

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 GUARDIANSHIP

ADKT 0507

FILED

OCT 07 2019

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

REPORT IN SUPPORT OF THE ADOPTION  
OF A MEDIATION MANUAL

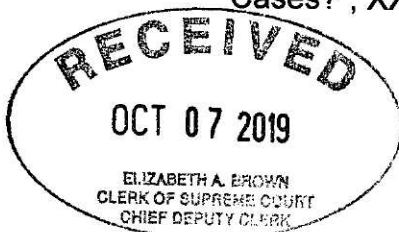
I. OVERVIEW:

The proposed mediation manual provides a framework for an additional method to resolve the difficult decision-making issues faced by elders and persons with an intellectual disability. Adult guardianship mediation is a "valuable tool in providing individual autonomy while protecting and enhancing vital relationships" <sup>1</sup> of an elder or a person with an intellectual disability. The mediation process is suitable for adult guardianship for the following reasons:

- (a) It can maintain family relationships and provide a forum for attendant emotional issues;
- (b) It can help the need and desire for maintaining privacy;
- (c) It makes available flexible and creative solutions for multiple issues;
- (d) It provides a problem-solving option to parties to avoid the effects and costs of litigation <sup>2</sup>.

The success of mediation in adult guardianships is subject to: providing the public, through appropriate publicity, information about the mediation process; creating a pool of credentialed mediators; and ensuring that the adult's rights are protected.

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1. Grant, Janice, "Guardianship Mediation", 1 Marquette Elder Advisor, Issue 2, Fall, Article 7 (1999).
  2. Radford, Mary F., "Is the Use of Mediation Appropriate in Adult Guardianship Cases?", XXXI Stetson Law Review, 611 (2002).



## II. PREPARATION OF THE MEDIATION MANUAL

In preparing the proposed mediation manual, the undersigned reviewed materials that focused on the results of the pilot projects of The Center for Social Gerontology of Ann Arbor Michigan <sup>3</sup>. These projects started in the early 1990's and introduced mediation into guardianship proceedings. I found no criticisms of these pilot projects suggesting that mediation not be used in adult guardianship.

Generally, a court can grant a general guardianship, or a limited (special) guardianship, or dismiss the case. Mediation can contribute to family harmony and avoid the diminishment of the proposed protected person. Too often a petitioner focuses on the weakness instead of the strength of the adult in order to sustain the petition.

One of the best reports/analysis of mediation in adult guardianship is the January 2012, report prepared by The Canadian Centre For Elder Law which reviewed the Alaska Court System Adult Guardianship/Conservatorship Mediation Pilot Program and called it a "model program." The proposed mediation manual before the Court is substantially based on that of Alaska.

The portion of the Canadian report that focuses on it's review of the Alaskan experience is set forth in Appendix I to this Report.

## III. SUGGESTED CHANGES TO THE TEXT

I suggest three (3) changes to the text of the manual as set forth below:

First, on page 20, (line 1 of Section II. A) it states: "The aim of this program is for the respondent or protected person to have the option to participate..." This could be changed to: "The respondent or protected person should have the option to participate..."

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3. See Generally, Radford at 615 and The Canadian Centre For Elder Law, "Elder and Guardianship Mediation", The British Columbia Law Institute, (Jan 2012).

Second, on page 35, (line 11 of VI.) refers to "Program Director". Should this be changed to "the Referring Judicial Officer"?

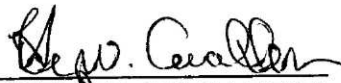
Third, on page 40, (line 1, VI.) there is a reference to: "This program strives..." This could be changed to, "A policy of mediation is to incorporate..."

#### IV. CONCLUSION

Mediation should be available in adult guardianship cases with a uniform set of policies and procedures. If the mediation manual is approved by the Court then an appropriate evaluation process should be considered.

Dated this 7 day of October, 2019.

Respectfully Submitted,



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