

## **SYNOPSIS OF THE FINAL REPORT OF THE SUPREME COURT'S COMMISSION TO STUDY THE ADMINISTRATION OF GUARDIANSHIPS**

This is a list of the proposals of the Commission, which begin on page 110 of the report. The proposals are divided into three sections. Detailed discussion notes follow each proposal in the full report, should more information be needed. The full report can be found at <http://nvcourts.gov/AOC/Templates/documents.aspx?folderID=21887>

Section A, Court Rules, contains those suggested changes that can be accomplished through rules written and approved by the Supreme Court for the District Courts.

Section B, Legislation, contains the suggested changes that can be accomplished by the State Legislature through their process. Section C contains Policy Statements of Support from the Commission.

### **A. Court Rules**

1. Establish a permanent Commission to address issues of concern of those persons who would be subject to the guardianship statutes, rules, and procedures in Nevada.
2. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney for a Proposed Protected Person or Protected Person.
3. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney guardian ad litem for a Proposed Protected Person or Protected Person.
4. The Commission urges the Supreme Court to develop procedures or Court Rules to require mediations in all contested guardianship proceedings.
5. The Commission urges the Supreme Court to adopt Court Rules to evaluate Court supervision of guardianships including training, staffing, scheduling and caseload limits.
6. The Commission urges the Supreme Court to adopt Court Rules appropriate to designate training and caseloads for private and professional guardians.
7. The Commission urges the Supreme Court to adopt uniform statewide Court Rules and forms for the processing of guardianship proceedings in all Nevada District Courts.
8. The Commission urges the Supreme Court adopt a Court Rule to require the Court to make specific findings if the Court does not order a bond or blocked account.
9. The Commission urges the Supreme Court to adopt a Court Rule regarding NRS 159.057. The rule would require the court to create and maintain a separate case for each individual protected person regardless of whether one petition was filed for two or more protected persons.

10. The Commission urges the State Court Administrator to adopt a uniform Guardianship Information Sheet to be used by all District Courts pursuant to NRS 3.275.
11. The Commission urges the use of court-performance measures in all District Courts. Measures would include age of pending case, time to disposition, and clearance rates for guardianship cases.
12. The Commission urges the Supreme Court to adopt Court Rules for the qualifications of Non-Attorney Guardian ad Litem or Advocate.
13. The Commission urges the Supreme Court to adopt Court Rules outlining the initial plan for guardianship.
14. The Commission urges the Supreme Court to adopt a modification to the Judicial Code, as necessary, to accommodate the judge's ability to address ex parte communications that deal with the welfare of the Protected Person.

**B. Legislative Recommendations**

1. The Commission recommends NRS 159.0485 make clear that legal counsel be appointed for every Proposed Protected Person, regardless of means.
2. The Commission urges the Legislature to approve an increase in recording fees of \$1.50 pursuant to NRS 247.305, for funds to be distributed in each county to legal aid organizations to provide legal counsel for all Proposed Protected Persons and Protected Minors in guardianship proceedings. In the absence of a legal aid organization in a given judicial district, the Court may appoint counsel to provide legal services with those funds. The funds for the legal aid organization, in a given judicial district, will be set aside by the Access to Justice Commission of the Nevada Supreme Court.
3. Replace the term "ward" as defined in NRS 159.027 with the term "Proposed Protected Person" or "Proposed Protected Minor" pre-adjudication and "Protected Person" or "Protected Minor" post-adjudication. This will require amendments to multiple statutes where the term "Ward" is used.
4. Revise NRS Chapter 159 to incorporate the concept of "Incapacitated Person."
5. The Commission recommends legislation to add a Bill of Rights with the understanding the Bill of Rights would be included in the Guardianship Oath and be subject to enforceability through a private right of action.
6. The Commission recommends the following rights of a Proposed Protected Person or Protected Person that should be included in the Statutes under NRS Chapter 159.

7. The Commission recommends adding a new Chapter 159A to Nevada Revised Statutes to address guardianships specific to Proposed Protected Minors and Protected Minors.
8. The Commission recommends adding statutory language for the compensation of attorneys in guardianship cases.
9. The Commission recommends amending statutory language for notice in guardianship proceedings.
10. The Commission recommends proof of personal service by affidavit be required to show proof a Protected Person was served notice of the petition.
11. The Commission calls upon the Legislature to establish statewide standards for the guardianship investigation, administration, and accounting. The statewide model is a national best practice and the Commission urges the Legislature to look into creating a Statewide Office of Public Guardian. This would include the Commission's prior recommendation to approve the use of investigators, as necessary, and auditors or accountants, to evaluate financial records and fee requests, and other petitions/motions raising financial issues concerning the Protected Person.
12. The Commission supports the recommendations relating to the Appointment of Registered Agent by Nonresident Guardian of Adult. The Resolution provided by the Nevada Secretary of State's Office is included as Exhibit M.
13. The Commission supports legislation to have the Secretary of State's Lockbox Program expanded to include designations of guardians.
14. The Commission recommends the Legislature eliminate the collection of payment for filing fees in all guardianship cases.
15. The Commission recommends a statutory provision stating, "Upon the filing of a guardianship action, the proposed guardian may also be required to file a proposed preliminary care plan and budget. The format of said plan, and the timing of the filing, shall be specified by court rule approved by the Nevada Supreme Court.
16. The Commission recommends amendments to NRS Chapter 159 concerning the management and administration of the Protected Person's estate and personal property.

C. Policy Statements of Support

1. The Commission adopts a policy statement that every Protected Person, regardless of means, is entitled to legal counsel.
2. The Commission authorizes the chair to send a letter to county commissioners to provide financial support to legal aid organizations to make counsel available for all Protected Persons until the next legislative session.

3. The Commission adopts a policy statement that the Commission is in favor of acknowledging the purposes and tenets behind “person-centered planning” and determinations by the Court that guardianships are approved only for “least-restrictive alternatives.” Additionally, the Court should be required to make specific findings in any order appointing a guardian that includes a conclusion that no other “least-restrictive means” are available to address the needs of the Proposed Protected Person.
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5. The Commission adopts a policy statement encouraging the use of volunteers or programs in each district as appropriate and available.
6. The Commission adopts a policy statement that the Commission determined there are policies, court rules, and statutes in place to address confidentiality.
7. The Commission adopts a policy statement that every hearing involving a Protected Person should require the Protected Person’s presence, which could only be exempt upon a medical showing or some other good cause approved by the Court. Good cause findings would be incorporated into the reference of good cause approved by the Court. This applies to adult Protected Persons only.
8. The Commission adopts a policy statement that the Commission favors the use of special guardianships pursuant to NRS 159.0487, NRS 159.0795, and NRS 159.0801, in circumstances in which the capacity of the individual may not place the person in a position where a full guardianship is warranted. The Commission voted that this is consistent with the approach the Commission has taken in its recommendation to use special guardianships as a starting point, not as the exception when making these findings and determinations.
9. The Commission supports the concept, which would require greater evidence for the judge to make the determination of exactly what incapacity is and how it is documented and supported.
10. The Commission supports the application for a grant through the National Resource Center for Supported Decision Making in an effort to expand knowledge of the Supported Decision-Making Process and its agreements as alternative to a guardianship.