

# Nevada Guardianship Reform Bills

BY DEBRA BOOKOUT, ESQ.

In the early part of 2015, allegations of exploitation, neglect and other abuses in guardianship court were gaining statewide attention. The Clark County Commission held a hearing on April 21, 2015, at which concerned citizens complained of such abuses and pointed to a serious lack of oversight and accountability by the guardianship court. The commission's hearing followed on the heels of a series of articles published by the *Las Vegas Review-Journal* detailing serious flaws in a system that should have been protecting its most vulnerable citizens, but instead left them open to rampant fraud and exploitation.

On May 21, 2015, Nevada Supreme Court Justice James W. Hardesty, and the chief judges of the Eighth and Second Judicial District Courts, petitioned the Nevada Supreme Court "to consider the creation of a Commission to Study the Creation and Administration of Guardianships in Nevada's Courts."<sup>1</sup> The commission's goal was to "study and make appropriate recommendations for statewide policies and procedures concerning the creation and administration of guardianship...."

The commission held its first meeting on July 15, 2015, and its final meeting on September 16, 2016. The commission invited testimony from the public and heard from other stakeholders in Nevada as well as practitioners, courts and administrators from other states. The commission filed its final report on September 29, 2016.<sup>2</sup>

In its final report, the commission made 16 legislative recommendations, 14 court rule recommendations and nine policy support statements. Some of the most significant recommendations impacting practitioners in guardianship include:

- Appointing counsel for every proposed protected person,
- Adding a Bill of Rights to be included in the Guardianship Oath, subject to enforcement through a private right of action,
- Adding enhanced procedures governing the placement of a protected person,

- Outlining procedures for compensation of attorneys,
- Enhancing notice procedures in all aspects of guardianship, and
- Requiring a guardian to file a preliminary care plan and budget.

During this current legislative session, several proposed bills directly address the commission's recommendations. The following summaries of these bills are likely to have the most impact on guardianship practitioners.





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## Appointment of Counsel to the Protected Person in Guardianship Proceedings

The commission strongly believed that having counsel representing a protected person at the outset of a guardianship was critically important in order to address many of the concerns regarding unscrupulous billing by guardians, isolation, lack of notice and financial exploitation.

SB433 amends NRS 159.0485 to require that, upon the filing of the petition, the court shall appoint

counsel for the protected person, unless the he or she wishes to retain or already has retained counsel.

In a county that has legal service organizations providing representation to protected persons, the court shall appoint the organization to represent the protected person. In a county without such a legal service organization, the court shall appoint counsel to the protected person, and the protected person shall pay reasonable compensation where their estate can afford to do so.

## Attorney Compensation

One of the most repeated complaints heard during the commission hearings concerned the financial exploitation of protected persons. Many families testified that their loved ones had lost their life savings as a result of the outrageous fees paid to guardians and their attorneys from the estates of protected persons. AB130 seeks to address some of those concerns.

AB130 sets out guidelines for the guardianship court in determining compensation for attorneys. This bill provides that any person who retains counsel to represent a party in a guardianship proceeding is personally liable for any attorney's fees incurred. Any person liable for such fees may petition the court for payment out of the estate of the protected person. Any person seeking to have the estate pay the fees must first file a written notice of the intent to seek payment from the estate. The notice must include a general description of the compensation arrangement and the hourly billing rate, and it must be served on all persons entitled to notice.

## New Notice Requirements

During its tenure, the commission identified several discrepancies in NRS 159 with regard to its notice provisions.

AB130 amends NRS 159.047 to require that a copy of the petition must accompany the citation, and it must be served on any proposed protected person who is 14 years of age or older,

“regardless of whether the [protected person] is considered to have the capacity to understand or appreciate the contents of the petition,” and the person serving the citation must submit an affidavit stating that he or she has served the proposed protected person.

Additionally, AB130 requires that guardians serve a copy of the inventory on protected persons, their attorneys and any guardian ad litem (NRS 159.085). A guardian's report must also be served upon the protected person (NRS 159.081).

The bill also amends NRS 159.1515 to require guardians to give notice, with some exceptions, prior to selling any of a protected person's personal property worth less than \$100.

SB433 requires that notice shall be provided to all interested persons before a protected person:

1. Is admitted to a secure residential long-term care facility;
2. Changes residence, including moving from one secure residential long-term care facility to another;
3. Will reside at a location other than his or her residence for more than three days; or
4. Will be admitted to a medical facility for acute or emergency care.

## Bill of Rights

The creation of a Bill of Rights for protected persons in guardianship was a hotly debated topic during the commission meetings. The commission ultimately recommended that a Bill of Rights be added to NRS 159, with the understanding that it would be included in the Guardianship Oath and be subject to a private right of action.

There are 19 enumerated rights under SB360. These rights include:

- The right to an attorney,
- The right to receive copies of documents,
- The right to participate in developing a plan for care,

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- The right to have consideration given to stated desires and preferences,
- The right to exercise control of all aspects of life not delegated to a guardian by court order, and
- The right to maintain privacy and confidentiality in personal matters.

SB360 requires that the Bill of Rights be made readily available to the public, be maintained in court for reproduction and distribution to the public, be posted in a conspicuous place in the courtroom and be available on the court's website.

## Trust Accountings

Another topic of discussion during the commission meetings centered around the guardianship court's jurisdiction of trusts of which the protected person is a beneficiary. The commission determined that, while the assets of the trust might not be part of the guardianship estate, there should be some accountability to the guardianship court when those trust assets are used for the benefit and care of a protected person in a guardianship.

AB254 proposes to amend NRS 159.085 to require that the inventory of a protected person's property shall include any trust of which the protected person is an income beneficiary. The bill would require that, when the inventory includes a trust of which the protected person is an income beneficiary, the trustee must be served a copy of the inventory for the purpose of alerting the trustee that the court may assume jurisdiction of the trust or that supervision of the trust may be transferred pursuant to NRS 164.130. AB254 would give a protected person the right to demand that a copy of the trust and an accounting of the trust assets be filed with the court. If no objection to such a demand is filed, the court may assume jurisdiction of the trust.

## Penalties for Guardian Misconduct

SB433 would allow the court to impose penalties when a guardian:

1. Is guilty of a gross impropriety in the handling of the estate,
2. Makes a substantial misstatement in the report of guardian or the accounting, or
3. Willfully fails to file the report of guardian or accounting.

The court may impose a penalty in an amount not to exceed \$5,000 and order restitution of any misappropriated property of the estate.

SB433 also provides that should a guardian violate any right of a protected person, a court may:

1. Issue an order that certain actions shall be taken or discontinued;
2. Disallow fees payable to the guardian;
3. After notice and hearing, issue an order compensating the protected person or the estate of the protected person for any injury, loss or death caused by the guardian's actions;
4. Remove the guardian; or
5. Take any other appropriate action.

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The court may impose twice the actual damages and attorney's fees if any action by a guardian is deemed deliberately harmful, fraudulent or committed with malice.

Currently in Clark County there are approximately 2,850 active adult guardianship cases with an average of 69.3 petitions for guardianship filed each month. In Washoe County, there are currently 876 active adult guardianship cases with an average of 11.6 cases initiated each month. People aged 65 and older represented 14.5 percent of the population in 2014, and that number is expected to increase to 21.7 percent by 2040.<sup>3</sup> Guardianships for

vulnerable adults are not going away. These proposed statutory changes will serve to protect our most vulnerable citizens and to hold guardians, attorneys and the courts accountable in guardianship proceedings. **NL**

1. See ADKT 0507.
2. The full Report and Appendices can be found at ADKT 0507, No. 16-30338 and 16-30339.
3. [https://aoa.acl.gov/Aging\\_Statistics/Index.aspx](https://aoa.acl.gov/Aging_Statistics/Index.aspx).



**DEBRA BOOKOUT** joined the staff of Legal Aid Center of Southern Nevada in the Consumer Rights Project in October of 2013, after more than nine years with the Federal Public Defender's Office. She currently handles foreclosure, general consumer and guardianship cases. Bookout earned her bachelor's degree from the University of Houston in 1986 and received her J.D. from the University of Texas School of Law in 1992.