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

October 9, 2019

Via Electronic Submission

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

Re: Draft Nevada Court System Adult Guardianship Mediation Policies & Procedures Manual

Dear Guardianship Commission Members:

The purpose of this letter is to address the proposed Nevada Court System Adult Guardianship Mediation Policies & Procedures ("the Manual"). I regret that I will be unable to attend the October 17, 2019 hearing.

I appreciate the time and effort members of this Commission have put into making excellent changes to the Nevada guardianship laws and practices. I am so pleased that the Commission is considering mediation in guardianship cases. With regard to the proposed Manual, the provisions are well crafted. They cover many situations that may arise in this area.

By way of background, I have been an attorney since 1991 and a mediator since 2008. I have had the pleasure of mediating a number of guardianship matters. In addition, I serve as the Program Administrator for the Juvenile Dependency Mediation Program, so have experience implementing a statewide mediation program and ensuring the quality of mediator training and practice meets high standards. As an accredited CLE provider for the Nevada Board of CLE, I mainly teach beginning and advanced mediation courses for Boyd Law School, the National Judicial College and my own company. Specific to guardianship, I helped to start and mediated in the 2nd Judicial District's Pilot Guardianship

Mediation Program. Pursuant to that Program, I taught a 1-day advanced guardianship CLE when the Program launched.

I would ask the Commission to consider making the following additions/changes to the Manual. These recommendations are in order of importance rather than sequential.

Policy #2(I) (p. 3)

Referrals to mediation should be mandatory, just as in custody, dependency and Supreme Court matters. When the Juvenile Dependency Mediation Program began, mediations were wholly voluntary and the Program was rarely utilized. Once mediations were made mandatory, not only did the use of mediation increase dramatically, but regular participants began to appreciate the many benefits of mediation. A mandate for mediation will make the program more successful.

Policy #13 (p. 40)

Of primary importance are the mediator qualifications. The requirement of a 40 hour facilitative guardianship mediation training is an essential one. I also suggest an alternative. Given the rural nature of our State, it may be difficult for prospective mediators to find a 40 hour training tailored to adult guardianship issues. A potential remedy for this would be to allow those who have already taken a facilitative 40 hour mediation training to take a 12 hour advanced guardianship mediation training. This would allow seasoned mediators to participate in the program without having to take another 40 hour class. Of added benefit, this could be a way to quickly expand the mediation program. Because of the Court's statewide Juvenile Dependency Mediation Program, there are now trained and experienced mediators in many of Nevada's Judicial Districts. A 12 hour guardianship training would enable these mediators to begin mediating guardianship cases immediately.

Policy #9(E), ¶2 (p. 26)

Because capacity is at issue, having legal counsel present is vital. There should be firmer language regarding legal counsel's attendance at mediation. Rather than strongly encouraging the protected person's attorney to attend the mediation, the attorney should be mandated to attend unless excused by the mediator.

Policy #11 (p.35)

Parties should be allowed to utilize private mediators who meet the qualifications set forth in the Manual at the private mediator's rate. This would

align with the current practice in custody mediation in the 2nd and 8th Judicial Districts, where parties can choose between court and private mediators. It is worth noting that for the 2nd Judicial District's Pilot, mediators were court approved but charged their own private rates.

A few other minor suggestions:

Policy #5(C), ¶2, 1st line (p.10)

Insert the words "before or" between "CMA" and "during." My practice is to provide the CMA in advance of the mediation session so that it can be reviewed.

Policy #7(IV), ¶3, 2nd to last line (p.16)

Insert "Guardian ad litem" after "Legal counsel." If a GAL is appointed, the GAL should be invited to attend the screening session.

Policy #8(II), ¶1 (21)

The end of this paragraph discusses factors to take into account when considering whether the protected person should participate in the mediation. In my experience, an additional factor that is often discussed is the effect of a potential mediation on the protected person's health and well-being. For example, if the protected person's children are disputing who should serve as the guardian, that may be too overwhelming for a protected person to cope with in the session and other measures can be taken to ensure the protected person has a voice at the table.

¶2, last line (p.21)

Add "or GAL" after "legal counsel."

Policy #10(C) Phase 2(3)(d) (p. 31)

The word "patter" should be changed to "pattern."

Policy #12(V)(B) ¶2 (p.38)

The rule allowing one half-hour compensation for no-shows is appropriate. Mediator/staff time spent on screening for domestic abuse (Policy #10) should be compensated as well, as these screenings may take a significant amount of time.

Another addition to the Manual should be a provision addressing the ongoing quality of the mediators. One way to do that would be post-mediation evaluations that allow comments about both the process and the mediator.

Ensuring a quality process is essential, and part of that is providing an avenue for parties to give feedback.

Finally, the Manual does not set forth the full structure of the mediation program. The Manual refers to a "Program Director" (Policy #10(F), p. 33), but it is not clear whether there is a single director for the entire State or exactly how the program will be administered. Some additional provisions on the program structure will be necessary.

Thank you for considering my input.

Sincerely,

Margaret Crowley

Margaret Crowley, Esq.