

SECOND JUDICIAL DISTRICT COURT



WASHOE COUNTY
STATE OF NEVADA

Office of Court Administration
75 Court Street, Reno, NV 89501
Phone: 775-328-3470 * FAX: 775-328-3475
Honorable Frances Doherty, Department 12

July 17, 2018

Elizabeth Brown
Clerk of the Supreme Court
201 S. Carson Street
Carson City, NV 89701

Re: First Interim Report of the Guardianship Commission, ADKT 0507, filed May 30, 2018

Dear Ms. Brown:

Please accept the following letter in support of the finalized proposed statewide guardianship rules and forms.

I have worked with elderly and disabled populations, as an advocate, judicial officer, and in other capacities for 38 years. As a judge, I have presided over the adult guardianship caseload in the Second Judicial District since 2012. During every Tuesday guardianship docket, I am impressed by the commitment and sacrifice demonstrated by many guardians to Protected Persons, guardians who are overwhelmingly family members juggling their responsibilities as caregivers, obligations to the court, and commitments to their own families and careers.

However, I have also seen instances of parties' conduct that fall below the mandates of NRS Chapter 159. Such conduct, whether the product of ignorance of duties, or outright exploitation or fraud, is to be answered by the Court with swift, corrective action, however

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CLERK OF SUPREME COURT
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well-intentioned the guardian. Thus, the need for full development of the record and party accountability is critical.

I served on the initial Commission to Study the Creation and Administration of Guardianships, led by Justice James Hardesty. Such Commission included judges, private and public guardians, private and legal aid attorneys, and other professionals committed to the dignity and protection of vulnerable persons. This array of perspectives and experiences led to robust and considered discussion regarding meaningful guardianship reform that prioritized Protected Persons' human dignity and safety while recognizing the difficult role of guardians, who may also be caregivers.

The Commission, based upon its members' research of best practices nationwide, and consideration of public comment consistently describing a challenged guardianship process, promulgated a series of recommendations designed to *reform* guardianship administration in Nevada. The initial Commission recommendations, largely codified by the legislature, as a whole represent an emphasis on basic due process and transparency towards person-centered proceedings that recognize the Protected Person as the driving priority of the guardianship. Indeed, the change from "ward" to "Protected Person" embodies so much of the changed approach to guardianship.

Guardians exercise unilateral authority over the most intimate aspects of another human being's life, and to all intents and purposes, become that individual to the outside world. Such authority is counter-balanced by requiring accountability. The 2017 legislative changes contain heightened due process considerations that recognize the nature of these proceedings are guided by statutory and constitutional requirements. The 2017 legislative reforms also recognize the movement, in Nevada and nationwide, towards a transparent system in which concerned loved ones, and the court mandated with oversight, actively manage and scrutinize this vulnerable caseload.

The Court appreciates guardianship legislative reforms represent a daunting learning curve to guardians, practitioners, and the judiciary. To that end, introduction of proposed statewide forms, which are drafted to track NRS Chapter 159's very specific requirements, benefit both guardians and the Court. In completing the proposed forms, guardians are on notice of the specific information the Court requires to properly assess the status of the guardianship estate and can anticipate and prepare for inquiries. In using the proposed forms, practitioners less familiar with recent changes to guardianship law, need not reinvent the wheel but may utilize the prescribed forms to present necessary information in a way that enhances discussion of the Protected Person's status.

The Second Judicial District and the practitioners who regularly appear before this Court, have largely incorporated the forms' contents into regular use to positive effect. Parties appearing before this Court and this author are able to have productive, enhanced conversations based on information detailed and organized in a predictable fashion to all involved. The forms present a consistent avenue to relay accountings, reports, etc., to the judicial officer, whether he or she is new to the case or has supervised the proceeding for years. It is the role of the court, based upon statutory and constitutional requirements, to scrutinize filings and expenditures by guardians and other paid professionals to ensure

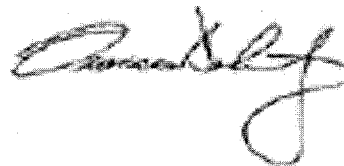
the Protected Person's best interests and quality of life are maximized. The proposed forms and rules advance such appropriate scrutiny. A small suggestion with respect to the annual report form is to include a section addressing whether the Protected Person had been involved in any incidents of abuse or neglect in the past year.

I recently had a disturbing experience at a hearing in which we were reviewing an annual report and accounting. During the hearing, it was inadvertently mentioned that the Protected Person had been the subject of abuse in a skilled care facility during the preceding year. Only by delving into the statement made in open court, did I fully appreciate the seriousness of maltreatment by the facility. My concern is that the written annual report submitted prior to the hearing did not mention the abuse, yet the matter proceeded to hearing with only a vague reference to the Protected Person having been physically abused during a showering incident in the preceding year. There was no initial report that the Ombudsman and EPS had been notified; that the corporate office terminated the facility's administrator; and, that the corporate office had taken over the administration of the facility.

I was concerned that no one thought such information was critical to the Court's annual review. Because the proposed annual report form does not seek information, perhaps including language such as the following would address the omission: "Has the protected person been abused or neglected in the past year? If so, in what manner? What if any steps were taken to address the abuse and its consequences? Was Elder Protective Services, the Ombudsman's Office or law enforcement notified? What was the outcome of the investigation?"

Thank you for the opportunity to submit these comments,

Sincerely,

A handwritten signature in black ink, appearing to read "Frances M. Doherty". The signature is fluid and cursive, with a large loop at the end of the last name.

Frances M. Doherty