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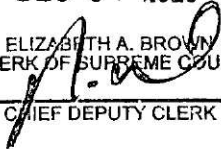
November 30, 2023

Via E-Mail: [nvscclerk@nvcourts.nv.gov](mailto:nvscclerk@nvcourts.nv.gov)

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

**FILED**

**DEC 01 2023**

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

Re: ADKT 0581 - Nevada Supreme Court's Commission to Study Best Practices For Virtual Advocacy's Report and Recommendations

Dear Ms. Brown and Honorable Justices of the Nevada Supreme Court:

Legal Aid Center of Southern Nevada, Inc., appreciates this Commission's work, the ability to participate on the Commission, and the opportunity to provide additional input. Legal Aid Center of Southern Nevada, Inc. submits this letter requesting clarification and modification on three aspects of "Exhibit C" of the Final Report and Recommendations of the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts (ADKT 0581).

**Clarification that all the Practice Areas in "Exhibit C" are Subject to the "All Case Types" Opening Section.**

In "Exhibit C," the table begins with a section, "All Case Types," and then a list of Case/Hearing Types follows. Legal Aid Center assumes the Commission's intent is that all case types in "Exhibit C" are controlled by this opening section. For example, evidentiary hearings are presumptively in-person for all the case types identified in "Exhibit C."

Yet, in regard to adult guardianship, the language in "Exhibit C" reads "All Adult Guardianship Hearings" are presumptively virtual which appears to be in conflict with the "All Case Types" section. This is easily remedied by changing the wording to, "All **Other** Adult Guardianship Hearings." In addition to this change, the Court could consider other ways to make it clear that the "All Case Types" section controls those specified hearing types for the entirety of "Exhibit C."

**Modification of Citation Hearings for Adult Guardianship and Minor Guardianship.**

**Analyzing Citations to Appear and Show Cause as Orders to Show Cause:**

Under the "All Case Types" section, "Exhibit C" creates a presumption that Orders to Show Cause are presumptively in person. This presumption recognizes that in Order to Show Cause Hearings, as in Evidentiary Hearings, a court is expected to take evidence through testimony and assess credibility; practices that are better accomplished through in person presentations. In both adult and minor guardianship, Citations Hearings are, in fact, Citations to Appear and Show Cause. Citations to Appear and Show Cause are used in only three instances in guardianship: initial petitions for appointment of guardianship, petitions to terminate or modify guardianship, and petitions to remove guardians. See NRS 159.047, NRS 159.1905, NRS 159.1855. "Exhibit C"

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appears to distinguish Orders to Show Cause and Citations to Appear and Show Cause. Citation Hearings are listed in both the Minor Guardianship Section and the Juvenile Dependency Section of "Exhibit C," and thus can be inferred to be included in the "All Adult Guardianship Hearings" section.

The Court should consider removing all reference to Citation Hearings from the individual case types and instead specifically include Citations to Appear and Show Cause under "Orders to Show Cause" within the "All Case Types" section of "Exhibit C" so that they are presumptively in-person. This could similarly be accomplished by clarifying that Orders to Show Cause as outlined in the "All Case Types" section include Citations to Appear and Show Cause through a simple footnote.

### **Adult Guardianship:**

In Adult Guardianship, the Citation to Appear and Show Cause, is not a perfunctory hearing, nor is it ministerial in nature. It is the hearing where the vast majority of guardianship cases are adjudicated. The consequence of granting guardianship over an adult is the permanent deprivation of personal liberty for that adult. In cases where there is not a significant estate, this may be the only hearing in which the court will see and interact with the adult or their proposed guardian in the case. As long as a case is in compliance, a guardianship can last for decades, until the protected adult regains capacity, passes away, or moves out of the jurisdiction. The proposed rule gives thoughtful consideration for the need to balance efficiency with the need for the most critical hearings to be presumptively in-person. In adult guardianship, the Citation to Appear and Show Cause is the most critical hearing.

Adult guardianship reforms that were enacted in 2017 (NRS 159, *et seq.*) rightfully put the proposed protected person/protected person at the center of Nevada guardianship law. The Commission to Study the Creation and Administration of Guardianships in Nevada's Courts and the Nevada Legislature recognized the grave nature of decisions made in guardianship cases. Those decisions are overwhelmingly made at the Citation Hearings.

Proposed protected persons/protected persons should be able to attend hearings, where their very liberty will be decided, with all parties present in the courtroom. Adult guardianships necessarily involve vulnerable populations who may have additional impediments, such as processing and auditory issues, that make meaningful participation difficult when done remotely. Requiring protected persons, when able, to attend the Citation to Appear and Show Cause will ensure the greatest protection of their rights and their opportunity to participate in, what is likely, the hearing that will determine whether or not a guardianship will be granted.

This is not to suggest that virtual appearance shall never be an option for these hearings. Many adults facing guardianship may not be able to attend hearings in person due to physical and other limitations that make the act of getting to the courtroom near impossible. In these cases, the proposed protected persons/protected persons would follow the procedures for deviating from presumptively in-person hearings outlined in ADKT 0581.

## **Minor Guardianship:**

The importance of Citations to Appear and Show Cause in minor guardianship have significant overlap with adult guardianship in that Citation Hearings in minor guardianship are not perfunctory, and, in fact, are the hearings where the vast majority of cases are adjudicated. While adult and minor guardianships are procedurally similar in that effect, it is important to recognize the unique needs of litigants in both contexts.

In minor guardianship, a Citation hearing is not only where the Court is likely to render a decision on the case, but it is often the only opportunity for the Court to interact with the child and the proposed guardian. The legislature recognized the importance of this when reforming the minor guardianship statute in 2017 by *requiring* that all children for whom guardianship is sought attend the Citation to Appear and Show Cause. *See* NRS 159A.0535 (“A proposed protected minor who is found in this State must attend the hearing for the appointment of a guardian.”). *Only* with a letter from a medical or psychiatric expert may a minor attend a Citation Hearing remotely under the existing statute. *See* NRS 159A.0535(2) (“A proposed protected minor found in this State who cannot attend the hearing for the appointment of a guardian as set forth in a certificate pursuant to subsection 1 may appear by telephone or by videoconference or any other means that uses audio-video communication.”). . The circumstances that necessitate the filing of a minor guardianship petition are typically strikingly similar to those circumstances that cause children to enter the child welfare system. In child welfare there are numerous hearings throughout a case, there is a Department of Family Services case-worker placing eyes on that child every month and other safeguards to protect that vulnerable child. Those same safeguards are absent in minor guardianship. Without these additional safeguards, it often falls to the court system to assess the safety of a minor child in a guardianship proceeding.

It is not uncommon for a minor to be the victim of abuse in the home of the proposed guardian. When a Citation Hearing is presumptively virtual, the ability of the child to attend court is completely within the discretion of the person they are living with. If a child is being abused by a proposed guardian, presumptively virtual hearings restrict a child’s ability to potentially disclose the abuse to the court. In a remote hearing, the child and proposed guardian would likely be using the same device and would certainly be in close proximity to one another. The importance of these hearings being presumptively in-person is vital for the Court to observe the demeanor of the child towards the proposed guardian. The Judge is in a better position to notice cues that might warrant testimony by alternative means when all parties are present in court. A child is more likely to disclose the truth in Court where the Judge, not the abuser, is the most powerful person in the room.

Beyond the clear safety concerns, the practical implication of having children presumptively appear remotely for Citation Hearings restrict their access to the courtroom. As we learned with COVID, many children are not able to process information as well remotely as they are in person. The award of guardianship to a non-parent is a significant decision in a child’s life. It affect their relationship with their parent and their other family permanently. Indeed, there are

many cases where a family has a history of child welfare involvement, yet the family has been referred to 159A guardianship in lieu of a formal dependency proceeding where, as mentioned above, many hearings may take place before permanency is achieved. Requiring all parties to attend the first, and sometimes only, hearing in this matter, creates the best opportunity to ensure that all parties -- the guardian, the parents, and the child -- understand the contours and consequences of a guardianship being granted or denied.

Sincerely,

*Debra A. Bookout*

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