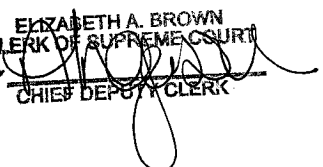


August 2, 2018

FILED

AUG 06 2018

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

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Re: *In the Matter of the Creation of A Commission to Study the Creation and Administration of Guardianships*
ADKT 507

Dear Ms. Brown:

At the public hearing held on July 18, 2018, Justice Hardesty asked that the Guardianship Commission's Forms Subcommittee (the "Subcommittee") provide a written response to the comments submitted with respect to the proposed guardianship forms. To that end, the Subcommittee provides the following response:

A. Comments of Judge Frances Doherty dated July 17, 2018

Judge Doherty suggests in her written comments that a section be added to the "Annual Report of Guardian of the Adult Person" form to address whether the protected person has been involved in any incidents of abuse or neglect in the past year. (*See* Letter to E. Brown from F. Doherty of July 17, 2018, at 3.)

Specifically, Judge Doherty proposes that the following series of questions be added to the form: "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?" (*See id.*)

The Subcommittee supports Judge Doherty's suggested change.¹ The Subcommittee also asks that, if this change is adopted, similar language be incorporated into the "Report of the Guardian of the Child" form.

¹ One Subcommittee member notes that there may be some limitation in the annual report's ability to collect the sought-after information. If the guardian is the suspect in a protective services case, by law he or she will not receive notification of the case. *See* NRS 200.5095(h). Therefore, the case's existence might not be reflected in the report, which is prepared and filed by the guardian, thereby depriving the court of that important information.

B. Comments of Jennifer Richards, et al., dated August 1, 2018

1. Admonishment of Rights for Proposed Protected Person

Ms. Richards suggests that the “Admonishment of Rights for Protected Person” form be removed in its entirety. (*See* Letter to E. Brown from J. Richards, et al., of July 26, 2018 [hereinafter “Richards Letter”], at 1-2.)

The subcommittee is of the opinion that the Admonishment of Rights form, as written, specifically tracks the requirements of NRS 159.0535(2)-(3) and should be retained and adopted.²

Ms. Richards’ suggestion that “[t]he Guardianship Commission can and should adopt the position that counsel for the proposed protected person should be the party to fulfill [the requirements of NRS 159.0535]” is beyond the purview of the Subcommittee and technically not a “forms” issue. Given the important role of counsel, Ms. Richards’ suggestion may well highlight an area to be analyzed and potentially addressed by way of court rule or statutory change.

2. Physician’s Certificate with Needs Assessment

Ms. Richards makes a number of suggestions with respect to the “Physician’s Certificate with Needs Assessment” form.

- a. Ms. Richards suggests that Section 2 be eliminated and combined in various ways with Section 1, question G, to avoid confusion and seeming duplication. (*See* Richards Letter at 2.) Question G in Section 1 was added in the last round of form revisions at the specific request of a Guardianship Commission member, and its addition may have inadvertently created some duplication of information. If necessary, rather than revising the form as Ms. Richards suggests, this duplication should be resolved by deleting question G in Section 1 in its entirety (and renumbering the remaining paragraphs in Section 1 accordingly).
- b. Ms. Richards suggests that questions D and E of Section 3 be removed entirely. (*See* Richards Letter at 2-3.) The subcommittee is of the opinion that questions D and E of Section 3, as written, specifically track the language of NRS 159.044(2)(i)(1)(IV) and should be retained and approved. However, Ms. Richards’ suggestion might point to an issue to be analyzed and potentially addressed by way of statutory change.
- c. Ms. Richards suggests that question A of Section 5 be deleted and the proposed protected person’s capacity to participate in mediation left to his or her attorney. (*See* Richards Letter at 3.) The Subcommittee is of the opinion that the form is

² However, one Subcommittee member suggests that the form would benefit from the inclusion of additional instructions to clarify when the form is to be used and who is authorized to sign the form under NRS 159.0535.

acceptable as written and that a physician offering an opinion on the topic does not preclude counsel from involving the proposed protected person in mediation as counsel deems appropriate or from challenging the physician's opinion if necessary.

3. Order Appointing Guardian(s) over Adult

The Subcommittee has no objection to Ms. Richards' suggestion that one line be added to the "Order Appointing Guardian(s) over Adult" form that incorporates the entirety of NRS 159 by reference. (*See Richards Letter at 3.*)

4. Initial Plan of Care for the Protected Adult Person

Ms. Richards suggests that the "Initial Plan of Care for the Protected Adults Person" form be revised so that potentially sensitive and private information can be filed as a confidential exhibit or attachment. (*See Richards Letter at 3.*)

The Subcommittee wholeheartedly agrees that the proposed protected person is entitled to have his or her privacy and confidentiality maintained. It is the Subcommittee's understanding that court rules are being developed by the Guardianship Commission's Rules Subcommittee to address the filing of confidential documents in guardianship cases and to require that some documents, including presumably the plan of care, be filed confidentially. Until such rules are finalized and adopted, there are currently procedures in place that permit a party to request that a document be filed confidentially.

5. Certificate of Incapacity

Ms. Richards suggests that the form currently named "Physician's Certificate with Needs Assessment" be renamed "Certificate of Incapacity." (*See Richards Letter at 4.*)

This suggestion seems more stylistic than substantive. In practice, this form is variously referred to as a "physician's certificate" or a "certificate of incapacity." The statutes referencing the certificate – specifically, NRS 159.044(2)(i), NRS 159.0523(1)(a), NRS 159.0525(1)(a), and NRS 159.0535(1)(a) – all use the phrase "certificate signed by a physician" (i.e., a "physician's certificate"), but the certificate itself does, of course, relate to the alleged incapacity of the proposed protected person.

The Subcommittee is of the opinion that the "Physician's Certificate with Needs Assessment" form is acceptable as currently named. If, however, the court believes some revision is necessary, the Subcommittee recommends renaming the form "Physician's Certificate of Incapacity with Needs Assessment."

6. Order Appointing Temporary Guardian over Adult

As a general note regarding all form orders, the Subcommittee anticipates that judges and attorneys will continue the practice of drafting their own orders to include findings tailored to the

specifics of each case. The proposed form orders are not intended to preclude that practice. Rather, recognizing the limitations of generic form orders, it is anticipated the form orders will be used as templates to build appropriate orders as needed.

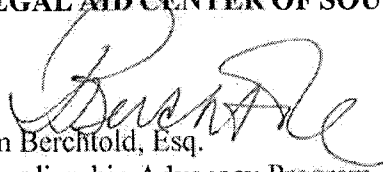
With respect to Ms. Richards' comment, the Subcommittee has no objection to the suggestion that the language in the "Order Appointing Temporary Guardian over Adult" form, which currently states that "Judge will enter specific findings if needed," be changed to require the judge to enter specific findings (in other words, that the phrase "if needed" be deleted). (See Richards Letter at 4.)

In closing, the Subcommittee is happy to provide revised versions of the forms to incorporate any of the above changes the Court elects to adopt.

Please let me know if you have any questions or require any additional information.

Best regards,

LEGAL AID CENTER OF SOUTHERN NEVADA



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