

PRESIDENT'S MESSAGE

Who Guards the Guardians?

BY JULIE CAVANAUGH-BILL, PRESIDENT,
STATE BAR OF NEVADA



A few years ago, Nevada made national news for its guardianship practices – and not in a good way. Scandalous stories featuring horrific cases of guardianship abuse circulated through the country – including on John Oliver’s “Last Week Tonight” satirical news program.

Thankfully those stories spurred action, and changes to Nevada law started in 2017 and continued through the most recent legislative session. In the past six years, we’ve gone from an example of the worst possible scenario in guardianship to a national leader in how to best handle this important responsibility.

And these responsibilities are huge. For example, in one of my first guardianships, my client had been flown to Elko and “dropped off” at a family friend’s house through an “agreed upon” guardianship to avoid her being interviewed when she reported her parent’s drug use to school officials. The family “friend” had small children, and my client quickly became the family’s babysitter and unpaid maid, working as soon as she was old enough but required to pay the family’s

expenses (such as food and toilet paper) to earn her keep.

When she excelled in school despite her situation, she became eligible to graduate high school early and secretly applied for and was awarded scholarships to begin college with paid housing and tuition. The family she had been placed with told her no (she was still a minor) and planned to move out-of-state to keep her from leaving their control. A high school friend and the friend’s family heard what was going on and brought the case to our law office. Through the guardianship process, we were able to successfully transfer the guardianship to this non-relative family, despite the objections from her parent and the original guardians. (Emancipation was considered but not likely given the specific facts of the case.) This amazing person not only went on to graduate early from high school, but then graduated from college, attended one of the best graduate programs in the country, and now inspires other individuals, young and old, about what can happen when you persevere and have access to justice.

Since that time, our firm has used guardianships to protect countless children with the oversight and wisdom of district court judges, such as our guest contributor this month. From newborn infants to teenager groups of siblings – the standard of clear and convincing evidence is high – but

the rewards are immeasurable as you find yourself using your legal skills to literally “save lives.” For adult guardianships, the impacts of your legal assistance are equally as rewarding – oftentimes with your voice being the one the court needs to hear to articulate the client’s situation and position.

A recent article published by *Bloomberg Law* states that in 2017, Nevada “... began requiring independent lawyers be assigned to represent adults whenever a petition for guardianship is filed. This legal help comes at no cost, much like in criminal cases where indigent defendants are guaranteed free counsel.”¹

The article also notes that in other states, their laws “... typically say adults under guardianship have a right to counsel, but Nevada goes significantly further. It requires that representation come before a petition is approved, that the lawyer’s sole role is to represent the Protected Person’s interests, and that the legal guidance is free. Court fees pay the costs.”

This issue of *Nevada Lawyer* explores many new considerations when working on guardianships, from legislative changes to best practices – including alternatives to guardianships, which helps this circumstance become a last resort.

Wherever you are located, consider taking a pro bono case representing a child or an adult in a guardianship case through your district court appointment process or through one of our stellar legal service organizations. You can find a list of organizations at <https://nvbar.org/access-to-justice/take-a-pro-bono-case/>.

Thank you for taking the time to read this important issue and, as always, if you have questions or ideas about any issue germane to our work as a state bar, I invite you to send those questions or ideas to me at president@nvbar.org.

ENDNOTE:

1. <https://news.bloomberglaw.com/us-law-week/guardians-abuses-persist-as-one-states-easy-fix-goes-unmatched>

SPOTLIGHT ON THE RURALS:

Guardianship in the Rurals

BY NANCY PORTER, FORMER DISTRICT COURT JUDGE FOR THE FOURTH JUDICIAL DISTRICT AND CURRENT PARTNER AT GOICOECHEA, DIGRAZIA, COYLE & STANTON, LTD., IN ELKO

Guardianship matters are among the most important cases heard by the district court. It is no small thing for an adult to lose their autonomy or a child to be taken from their parents and placed with someone else. The responsibility of a guardian is tremendous as well, whether a guardian of the person, a guardian of the estate, or both. Guardians must report to the court annually on the physical and mental condition of their assigned Protected Person (a person with a guardian) and must provide an annual accounting. Once guardianship is established, the court sees the Protected Person at least once a year. Sometimes the Protected Person appears from their residence by virtual means, which is helpful for those Protected Persons who are unable to appear personally.

Guardianship cases in Nevada's rural counties present additional, distinctive challenges. Resources, such as mental health treatment and substance use treatment, are very limited, particularly for parents of minor children and Protected Persons with limited financial means.

In 2017, the Commission to Study the Creation and Administration of Guardianships in Nevada issued its report after a 15-month study, making several recommendations for the improvement of guardianship laws and procedures, including the creation of a state guardianship compliance manager. The guardianship compliance manager has been particularly helpful to the rural communities by locating Protected Persons that the court cannot find and by performing forensic audits of questionable accountings. Previously, the rural counties had no access to such assistance.

In the Fourth Judicial District, then-Judge Nancy Porter (your author), shortly after taking the bench, discovered that hundreds of guardianships in Elko County

were not in compliance. She hired a guardianship compliance specialist who is responsible for ensuring that all annual reports are timely filed. Porter and the guardianship compliance specialist set show cause hearings for the hundreds of guardianship matters that were delinquent in their annual reporting. With the assistance of the state guardianship compliance, the court was able to locate all minors that had guardians.

The needs and issues of minor Protected Persons differ from those of adult Protected Persons. Porter coordinated with Washoe Legal Services, which provided financial assistance for a number of years so that the court could employ an attorney to represent children in guardianship matters. The children's attorney can investigate and present evidence to the court that it would not otherwise have. A unique aspect of guardianships of minors in Elko County is the ability of parents with substance-use issues to participate in Family Preservation Court, which also provides services to parents whose children are in the custody of the state. Family Preservation Court has been very successful in reuniting parents with children who are the subject of guardianships.

Porter also worked with Nevada Legal Services to arrange for attorneys for adult Protected Persons (a new statutory requirement that resulted from the report of the guardianship commission). She also formed, with the assistance of other professionals, a nonprofit organization called Northeastern Nevada Special Advocates for the Elderly (SAFE), which provides trained volunteer advocates to elderly Protected Persons to aid and protect them in court-appointed guardianships.

District Judge Nathan Tod Young of the Ninth Judicial District reported that there

are issues that run through the majority of guardianship cases that make them a priority for judges. Whether a guardianship petition pertains to an adult or a minor, the case requires that the judge review it quickly. The material facts alleged in a petition almost always refer to an immediate need for protection; the safety of the vulnerable must always be a primary concern for the court.

In the Ninth Judicial District, when a petition for guardianship is filed, a clerk brings it to the attention of the judge that same day. It is rare that a decision, albeit temporary, is not issued within hours of filing. The court immediately sets a hearing on the temporary order. The court always appoints an attorney for adults and often appoints an attorney for minors. The Ninth Judicial District also has robust Court Appointed Special Advocates (CASA) and SAFE programs, which the court appoints where appropriate. (The SAFE program in Elko County is loosely based on the SAFE program in the Ninth district.)

In the Seventh Judicial District, Judge Steve Dobrescu has seen a notable decrease in guardianship cases in recent years. He points out that most guardianship matters he sees involve grandparents as guardians or are within the context of Division of Child and Family Services cases. He finds guardianship to be very useful in placing a child in a safe, secure home, without termination of parental rights.

Whether a guardianship matter involves a minor or an adult, guardianship cases present unique challenges for the court and the attorneys in a small community. Often the court must be creative to ensure that vulnerable persons receive the protection they need and that they are not exploited by their caretakers.