

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
CREATION AND ADMINISTRATION
OF GUARDIANSHIPS.

ADKT 0507

FILED

JAN 02 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

SUPPLEMENT TO FIRST INTERIM REPORT OF
THE GUARDIANSHIP COMMISSION

On August 2, 2017, the Supreme Court of Nevada created a permanent Guardianship Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules and processes in Nevada.

Pursuant to the First Interim Report of the Guardianship Commission filed on May 30, 2018, the Rules Subcommittee has drafted seven additional rules that were recommended for submission to the full Guardianship Commission. The Commission recommends that these additional rules for guardianship be adopted by the Supreme Court of Nevada.

The Commission requests that the Nevada Supreme Court place this matter on its administrative docket, hold such hearings as it deems necessary, and consider the proposed additional rules as set forth in Exhibit A.

Respectfully submitted,

James W. Hardesty J.
James W. Hardesty

19-00051

cc: All Supreme Court Justices
All Permanent Guardianship Commission Members
All District Court Judges
Ms. Julie Bobzien, Executive Director, Volunteer Attorneys for Rural Nevadans
Mr. James Conway, Executive Director, Washoe Legal Services
Ms. Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Ms. Anna Marie Johnson, Executive Director, Nevada Legal Services
Ms. Sheri Cane Vogel, Executive Director, Southern Nevada Senior Law Program

EXHIBIT "A"

EXHIBIT "A"

STATEWIDE GUARDIANSHIP RULES

RECOMMENDED FOR SUBMISSION TO THE NEVADA SUPREME COURT

| RULE | |
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| 7. | <p><u>Noticing</u></p> <p>Except as otherwise specially provided in these rules, in computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run must not be included.</p> <p>(a) The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a non-judicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a non-judicial day, or, when the act to be done is the filing of a paper in court or the mailing of a notice, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. The County Clerk shall memorialize and maintain in a written log all such inaccessible days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-judicial days must be excluded in the computation.</p> <p>(b) If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day.</p> <p>(c) whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, or by electronic means, three (3) days must be added to the prescribed period.</p> |
| 8. | <p><u>Attorney Fee Petitions and Payments</u></p> <p>A petition for attorney fees, as required by NRS 159.344(4), shall be served on all those entitled to notice pursuant to NRS 159.034 and NRS 159.047. Such notice may be served by first class mail.</p> |
| 9. | <p><u>Guardian ad Litem for Protected Person or Proposed Protected Person</u></p> <ol style="list-style-type: none">1. This rule applies to any Guardian Ad Litem appointed pursuant to NRS 159.0455 and NRS 159A.0455.2. The Guardian Ad Litem shall zealously advocate for the best interest 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 interest of the Protected Person or proposed Protected Person. |

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3. A Guardian Ad Litem is an officer of the court and a representative of the Protected Person or proposed Protected Person and is not a party to the case.
4. A Guardian Ad Litem may be appointed if the Protected Person or proposed Protected Person will benefit from the appointment or the services of the Guardian Ad Litem or if the appointment will be beneficial in determining the best interest of the Protected Person or proposed Protected Person.
5. The order appointing the Guardian Ad Litem shall set forth with specificity the duties of the Guardian Ad Litem and shall identify the issues that the Guardian Ad Litem is directed to address. The Guardian Ad Litem shall address only the issues identified in the appointing order absent an additional order from the court. The order appointing the Guardian Ad Litem shall authorize the Guardian Ad Litem access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents.
6. The Guardian Ad Litem shall not have authority to waive any of the Protected Person's or proposed Protected Person's due process rights or protections including, without limitation, the Protected Person's or proposed Protected Person's right to counsel, right to oppose the guardianship, right to oppose the choice of guardian, right to attend hearings and the right to object to any action or proposed action by the guardian.
7. The Guardian Ad Litem shall advocate for the best interest of Protected Person or proposed Protected Person based on admissible evidence available to the Guardian Ad Litem. The Guardian Ad Litem shall conduct independent investigation and assessment of the facts to carry out the directives of the appointing order and may submit recommendations to the Court that are based on admissible evidence. The Guardian Ad Litem shall not be a witness and shall not testify or be cross examined. The Guardian Ad Litem shall not be subject to a subpoena, except to the extent an attorney representing the Protected Person or proposed Protected Person would be subject to a subpoena.
8. A Guardian Ad Litem may be a trained volunteer from a court-approved advocate program, an attorney, or any other person that the Court finds has appropriate training and experience.
9. If the Guardian Ad Litem is a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a Guardian Ad Litem pro bono, the appointing order shall state that fact and state that the Guardian Ad Litem is not seeking compensation. If the Guardian Ad Litem is not a volunteer and will seek compensation in the case, the appointing order shall state the hourly rate to be charged by the Guardian Ad Litem and may limit the hours that may be charged by the Guardian Ad Litem, absent further order of the Court.
10. A Guardian Ad Litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344, et al., and the request for payment whether or not payment is to be from the guardianship estate or from any third party shall be subject to the requirements and analysis as set forth in NRS 159.344.
11. An attorney that serves as a Guardian Ad Litem is bound by the Nevada Supreme Court Rules of Professional Conduct to the extent those Rules are applicable.
12. A Guardian Ad Litem shall not communicate with any party represented by counsel outside the presence of the party's attorney without first obtaining the attorney's consent.

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13. The Guardian Ad Litem shall provide a copy to all parties of any written report of the Guardian Ad Litem that is filed with the Court.

14. The role of the Guardian Ad Litem is separate and distinct from the role of an attorney for a Protected Person or proposed Protected Person appointed pursuant to NRS 159.0485 and separate and distinct from an Investigator appointed pursuant to NRS 159.046. A Guardian Ad Litem for a Protected Person or proposed Protected Person shall not serve as an attorney for a Protected Person or proposed Protected, as an attorney for a Guardian(s) or as an Investigator in the same case or in a related matter.

15. The Guardian Ad Litem shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the Guardian Ad Litem shall immediately report to the court any transgressions of said rights.

16. A Guardian Ad Litem who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint a separate Guardian Ad Litem in the event that a conflict or potential conflict should arise.

Attorney for Protected Person or Proposed Protected Person

1. A Protected Person or proposed Protected Person has a right to legal representation and shall be entitled to retain counsel of their choosing to represent them in any guardianship or other related court proceeding. A Protected Person or proposed Protected Person may decline representation by an attorney or by a court appointed attorney, unless the Court finds that the Protected Person or proposed Protected Person lacks the minimum capacity to make those decisions. A Protected Person's or proposed Protected Person's waiver of right to counsel must be made knowingly and voluntarily and must be reasonable under the circumstances.

2. The attorney for a Protected Person or proposed Protected Person shall zealously advocate for the Protected Person's or proposed Protected Person's express wishes and shall protect the Due Process Rights of the Protected Person or proposed Protected Person.

3. The attorney for the Protected Person or proposed Protected Person shall maintain, as far as reasonably possible, a normal client-attorney relationship as prescribed by the Nevada Rules of Professional Conduct and shall advocate for the expressed wishes of the Protected Person or proposed Protected Person even if those express wishes are in conflict with the client's apparent best interests.

4. An attorney for a Protected Person or proposed Protected Person shall in all cases:

a. review the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings;

b. personally visit and interview the Protected Person or proposed Protected Person prior to the initial hearing to appoint a guardian, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall visit as frequently as necessary and practicable under the circumstances;

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- c. explain to the Protected Person or proposed Protected Person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship;
 - d. secure and present admissible evidence and offer argument as appropriate and warranted to further the expressed wishes of the Protected Person or proposed Protected Person and to protect his or her rights and interests; and
 - e. continue as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court;
5. The duties of the attorney for a Protected Person or proposed Protected Person include, but are not limited to:
- a. zealously advocating for the express wishes of the Protected Person or proposed Protected Person, including those wishes contained in any advance directive or estate planning document;
 - b. reviewing the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings and supporting documents;
 - c. personally meeting and interviewing the Protected Person or proposed Protected Person prior to a hearing to appoint a guardian or temporary guardian and thereafter as otherwise appropriate to foster communication, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall communicate and/or meet with the Protected Person or proposed Protected Person as frequently as necessary and practicable under the circumstances;
 - d. explaining to the protected person or proposed protected person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship;
 - e. securing and presenting available evidence and testimony and offering argument as warranted that would tend to further the expressed wishes of the Protected Person or proposed Protected Person and protect his or her rights and legal interests;
 - f. conducting independent investigation to ascertain the facts of the case;
 - g. participating in all court proceedings, mediations, settlement conferences and negotiations;
 - h. ensuring the Protected Person or proposed Protected Person is in attendance at court proceedings where attendance is appropriate, unless appearance is waived by the Court;
 - i. communicating, coordinating, and maintaining a professional relationship in so far as possible with all parties;
 - j. filing appropriate petitions, motions, briefs, and appeals on behalf of the Protected Person or proposed Protected Person;

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- k. communicating the court's decisions and consequences to the Protected Person or proposed Protected Person;
- l. ensuring there is no less restrictive alternative to guardianship or to the matter before the court;
- m. ensuring proper due process procedure is followed and relevant statutes are complied with;
- n. confirming the petition for guardianship can be supported by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in any subsequent proceedings;
- o. confirming the proposed guardian is a qualified person to serve or to continue to serve, consistent with all statutory requirements;
- p. advocating for and confirming that if a guardian is appointed, the initial order and any subsequent order is least restrictive of the personal freedom of the Protected Person in type, duration, and scope, consistent with his or her need for care and supervision;
- q. protecting the dignity of the Protected Person or proposed Protected Person;
- r. protecting the personal, confidential, financial and medical information and documents concerning the Protected Person or proposed Protected Person; and
- s. continuing as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court.
6. Upon the appointment of an attorney for the Protected Person or proposed Protected Person, the court shall enter an order authorizing the attorney access to the Protected Person or proposed Protected Person and allowing the attorney access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents.
7. An attorney for a Protected Person or proposed Protected Person shall be entitled to waive rights and admit matters within the guardianship proceeding on behalf of the Protected Person or proposed Protected Person so long as such waiver or admission is not contrary to the express wishes of the Protected Person or proposed Protected Person.
8. The role of the attorney for the Protected Person or proposed Protected Person is distinct from the role of a Guardian Ad Litem appointed under NRS 159.0455 or an investigator appointed under NRS 159.046. An attorney for a Protected Person or proposed Protected Person shall not serve as a Guardian Ad Litem in the same case or in a related matter. An attorney for a Protected Person or proposed Protected Person shall not serve as the attorney for the Guardian(s) in the same or related case.
9. If the Protected Person or proposed Protected Person is unable to express or communicate his or her wishes to the attorney or maintain, as far as reasonably possible, a normal client-attorney relationship, the attorney shall protect the legal interests and due process rights of the Protected Person or proposed Protected Person and the attorney may take reasonably necessary protective action pursuant to Rule 1.14 of the Nevada Rules of Professional Conduct, which may include requesting the appointment of a Guardian Ad Litem under NRS 159.0455 to advocate for the best interest of the Protected Person or proposed Protected Person.
10. The attorney for a Protected Person or proposed Protected Person shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the attorney shall be authorized to prosecute a petition within the

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guardianship on behalf of the Protected Person or proposed Protected Person to enforce the rights of the Protected Person or proposed Protected Person, including those rights set forth in the Protected Person's Bill of Rights. With the express prior approval of the Court, the attorney for a Protected Person or proposed Protected Person may commence a separate lawsuit on behalf of the Protected Person or proposed Protected Person to enforce the rights of the Person, including those rights set forth in the Protected Person's Bill of Rights.

11. An attorney who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint separate attorneys in the event that a conflict or potential conflict should arise.

12. An attorney for a Protected Person or proposed Protected Person shall only be entitled to receive compensation for legal services provided upon compliance with NRS 159.344 and upon receipt of a court order approving of said payment, whether or not paid from the Guardianship estate or from a third party.

Termination of guardianships for non-compliance with no further identification of whether a guardianship remains necessary, and if so, a successor guardian

A. Where the Court removes a sole guardian based upon the sole guardian's non-compliance with his or her duties and responsibilities pursuant to NRS 159.185 – 159.1857 / 159A.185 – 159A.186, suspend a sole guardian's authority under NRS 159.1855(3) / 159A.1855(3) or revokes letters of guardianship pursuant to NRS 159.085(8) / 159A.085(8), the Court shall not terminate the guardianship pursuant to NRS 159.1905 – 159.192 / 159A.1905 – 159A.192, without making specific findings as to:

1. The protected person's current health and welfare,
2. The reasons a guardianship does or does not remain necessary, including identifying the existence of less-restrictive alternatives, and,
3. Whether maintaining the guardianship would serve the Protected Person's best interests.

B. Where the location and circumstances of the protected person are unknown to the court and/or parties of record, prior to terminating a guardianship pursuant to NRS 159.1905 – 159.192 / 159A.1905 – 159A.192 based upon a guardian's non-compliance with duties and responsibilities under law, the court shall order an investigation pursuant to NRS 159.046, 159A.046 and/or NRS 159.341 to verify the status of the protected person.

C. Upon notice, the court may appoint the public guardian as temporary guardian of a protected adult during pendency of proceedings described in paragraph "A."

Guardianship Review Hearing

12.

(a) Guardianship of person. A review hearing shall be held by the court on every guardianship of person not later than three years after the initial appointment of a general or special guardian of person, and not later than three

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years after each preceding review hearing. A review hearing may occur in response to the report of person required by NRS 159.081 or at any other time as the court may order.

(b) Guardianship of estate. The court shall review every guardianship of estate annually on which a hearing of account is required by NRS 159.181.

Operating Accounts: Bonds

- (a) The Court may require blocked accounts for the guardianship in addition to or in lieu of requiring a bond of the guardian, and limiting the disbursements from the guardianship estate out of the blocked accounts. Such disbursements shall be made to a separate operating account under the name of the Guardian and on behalf of the protected person, to provide for the health, welfare and support of the protected person. This rule shall not apply to the Public Guardian, under NRS 253.010-250.
- (b) A guardian shall acquire a bond to secure performance of the guardian's duties if a court issues a finding that a bond is needed to protect the interests of the beneficiaries.
- (c) Using the inventory of a protected person which shows the value of the guardianship estate's personal property, the probable annual gross income of the estate, and the sum of the probable annual gross payments of the public benefits of the protected person, the Court may set a bond for the protection of a protected person. Except as otherwise provided by statute, every guardian of the estate must furnish a bond that includes an amount 10% in excess of the value of the estate as a reasonable amount for the cost of recovery to collect on the bond.
- (d) Posting of a bond does not protect a guardian or eliminate personal liability over and above the amount of the bond, should the bond be found to be insufficient to cover any losses to the protected person for improper actions of the guardian.
- (e) If two or more persons to serve as guardians and the Court does not waive bond, the Court may require each guardian to give a bond.
- (f) Because a corporate guardian (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual co-guardian, an individual co-guardian who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate co-guardian.
- (g) The Court may require an additional bond for the Guardian in the event real or personal property is sold from the guardianship estate.
- (h) The Court may increase, decrease, or terminate a guardian's bond at any time or upon the presentation of facts making it necessary or appropriate to adjust the amount of the bond.
- (i) Upon good cause, any party or interested person may make a request for an adjustment of the guardian's bond.
- (j) The Public Guardian's bond under NRS 253.160(2) shall be sufficient for this rule, and Court shall not require additional bonds.

