

PRESENTATION ON GUARDIANSHIP
THE SILVER HAired LEGISLATIVE FORUM
Sally Crawford Ramm, Esq.
Division for Aging Services, Department of Human Resources

In my opinion, Nevada's laws affecting adult guardianships, while not as protective of the rights of potential wards as some states' laws, are not embarrassing. One of the problems we have, however, is that the laws are not uniformly enforced throughout the state.

Nowhere in the state at this time is the law requiring an annual accounting of the ward's assets to the court being enforced. There is no follow-up on the part of the court to make sure the accountings are done. While some guardians do an annual accounting, they do it voluntarily or because someone has brought a case to court questioning them. Other guardians do not do the accountings, either because they do not remember, do not know how, or do not want anyone to know how they are spending the ward's money.

In Clark County, a Guardianship Commissioner adjudicates guardianships, which is the best way to do them. In Washoe County, the family court judges handle guardianships, which works very well with the current judges, as they have a good understanding of the impact of guardianship on the potential wards. In the rural counties, general jurisdiction judges do guardianships, and not all of them have a good understanding of the effect of their rulings. There was a case in one of the rural counties in the last year, where an elderly woman was being cared for by her daughter. The daughter and her older children moved into the elderly woman's house, and had been there for over a year, taking good care of her mother, when the other siblings decided that the caregiver daughter might get more of Mom's assets than they would. They went to court in the county, and two brothers were named co-guardians of the elderly woman. One lived out of state and the other in Nevada, in a different county. The elderly woman was not notified of the action. The caregiver daughter had no representation, and did not understand what was happening. The judge evidently did not ask all of the important questions, like why is the ward not here, and who is taking care of her, and why is the caregiver not here?

When the daughter called me, she said that she was in a very awkward position, because she could not use her mother's assets to pay for her mother's prescriptions, and she could not pay for them herself. She now has to go to her brothers, who have never cared for Mom, for everything Mom needs. If they wanted to, the brothers could put Mom in a nursing facility and sell her house.

I have some specific guardianship issues about which I am very concerned. The first is that every potential ward should be represented by an attorney at every step of the guardianship proceeding. Other states do this. Nevada law requires

EXHIBIT <u>C</u> Silver	Document consists of <u>3</u> pages
<input type="checkbox"/> Entire document provided.	
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).	
Meeting Date <u>4/3/04</u>	

that anyone whose parental rights are being terminated by afforded an attorney. Yet, in a guardianship case, where all of an individual's rights are being terminated, Nevada law does not require that they be represented. The law does require that they be in court, but that can be set aside if the person is unable to come to court. Sometimes, being unable to come to court simply means that nobody told the potential ward about the hearing. I know that providing attorneys for every potential ward would be expensive, but it is just as important as making sure that other people who are potentially losing rights, like criminals, have attorneys.

The next issue about which I am concerned is the regulation of private fiduciaries. These are people who act as guardians of wards who have no family willing to be guardian, and who can afford to pay the fiduciary to act in that capacity. Right now, there are only a few people doing this work in Nevada, but it is a growing field and it will be only a short time before corporations from out of state will realize that it can be very profitable. As it stands, anyone or any company can call themselves a private guardian, with no background checks and no regulation. This is potentially very dangerous for vulnerable people of all ages. It is time for Nevada to adopt regulations for these private fiduciaries.

There are other problems with guardianships in Nevada. Even though the public guardians are county agencies, for some reason the district attorneys' offices will not represent them. This means that, in Washoe County for instance, the public guardian's office must go to private attorneys and pay them out of the ward's assets, if there are any, or ask the attorney to do the work for free. This often delays the guardianship by six weeks or more, while the incapacitated person is potentially in harm's way.

To my knowledge, I believe that only six counties in Nevada have dedicated public guardians—Clark, Washoe, Carson City, Douglas, Lyon and Elko. In some counties, like Nye, there is nobody who will act as public guardian. In other counties, the county commissioners appoint the public administrator as public guardian. However, since most of the cases that need public guardians are people with little or no assets, the public administrators are hesitant to handle them. Guardianship takes a lot of time and creates some liability on the part of the guardian. Public administrators' compensation in the rural counties comes from fees generated by the estates they handle. Also, all guardianships must go to court, so the guardian needs a lawyer. It is hard to find a lawyer in the rural counties to take on this responsibility. Unfortunately, this leaves many of our at-risk seniors in rural counties without the help they need.

How do we address these issues? Legislatively, we can address the due process issue of having every potential ward represented by an attorney at every step of the guardianship proceeding. Costs money. We can also ask the legislature to pass a law requiring the regulation of private fiduciaries. This is not as expensive. Providing oversight on the guardianships is now the responsibility

of the district courts, and they are not doing it. Providing public guardianship services is also the responsibility of the counties, and over half of them are not doing it. It may be time to discuss the possibility of a state guardianship office with authority to provide oversight and services when needed. This is very big money, and the counties will probably not like to have the state come into what has been their purview. Finally, we must find a way to train all of our district court judges on the issues and consequences of guardianship for those who become wards.

Guardianship is a very complicated subject with incredible consequences to the person who becomes a ward. There are also terrible consequences for the person who needs a guardianship and cannot get one. And there are tragic consequences when the guardian mistreats the ward. Any one of us at any time could need a guardian. Unfortunately, it is true that any one of us might find ourselves being a ward, without ever knowing what was happening.

We must pay attention, personally and as a state, to the issue of guardianship.

There are a few other issues that may come up during the next session. Nevada's statutes allow for powers of attorney in a few different chapters of NRS. We need to take a look at those chapters and possibly try to consolidate the laws. One of the concerns is whether or not a power of attorney signed in another state is valid in Nevada. Also, the issue of sending some of our dementia patients to facilities out of state will come up. Some folks are working on some changes to the public guardian statute.

If you would like, I will be glad to come back periodically and update you on what is happening, as far as I know, with legislation that could affect your constituents.

April, 2004