorney in the law firm who performed the work in guardianship could have received fees as a guardian for performing services different than those as an attorney. However, under an employment agreement entered into by the partners of the firm, the guardianship fees earned by the partners were to be the property of the firm, and whether the attorney who had earned the fees was entitled to the fees as a guardian personally or as a member of the firm was a question of fact. If the attorney who had earned the fees was entitled to the fees personally, he had a right to waive them, but if he were entitled to the fees as a member of the firm for the work performed as a guardian and no legal justification existed to waive the fees, the former partner who brought an action against the firm would have an interest in a share of those fees earned before his departure from the firm. (See NRS 159.183.) Foley v. Morse & Mowbray, 109 Nev. 116, 848 P.2d 519 (1993)

NRS 159.184 Accounting by certain care providers. If a protected person resides with a care provider that is an institution or facility, the care provider shall furnish to the guardian an itemized accounting of all financial activity pertaining to the protected person:

1. On a quarterly basis; and
2. At any other time, upon the request of the guardian.

(Added to NRS by 2009, 1640)

REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP

REMOVAL OF GUARDIAN

NRS 159.185 Conditions for removal.

1. The court may remove a guardian if the court determines that:

(a) The guardian has become mentally incapacitated, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;

(b) The guardian is no longer qualified to act as a guardian pursuant to NRS 159.0613;

(c) The guardian has filed for bankruptcy within the previous 5 years;

(d) The guardian of the estate has mismanaged the estate of the protected person;

(e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

(1) The negligence resulted in injury to the protected person or the estate of the protected person; or

(2) There was a substantial likelihood that the negligence would result in injury to the protected person or the estate of the protected person;

(f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;

(g) The guardian has violated any right of the protected person that is set forth in this chapter;

(h) The guardian has violated a court order or committed an abuse of discretion in making a determination pursuant to paragraph (b) of subsection 1 or subsection 3 of NRS 159.332;

(i) The guardian has violated any provision of NRS 159.331 to 159.338, inclusive, or a court order issued pursuant to NRS 159.333;

(j) The best interests of the protected person will be served by the appointment of another person as guardian; or

(k) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595 or 159A.0595.

2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

(Added to NRS by 1969, 432; A 2003, 1798; 2005, 819; 2011, 999; 2015, 2367, 2509; 2017, 884, 2561, 3920)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

FEDERAL AND OTHER CASES.

Personal service on guardian unnecessary where attorney was served and guardian voluntarily appeared. In a proceeding for the removal of a guardian under NRS 159.185, personal service of a citation on the guardian was unnecessary where her attorney had been served with the citation and the guardian voluntarily appeared in open court in response thereto. Pfotenhauer v. Hunter, Okl., 536 P.2d 923 (1975)

NRS 159.1852 Duty of guardian to notify court if no longer qualified to serve as guardian; appointment of successor guardian. A guardian who, after appointment:

1. Is convicted of a gross misdemeanor or felony in any state;

2. Files for or receives protection as an individual or as a principal of any entity under the federal bankruptcy laws;

3. Has a driver's license suspended, revoked or cancelled for nonpayment of child support;

4. Is suspended for misconduct or disbarred from:

(a) The practice of law;

(b) The practice of accounting; or

(c) Any other profession which:

(1) Involves or may involve the management or sale of money, investments, securities or real property; or

(2) Requires licensure in this State or any other state; or

5. Has a judgment entered against him or her for misappropriation of funds or assets from any person or entity in any state,

➥ shall immediately inform the court of the circumstances of those events. The court may remove the guardian and appoint a successor guardian, unless the court finds that it is in the best interest of the protected person to allow the guardian to continue in his or her appointment.

(Added to NRS by 2013, 904)

NRS 159.1853 Petition for removal.

1. The following persons may petition the court to have a guardian removed:

(a) The protected person;

(b) The spouse of the protected person;

(c) Any relative who is within the second degree of consanguinity to the protected person;

(d) A public guardian; or

(e) Any other interested person.

2. The petition must:

(a) State with particularity the reasons for removing the guardian; and

(b) Show cause for the removal.

3. If the court denies the petition for removal, the petitioner shall not file a subsequent petition unless a material change of circumstances warrants a subsequent petition.

4. If the court finds that the petitioner did not file a petition for removal in good faith or in furtherance of the best interests of the protected person, the court may:

(a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the protected person; and

(b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the protected person for all or part of the expenses incurred by the estate of the protected person in responding to the petition and for any other pecuniary losses which are associated with the petition.

(Added to NRS by 2003, 1766)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1855 Issuance and service of citation concerning filing of petition for removal; actions of court if protected person or estate may suffer loss or injury during time required for service.

1. If a petition to have a guardian removed is filed with the court, the court shall issue and serve a citation on the guardian and on all other interested persons.

2. The citation must require the guardian to appear and show cause why the court should not remove the guardian.

3. If it appears that the protected person or estate may suffer loss or injury during the time required for service of the citation on the guardian, on the court's own motion or on petition, the court may:

(a) Suspend the powers of the guardian by issuing a 30-day temporary restraining order or an injunction;

(b) Compel the guardian to surrender the protected person to a temporary guardian for not more than 30 days; and

(c) Compel the guardian to surrender the assets of the estate to a temporary guardian or to the public guardian until the date set for the hearing.

(Added to NRS by 2003, 1766)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1857 Actions of court when petition to remove guardian is deemed sufficient and guardian fails to appear. If a petition to remove a guardian is deemed sufficient and the guardian fails to appear before the court, the court may:

1. Hold the guardian in contempt of court.
2. Require the guardian to appear at a date and time set by the court.
3. Issue a bench warrant for the arrest and appearance of the guardian.
4. Find that the guardian caused harm to the protected person or the estate of the protected person and issue an order accordingly.

(Added to NRS by 2003, 1767)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.186 Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

NRS 159.187 Successor guardians.

1. When a guardian dies or is removed by order of the court, the court, upon the court's own motion or upon a petition filed by any interested person, may appoint another guardian in the same manner and subject to the same requirements as are provided by law for an original appointment of a guardian.

2. If a guardian of the person is appointed for a protected person pursuant to this section, the protected person must be served with the petition. If the protected person does not object to the appointment, the protected person is not required to attend the hearing.

(Added to NRS by 1969, 432; A 2003, 1798)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

RESIGNATION OF GUARDIAN

NRS 159.1873 Petition tendering resignation.

1. A guardian of the person, of the estate, or of the person and the estate, may file with the court a petition tendering the resignation of the guardian.

2. If the guardian files a petition to resign, the court shall serve notice upon any person entitled to notice pursuant to NRS 159.047.

(Added to NRS by 2003, 1767)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1875 Approval of resignation of guardian of person.

1. Before the court approves the resignation of a guardian of the person and discharges the guardian, the court shall appoint a successor guardian.

2. If a protected person has more than one guardian, the court may approve the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone.

(Added to NRS by 2003, 1767)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.1877 Resignation of guardian of estate: Accounting required before approval; sanctions for failure to file accounting; acceptance when estate has more than one guardian; court order.

1. Before the court approves the resignation of a guardian of the estate and discharges the guardian, the court shall require the guardian to submit, on the date set for the hearing, an accounting of the estate through the end of the term.

2. If the guardian fails to file such an accounting, the court may impose sanctions upon the guardian.

3. If an estate has more than one guardian, the court may accept the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone. The court may waive the requirement of filing the accounting if the remaining guardian or guardians are:

(a) Required to file the annual accounting, if applicable; and

(b) Responsible for any discrepancies in the accounting.

4. Upon approval of the accounting, if any is required, and appointment of a successor guardian, the court may approve the resignation of a guardian and order the discharge of his or her duties.

(Added to NRS by 2003, 1767)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

TERMINATION OF GUARDIANSHIP

NRS 159.1905 Petition for termination or modification; appointment of attorney to represent protected person; burden of proof; issuance of citation; penalties for not filing petition in good faith.

1. A protected person, the guardian or another person may petition the court for the termination or modification of a guardianship. The petition must state or contain:

(a) The name and address of the petitioner.

(b) The relationship of the petitioner to the protected person.

(c) The name, age and address of the protected person, if the protected person is not the petitioner, or the date of death of the protected person if the protected person is deceased.

(d) The name and address of the guardian, if the guardian is not the petitioner.

(e) The reason for termination or modification.

(f) Whether the termination or modification is sought for a guardianship of the person, of the estate, or of the person and estate.

(g) A general description and the value of the remaining property of the protected person and the proposed disposition of that property.

2. Upon the filing of the petition, the court shall appoint an attorney to represent the protected person if:

(a) The protected person is unable to retain an attorney; or

(b) The court determines that the appointment is necessary to protect the interests of the protected person.

3. The petitioner has the burden of proof to show by clear and convincing evidence that the termination or modification of the guardianship of the person, of the estate, or of the person and estate is in the best interests of the protected person.

4. The court shall issue a citation to the guardian and all interested persons requiring them to appear and show cause why termination or modification of the guardianship should not be granted.

5. If the court finds that the petitioner did not file a petition for termination or modification in good faith or in furtherance of the best interests of the protected person, the court may:

(a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the protected person; and

(b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the protected person for all or part of the expenses and for any other pecuniary losses which are incurred by the estate of the protected person and associated with the petition.

(Added to NRS by 1981, 1933; A 1999, 1401; 2003, 1798; 2017, 2562)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

Power of court to regulate, control, deny or modify guardianship. A petition for the right of visitation with respect to a child for whom the court had appointed a guardian should have been considered within the court's power to regulate, control, deny or modify guardianship (see NRS 159.1905). It was error for the court to deny the petition on the ground that the petitioner was not eligible to seek court-ordered visitation under the provisions of former NRS 123.123 (cf. NRS 125C.050). Daly v. Morse, 99 Nev. 532, 665 P.2d 797 (1983), cited, Morse v. Daly, 101 Nev. 320, at 321, 704 P.2d 1087 (1985)

NRS 159.191 Termination of guardianship of person, estate or person and estate; procedure upon death of protected person.

1. Except as otherwise provided in subsection 2, a guardianship of the person is terminated:

(a) By the death of the protected person;

(b) Upon the change of domicile of the protected person to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile; or

(c) Upon order of the court, if the court determines that the guardianship no longer is necessary.

2. If a court appoints or extends the appointment of a guardian of the person pursuant to NRS 159.343, the guardianship is terminated on the date on which the protected person reaches 21 years of age, unless the protected person petitions the court to terminate the guardianship before he or she reaches 21 years of age pursuant to NRS 159.1905 and the court grants the petition.

3. A guardianship of the estate is terminated:

(a) If the court removes the guardian or accepts the resignation of the guardian and does not appoint a successor guardian;

(b) If the court determines that the guardianship is not necessary and orders the guardianship terminated; or

(c) By the death of the protected person, subject to the provisions of NRS 159.193.

4. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.

5. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the protected person of the death of the protected person within 30 days after the death.

6. Immediately upon the death of the protected person:

(a) The guardian of the estate shall have no authority to act for the protected person except to wind up the affairs of the guardianship pursuant to NRS 159.193, and to distribute the property of the protected person as provided in NRS 159.195 and 159.197; and

(b) No person has standing to file a petition pursuant to NRS 159.078.

(Added to NRS by 1969, 432; A 1999, 1401; 2003, 1799; 2013, 922; 2017, 885, 1149)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NEVADA CASES.

District court had no authority in adoption proceeding to compel guardian of infant appointed and residing with infant in another county to appear and deliver infant. The district court had no authority in an adoption proceeding to issue a citation to compel the guardian of an infant appointed and residing with the infant in another county to bring such infant before the court and deliver him to the petitioning adoptive parents, because proceedings growing out of the citation would involve enforcement through contempt, which is not authorized by adoption statutes, and would interfere with the order of the court appointing the guardian, because the guardian was entitled to the custody of the infant under NCL § 9500 (cf. NRS 159.191). Mendive v. Third Judicial Dist. Court, 70 Nev. 51, 253 P.2d 884 (1953)

NRS 159.192 Termination of temporary guardianship.

1. If a temporary guardianship is terminated and a petition for a general or special guardianship has not been filed:

(a) The temporary guardian shall immediately turn over all of the property of the protected person to the protected person; or

(b) If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate, the temporary guardian shall seek approval from the court to maintain possession of all or a portion of the property of the protected person.

2. If a temporary guardianship is terminated and a petition for general or special guardianship has been filed, the temporary guardian of the estate may:

(a) Continue possessing the property of the protected person; and

(b) Perform the duties of guardian for not more than 90 days after the temporary guardianship is terminated or until the court appoints another temporary, general or special guardian.

3. If the death of a protected person causes the termination of a temporary guardianship before the hearing on a general or special guardianship:

(a) The temporary guardian of the estate may:

(1) Continue possessing the property of the protected person; and

(2) Except as otherwise provided in this paragraph, perform the duties of guardian for not more than 90 days after the date of the termination of the temporary guardianship or until the court appoints a personal representative of the estate, if any. If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate and it will take longer than 90 days after the date of the termination of the temporary guardianship to receive such certification, the temporary guardian must seek approval from the court to maintain possession of all or a portion of the property of the protected person until certification is received.

(b) If no personal representative has been appointed pursuant to chapter 138 or 139 of NRS, the temporary guardian shall pay all of the final expenses and outstanding debts of the protected person to the extent possible using the assets in the possession of the temporary guardian.

(Added to NRS by 2003, 1767)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.193 Winding up affairs.

1. The guardian of the estate is entitled to retain possession of the property of the protected person already in the control of the guardian and is authorized to perform the duties of the guardian to wind up the affairs of the guardianship:

(a) Except as otherwise provided in paragraph (b), (c) or (d), for not more than 180 days or a period that is reasonable and necessary as determined by the court after the termination of the guardianship;

(b) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a personal representative of the estate of a deceased protected person;

(c) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a successor trustee of a trust of the deceased protected person and upon request by the trustee; or

(d) Upon approval of the court, for more than 180 days or 90 days, as applicable, if the guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate.

2. To wind up the affairs of the guardianship, the guardian shall:

(a) Pay all expenses of administration of the guardianship estate, including those incurred in winding up the affairs of the guardianship.

(b) Complete the performance of any contractual obligations incurred by the guardianship estate.

(c) With prior approval of the court, continue any activity that:

(1) The guardian believes is appropriate and necessary; or

(2) Was commenced before the termination of the guardianship.

(d) If the guardianship is terminated for a reason other than the death of the protected person, examine and allow and pay, or reject, all claims presented to the guardian prior to the termination of the guardianship for obligations incurred prior to the termination.

3. If the assets are transferred to a personal representative or a successor trustee as provided for in paragraphs (b) and (c) of subsection 1, the court may authorize the guardian to retain sufficient assets to pay any anticipated expenses and taxes of the guardianship estate.

(Added to NRS by 1969, 432; A 2003, 1800; 2007, 2034; 2013, 922)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.195 Disposition of claims of creditor after termination of guardianship by death of protected person.

1. If the guardianship is terminated by reason of the death of the protected person:

(a) Except as otherwise provided in NRS 159.197, the guardian shall report to the personal representative claims which are presented to the guardian, or which have been presented to the guardian but have not been paid, except those incurred in paying the expenses of administration of the guardianship estate and in winding up the affairs of the guardianship estate.

(b) Claims which have been allowed by the guardian, but not paid, shall be paid by the personal representative in the course of probate in the priority provided by law for payment of claims against a decedent, and shall have the same effect and priority as a judgment against a decedent.

(c) Claims which have been presented and not allowed or rejected shall be acted upon by the personal representative in the same manner as other claims against a decedent.

2. The personal representative shall be substituted as the party in interest for the guardian in any action commenced or which may be commenced by the creditor pursuant to NRS 159.107, including summary determination, on any claim rejected by the guardian.

(Added to NRS by 1969, 433; A 2003, 1800)

NRS 159.197 Delivery of physical possession of property of protected person; petition to modify title to such property; handling property of deceased protected person.

1. After the winding up of the affairs of the guardianship, the guardian shall deliver physical possession of all of the property of the protected person to the protected person, the personal representative or the successor guardian, as the case may be, and obtain a receipt of the delivery of the property.

2. Before the guardian delivers physical possession of the property of the protected person to the personal representative and upon sufficient evidence of prior title, the guardian may petition the court to have the title to the property modified, on a pro rata basis, to reflect the manner in which title was held before the guardianship was established so that the property is distributed to the intended beneficiary or former joint owner of the property.

3. If the guardianship has terminated by reason of the death of the protected person, the court, by order, may authorize the guardian to handle the property of the deceased protected person in the same manner as authorized by NRS 146.070 or 146.080, if the gross value of the property, less encumbrances, and less fees, costs and expenses that are approved by the court, remaining in the hands of the guardian does not exceed the amount authorized pursuant to NRS 146.070 or 146.080.

(Added to NRS by 1969, 433; A 1971, 157; 1973, 432; 1975, 1780; 1979, 479; 1983, 196; 1997, 1495; 2003, 1801, 2514)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.199 Discharge of guardian; exoneration of bond; order of discharge.

1. Upon the filing of receipts and vouchers showing compliance with the orders of the court in winding up the affairs of the guardianship, the court shall enter an order discharging the guardian and exonerating the bond of the guardian.

2. A guardian is not relieved of liability for his or her term as guardian until an order of discharge is entered and filed with the court.

(Added to NRS by 1969, 433; A 2003, 1801)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

MAINTENANCE OF RECORDS

NRS 159.19905 Time period for which certain records are required to be maintained. A guardian shall maintain all records and documents for each protected person whom the guardian has authority over for a period of not less than 7 years after the court terminates the guardianship and shall maintain all financial records related to the guardianship for a period of not less than 7 years after the date of the last financial transaction.

(Added to NRS by 2009, 1639)

ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION (UNIFORM ACT)

GENERAL PROVISIONS

NRS 159.1991 Short title. NRS 159.1991 to 159.2029, inclusive, may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(Added to NRS by 2009, 1640)

NRS 159.1993 International application of Act. A court of this State may treat a foreign country as if it were a state for the purpose of applying NRS 159.1991 to 159.2029, inclusive.

(Added to NRS by 2009, 1640)

NRS 159.1994 Communication with other courts.

1. A court of this State may communicate with a court of another state concerning a proceeding arising under NRS 159.1991 to 159.2029, inclusive. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

(Added to NRS by 2009, 1640)

NRS 159.1995 Cooperation with other courts.

1. In a guardianship proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to the procedures of that state;

(c) Order that an evaluation or assessment be made of the protected person;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d);

(f) Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the proposed protected person, the protected person or the person who is incapacitated; and

(g) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state relating to the protected person or proposed protected person, including protected health information as defined in 45 C.F.R. § 160.103.

2. If a court of another state in which a guardianship or conservatorship proceeding is pending requests assistance of the kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

(Added to NRS by 2009, 1640; A 2017, 3920)

NRS 159.1997 Taking testimony in another state.

1. In a guardianship proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship proceeding, a court of this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from a court of another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on NRS 52.235.

(Added to NRS by 2009, 1640)

JURISDICTION

NRS 159.1998 General provisions governing jurisdiction and special jurisdiction.

1. A court of this State has jurisdiction to appoint a guardian if:

(a) This State is the home state of the proposed protected person;

(b) The proposed protected person holds property within this State and a court of the home state of the proposed protected person has declined to exercise jurisdiction because this State is a more appropriate forum;

(c) The proposed protected person has a significant connection with this State and a court of the home state of the proposed protected person has declined to exercise jurisdiction because this State is a more appropriate forum; or

(d) The proposed protected person does not have a home state.

2. A court of this State lacking jurisdiction under subsection 1 has special jurisdiction to appoint a temporary guardian for a protected person:

(a) To facilitate transfer of the guardianship proceedings from another state pursuant to NRS 159.1991 to 159.2029, inclusive.

(b) In an emergency if the protected person is physically present in this State, and such temporary guardianship will be terminated at the request of a court of the home state of the protected person before or after the emergency appointment.

3. Except as otherwise provided in this section, a court that has appointed a guardian consistent with NRS 159.1991 to 159.2029, inclusive, has exclusive and continuing jurisdiction over the proceedings until it is terminated by the court pursuant to NRS 159.1905 or 159.191.

(Added to NRS by 2009, 1641)

NRS 159.1999 Declination of jurisdiction generally.

1. A court of this State having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this State declines to exercise its jurisdiction under subsection 1, it shall either dismiss or stay the proceedings. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian be filed promptly in another state.

3. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including, without limitation:

(a) Any expressed preference of the protected person;

(b) Whether abuse, neglect, exploitation, isolation or abandonment of the protected person has occurred or is likely to occur and which state could best protect the protected person from the abuse, neglect, exploitation, isolation or abandonment;

(c) The length of time the protected person was physically present in or was a legal resident of this State or another state;

(d) The distance of the protected person from the court in each state;

(e) The financial circumstances of the estate of the protected person;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian.

(Added to NRS by 2009, 1641; A 2015, 824)

NRS 159.202 Declination of jurisdiction by reason of conduct.

1. If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian because of unjustifiable conduct by the guardian or the petitioner, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the protected person or the protection of the property of the protected person or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(1) The extent to which the protected person and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(2) Whether it is a more appropriate forum than the court of any other state; and

(3) Whether the court of any other state would have jurisdiction under factual circumstance in substantial conformity with the jurisdictional standard.

2. If a court of this State determines that it acquired jurisdiction to appoint a guardian because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including, without limitation, attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.

(Added to NRS by 2009, 1642)

NRS 159.2021 Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court of this State has jurisdiction under NRS 159.1991 to 159.2029, inclusive, it may proceed with the case unless a court of another state acquires jurisdiction under provisions similar to NRS 159.1991 to 159.2029, inclusive, before the appointment.

2. If the court of this State does not have jurisdiction under NRS 159.1991 to 159.2029, inclusive, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction, the court of this State shall dismiss the petition unless the court of the other state determines that the court of this State is a more appropriate forum.

(Added to NRS by 2009, 1642)

NRS 159.2023 Transfer of jurisdiction of guardianship to another state.

1. A guardian appointed in this State may petition the court to transfer the jurisdiction of the guardianship to another state. Notice of the petition must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian.

2. The court shall issue an order provisionally granting the petition to transfer a guardianship and shall direct the guardian or other interested party to petition for guardianship in the other state if the court finds that:

(a) The protected person is physically present in, or is reasonably expected to move permanently to, the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) The plans for care and services for the protected person in the other state are reasonable and sufficient.

3. The court shall issue a final order confirming the transfer and terminating the guardianship upon a petition for termination pursuant to NRS 159.1905 or 159.191 and filing of a provisional order accepting the proceeding from the court to which the proceeding is to be transferred.

(Added to NRS by 2009, 1642)

NRS 159.2024 Transfer of jurisdiction of guardianship or conservatorship from another state to this State.

1. To transfer jurisdiction of a guardianship or conservatorship to this State, the guardian, conservator or other interested party must petition the court of this State for guardianship pursuant to NRS 159.1991 to 159.2029, inclusive, to accept guardianship in this State. The petition must include a certified copy of the other state's provisional order of transfer and proof that the protected person is physically present in, or is reasonably expected to move permanently to, this State.

2. The court shall issue a provisional order granting a petition filed under subsection 1, unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the protected person; or

(b) The guardian or petitioner is not qualified for appointment as a guardian in this State pursuant to NRS 159.0613.

3. The court shall issue a final order granting guardianship upon filing of a final order issued by the other state terminating proceedings in that state and transferring the proceedings to this State.

4. Not later than 90 days after the issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.

5. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacity of the protected person and the appointment of the guardian or conservator.

(Added to NRS by 2009, 1643; A 2015, 2368, 2510; 2017, 886)

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

NRS 159.2025 Registration of guardianship orders issued in another state. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register and the reason for registration, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State:

1. Certified copies of the order and letters of office; and

2. A copy of the guardian's driver's license, passport, permanent resident card, tribal identification card or other valid photo identification card in a sealed envelope.

(Added to NRS by 2009, 1643; A 2017, 93, 1624, 2273)

NRS 159.2027 Effect of registration of guardianship orders issued in another state.

1. Upon registration of a guardianship, the guardian may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian is not a resident of this State, subject to any conditions imposed upon nonresident parties.

2. A court of this State may grant any relief available under NRS 159.1991 to 159.2029, inclusive, and other law of this State to enforce a registered order.

(Added to NRS by 2009, 1643)

MISCELLANEOUS PROVISIONS

NRS 159.2029 Uniformity of application and construction. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Added to NRS by 2009, 1644)

TRANSACTIONS WITHOUT GUARDIANSHIP IN NEVADA

NRS 159.203 Delivering property or paying obligations to foreign guardian.

1. Where a guardian of the estate for a nonresident has not been appointed in this state, but the nonresident has a foreign guardian and a person within this state is indebted to such nonresident or such nonresident has property within this state that is capable of being removed and which is on deposit with or in the possession of a resident of this state, and such property is not subject to a mortgage, pledge, lien or other encumbrance restricting removal of the property from this state, the person in possession of the property may deliver such property or the person indebted may pay such debt, to the foreign guardian. The delivery of such property or the payment of such debt is, to the extent of such delivery or payment, a release and discharge with respect to such property or debt.

2. The court may require such foreign guardian to post a bond in the same manner as required of a resident guardian and may enter such orders as are necessary to protect secured creditors of the protected person and unsecured creditors of the protected person who are residents of this state.

(Added to NRS by 1969, 434)

NEVADA CASES.

Statute strengthens conclusion that guardians appointed in another state had no standing before Nevada courts. The conclusion that a person appointed in another jurisdiction as the guardian of the minor children of the deceased did not fall within the meaning of the statute providing that if any person entitled to letters of administration was a minor, the administration should be granted his guardian, was strengthened by ch. 51, Stats. 1887 (cf. NRS 159.203), authorizing the removal of property by nonresident guardians in certain cases, because it tended to prove that without such statutory authority, guardians appointed in another state had no standing before Nevada courts. In re Estate of Nickals, 21 Nev. 462, 34 Pac. 250 (1893)

APPOINTMENT OF GUARDIAN OF MINOR WITHOUT APPROVAL OF COURT

NRS 159.205 Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

NRS 159.215 Guardian of person of minor child of member of Armed Forces. Repealed. (See chapter 172, Statutes of Nevada 2017, at page 910.)

ACTS AGAINST OR AFFECTING PROTECTED PERSON OR PROPOSED PROTECTED PERSON

NRS 159.305 Petition alleging that person disposed of money of protected person or has evidence of interest of protected person in or to property.

1. If a guardian, interested person, protected person or proposed protected person petitions the court upon oath alleging:

(a) That a person has or is suspected to have concealed, converted to his or her own use, conveyed away or otherwise disposed of any money, good, chattel or effect of the protected person; or

(b) That the person has in his or her possession or knowledge any deed, conveyance, bond, contract or other writing which contains evidence of, or tends to

disclose the right, title or interest of the protected person or proposed protected person in or to, any real or personal property, or any claim or demand,

➥ the judge may cause the person to be cited to appear before the district court to answer, upon oath, upon the matter of the petition.

2. If the person cited does not reside in the county where letters of guardianship have been issued pursuant to NRS 159.075, the person may be cited and examined before the district court of the county where the person resides, or before the court that issued the citation. Each party to the petition may produce witnesses, and such witnesses may be examined by either party.

(Added to NRS by 2003, 1759)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 159.315 Order of court upon findings concerning allegations that person disposed of money of protected person or proposed protected person or has evidence of interest of protected person or proposed protected person in or to property; nonappearance or noncompliance by person cited; effect of order.

1. If the court finds, after examination of a person cited pursuant to NRS 159.305, that the person has committed an act:

(a) Set forth in paragraph (a) of subsection 1 of NRS 159.305, the court may order the person to return the asset or the value of the asset to the guardian of the estate; or

(b) Set forth in paragraph (b) of subsection 1 of NRS 159.305, the court may order the person to return the asset or provide information concerning the location of the asset to the guardian of the estate.

2. The court may hold a person who is cited pursuant to NRS 159.305 in contempt of court and deal with the person accordingly if the person:

(a) Refuses to appear and submit to examination or to testify regarding the matter complained of in the petition; or

(b) Fails to comply with an order of the court issued pursuant to subsection 1.

3. An order of the court pursuant to subsection 1 is prima facie evidence of the right of the proposed protected person or the estate of the protected person to the asset described in the order in any action that may be brought for the recovery thereof, and any judgment recovered therein must be double the value of the asset, and damages in addition thereof equal to the value of such property.

4. If the person who is cited pursuant to NRS 159.305 appears and, upon consideration of the petition, the court finds that the person is not liable or responsible to the proposed protected person or the estate of the protected person, the court may order:

(a) The proposed protected person or the estate of the protected person to pay the attorney's fees and costs of the respondent; or

(b) If the court finds that the petitioner unnecessarily or unreasonably filed the petition, the petitioner personally to pay the attorney's fees and costs of the respondent.

(Added to NRS by 2003, 1759; A 2017, 886)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

APPEALS

NRS 159.325 Appeals to appellate court of competent jurisdiction. [Replaced in revision by NRS 159.375.]

PROTECTED PERSONS' BILL OF RIGHTS

NRS 159.327 Short title. NRS 159.327 and 159.328 may be cited as the Protected Persons' Bill of Rights.

(Added to NRS by 2017, 2532)

NRS 159.328 Legislative declaration of protected persons' rights.

1. The Legislature hereby declares that, except as otherwise specifically provided by law, each proposed protected person has the right to have an attorney before a guardianship is imposed to ask the court for relief, and each protected person has the right to:

(a) Have an attorney at any time during a guardianship to ask the court for relief.

(b) Receive notice of all guardianship proceedings and all proceedings relating to a determination of capacity unless the court determines that the protected person lacks the capacity to comprehend such notice.

(c) Receive a copy of all documents filed in a guardianship proceeding.

(d) Have a family member, an interested party, a person of natural affection, an advocate for the protected person or a medical provider speak or raise any issues of concern on behalf of the protected person during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian.

(e) Be educated about guardianships and ask questions and express concerns and complaints about a guardian and the actions of a guardian, either orally or in writing.

(f) Participate in developing a plan for his or her care, including, without limitation, managing his or her assets and personal property and determining his or her residence and the manner in which he or she will receive services.

(g) Have due consideration given to his or her current and previously stated personal desires, preferences for health care and medical treatment and religious and moral beliefs.

(h) Remain as independent as possible, including, without limitation, to have his or her preference honored regarding his or her residence and standard of living, either as expressed or demonstrated before a determination was made relating to capacity or as currently expressed, if the preference is reasonable under the circumstances.

(i) Be granted the greatest degree of freedom possible, consistent with the reasons for a guardianship, and exercise control of all aspects of his or her life that are not delegated to a guardian specifically by a court order.

(j) Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting, marrying or entering into a domestic partnership, traveling, working and having a driver's license.

(k) Be treated with respect and dignity.

(l) Be treated fairly by his or her guardian.

(m) Maintain privacy and confidentiality in personal matters.

(n) Receive telephone calls and personal mail and have visitors, unless his or her guardian and the court determine that particular correspondence or a particular visitor will cause harm to the protected person.

(o) Receive timely, effective and appropriate health care and medical treatment that does not violate his or her rights.

(p) Have all services provided by a guardian at a reasonable rate of compensation and have a court review any requests for payment to avoid excessive or unnecessary fees or duplicative billing.

(q) Receive prudent financial management of his or her property and regular detailed reports of financial accounting, including, without limitation, reports on any investments or trusts that are held for his or her benefit and any expenditures or fees charged to his or her estate.

(r) Receive and control his or her salary, maintain a bank account and manage his or her personal money.

(s) Ask the court to:

(1) Review the management activity of a guardian if a dispute cannot be resolved.

(2) Continually review the need for a guardianship or modify or terminate a guardianship.

(3) Replace the guardian.

(4) Enter an order restoring his or her capacity at the earliest possible time.

2. The rights of a protected person set forth in subsection 1 do not abrogate any remedies provided by law. All such rights may be addressed in a guardianship proceeding or be enforced through a private right of action.

(Added to NRS by 2017, 2532)

NRS 159.329 Duties of courts. Each court shall:

1. Make the Protected Persons' Bill of Rights readily available to the public;

2. Maintain a copy of the Protected Persons' Bill of Rights in the court for reproduction and distribution to the public; and

3. Ensure that the Protected Persons' Bill of Rights is posted:

(a) In a conspicuous place, in at least 12-point type, in the court; and

(b) On the Internet website of the court.

(Added to NRS by 2017, 2533)

COMMUNICATION, VISITATION AND INTERACTION BETWEEN PROTECTED PERSONS AND RELATIVES OR PERSONS OF NATURAL AFFECTION

NRS 159.331 "Relative" defined. As used in NRS 159.331 to 159.338, inclusive, "relative" means a parent, child or sibling of a protected person.

(Added to NRS by 2017, 2546)

NRS 159.332 Guardian prohibited from restricting communication, visitation or interaction between protected person and relative or person of natural affection; exceptions.

1. A guardian shall not restrict the right of a protected person to communicate, visit or interact with a relative or person of natural affection, including, without limitation, by telephone, mail or electronic communication, unless:

(a) The protected person expresses to the guardian and at least one other independent witness who is not affiliated with or related to the guardian or the protected person that the protected person does not wish to communicate, visit or interact with the relative or person of natural affection;

(b) There is currently an investigation of the relative or person of natural affection by law enforcement or a court proceeding concerning the alleged abuse of the protected person and the guardian determines that it is in the best interests of the protected person to restrict the communication, visitation or interaction between the protected person and the relative or person of natural affection because of such an investigation or court proceeding;

(c) The restriction on the communication, visitation or interaction with the relative or person of natural affection is authorized by a court order;

(d) Subject to the provisions of subsection 2, the guardian determines that the protected person is being physically, emotionally or mentally harmed by the relative or person of natural affection; or

(e) Subject to the provisions of subsection 3, a determination is made that, as a result of the findings in a plan for the care or treatment of the protected person, visitation, communication or interaction between the protected person and the relative or person of natural affection is detrimental to the health and well-being of the protected person.

2. Except as otherwise provided in this subsection, if a guardian restricts communication, visitation or interaction between a protected person and a relative or person of natural affection pursuant to paragraph (d) of subsection 1, the guardian shall file a petition pursuant to NRS 159.333 not later than 10 days after restricting such communication, visitation or interaction. A guardian is not required to file such a petition if the relative or person of natural affection is the subject of an investigation or court proceeding pursuant to paragraph (b) of subsection 1 or a pending petition filed pursuant to NRS 159.333.

3. A guardian may consent to restricting the communication, visitation or interaction between a protected person and a relative or person of natural affection pursuant to paragraph (e) of subsection 1 if the guardian determines that such a restriction is in the best interests of the protected person. If a guardian makes such a determination, the guardian shall file a notice with the court that specifies the restriction on communication, visitation or interaction not later than 10 days after the guardian is informed of the findings in the plan for the care or treatment of the protected person. The guardian shall serve the notice on the protected person, the attorney of the protected person and any person who is the subject of the restriction on communication, visitation or interaction.

(Added to NRS by 2017, 2547)

NRS 159.333 Petition for order restricting communication, visitation or interaction between protected person and relative or person of natural affection; issuance of order; petition to modify or rescind order.

1. For good cause, a guardian may petition a court to issue an order restricting the ability of a relative or person of natural affection to communicate, visit or interact with a protected person.

2. After a petition is filed by a guardian pursuant to subsection 1, a court:

(a) May appoint a person to meet with the protected person to determine his or her wishes regarding communication, visitation or interaction with the relative or person of natural affection;

(b) Shall give notice and an opportunity to be heard to the guardian, the protected person and the relative or person of natural affection;

(c) Shall preserve the right of the protected person to be present at the hearing on the petition; and

(d) May order supervised communication, visitation or interaction between the protected person and the relative or person of natural affection before the hearing on the petition.

3. Upon a showing of good cause by a guardian, a court may issue an order restricting the communication, visitation or interaction between a protected person and a relative or person of natural affection pursuant to this section. When determining whether to issue an order, a court shall consider the following factors:

(a) Whether any protective order has been issued to protect the protected person from the relative or person of natural affection;

(b) Whether the relative or person of natural affection has been charged with abuse, neglect or financial exploitation of the protected person;

(c) Whether the protected person has expressed to the court or to the guardian and at least one other independent witness who is not affiliated with or related to the guardian or the protected person a desire to or a desire not to communicate, visit or interact with the relative or person of natural affection;

(d) If the protected person is unable to communicate, whether a properly executed living will, durable power of attorney or other written instrument contains a preference by the protected person regarding his or her communication, visitation or interaction with the relative or person of natural affection; and

(e) Any other factor deemed relevant by the court.

4. If a protected person is unable to communicate verbally, the guardian shall provide the court with documentation of any physical reactions or manifestations of agitation, distress or combative or overly emotional behavior by the protected person during or following any contact with a relative or person of natural affection or any opposition by the protected person to any communication, visitation or interaction with a relative or person of natural affection for the purpose of allowing the court to consider whether the protected person has expressed a desire not to communicate, visit or interact with the relative or person of natural affection, as set forth in paragraph (c) of subsection 3. Such documentation may include, without limitation, any nursing notes, caregiver records, medical records or testimony of witnesses.

5. A guardian, protected person, relative or person of natural affection may petition the court to modify or rescind any order issued pursuant to this section.

(Added to NRS by 2017, 2547)

NRS 159.334 Imposition of certain restrictions on communication, visitation or interaction between protected person and relative or person of natural affection before issuance of order.

1. Before issuing an order pursuant to NRS 159.333, a court shall consider imposing any restrictions on communication, visitation or interaction between a protected person and a relative or person of natural affection in the following order of preference:

(a) Placing reasonable time, manner or place restrictions on communication, visitation or interaction between the protected person and the relative or person of natural affection based on the history between the protected person and the relative or person of natural affection or the wishes of the protected person;

(b) Requiring that any communication, visitation or interaction between the protected person and the relative or person of natural affection be supervised; and

(c) Denying communication, visitation or interaction between the protected person and the relative or person of natural affection.

2. If the court determines that the relative or person of natural affection poses a threat to the protected person, the court may order supervised communication, visitation or interaction pursuant to paragraph (b) of subsection 1 before denying any communication, visitation or interaction.

(Added to NRS by 2017, 2548)

NRS 159.335 Petition for certain relief upon reasonable belief of abuse of discretion or violation of court order by guardian.

1. If any person, including, without limitation, a protected person, reasonably believes that a guardian has committed an abuse of discretion in making a determination pursuant to paragraph (b) of subsection 1 or subsection 3 of NRS 159.332 or has violated a court order issued pursuant to NRS 159.333, the person may petition the court to:

(a) Require the guardian to grant the relative or person of natural affection access to the protected person;

(b) Restrict or further restrict the access of the relative or person of natural affection to the protected person;

(c) Modify the duties of the guardian; or

(d) Remove the guardian pursuant to NRS 159.185.

2. A guardian who violates any provision of NRS 159.331 to 159.338, inclusive, is subject to removal pursuant to NRS 159.185.

(Added to NRS by 2017, 2549)

NRS 159.336 Hearing on petition for restricted communication, visitation or interaction between protected person and relative or person of natural affection or petition for relief; emergency hearing required in certain circumstances.

1. Except as otherwise provided in subsection 2, a court shall schedule a hearing on a petition filed pursuant to NRS 159.333 or 159.335 not later than 63 days after the date the petition is filed.

2. If a petition filed pursuant to NRS 159.333 or 159.335 states that the health of the protected person is in significant decline or that the death of the protected person might be imminent, the court shall issue an order for an emergency hearing and conduct the emergency hearing as soon as practicable but not later than 7 days after the date the petition is filed.

3. If a court issues an order for an emergency hearing pursuant to subsection 2, the court may order supervised communication, visitation or interaction between the protected person and the relative or person of natural affection before the hearing.

4. Notice of the hearing, a copy of the petition and a copy of any order issued pursuant to subsection 2, if applicable, must be personally served upon the protected person and any person against whom the petition is filed. Nothing in this section affects the right of the protected person to appear and be heard in the proceedings.

(Added to NRS by 2017, 2549)

NRS 159.337 Burden of proof. In a proceeding held pursuant to NRS 159.331 to 159.338, inclusive:

1. The guardian has the burden of proof if he or she:

(a) Petitions the court to restrict the ability of a relative or person of natural affection to communicate, visit or interact with a protected person pursuant to subsection 1 of NRS 159.333;

(b) Petitions the court to modify or rescind an order pursuant to subsection 5 of NRS 159.333; or

(c) Opposes a petition filed pursuant to NRS 159.335.

2. A relative or person of natural affection has the burden of proof if he or she petitions the court to modify or rescind an order pursuant to subsection 5 of NRS 159.333.

(Added to NRS by 2017, 2549)

NRS 159.338 Attorney's fees and sanctions.

1. In a proceeding held pursuant to NRS 159.331 to 159.338, inclusive, if the court finds that:

(a) A petition was filed frivolously or in bad faith, the court shall award attorney's fees to the party opposing the petition.

(b) A guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting communication, visitation or interaction between the relative or person of natural affection and the protected person, the court may:

(1) Award attorney's fees to the prevailing party; and

(2) Impose sanctions against the guardian.

2. Any attorney's fees awarded pursuant to this section must not be paid by the protected person or the estate of the protected person.

(Added to NRS by 2017, 2550)

TRUSTS

NRS 159.339 Assumption of jurisdiction by court of trust of which protected person is beneficiary.

1. If the inventory filed pursuant to NRS 159.085 includes the existence of a trust of which the protected person is currently a beneficiary who is receiving or is entitled to receive distributions, the trustee must be served with a copy of the inventory for the purpose of alerting the trustee that the court may assume jurisdiction of the trust pursuant to this section or that supervision of the trust may be transferred to the court pursuant to NRS 164.130.

2. The guardian of the protected person or attorney of the protected person may demand a copy of the trust and an accounting of the assets of the trust from the trustee. Such a demand must be served on the trustee and all parties and include notice that failure to comply with the demand may result in the court assuming jurisdiction of the trust.

3. If the trustee fails to comply with the demand made pursuant to subsection 2 within 30 days after being served with the demand, the guardian of the protected person or attorney of the protected person may petition the court to assume jurisdiction of the trust. Such a petition must be served on the trustee and all parties.

4. Not later than 30 days after being served with a petition pursuant to subsection 3, the trustee may object to the court assuming jurisdiction of the trust. If no objection is filed or if the court does not find good cause as to why it should not assume jurisdiction of the trust, the court may assume jurisdiction of the trust.

5. Not later than 30 days after the court assumes jurisdiction of the trust pursuant to this section or supervision of the trust is transferred to the court pursuant to NRS 164.130, the trustee shall file a copy of the trust and an accounting of the assets of the trust with the court.

6. The provisions of chapters 162 to 167, inclusive, of NRS apply to a trust of which a court has jurisdiction.

(Added to NRS by 2017, 1234)

NRS CROSS REFERENCES.
Administration of trusts, NRS ch. 164
Custodial trusts, NRS ch. 166A
Fiduciaries, NRS ch. 162
Power of attorney for financial matters, NRS ch. 162A
Spendthrift trusts, NRS ch. 166
Transfers to minors, NRS ch. 167
Trustees' accounting, NRS ch. 165
Trusts, NRS ch. 163

NRS 159.3395 Protected person or attorney entitled to copies of accountings for trust created by or for benefit of protected person; submission of trust to jurisdiction of court. A protected person or his or her attorney is entitled to receive copies of any accountings relating to any trusts created by or for the benefit of the protected person. A protected person may submit any trust to the jurisdiction of a court if:

1. The protected person, his or her spouse, or both the protected person and his or her spouse are grantors and sole beneficiaries of the income of the trust; or
2. The trust was created at the discretion of or with the consent of a court.

(Added to NRS by 2017, 2552)

STATE GUARDIANSHIP COMPLIANCE OFFICE

NRS 159.341 State Guardianship Compliance Office: Creation; State Guardianship Compliance Officer.

1. The State Guardianship Compliance Office is hereby created.
2. The State Guardianship Compliance Officer is:
(a) Appointed by the Supreme Court and serves at the pleasure of the Court; and
(b) Entitled to receive an annual salary set by the Supreme Court within the limits of legislative appropriations.
3. The State Guardianship Compliance Officer may hire two accountants and two investigators to provide auditing and investigative services to the district courts during the administration of guardianship proceedings pursuant to chapter 159 and 159A of NRS.
4. The State Guardianship Compliance Officer shall not act as a guardian for any protected person or protected minor.

(Added to NRS by 2017, 3901)

MISCELLANEOUS PROVISIONS

NRS 159.342 Determination as to whether guardian has already been appointed upon application by person to be designated as guardian.

1. If a guardian applies to a court to be designated as the guardian of a person, the court must determine whether a guardian has already been designated for the person by accessing the Nevada Lockbox established by the Secretary of State pursuant to NRS 225.360 in accordance with the provisions of NRS 225.380.
2. When determining whether a guardian has already been designated for the person, if the court determines that two or more different designations exist and each designation is valid, the most recent designation shall be deemed to be the controlling designation.

3. If the court determines that a guardian has already been designated for the person, the application for guardianship cannot proceed unless the court revokes the designation.

(Added to NRS by 2017, 4359)

NRS 159.343 Appointment or extension of appointment of guardian of the person for protected person or proposed protected person seeking status as special immigrant juvenile.

1. If a person includes a request that the court make the findings set forth in subsection 3 of NRS 3.2203 in a petition filed or motion made pursuant to this chapter, the court may appoint or extend the appointment of a guardian of the person for a protected person or proposed protected person seeking status as a special immigrant juvenile with the United States Citizenship and Immigration Services of the Department of Homeland Security if the protected person or proposed protected person:

(a) Is an unmarried person who is 18 years of age or older but less than 21 years of age; and

(b) Consents to the appointment or the extension of the appointment.

2. The appointment or the extension of the appointment of a guardian of the person pursuant to subsection 1 does not authorize the guardian to abrogate any rights that the protected person or proposed protected person may have pursuant to the laws of this State, including, without limitation, the right to make decisions regarding his or her medical treatment, education or residence, without the express consent of the protected person or proposed protected person.

(Added to NRS by 2017, 1148)

NRS 159.344 Payment of attorney's fees and costs incurred as result of representation by attorney in guardianship proceeding: Liability; petition for payment from guardianship estate; procedure upon filing petition.

1. Any person, including, without limitation, a guardian or proposed guardian, who retains an attorney for the purposes of representing a party in a guardianship proceeding is personally liable for any attorney's fees and costs incurred as a result of such representation.

2. Notwithstanding the provisions of subsection 1 and except as otherwise provided in subsection 5 of NRS 159.183, a person who is personally liable for attorney's fees and costs may petition the court for an order authorizing such attorney's fees and costs to be paid from the estate of the protected person in accordance with this section. Any such attorney's fees and costs must not be paid from the guardianship estate unless and until the court authorizes the payment pursuant to this section.

3. When a person who intends to petition the court for payment of attorney's fees and costs from the guardianship estate first appears in the guardianship proceeding, the person must file written notice of his or her intent to seek payment of attorney's fees and costs from the guardianship estate. The written notice:

(a) Must provide a general explanation of the compensation arrangement and how compensation will be computed;

(b) Must include the hourly billing rates of all timekeepers, including, without limitation, attorneys, law clerks and paralegals;

(c) Must provide a general explanation of the reasons why the services of the attorney are necessary to further the best interests of the protected person;

(d) Must be served by the person on all persons entitled to notice pursuant to NRS 159.034 and 159.047; and

(e) Is subject to approval by the court after a hearing.

4. If written notice was filed and approved by the court pursuant to subsection 3, a person may file with the court a petition requesting payment of attorney's fees and costs from the guardianship estate. Such a petition must include the following information:

(a) A detailed statement as to the nature and extent of the services performed by the attorney;

(b) An itemization of each task performed by the attorney, with reference to the time spent on each task in an increment to the nearest one-tenth of an hour and with no minimum billing unit in excess of one-tenth of an hour;

(c) An indication of whether any time billed, including, without limitation, any time spent traveling or waiting, benefited any clients of the attorney other than the protected person and, if so, how many other clients benefited from such time; and

(d) Any other information considered relevant to a determination of whether attorney's fees are just, reasonable and necessary.

Absent approval from all parties who have appeared in the proceeding, any supplemental requests for the payment of attorney's fees and costs cannot be augmented in open court and must be properly noticed in the same manner as the underlying petition requesting payment.

5. In determining whether attorney's fees are just, reasonable and necessary, the court may consider all the following factors:

(a) The written notice approved by the court pursuant to subsection 3.

(b) Whether the services conferred any actual benefit upon the protected person or attempted to advance the best interests of the protected person.

(c) The qualities of the attorney, including, without limitation, his or her ability, training, education, experience, professional standing and skill.

(d) The character of the work performed, including, without limitation, the difficulty, intricacy and importance of the work, the time and skill required to complete the work, the responsibility imposed and the nature of the proceedings.

(e) The work actually performed by the attorney, including, without limitation, the skill, time and attention given to the work.

(f) The result of the work, including, without limitation, whether the attorney was successful and any benefits that were derived.

(g) The usual and customary fees charged in the relevant professional communities for each task performed, regardless of who actually performed the task. The court may only award:

(1) Compensation at an attorney rate for time spent performing services that require an attorney;

(2) Compensation at a paralegal rate for time spent performing paralegal services;

(3) Compensation at a fiduciary rate for time spent performing fiduciary services; and

(4) No compensation for time spent performing secretarial or clerical services.

(h) The appropriate apportionment among multiple clients of any billed time that benefited multiple clients of the attorney.

(i) The extent to which the services were provided in a reasonable, efficient and cost-effective manner, including, without limitation, whether there was appropriate and prudent delegation of services to others.

(j) The ability of the estate of the protected person to pay, including, without limitation:

(1) The value of the estate;

(2) The nature, extent and liquidity of the assets of the estate;

(3) The disposable net income of the estate;

(4) The anticipated future needs of the protected person; and

(5) Any other foreseeable expenses.

(k) The efforts made by the person and attorney to reduce and minimize any issues.

(l) Any actions by the person or attorney that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

(m) Whether any actions taken by the person or attorney were taken for the purpose of advancing or protecting the interests of the person as opposed to the interests of the protected person.

(n) Any other factor that is relevant in determining whether attorney's fees are just, reasonable and necessary, including, without limitation, any other factor that is relevant in determining whether the person was acting in good faith and was actually pursuing the best interests of the protected person.

6. The court shall not approve compensation for an attorney for:

(a) Time spent on internal business activities of the attorney, including, without limitation, clerical or secretarial support; or

(b) Time reported as a total amount of time spent on multiple tasks, rather than an itemization of the time spent on each task.

7. Any fees paid by a third party, including, without limitation, a trust of which the estate is a beneficiary, must be disclosed to and approved by the court.

8. In addition to any payment provided to a person pursuant to this section for the services of an attorney, a person may receive payment for ordinary costs and expenses incurred in the scope of the attorney's representation.

9. If two or more parties in a guardianship proceeding file competing petitions for the appointment of a guardian or otherwise litigate any contested issue in the guardianship proceeding, only the prevailing party may petition the court for payment of attorney's fees and costs from the guardianship estate pursuant to this section. If the court determines that there is no prevailing party, the court may authorize a portion of each party's attorney's fees and costs to be paid from the guardianship estate if the court determines that such fees and costs are just, reasonable and necessary given the nature of any issues in dispute.

10. If an attorney is appointed by the court in a guardianship proceeding, he or she may petition the court for compensation for his or her services from the guardianship estate in accordance with the procedure set forth in this section.

(Added to NRS by 2017, 3898)

NRS 159.345 Imposition of penalties upon certain misconduct by guardian. If a guardian:

1. Is guilty of gross impropriety in handling the property of the protected person;

2. Makes a substantial misstatement in any report filed pursuant to NRS 159.081 or any account filed pursuant to NRS 159.177; or

3. Willfully fails to file a report required by NRS 159.081 or an account required by NRS 159.177 after receiving written notice from the court of the failure to file and a grace period of 2 months after such notification has elapsed,

the court may impose a penalty in an amount not to exceed $5,000 and order restitution of any money misappropriated from the estate of a protected person, which must be paid by the guardian and must not be paid by the estate of the protected person.

(Added to NRS by 2017, 2552)

NRS 159.346 Appropriate actions authorized upon violation by guardian of any right of protected person.

1. If a guardian violates any right of a protected person that is set forth in this chapter, a court may take any appropriate action, including, without limitation:

(a) Issuing an order that certain actions be taken or discontinued;

(b) Disallowing any fees payable to the guardian;

(c) After notice and a hearing, issuing an order compensating a protected person or the estate of a protected person for any injury, death or loss of money or property caused by the actions of the guardian or the failure of the guardian to take appropriate action;

(d) Removing the guardian pursuant to NRS 159.185; or

(e) Taking any other action that is proper under the circumstances.

2. If any action by a guardian is deemed to be deliberately harmful or fraudulent or to have been committed with malice, the court may also impose:

(a) Twice the actual damages incurred by the protected person; and

(b) Attorney's fees and costs.

(Added to NRS by 2017, 2552)

APPEALS

NRS 159.375 Appeals to appellate court of competent jurisdiction. In addition to any order from which an appeal is expressly authorized pursuant to this chapter, an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after its notice of entry from an order:

1. Granting or revoking letters of guardianship.
2. Directing or authorizing the sale or conveyance, or confirming the sale, of property of the estate of a protected person.
3. Settling an account.
4. Ordering or authorizing a guardian to act pursuant to NRS 159.113.
5. Ordering or authorizing the payment of a debt, claim, devise, guardian's fees or attorney's fees.
6. Determining ownership interests in property.
7. Granting or denying a petition to enforce the liability of a surety.
8. Granting or denying a petition for modification or termination of a guardianship.
9. Granting or denying a petition for removal of a guardian or appointment of a successor guardian.

(Added to NRS by 2003, 1769; A 2013, 1749)—(Substituted in revision for NRS 159.325)

REVISER'S NOTE.

Ch. 322, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

APPENDIX C

SELECT RULES OF PROFESSIONAL CONDUCT

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NEVADA RULES OF PROFESSIONAL CONDUCT

Rule 1.0. Terminology. As used in these Rules, the following terms shall have the meanings ascribed:

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(o) "Organization" when used in reference to "organization as client" denotes any constituent of the organization, whether inside or outside counsel, who supervises, directs, or regularly consults with the lawyer concerning the organization's legal matters unless otherwise defined in the Rule.

[Added; effective May 1, 2006; as amended; effective April 4, 2014.]

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CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[Added; effective May 1, 2006.]

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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Rule 1.3. Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

[Added; effective May 1, 2006.]

Rule 1.4. Communication.

(a) A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests for information; and

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) **Lawyer's Biographical Data Form.** Each lawyer or law firm shall have available in written form to be provided upon request of the State Bar or a client or prospective client a factual statement detailing the background, training and experience of each lawyer or law firm.

(1) The form shall be known as the "Lawyer's Biographical Data Form" and shall contain the following fields of information:

(i) Full name and business address of the lawyer.

(ii) Date and jurisdiction of initial admission to practice.

(iii) Date and jurisdiction of each subsequent admission to practice.

(iv) Name of law school and year of graduation.

(v) The areas of specialization in which the lawyer is entitled to hold himself or herself out as a specialist under the provisions of Rule 7.4.

(vi) Any and all disciplinary sanctions imposed by any jurisdiction and/or court, whether or not the lawyer is licensed to practice law in that jurisdiction and/or court. For purposes of this Rule, disciplinary sanctions include all private reprimands imposed after March 1, 2007, and any and all public discipline imposed, regardless of the date of the imposition.

(vii) If the lawyer is engaged in the private practice of law, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.

(2) Upon request, each lawyer or law firm shall provide the following additional information detailing the background, training and experience of each lawyer or law firm, including but not limited to:

(i) Names and dates of any legal articles or treatises published by the lawyer, and the name of the publication in which they were published.

(ii) A good faith estimate of the number of jury trials tried to a verdict by the lawyer to the present date, identifying the court or courts.

(iii) A good faith estimate of the number of court (bench) trials tried to a judgment by the lawyer to the present date, identifying the court or courts.

(iv) A good faith estimate of the number of administrative hearings tried to a conclusion by the lawyer, identifying the administrative agency or agencies.

(v) A good faith estimate of the number of appellate cases argued to a court of appeals or a supreme court, in which the lawyer was responsible for writing the brief or orally arguing the case, identifying the court or courts.

(vi) The professional activities of the lawyer consisting of teaching or lecturing.

(vii) The names of any volunteer or charitable organizations to which the lawyer belongs, which the lawyer desires to publish.

(viii) A description of bar activities such as elective or assigned committee positions in a recognized bar organization.

(3) A lawyer or law firm that advertises or promotes services by written communication not involving solicitation as prohibited by Rule 7.3 shall enclose with each such written communication the information described in paragraph (c)(1)(i) through (v) of this Rule.

(4) A copy of all information provided pursuant to this Rule shall be retained by the lawyer or law firm for a period of 3 years after last regular use of the information.

[Added; effective May 1, 2006; as amended; effective November 21, 2008.]

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Rule 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (d).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from committing a criminal or fraudulent act in furtherance of which the client has used or is using the lawyer's services, but the lawyer shall, where practicable, first make reasonable effort to persuade the client to take suitable action;

(3) To prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services have been or are being used, but the lawyer shall, where practicable, first make reasonable effort to persuade the client to take corrective action;

(4) To secure legal advice about the lawyer's compliance with these Rules;

(5) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) To comply with other law or a court order.

(7) To detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(d) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent a criminal act that the lawyer believes is likely to result in reasonably certain death or substantial bodily harm.

[Added; effective May 1, 2006; as amended; effective April 4, 2014.]

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

[Added; effective May 1, 2006.]

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Rule 1.14. Client With Diminished Capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

[Added; effective May 1, 2006.]

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Rule 1.16. Declining or Terminating Representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) The client has used the lawyer's services to perpetrate a crime or fraud;

(4) A client insists upon taking action that the lawyer considers repugnant or with which the lawyer has fundamental disagreement;

(5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) Other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

[Added; effective May 1, 2006.]

. . . .

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

[Added; effective May 1, 2006.]

. . . .

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

. . . .

Rule 4.2. Communication With Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

[Added; effective May 1, 2006.]

Rule 4.3. Dealing With Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

[Added; effective May 1, 2006.]

APPENDIX D

PROTECTED PERSON'S BILL OF RIGHTS

APPENDIX D

Your Guardianship

BILL OF RIGHTS

You have the right to have an attorney represent you before a guardianship is imposed to ask the court for relief.

After a guardianship is imposed, you have the right to:

1. Have an attorney at any time during a guardianship to ask the court for relief.
2. Receive notice of all guardianship proceedings and all proceedings relating to a determination of capacity unless the court determines that you lack the capacity to comprehend such notice.
3. Receive a copy of all documents filed in a guardianship proceeding.
4. Have a family member, an interested party, a person of natural affection, an advocate, or a medical provider speak or raise any issues of concern on your behalf during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian.
5. Be educated about guardianships and ask questions and express concerns and complaints about a guardian and the actions of a guardian, either orally or in writing.
6. Participate in developing a plan for your care, including, without limitation, managing your assets and personal property and determining your residence and the manner in which you will receive services.
7. Have due consideration given to your current and previously stated personal desires, preferences for health care and medical treatment, and religious and moral beliefs.
8. Remain as independent as possible, including, without limitation, to have your preference honored regarding your residence and standard of living, either as expressed or demonstrated before a determination was made relating to capacity or as currently expressed, if the preference is reasonable under the circumstances.

9. Be granted the greatest degree of freedom possible, consistent with the reasons for a guardianship, and exercise control of all aspects of your life that are not delegated to a guardian specifically by a court order.
10. Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting, marrying or entering into a domestic partnership, traveling, working and having a driver's license.
11. Be treated with respect and dignity.
12. Be treated fairly by your guardian.
13. Maintain privacy and confidentiality in personal matters.
14. Receive telephone calls and personal mail and have visitors, unless your guardian and the court determine that particular correspondence or a particular visitor will cause harm to you.
15. Receive timely, effective, and appropriate health care and medical treatment that does not violate your rights.
16. Have all services provided by a guardian at a reasonable rate of compensation and have a court review any requests for payment to avoid excessive or unnecessary fees or duplicative billing.
17. Receive prudent financial management of your property and regular detailed reports of financial accounting, including, without limitation, reports on any investments or trusts that are held for your benefit and any expenditures or fees charged to your estate.
18. Receive and control your salary, maintain a bank account, and manage your personal money.
19. Ask the court to:
    a. Review the management activity of a guardian if a dispute cannot be resolved.
    b. Continually review the need for a guardianship or modify or terminate a guardianship.
    c. Replace the guardian.
    d. Enter an order restoring his or her capacity at the earliest possible time.

APPENDIX E

SAMPLE GUARDIANSHIP FORMS

APPENDIX E

EXPP
Jim Berchtold, Esq.
Nevada Bar No. 005874
jberchtold@lacsn.org
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd
Las Vegas, NV 89104
Telephone: (702) 386-1451
Facsimile: (702) 386-1451

(Prospective) Attorneys for XXXXX,
Proposed Protected Person

In cooperation with Legal Aid Center
of Southern Nevada, Inc.

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Guardianship of the Person and Estate of: XXXXX, Adult Protected Person.	**Case No.: G-13-039426-A** **Dept No.: S**

EX PARTE PETITION FOR APPOINTMENT OF COUNSEL AND RELEASE OF RECORDS FOR PROPOSED PROTECTED PERSON

Pursuant to NRS 159.0485(2), YYYYY, in cooperation with Legal Aid Center of Southern Nevada, Inc., files this *ex parte* petition to be appointed as counsel for XXXXX, the proposed protected person herein.

NRS 159.0485 provides, in pertinent part, as follows:

1. Upon the filing of a petition for the appointment of a guardian for a proposed protected person who is an adult, the court shall appoint an attorney for the proposed protected person unless the proposed protected person wishes to retain or has already retained an attorney of his or her own choice.

2. The court shall:

   (a) If the proposed protected person resides in a county that has a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons who are adults and the program is able to accept the case, appoint an attorney who works for the organization operating the program to represent the proposed protected person. . . .

XXXXX, the proposed protected person, is entitled to representation in this guardianship proceeding. YYYYY, in cooperation with Legal Aid Center of Southern Nevada, a nonprofit organization that provides free legal assistance to adults facing or under guardianship, has agreed to represent XXXXX in this matter and will not charge XXXXX fees or costs for such representation. To the representation of XXXXX, YYYYY requests that the order appointing YYYYY as counsel authorize and direct that the proposed protected person's medical and financial records be released to YYYYY from any person or entity in possession of such records or having a relationship with the proposed protected person. YYYYY also asks that, if this case has previously been sealed by order of this Court or otherwise, the Court direct the Clerk of the Court to provide YYYYY full and complete access to the case and court file, both physical and electronic.

An Order Appointing Counsel and Directing Release of Medical and Financial Records and Information is submitted herewith for the Court's review and signature.

DATED this _____ day of _____, 2018.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: /s/ Jim Berchtold, Esq.

Jim Berchtold, Esq.
Nevada Bar No. 005874
jberchtold@lacsn.org
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd
Las Vegas, NV 89104
Telephone: (702) 386-1451
Facsimile: (702) 386-1451

(Prospective) Attorney for XXXXX, Proposed Protected Person

In cooperation with Legal Aid Center of Southern Nevada, Inc.

OAC
Jim Berchtold, Esq.
Nevada Bar No. 005874
jberchtold@lacsn.org
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd
Las Vegas, NV 89104
Telephone: (702) 386-1451
Facsimile: (702) 386-1451

Attorney for XXXXX, *Protected Person*

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Guardianship of the Person and Estate of: XXXXX, Adult Protected Person.	**Case No.: G-18-** **Dept. No.:**

ORDER APPOINTING COUNSEL AND DIRECTING
RELEASE OF MEDICAL AND FINANCIAL RECORDS AND INFORMATION

Pursuant to NRS 159.0485(1)-(2), LEGAL AID CENTER OF SOUTHERN NEVADA, INC., is hereby appointed as counsel for XXXXX, the protected person herein.

IT IS HEREBY ORDERED THAT LEGAL AID CENTER OF SOUTHERN NEVADA, INC., and each of its attorneys and employees, shall have access to and be permitted to speak confidentially with XXXXX at any public or private institution, facility, or residence.

IT IS FURTHER ORDERED THAT LEGAL AID CENTER OF SOUTHERN NEVADA, INC., and each of its attorneys and employees, shall be permitted to discuss the care, treatment, and finances pertaining to XXXXX with any individual possessing knowledge of the same, including protected health information under the provisions of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPPA").

IT IS FURTHER ORDERED THAT LEGAL AID CENTER OF SOUTHERN NEVADA, INC., shall be permitted to obtain copies of any and all documents and records

relating to XXXXX, without charge, from any guardian; any person or entity having a financial relationship with XXXXX, including but not limited to any financial institution, mortgage servicer, or landlord; any human services agency, including but not limited to Aging and Disability Services Division, Elder Protective Services; any medical professional, including but not limited to physicians, psychologists, psychiatrists, mental health clinics, or other health care providers; and any agency, facility, individual, or entity providing placement, care, treatment, or services of any kind to XXXXX, including documents and records containing confidential information or health information protected under HIPPA.

IT IS FURTHER ORDERED THAT prior to any change in the placement, residence, or address of XXXXX, XXXXX's guardian shall notice LEGAL AID CENTER OF SOUTHERN NEVADA, INC., at least ten business days prior to the anticipated change in placement or residence. In the event of an emergency change in placement or residence, the guardian shall notice LEGAL AID CENTER OF SOUTHERN NEVADA, INC. as soon as possible.

IT IS FURTHER ORDERED THAT LEGAL AID CENTER OF SOUTHERN NEVADA, INC., and each of its attorneys and employees, shall have access to any and all data, information, reports, documents, and records held by local, state, and federal governmental or law enforcement agencies, for the purpose of inspecting and/or copying such data, information, reports, documents, and records relating to XXXXX, whether public, private, or confidential, in order to provide legal representation to XXXXX relating to the guardianship and the protection of XXXXX's rights as provided by law. This includes access to data, information, reports, documents, and records that would otherwise be confidential under NRS 200.5095 and includes the disclosure of information pursuant to NRS 200.5098 and health information protected under HIPPA.

IT IS FURTHER ORDERED that, in the event this case has previously been sealed by order of this Court or otherwise, the Clerk of the Court is hereby ordered and directed to provide LEGAL AID CENTER OF SOUTHERN NEVADA, and each of its attorneys and employees, full and complete access to the case and court file, both physical and electronic.

IT IS FURTHER ORDERED that the appointment of LEGAL AID CENTER OF SOUTHERN NEVADA, INC. as counsel for XXXXX shall terminate when so ordered by this Court or upon this case being otherwise closed or dismissed or the guardianship terminated, at which time LEGAL AID CENTER OF SOUTHERN NEVADA, INC. shall be relieved of its duties as appointed counsel.

IT IS SO ORDERED.

DATED this _____ day of _____, 2017.

_____
DISTRICT COURT JUDGE

Submitted By:

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

_____

Jim Berchtold, Esq.
Nevada Bar No. 005874
jberchtold@lacsn.org
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd
Las Vegas, NV 89104
Telephone: (702) 386-1451
Facsimile: (702) 386-1451

Attorney for XXXXX, *Protected Person*

July 17, 2018

Clerk of the Court
Family Courts and Services Center
601 North Pecos Road
Las Vegas, NV 89155

Dear Clerk of the Court:

Please be advised that the Court has appointed Legal Aid Center of Southern Nevada as attorney of record for the protected person in a guardianship proceeding. A copy of the Order Appointing Counsel is enclosed for your attention. Please release the documents filed under confidential information sheet to our runner or any other employee of Legal Aid Center of Southern Nevada.

Should you have any questions, please do not hesitate to contact me.

Cordially,

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

Aaron D. MacDonald, Esq.
Attorney, Consumer Rights Project
Phone: (702) 386-1437
Email: amacdonald@lacsn.org

[DATE]

[NAME & ADDRESS OF ALL RELATIVES] ***Via: Regular Mail***

Re: In the Matter of the Guardianship of XXXXXXXXX
Case No.: XXXXXXXXXXX

Dear [Mr. or Ms. XXXXX or Sirs and Madams if multiple]:
XXXX
XXXX

I have been appointed by the court as the attorney for CLIENT, the protected person in the above-referenced guardianship case, which is currently pending in the Eighth Judicial District Court in Las Vegas, Nevada. Enclosed for your records is the court's order appointing me as CLIENT's counsel.

In the papers filed with the court, you were identified as CLIENT's relatives.

A court-ordered guardianship is a serious matter that could substantially impact all aspects of CLIENT's life. It could take away CLIENT's power to make even the most basic decisions about such things as his/her finances, living arrangements, and medical treatment. My role, as CLIENT's attorney, is to ensure that his/her rights are protected, that he/she has a voice in the court proceedings, and that his/her wishes are made known to the court. As such, I would very much like to chat with you about any thoughts (positive or negative) or concerns you might have relating to the guardianship or CLIENT's situation.

Please feel free to email me at [ATTORNEY EMAIL] or call me at [ATTORNEY PHONE]. I look forward to hearing from you.

Best regards,

LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.

[ATTORNEY], Esq.
Guardianship Advocacy Project

Enclosure

July 17, 2018

TRUSTEE NAME AND ADDRESS

Dear TRUSTEE:

Legal Aid Center of Southern Nevada has been appointed to represent PROTECTED PERSON in HIS/HER guardianship proceedings, Case No. XXXXXXX, currently pending in the Eighth Judicial District Court, Clark County, Nevada. Enclosed for your information and records is a copy of the court's order appointing Legal Aid Center as XXXXXXX's counsel.

It has come to our attention that PROTECTED PERSON may be a beneficiary of a trust or special needs trust. DESCRIBE RELEVANT CIRCUMSTANCES RELATING TO TRUST, HOW YOU FOUND OUT ABOUT IT, PREVIOUS REFUSALS TO PRODUCE TRUST DOCUMENTS, REFUSALS TO PAY, WHATEVER YOU THINK WARRANTED.

Please allow this letter to serve as our formal demand that you provide us with a copy of the trust and an accounting of the trust assets. Nevada law allows you thirty days to comply with this demand. If, within that time, you fail to comply or fail to file an appropriate objection with the court, we are then permitted to petition the court for relief.

Please be aware that failing to comply with our demand to provide a copy of the trust and a trust accounting may result in the guardianship court assuming jurisdiction over the trust pursuant to Section 164.130 of the Nevada Revised Statutes and Assembly Bill 254 sec. 3, which became effective October 1, 2017.

We look forward to receiving the requested documentation at your earliest convenience and no later than CALCULATE 30 DAYS – INSERT DATE HERE AND PUT ON YOUR CALENDAR.

Cordially,

LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.

Aaron D. MacDonald, Esq.
Attorney, Consumer Rights Project

Enclosure (as stated)

cc: MUST BE SERVED ON ALL PARTIES TO CASE

January 3, 2017

Cara M. Lary
Social Work Supervisor 1
Nevada Department of Health and Human Services
Aging and Disability Services Division, Elder Protective Services
1860 E Sahara Ave.
Las Vegas, NV 89104

Re: In the Guardianship matter of XXXXXXXX
Case No.: G-XX-XXXXXX

Dear Ms. Lary:

Our office has been appointed to represent XXXXXXXX in the above-referenced guardianship case. Enclosed please find a copy of the signed Order Appointing Counsel, which, among other things, authorizes us to obtain copies of any and all records and documents relating to XXXXXXXX, free of charge, from any human services agency, including but not limited to Aging and Disability Services Division ("ADS").

Attorney XXXXXXX, Esq., hereby requests that you provide and deliver to our office all records regarding or relating to our client, XXXXXXXX, currently in the possession, custody, or control of ADS.

If you have any questions please feel free to call me directly at 702-386-1436.

Cordially,

LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.

Amy Berlin
Amy Berlin, Legal Assistant to
Heather Goodlett, Esq.
Consumer Rights Project

HG/ab

Enclosure(s)

February 9, 2017

VIA REGULAR MAIL

Michelle Gioia
7312 Atwood Ave.
Las Vegas, NV 89129

Re: In the Matter of the Guardianship of ANNE KLEINMAN
Case No.: G-17-048593-A

Dear Michelle:

I was very sorry to learn of Anne's passing. Please accept my condolences.

I have no doubt that you have a lot on your plate right now, and I hate to add more. Unfortunately, there are a couple of things you'll need to do to wrap up the guardianship. Specifically, you'll need to file a "Petition to Terminate" and a "Final Accounting." I've enclosed a packet that contains both of those forms, some related forms you'll need, and instructions.

The guardianship statutes require that you file these documents with the court within ninety days of Anne's passing, so ideally by the beginning of April. The court will set a hearing and, if your submissions are approved, will issue an order relieving you of all liability. So it's in your best interest to get this taken care of.

If you have any questions while preparing the documents, you can call me or visit the Civil Law Self-Help Center at the Regional Justice Center downtown at 200 Lewis Avenue. The Self-Help Center staff can look over your completed forms and instruct you on how to file them with the court.

Again, I'm sorry for your loss.

Best regards,

LEGAL AID CENTER OF SOUTHERN NEVADA

Jim Berchtold, Esq.
Guardianship Advocacy Program
jberchtold@lacsn.org / (702) 386-1451

Enclosure

NOTC
[Attorney Name]
Nevada Bar No.
[Attorney email]
[Firm]
[Firm address]
Telephone: (702)
Facsimile: (702)

Attorney for XXXXX, Adult Protected Person

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the matter of the Guardianship of the Person and Estate of: XXXXX Adult Protected Person.	**Case No.:** **Dept. No.:**

XXXXX'S NOTICE OF OBJECTION TO GUARDIAN'S COUNSEL'S WRITTEN NOTICE OF INTENT TO SEEK PAYMENT OF ATTORNEY'S FEES AND COSTS

XXXXX ("Mr. XXXXX"), the protected person herein, by and through his counsel, XXXXX of XXXXX, hereby submits notice of his objection to the written notice of intent to seek payment of attorney's fees and costs from the guardianship estate filed by counsel for XXXXX ("XXXXX"), the special guardian herein, as follows:

1. NRS 159.344(3) requires that any person who intends to seek payment of attorney's fees and costs from the guardianship estate must file a written notice of such intent when that person first appears in the guardianship proceedings. The written notice of intent

> (a) Must provide a general explanation of the compensation arrangement and how compensation will be computed;
>
> (b) Must include the hourly billing rates of all timekeepers, including, without limitation, attorneys, law clerks and paralegals;
>
> (c) Must provide a general explanation of the reasons why the services of the attorney are necessary to further the best interests of the ward;
>
> (d) Must be served by the person on all persons entitled to notice pursuant to NRS 159.034 and 159.047; and

(e) Is subject to approval by the court after a hearing.[1]

No petition for attorney's fees and costs may be submitted in a guardianship case unless such written notice was filed by the person seeking fees and approved by the court.[2]

2. In this case, counsel for XXXXX filed a Petition for Appointment of Temporary Special Guardian on XXXXX. In that petition, XXXXX's counsel included a written notice of intent to seek payment of attorney's fees and costs from the guardianship estate.

3. Counsel's written notice of intent states simply that counsel's firm "bills hourly for services rendered in guardianship matters."[3] Counsel's written notice of intent fails to set forth the general compensation arrangement (existence of a fee agreement specific to this case, retainer paid or required, frequency of billings and payments, discounts offered or received, and the like) and fails to state specifically how compensation will actually be computed as required by NRS 159.344(3).

4. Counsel's written notice of intent states that XXXXX's primary counsel bills at the rate of $420.00 per hour and that other attorneys at counsel's firm bill at rates between $350.00 and $450.00 per hour. According to one recent study, the average hourly rate for attorneys in Nevada is in the mid-$300 per hour range, which is one of the highest average hourly rates of any state in the country and on par with the average rates charged in New York, California, Connecticut, and D.C.[4] When cost of living is factored into the analysis, the average hourly rate charged by attorneys in Nevada far outstrips any other state in the U.S.[5] In this case, it must be remembered that attorney's fees and costs will ultimately be requested from the protected person's estate, despite the fact that the protected person had no say or input regarding the retention of an attorney and no ability to negotiate or agree to the attorney's hourly rate.

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[1] NRS 159.344(4) ("If written notice was filed and approved by the court pursuant to subsection 3, a person may file with the court a petition requesting payment of attorney's fees and costs . . . .).

[2] *See id.*

[3] *See id.* at 9:4-5.

[4] *See* Clio, *Legal Trends Report 2017*, at 43, available at https://www.clio.com/2017-legal-trends-report/. This report was prepared by Clio, a cloud-based practice management platform for the legal industry, using actual aggregated usage data from approximately 60,000 customers collected from the Clio platform. *See id.* at 46-48.

[5] *See id.* at 44.

Were this a complex estate planning or probate case, XXXXX's counsel's hourly rate might well be justified – there is no dispute regarding counsel's education, knowledge, and experience. However, this is not a complex estate planning or probate case. This is a seemingly straight-forward guardianship case that will be largely form driven.[6] Thus, barring unforeseen circumstances, this case will simply not require a lawyer of counsel's expertise or a lawyer that bills at counsel's hourly rate, which in context is unnecessarily and disproportionately high given the case's needs.[7]

5. XXXXX's counsel's written notice of intent states that paralegals at counsel's firm bill at the rate of $250.00 to $300.00 per hour. According to a 2016 report issued by the National Association of Legal Assistants, the leading paralegal association in the U.S., "the Far West region continues to report the highest hourly billing rate [for paralegals] averaging $136.00 an hour, which includes states like California, Oregon, and Nevada."[8] Indeed, even paralegals with over twenty-five years of experience bill at a rate of only $145.00 per hour on average.[9] Counsel's stated hourly rate for paralegals is nearly double even the high-end of the average hourly rate for paralegals in Nevada and is, in fact, nearly as high as the average hourly rate for attorneys. A reasonable hourly rate for paralegal staff is between $100.00 and $150.00.

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[6] Guardianship forms are available for free at the Civil Law Self-Help Center and online at http://www.familylawselfhelpcenter.org/forms/85-guardianship-forms.

[7] The principle is straightforward: "Senior partner rates will be paid only for work that warrants the attention of a senior partner. If a senior partner spends his time reviewing documents or doing research a beginning associate could do, he will be paid at the rate of a beginning associate." *In re Continental Ill. Sec. Litig.*, 572 F. Supp. 931, 933 (N.D. Ill. 1983). Or as eloquently stated by another court:

> Nor do we approve the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates. Routine tasks if performed by senior partners in large firms, should not be billed at their usual rates. *A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.*

Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983) (emphasis added).

[8] *See* National Association of Legal Assistants, *2016 National Utilization & Compensation Survey Report*, at 3, available at https://www.nala.org/sites/default/files/files/banner/2016%20NALA%20Utilization%20Compensation%20Survey%20Report.pdf.

[9] *See id.* at 22 (Hourly Billing Rates by Total Years Legal Experience).

6. ADD A PARAGRAPH HERE IF NOTICE CONTAINS NO EXPLANATION OF WHY THE SERVICES ARE NEEDED.

7. ADD A PARAGRAPH HERE IF NOTICE WAS NOT SERVED ON ALL PARTIES.

8. NRS 159.344(3)(e) states that a written notice of intent to seek payment of attorney's fees and costs "[i]s subject to approval by the court after a hearing" and that a petition requesting payment may be filed only if such written notice was "filed and approved by the court."[10] To avoid incurring additional and unnecessary attorney's fees, Mr. XXXXX does not seek a hearing on counsel's notice of intent at this time and, instead, asks the Court to consider counsel's notice of intent in conjunction with, and at the hearing of, any petition requesting payment eventually filed in this case by XXXXX's counsel. Mr. XXXXX submits this notice of objection now to preserve his objections and place all parties on notice of the objections he intends to raise at the time of hearing.

DATED this ____ day of _____, 2018.

[FIRM]

_____

[Attorney]
Nevada Bar No.
[Firm]
[Firm address]
Telephone: (702)
Facsimile: (702)
[Attorney email]
Attorney for XXXXX, Adult Protected Person

[10] *See* NRS 159.344(4).

CERTIFICATE OF SERVICE

I hereby certify that on the 5TH day of February, 2018, I served a true and correct copy of the **MIGUEL LAUSAN-BATISTA'S NOTICE OF OBJECTION TO GUARDIAN'S COUNSEL'S WRITTEN NOTICE OF INTENT TO SEEK PAYMENT OF ATTORNEY'S FEES AND COSTS** pursuant to NRCP 5(d) and EDCR 8.05 by E-Service via the E-Filing System and pursuant to NRCP 5(b) by depositing for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Las Vegas, Nevada, addressed to the following:

/s/ _____
Legal Aid Center of Southern Nevada, Inc.