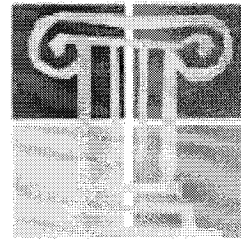


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**FILED**

**AUG 06 2018**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

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

Wednesday, August 1, 2018

*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, with several additional comments and concerns.

We are grateful to the court for allowing our office to comment at the public hearing on July 18, 2019 and appreciate the extended deadline for written comments. Washoe Legal Services is a non-profit legal aid organization with attorneys who are appointed as counsel for proposed protected persons. Our guardianship attorneys have appeared in proceedings in Washoe, Lyon, Carson, Storey, and Douglas County. As guardianship moves towards ensuring more transparency and due process with a focus on the person, these forms will be invaluable to helping families navigate the system in an effort to care for their loved ones. With that said, several of the forms may benefit from additional discussion or slight adjustments.

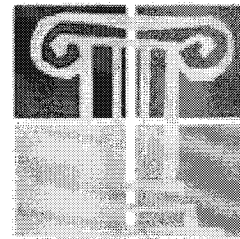
*Admonishment of Rights Form Should be Removed*

The commission has proposed a form in which a person, not the petitioner, would advise the proposed protected person of their rights during the pendency of a guardianship proceeding. The form also seeks the proposed protected person's response to the petition, preference for appointment of a guardian, and ways they desire to participate in the hearing. Once a petition has been filed, the proposed protected person has a statutory right to have an attorney. Inclusive in that right is the person's opportunity to discuss the guardianship, their response, and preferences. To analogize this form to the criminal law realm, forms such as this are completed with the defendant by their public attorney or privately retained criminal defense attorney.

It isn't appropriate to ask our nurses, social workers, or family friends to take on the role of advising proposed protected persons of their legal rights in a guardianship case. Additionally, by requiring such a form does it diminishes and impedes upon the role of protected person's

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counsel. For those reasons, this form is problematic. Additionally, this form has little utility and value in assisting the court in making judicial determinations. Counsel for the proposed protected person will provide legal advice regarding the specifics of the petition, will assist the person in responding to the petition, will advise of their right to appear in court, will advise of statutory preferences for appointment of a guardian and convey preferences to the court, and will assist in facilitating attendance in court if medically feasible and desired by the client. This form purports to duplicate the efforts of protected person's counsel with little gained. Of course, nothing prohibits providers or other persons, including petitioners, from asking these questions prior to commencing a guardianship action.

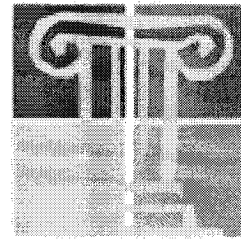
The "Admonishment of Rights" form is not required under NRS 159.0535. Under NRS 159.0535 it states, "... If the proposed protected person cannot attend by videoconference, the person who signs the certificate described in subsection 1 **or any other person the court finds qualified shall**: (a) Inform 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." First, this statute only applies if the proposed protected person cannot attend. If there is a valid medical rationale for their lack of attendance, the court then would address the subsequent requirements under NRS 159.05353. As permitted under the statute "any person the court finds qualified shall" inform the court of the proposed protected person's response to the petition and preferences. The Guardianship Commission can and should adopt the position that counsel for the proposed protected person should be the party to fulfill this requirement and should not delegate to others. Reserving this role for the attorney is consistent with the recent statutory requirement for an attorney to be appointed in guardianship cases.

#### Concerns regarding Physician's Certificate

Section 2 of the physician's certificate is duplicative of Section 1, item G, perhaps these two should be combined to avoid confusion. The factors of NRS 159.019 are already asked in Section 1, item G and based upon the physician's selection a judicial officer can easily determine if the sum of those parts rises to the level of incapacitated. Section 2 item B is reminiscent of the first checkbox in Section 1, item G which delineates between "sufficient loss" and "total loss." Perhaps a checkbox could be added in item G allowing the physician to identify that the patient can make some independent decisions. In Section C requiring the physician to state whether the person requires a guardian versus a less restrictive option legal option such as a power of attorney, the form seeks a legal determination. Section 2 could be eliminated entirely and item D merged with Section 1-G. Section 3 of the form addresses the protected person's ability to

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attend a hearing. Section items D and E should be removed. Unless there is a physical or mental health issue that would be detrimental to the patient, they have a constitutional right to appear at the hearing. Items D and E seem to offer a reason to excuse persons even if there is no medical detriment to their attendance at the hearing. Since the entire purpose of the guardianship hearing is to determine the capacity of the person, i.e., their ability to comprehend and contribute, items D and E may inadvertently perpetuate a circular logic that they should not participate in a hearing to determine their capacity because they cannot comprehend and contribute. Due to the fact that guardianship implicates so many fundamental rights, the ability to appear at a hearing should be limited to items A-C.

Under Section 5, item A, we suggest that the determination of whether the person participates in mediation should be left to the discretion of proposed protected person and their attorney.

We appreciate the opportunity to submit these comments.

Sincerely,

Jennifer M. Richards, Esq.  
*Guardianship & Senior Services Attorney*

David D. Spitzer, Esq.  
*Directing Guardianship & Senior Services Attorney*

Lisa Evans, Esq.  
*Guardianship & Senior Services Attorney*

CC:  
Sharon Coates, Executive Assistant II  
Supreme Court of Nevada