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## **CHAPTER 1: BASIC ANATOMY OF A MINOR GUARDIANSHIP CASE**

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### **A. OVERVIEW**

Minor guardianship means obtaining the legal authority to make decisions for a child. Under normal circumstances, a child’s parents have the legal right to make decisions for their child. Sometimes, however, that is not possible for any number of reasons. In those situations where a parent is unable or unwilling to make decisions for their child, some other person may need to step in to do so. When that need arises, a guardianship case can be initiated. The powers and responsibilities of a guardian of a child under guardianship (who, under Nevada law, is referred to as the “proposed protected minor” before a guardianship is granted and as the “protected minor” once a guardianship is in place)<sup>1</sup> concern the child's support, care, education, health, and welfare. A minor is normally a child under eighteen years old, but can be up to nineteen years old if the protected minor is still enrolled in high school after the age of eighteen and consents to extension of the guardianship.<sup>2</sup> Guardians must act in the child's best interests at all times.<sup>3</sup>

Minor guardianships are governed by Chapter 159A of the Nevada Revised Statutes. Chapter 159A not only sets forth the substantive law relating to minor guardianships, it also details many of the court procedures to be followed in a minor guardianship case. Additionally, the Nevada Supreme Court has made clear that the Nevada Rules of Civil Procedure and the Nevada Rules of Evidence apply in guardianship cases.<sup>4</sup> Minor guardianships are also governed by Statewide Guardianship Rules as adopted by the Nevada Supreme Court.<sup>5</sup> Local rules of practice similarly apply; however, the application of those rules sometimes make little sense in the context of a minor guardianship case, and the determination of which procedural rules to follow and how those rules interplay can be confusing at times.<sup>6</sup>

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<sup>1</sup> NRS 159A.025 (defining “proposed protected minor”); NRS 159A.0251 (defining “protected minor”).

<sup>2</sup> NRS 159A.023 (defining “minor”).

<sup>3</sup> NRS 159A.073(1)(c)(1)(I).

<sup>4</sup> *See* Order, ADKT 0507, Doc. 16-22815 (Nev. S. Ct. July 22, 2016). In its order, ADKT 0507, Doc. 16-22815, the Nevada Supreme Court reasoned that the Nevada Rules of Civil Procedure apply in guardianship cases pursuant to NRCP 1 and NRCP 81(a) unless there is a specific statute in NRS Chapter 159 regarding a procedure or practice that conflicts with the NRCP. The Court further concluded that the Nevada rules regarding evidence and witnesses contained in Title 4 of the NRS similarly apply in guardianship matters unless there is a specific statute or procedural rule in NRS Chapter 159 that applies. The Court made clear that its order “does not preclude a challenge to the procedure or evidence in a guardianship matter based, for example, on a conflicting statute or general concerns about admissibility such as relevant or probative value.”

<sup>5</sup> *See* Order, ADKT 0507, Doc. 19-06211 (Nev. S. Ct. February 8, 2019) (promulgating the first six statewide guardianship rules). *See* ADKT 0507, Doc. 19-45886 (Nev. S. Ct. November 7, 2019) (promulgating statewide guardianship rules seven through twelve).

<sup>6</sup> *See* EDCR 5.701 – 5.710.

Since the needs, resources, and circumstances of the protected minor under guardianship are not static, once a minor guardianship is granted, the court maintains oversight of the guardianship’s administration for its duration.

Each courtroom is staffed with a court clerk and a marshal. As a pro bono attorney, you should check in with the court clerk or marshal, as appropriate, and let the marshal know that you are representing the protected minor pro bono. This might get you priority on the hearing calendar as the judges recognize that you are a volunteer donating your time.

## **B. VENUE AND JURISDICTION**

Nevada has adopted the Uniform Child Custody Jurisdiction and Enforcement Act as NRS Chapter 125A (UCCJEA). The UCCJEA applies in minor guardianship matters.<sup>7</sup> The UCCJEA governs which state has jurisdiction over the child in a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear.<sup>8</sup> The UCCJEA sets forth four bases for jurisdiction: home state, significant connection, more appropriate forum, and no other jurisdiction.<sup>9</sup>

A Nevada court has jurisdiction over a proposed protected minor if Nevada is the child’s “home state”<sup>10</sup>— meaning the proposed protected minor has been present in Nevada for at least six consecutive months.<sup>11</sup>

A state has significant connection jurisdiction if the child and at least one parent have a significant connection with the state more than physical presence.<sup>12</sup> There must be substantial evidence in the state concerning the child’s care, protection, training, and personal relationships.<sup>13</sup>

A more appropriate forum exists when both the home state and the significant connection jurisdiction have declined to exercise jurisdiction on the grounds that a court of another state is the more appropriate forum.<sup>14</sup>

No other state jurisdiction is available when no court of any other state would have home state, significant connection, or more appropriate forum jurisdiction.<sup>15</sup>

In addition to the four bases for jurisdiction, a court may exercise emergency jurisdiction if the child is present in the state and the child has been abandoned or it is necessary in an

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<sup>7</sup> NRS 125A.055(2).

<sup>8</sup> NRS 125A.055(2).

<sup>9</sup> See *Interstate Child Custody: A Practitioner’s Guide to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* prepared by the National Center on Protection Orders and Full Faith and Credit.

<sup>10</sup> NRS 159A.1998(1)(a).

<sup>11</sup> NRS 125A.305(1)(a) & NRS 159A.018 (defining “home state”).

<sup>12</sup> NRS 125A.305(1)(b)(1).

<sup>13</sup> NRS 125A.305(1)(b)(2).

<sup>14</sup> NRS 125A.305(1)(c).

<sup>15</sup> NRS 125A.305(1)(d).

emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.<sup>16</sup> Emergency jurisdiction is temporary, but under certain circumstances, such orders can become final.<sup>17</sup> Courts in different states are also required to communicate when one court exercises emergency jurisdiction to resolve an emergency, protect the safety of the child and the parties, and determine the duration of a temporary order.<sup>18</sup> Generally, the parties must have an opportunity to be heard before a jurisdictional decision is made, and the courts must make a record of the communication.<sup>19</sup>

A court having jurisdiction under one of the jurisdictional bases above may decline to exercise jurisdiction if it is an inconvenient forum and a court in another state is a more appropriate forum.<sup>20</sup> Courts must consider the following factors: (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; (b) The length of time the child has resided outside this state; (c) The distance between the court in this state and the court in the state that would assume jurisdiction; (d) The relative financial circumstances of the parties; (e) Any agreement of the parties as to which state should assume jurisdiction; (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child; (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (h) The familiarity of the court of each state with the facts and issues in the pending litigation.<sup>21</sup>

A court may also decline jurisdiction if a party has engaged in unjustifiable misconduct.<sup>22</sup> Allowing a court to decline jurisdiction due to a party's misconduct is typically used to prevent perpetrators who have abducted children and disappeared from benefitting by obtaining the forum of their choice.<sup>23</sup>

Under the UCCJEA, the original custody decree-granting state, if one, retains exclusive jurisdiction until it determines the child, the child's parents, and any person acting as a parent no longer have any significant connection with the state.<sup>24</sup>

If a custody determination has been made in a state, another state court has jurisdiction to modify the custody determination jurisdiction to make an initial determination, and (1) a court in the state that issued the original order determines that it no longer has jurisdiction or declines

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<sup>16</sup> NRS 125A.335.

<sup>17</sup> NRS 125A.335(2).

<sup>18</sup> NRS 125A.335.

<sup>19</sup> NRS 125A.335(4).

<sup>20</sup> NRS 125A.365.

<sup>21</sup> NRS 125A.365(2).

<sup>22</sup> NRS 159A.375(1).

<sup>23</sup> *See* Interstate Child Custody: A Practitioner's Guide to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) prepared by the National Center on Protection Orders and Full Faith and Credit.

<sup>24</sup> NRS 125A.315.

jurisdiction, or (2) a court in either state determines that the child, the child’s parents, and a person acting as a parent no longer reside in the state that issued the original order.<sup>25</sup>

Venue for a guardianship case is appropriate where the proposed protected minor resides.<sup>26</sup> If venue is appropriate in more than one county, it can be transferred if another of those other counties is more convenient.<sup>27</sup> The case can also be transferred to a different county in the interest of the protected minor or for the convenience of the guardian.<sup>28</sup>

If guardianship cases are filed in two different counties relating to the same proposed protected minor, the courts will stay all cases except the first filed until proper venue is determined and the cases are transferred to that court.<sup>29</sup>

### **C. TYPES OF GUARDIANSHIP**

Chapter 159A provides a number of different types of guardianship. Which type, if any, might be appropriate depends on the needs of the proposed protected minor.

#### **1. GENERAL GUARDIANSHIPS**

In a “general guardianship,” a guardian is appointed to have general care and control over a protected minor’s person, the protected minor’s estate, or both.

If a general guardianship is granted over the “person,” the guardian is responsible for the care, maintenance, education, and support of the protected minor.<sup>30</sup> The guardian can make personal and medical decisions for the protected minor, decisions about where the protected minor will live, and so on.

If a general guardianship is granted over the “estate,” the guardian can make financial decisions for the protected minor (although the court must first approve certain types of decisions).<sup>31</sup> Amongst the guardian’s other duties, the guardian must apply the protected minor’s estate to the protected minor’s care, maintenance, education, and support.<sup>32</sup> (If no guardian of the estate has been appointed, the guardian of the person can, subject to some restrictions, institute actions for support of the protected minor and receive the protected minor’s property and money to apply to the protected minor’s support, care, and education).<sup>33</sup>

If a general guardianship is granted over the “person and estate,” the guardian is allowed to make both personal and financial decisions for the protected minor.<sup>34</sup>

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<sup>25</sup> NRS 125A.325.

<sup>26</sup> NRS 159A.037(1).

<sup>27</sup> NRS 159A.037(2)-(3).

<sup>28</sup> NRS 159A.041.

<sup>29</sup> NRS 159A.039.

<sup>30</sup> NRS 159A.079(1).

<sup>31</sup> For example, those in NRS 159A.113 and NRS 159A.117.

<sup>32</sup> NRS 159A.083.

<sup>33</sup> NRS 159A.112.

<sup>34</sup> NRS 159A.077.

A general guardianship over the person lasts until the guardianship is terminated, the protected minor's domicile changes and jurisdiction is transferred to a different state, the court determines that the guardianship is no longer necessary, the protected minor dies, or the protected minor reaches the age of eighteen, or age of nineteen if still enrolled in high school and consents to the extension of the guardianship.<sup>35</sup> A guardianship over the estate ends if the guardianship is terminated, the court removes the guardian or accepts the guardian's resignation and does not appoint a successor, or the protected minor dies.<sup>36</sup>

## **2. SHORT-TERM GUARDIANSHIP WITHOUT COURT APPROVAL**

A parent can appoint a short-term guardian, for up to six months, without the court's consent.<sup>37</sup> A parent's appointment of a short-term guardian must be in writing, and if the child is fourteen years old or older, the child must also consent in writing.<sup>38</sup> The short-term guardianship shall not exceed six months.<sup>39</sup>

A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out daily child care decisions concerning the minor, unless the other parent of the minor child provides written consent to the appointment.<sup>40</sup> Appointment of a temporary guardian does not the effect the rights of the child's other parent.<sup>41</sup>

Termination of the short-term guardianship may be by an event identified in the writing establishing the short-term guardianship, but must occur sooner than six months from the date of the short-term guardianship agreement, six months from the date of the short-term guardianship agreement, by an instrument in writing signed by either parent if that parent has not been deprived of the legal custody of the minor, or by order of a court of competent jurisdiction that appoints a guardian.<sup>42</sup>

## **3. TEMPORARY GUARDIANSHIPS**

A "temporary guardianship" is authorized when an emergency situation exists that involves a proposed protected minor who is in need of immediate medical attention which he cannot obtain without the appointment of a temporary guardian.<sup>43</sup>

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<sup>35</sup> NRS 159A.191(1).

<sup>36</sup> NRS 159A.191(2).

<sup>37</sup> NRS 159A.205(1).

<sup>38</sup> NRS 159A.205(2).

<sup>39</sup> NRS 159A.205(6).

<sup>40</sup> NRS 159A.205(4).

<sup>41</sup> NRS 159A.205(3).

<sup>42</sup> NRS 159A.205(6)&(8).

<sup>43</sup> NRS 159A.052.

A temporary guardianship is also available if there is “good cause for the appointment of a temporary guardian.”<sup>44</sup> A temporary guardianship can be granted over the protected minor’s person, estate, or both.<sup>45</sup>

To obtain a temporary guardianship, the proposed guardian must present facts to the court that explain the emergency that requires immediate action.<sup>46</sup> A temporary guardianship can be granted on an ex-parte basis, without a hearing, but the proposed guardian must try in good faith to notify all relatives over the age of fourteen within two degrees of consanguinity, or otherwise explain why notice to the relatives would expose the proposed protected minor to an immediate risk of physical, emotional or financial harm, or alternatively explain why notice to the relatives is not feasible under the circumstances.<sup>47</sup> Any petition seeking an ex-parte temporary guardianship must include an affidavit which explains the emergency that requires a temporary guardian to be appointed before a hearing.<sup>48</sup> Nevada law provides that if no parent of the proposed protected minor has had the care, custody and control of the minor for the six months immediately preceding the petition, temporary guardianship of the person of the minor is presumed to be in the best interests of the minor.<sup>49</sup>

A temporary guardianship expires in ten days and, within that time, the court must conduct a hearing to determine the necessity of extending the temporary guardianship or converting the temporary guardianship to a general guardianship.<sup>50</sup> The court can extend a temporary guardianship for two sixty-day periods, unless extraordinary circumstances necessitate a longer duration for the temporary guardianship.<sup>51</sup>

#### 4. **SPECIAL IMMIGRANT JUVENILE STATUS GUARDIANSHIP**

The Special Immigrant Juvenile (SIJ) classification provides certain children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law the ability to seek lawful permanent residence in the United States.<sup>52</sup>

To pursue SIJ status, a child must first petition a state juvenile court to issue an order making special findings of fact that the child is dependent upon the court or legally committed to a court-appointed individual.<sup>53</sup> A state court must thereafter make findings that reunification with one or both of the parents is not viable and that it is not in the child's best interest to return to his

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<sup>44</sup> NRS 159A.053.

<sup>45</sup> NRS 159A.053(1)&(5).

<sup>46</sup> NRS 159A.053.

<sup>47</sup> NRS 159A.053(2)(a)-(c).

<sup>48</sup> NRS 159A.053(3).

<sup>49</sup> NRS 159A.053(4).

<sup>50</sup> NRS 159A.0523(5); NRS 159A.053(8).

<sup>51</sup> NRS 159A.053(10).

<sup>52</sup> See INA § 101(a)(27)(J); 8 CFR § 204.11; and USCIS Policy Manual, Volume 6, Part J- Special Immigrant Juveniles.

<sup>53</sup> See *In re Marisol N.H.*, 979 N.Y.S.2d 643, 645 (App. Div. 2014).

or her home country.<sup>54</sup> Once a state court has issued these findings, the child may petition the federal government for SIJ status.

In Nevada, NRS 3.2203 specifically details when a district court must make findings pursuant to the SIJ statutes, and one of those instances is during a proceeding held pursuant to the minor guardianship Chapter, NRS 159A.<sup>55</sup>

Although not formally a separate type of guardianship, SIJ status is a significant reason why a minor guardianship proceeding may be initiated.

#### **5. COMPROMISE OF MINOR'S CLAIM**

Parents and legal guardians have the right to enter into an out-of-court settlement on behalf of their minor children in Nevada personal injury cases. This is known as the compromise of a minor's claim.<sup>56</sup> A compromise of a minor's claims is not legally binding until approved by the district court.<sup>57</sup> Once the court approves the compromise of minor's claim, the parent or guardian must deposit the funds into a blocked account and provide proof of the blocked account to the court within thirty days.<sup>58</sup> The funds in the blocked account may only be released for the child's benefit after subsequent court order, or upon the child reaching eighteen years old and obtaining an order from the court closing the blocked account and releasing the funds to the child.<sup>59</sup>

Although not formally a separate type of guardianship, a compromise of a minor's claim is a significant reason why a minor guardianship proceeding may be initiated.

#### **D. QUALIFICATIONS AND ELIGIBILITY OF GUARDIANS**

##### **1. OVERVIEW**

NRS 159A.061 sets out various criteria and preferences that guide the court's determination of who should serve as guardian. The parent of a proposed protected minor, if qualified and suitable, is preferred over all others for appointment as guardian of the proposed protected minor, however appointment must not conflict with a custody order.<sup>60</sup> A parent is presumed suitable to serve as guardian over a proposed protected minor, unless the parent is unable to provide for any of the basic needs of the child, including: food, shelter, clothing, medical care, and education, or the parent poses a significant safety risk of either physical or emotional danger to the child.<sup>61</sup> If the proposed protected minor has not been in the custody or care of a parent for

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<sup>54</sup> *Id.*

<sup>55</sup> NRS 3.2203(2).

<sup>56</sup> NRS 41.200.

<sup>57</sup> NRS 41.200(1).

<sup>58</sup> NRS 41.200(5).

<sup>59</sup> NRS 41.200(6).

<sup>60</sup> NRS 159A.061(1).

<sup>61</sup> NRS 159A.061(4).

the six months immediately prior to the filing of the petition for guardianship, the presumption that the parent is presumed suitable to serve as guardian may be rebutted.<sup>62</sup>

Generally, the court is granted substantial discretion in its ultimate decision and can appoint anyone as a guardian who is qualified, suitable, and willing to serve.<sup>63</sup> A guardian does not have to be related to the protected minor, although when multiple people petition the court to be appointed as guardian, the court gives preference to suitable relatives and persons nominated by the protected minor.<sup>64</sup> If multiple relatives file competing petitions, the court will consider them in a certain order of preference, starting with the parent, then an adult sibling, then a grandparent, then an uncle or aunt.<sup>65</sup>

In determining whether any nominated person, relative, or other person is qualified and suitable to be appointed as guardian, the court will consider, without limitation, (a) which parent has custody of the proposed protected minor; (b) the ability of the person to provide for the basic needs of the proposed protected minor; (c) whether the person has engaged in the habitual use of alcohol or drugs in the previous six months; (d) whether the person has been judicially determined to have committed abuse or neglect of a child, spouse, parent, or other adult; (e) whether the person has been convicted of a felony; and (f) whether the person has engaged in domestic violence against the proposed protected minor, a parent of the proposed protected minor, or any other person who resides with the proposed protected minor.<sup>66</sup>

The court may also consider whether the proposed guardian has previously filed for bankruptcy.<sup>67</sup> The court will also consider, among other things, (a) a nomination of guardian for the proposed protected minor contained in a will or other written instrument by a parent, (b) the proposed protected minor's request for a person for appointment as guardian, if the proposed protected minor is over the age of fourteen, (c) any request of a relative, agency which provides child welfare services, agency which provides child protective services, or a similar agency; and (d) any recommendation made by a special master.<sup>68</sup>

A person is not qualified to be appointed as guardian if the person has filed for bankruptcy in the previous five years; had a driver's license suspended, revoked, or cancelled for nonpayment of child support; been suspended for misconduct or disbarred from the practice of law, accounting, or any other profession that requires a license and involves the management of money,

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<sup>62</sup> NRS 159A.061(4)(c).

<sup>63</sup> NRS 159A.061(6).

<sup>64</sup> NRS 159A.061(6).

<sup>65</sup> NRS 159A.061(6)(c).

<sup>66</sup> NRS 159A.061(3).

<sup>67</sup> NRS 159A.044(2)(r); *see also* NRS 159A.185(c) (bankruptcy as grounds for removal of guardian).

<sup>68</sup> NRS 159A.061(6).



investments, or real property; or has a judgment entered against her for misappropriation of funds or assets.<sup>69</sup>

## **2. THE PUBLIC GUARDIAN**

If the court finds there is no other suitable person to appoint as guardian, the court can appoint the public guardian to mitigate the risk of financial harm to a proposed protected minor.<sup>70</sup> The public guardian is sometimes thought of as the “guardian of last resort.” The office of the public guardian is created and governed by Nevada statute.<sup>71</sup>

## **3. PRIVATE PROFESSIONAL GUARDIANS**

If the court finds there is no other suitable person to appoint, the court can appoint a private professional guardian.<sup>72</sup> A “private professional guardian” is “a person who receives compensation for services as a guardian to three or more protected minors who are not related to the guardian by blood or marriage.”<sup>73</sup> Chapter 628B of the Nevada Revised Statutes governs the licensing and operation of private professional guardians.

## **E. THE INITIAL GUARDIANSHIP PROCEEDINGS**

### **1. THE PETITION**

A proposed protected minor, a governmental agency, a nonprofit corporation, or any other interested person can petition the court for the appointment of a guardian.<sup>74</sup> The petition’s caption must indicate whether it is seeking guardianship of the person, estate, or both.<sup>75</sup>

The required contents of the petition is spelled out in NRS 159A.044(2), which directs the petitioner to provide, among other things, various information about the petitioner, various information about the proposed protected minor, and the names and addresses of the proposed protected minor’s relatives within the second degree of consanguinity.<sup>76</sup> If the petition is for the appointment of a guardian of the estate, it must provide a general description of the probable value of the proposed protected minor’s property and income.<sup>77</sup>

Importantly, the petition must also state a summary of the reasons why a guardian is needed and supply any available documentation demonstrating the need for a guardianship, including any

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<sup>69</sup> NRS 159A.1852(1)-(5).

<sup>70</sup> NRS 253.200(1).

<sup>71</sup> NRS 253.150 to 253.250. In Clark County, Karen Kelly was appointed as public guardian by the Clark County Commission in 2017. Information about the public guardian’s office can be found at <http://www.clarkcountynv.gov/public-guardian>.

<sup>72</sup> NRS 159A.0595(a).

<sup>73</sup> NRS 159A.095.

<sup>74</sup> NRS 159A.044(1).

<sup>75</sup> NRS 159A.043(2).

<sup>76</sup> NRS 159A.044(2). The “second degree of consanguinity” includes the proposed protected minor’s parents, siblings, and grandparents.

<sup>77</sup> NRS 159A.044(2)(k).

custody order.<sup>78</sup> The petition must also identify the name and address of any person caring for the proposed protected minor.<sup>79</sup> If a petitioner is not a parent of the proposed protected minor, the petition must contain a declaration explaining the relationship of the proposed guardian to the proposed protected minor or to the proposed protected minor's parents and the interest, if any, of that proposed guardian in the appointment.<sup>80</sup>

A proposed protected minor or protected minor may be represented by an attorney, who has the same authority and rights as an attorney representing a party to the proceedings.<sup>81</sup>

## **2. THE CARE PLAN AND BUDGET**

The court can also require the petitioner to file a proposed preliminary care plan and budget, the format and timing of which can be set by court rule.<sup>82</sup>

## **3. THE NOTICE OF HEARING**

Once the petition is filed, the petitioner must give notice of the date, time, place, and nature of the hearing to the proposed protected minor (if fourteen years or older), the proposed protected minor's relatives within the second degree of consanguinity, any interested person who has filed a request for notice, any person or provider who is providing the proposed protected minor's care (except that if the person or care provider is not related to the protected minor, such person or care provider must not receive copies of any inventory or accounting), and the Department of Health and Human Services if the proposed protected minor is receiving Medicaid.<sup>83</sup>

The petitioner must provide notice at least ten days before the hearing by mailing a copy, by personal service, or as otherwise ordered by the court.<sup>84</sup> If the petitioner demonstrates that none of the people entitled to notice can be served, the petitioner may be able to serve by publication or as directed by the court under NRS 159A.0345.<sup>85</sup> On or before the date of the hearing, the petitioner must file proof that notice has been given.<sup>86</sup>

Upon a showing of good cause, the court can waive the notice requirement.<sup>87</sup> A person entitled to notice can also waive notice in writing.<sup>88</sup>

## **4. THE CITATION**

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<sup>78</sup> NRS 159A.044(2)(j).

<sup>79</sup> NRS 159A.044(2)(l).

<sup>80</sup> NRS 159A.044(2)(m).

<sup>81</sup> NRS 159A.0483.

<sup>82</sup> NRS 159A.0445.

<sup>83</sup> NRS 159A.034(1). In practice, the petitioner frequently will not file and serve a notice of hearing because notice of the hearing is already being provided to all parties via service of the citation discussed in the next section. Nonetheless, NRS 159A.034(1) technically requires a notice of hearing "on any petition filed in the guardianship proceedings."

<sup>84</sup> NRS 159A.034(2).

<sup>85</sup> NRS 159A.034(3).

<sup>86</sup> NRS 159A.034(6).

<sup>87</sup> NRS 159A.034(4).

<sup>88</sup> NRS 159A.034(5).

The citation is a document issued by the court clerk when a petition for guardianship is filed that includes language commanding a person to appear or act in a specific way or notifying a person of a hearing.<sup>89</sup> When a petition for guardianship is filed, the court clerk issues the citation, stating the date, time, and place of the hearing on the petition, and directing the persons entitled to service to appear and show cause why a guardian should not be appointed over the proposed protected minor.<sup>90</sup>

A guardianship citation must state that (a) the proposed protected minor may have a guardian appointed, (b) the proposed protected minor's rights may be affected as specified in the petition, (c) the proposed protected minor has the right to appear at the hearing and oppose the petition, and (d) the proposed protected minor has the right to be represented by an attorney.<sup>91</sup>

The citation and a copy of the petition must be served on (a) the proposed protected minor who is fourteen years or older; (b) the proposed protected minor's relatives within the second degree of consanguinity who are over fourteen years old; (c) the custodian of the proposed protected minor; (d) any person or care provider who has care, custody, or control of the proposed protected minor (unless they have signed the petition or a waiver of service per NRS 159A.0475(3)); (e) the proposed guardian (if not the actual petitioner); (f) and the Department of Health and Human Services if the proposed protected minor is receiving Medicaid benefits.<sup>92</sup>

The citation and petition must be served on the proposed protected minor who is fourteen years or older by personal service at least ten days before the hearing.<sup>93</sup> The citation and petition must be served on all other persons required to be served either by certified mail (at least twenty days before the hearing) or personal service (at least ten days before the hearing).<sup>94</sup> If none of the people entitled to notice can be served, and that fact is proved to the court's satisfaction, the citation can be served by publication at least twenty days before the hearing.<sup>95</sup>

The court can find that sufficient notice was given if the citation and petition were personally served on the protected minor and were served by certified mail or personal service on at least one of the proposed protected minor's relatives and the proposed protected minor's care provider or guardian.<sup>96</sup>

## 5. **THE HEARING**

Normally, the proposed protected minor is required to attend the hearing on the petition (sometimes called the "citation hearing"). However, the court can excuse the proposed protected

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<sup>89</sup> NRS 159A.0145.

<sup>90</sup> NRS 159A.047(1).

<sup>91</sup> NRS 159A.048.

<sup>92</sup> NRS 159A.047(2).

<sup>93</sup> NRS 159A.0475(1)(a).

<sup>94</sup> NRS 159A.0475(1)(b).

<sup>95</sup> NRS 159A.0475(2).

<sup>96</sup> NRS 159A.0475(4).

minor's attendance if presented with a certificate signed by a physician licensed in Nevada (or signed by "any other person the court finds qualified") that specifically states (a) the condition of the proposed protected minor, (b) the reasons why the proposed protected minor is unable to appear in court, and (c) whether the proposed protected minor's attendance would be detrimental to the proposed protected minor's physical or mental health.<sup>97</sup> A proposed protected minor who cannot attend the hearing in person can appear by videoconference.<sup>98</sup> If the proposed protected minor is not in Nevada, the proposed protected minor must attend the hearing only if the court deems it necessary in the interests of justice.<sup>99</sup>

At the hearing, the petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, the estate, or both is necessary.<sup>100</sup>

If after the hearing the court finds that the proposed protected minor is not in need of a guardian, it must dismiss the petition.<sup>101</sup> If the court finds the appointment of a general guardian is required, it will appoint a general guardian over the proposed protected minor's person, estate, or both.<sup>102</sup>

#### **6. THE ORDER**

If the court grants a guardianship, the court's order must contain the information detailed in NRS 159A.055(2). Specifically, the order must state (a) whether the guardian is appointed over the person, the estate, or both; (b) whether the protected minor is a resident of Nevada; (c) the amount of the bond the guardian must file; (d) the names and addresses of the protected minor's relatives and other interested persons upon whom notice must be served; and (e) whether the protected minor will require a guardianship after reaching eighteen years old.<sup>103</sup> The order must also contain the names, addresses, and telephone numbers of the guardian, the protected minor's attorney, and the investigator, if any.<sup>104</sup>

If a court order is in effect for payment for child support, once a guardian is appointed, the court shall assign the payment of child support to the guardian for the support of the protected minor.<sup>105</sup>

A copy of the order appointing the guardian must be served personally or by mail upon the protected minor no later than five days after the date the guardian is appointed.<sup>106</sup> A notice of entry

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<sup>97</sup> NRS 159A.0535(1).

<sup>98</sup> NRS 159A.0535(2).

<sup>99</sup> NRS 159A.0535(4).

<sup>100</sup> NRS 159A.055(1).

<sup>101</sup> NRS 159A.054(1).

<sup>102</sup> NRS 159A.055(2).

<sup>103</sup> NRS 159A.055(2).

<sup>104</sup> NRS 159A.074(2).

<sup>105</sup> NRS 159A.056.

<sup>106</sup> NRS 159A.074(1).

of the order must be served to the protected minor's relatives entitled to notice and any other interested person.<sup>107</sup> Notice of entry of order must be filed with the court.<sup>108</sup>

#### 7. **THE BOND OR BLOCKED ACCOUNT**

Generally, before a guardian can be appointed, the proposed guardian must execute and file a bond in the guardianship case in an amount the court determines necessary to protect the protected minor and the guardianship estate.<sup>109</sup> EDCR 5.706 provides that the bond should be equal to the total value of the personal property on hand plus one year's estimated annual income from real and personal property.

If the protected minor has no assets, no bond is required of the guardian.<sup>110</sup> However, the court has the power to increase (or decrease) the amount of bond required at any time upon a showing of good cause and notice to the guardian.<sup>111</sup>

Once the bond is filed with the clerk, the protected minor or any interested person can maintain an action on the bond.<sup>112</sup> However, any action on the bond must be commenced within three years after the guardian is discharged or, if the person entitled to bring the action is under a legal disability, within three years after the disability is removed.<sup>113</sup>

In lieu of filing a bond, the guardian can request that access to certain assets of the protected minor be blocked.<sup>114</sup> The court can grant the request and order letters of guardianship to issue only if the guardian files evidence that the protected minor's assets are being held in a manner that prevents the guardian from accessing the assets without a court order (this is sometimes called placing the assets in a "blocked account").<sup>115</sup>

#### 8. **THE LETTERS OF GUARDIANSHIP**

The letters of guardianship memorialize the legal authority of the guardian to act on behalf of the protected minor. The form of the letters can be found in NRS 159A.075. Before the letters of guardianship can issue, the guardian must take the official oath, file documents that include the guardian's full legal name and address, and make and file a verified acknowledgement of the guardian's duties and responsibilities.<sup>116</sup>

#### F. **PROCEEDINGS ONCE THE GUARDIANSHIP IS IN PLACE**

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<sup>107</sup> NRS 159A.055(3).

<sup>108</sup> NRS 159A.074(3).

<sup>109</sup> NRS 159A.065(1).

<sup>110</sup> NRS 159A.065(4).

<sup>111</sup> NRS 159A.067(1).

<sup>112</sup> NRS 159A.069.

<sup>113</sup> NRS 159A.071.

<sup>114</sup> NRS 159A.065(6).

<sup>115</sup> NRS 159A.065(6).

<sup>116</sup> NRS 159A.073(1), 159A.075.

The court's grant of a guardianship by no means ends the guardianship proceedings, the guardian's obligations, the attorney's role, or the court's involvement.

Many of the guardian's ongoing general duties are outlined in the oath of office the guardian takes when the guardianship is granted.<sup>117</sup> Under Chapter 159A, the guardian is free to perform some of the guardian's ongoing duties and responsibilities without obtaining prior court approval; however, others require approval of the court before the guardian takes any action.

The general functions of the guardian of the person are outlined in NRS 159A.079. In addition to these and other duties, the guardian of the person must

- File and serve every year (or within ten days of changing the protected minor's residence) a written report with the court regarding the protected minor's condition and the performance of the guardian's duties, which must include the protected minor's physical condition, place of residence, the names of all persons living with the protected minor (unless the protected minor resides in a group home or care facility), and any other information required by the court.<sup>118</sup>
- Immediately notify all interested persons and persons of natural affection if the guardian reasonably believes the protected minor is likely to die within the next thirty days based on information from a health care provider, or if the protected minor has died, or if arrangements have been made for the protected minor's burial or cremation.<sup>119</sup>
- Obtain an order which requires one or both parents of the protected minor to pay the guardian child support as established by NRS 125B.070 and 125B.080.<sup>120</sup>
- Give notice to the court of the entry of an order for the payment of child support or approval of any public assistance within thirty days of the order or approval.<sup>121</sup>

The specific duties and obligations of the guardian of the person are discussed in more detail in later chapters of this manual.

The general functions of the guardian of the estate are outlined in NRS 159A.083. Additionally, the guardian of the estate is required to, among other things,

- Take possession of the protected minor's property and income and secure the protected minor's personal property.<sup>122</sup>
- Cause an appraisal or valuation of protected minor's assets to be conducted.<sup>123</sup>

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<sup>117</sup> NRS 159A.073(1)(c).

<sup>118</sup> NRS 159A.081.

<sup>119</sup> NRS 159A.0809.

<sup>120</sup> NRS 159A.093(3)(a).

<sup>121</sup> NRS 159A.093(3)(b).

<sup>122</sup> NRS 159A.089(3).

<sup>123</sup> NRS 159A.086, .0865.

- File and serve an inventory of the protected minor’s property within sixty days after the guardian is appointed, which must be supplemented if additional property is discovered.<sup>124</sup>
- Record the letters of guardianship with the county recorder where the protected minor’s property is located within sixty days after appointment.<sup>125</sup>
- Secure the originals of any of protected minor’s contracts, estate planning documents, and trusts.<sup>126</sup>
- Demand all debts and “choses in action” (rights to sue) due the protected minor and, with prior approval of the court, settle them or sue to recover them.<sup>127</sup>
- Evaluate and pay all claims made against the protected minor’s estate, including the guardian’s own claims.<sup>128</sup>

The specific duties and functions of the guardian of the estate are discussed in more detail in later chapters of this manual.

It is not uncommon when representing a protected minor that the guardian’s performance of various duties becomes a point of contention and the subject of scrutiny. These possible points of contention (for example, accountings, budgets, care plans, visitation, sales of personal and real property, requests for attorney’s fees, and others), along with other issues that might arise during the course of a guardianship, are addressed in more detail in other chapters of this manual.

## **G. TERMINATION, REMOVAL, RESIGNATION, AND DISCHARGE**

Generally speaking, a guardianship over the person lasts until the guardianship is terminated, the protected minor’s domicile changes and jurisdiction is transferred to a different state, the protected minor dies, the court determines the guardianship is no longer necessary, or the protected minor reaches the age of eighteen (or on the date on which the protected minor graduates from high school or becomes nineteen years of age, whichever occurs sooner.)<sup>129</sup> A guardianship over the estate ends if the guardianship is terminated, the court removes the guardian or accepts the guardian’s resignation and does not appoint a successor, or the protected minor dies.<sup>130</sup>

### **1. PETITION FOR TERMINATION**

A protected minor, guardian, or any other person can petition the court to terminate or modify a guardianship.<sup>131</sup> Among other things, the petition must state the reason for termination

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<sup>124</sup> NRS 159A.085

<sup>125</sup> NRS 159A.087.

<sup>126</sup> NRS 159A.089(4).

<sup>127</sup> NRS 159A.093.

<sup>128</sup> NRS 159A.103; NRS 159A.105; NRS 159A.107; NRS 159A.109.

<sup>129</sup> NRS 159A.191(1).

<sup>130</sup> NRS 159A.191(2).

<sup>131</sup> NRS 159A.1905(1).

or modification and whether the termination or modification is sought for a guardianship of the person, estate, or both.<sup>132</sup>

The petitioner has the burden of proving by clear and convincing evidence that the termination or modification is in the protected minor's best interests.<sup>133</sup> When the petition is filed, the court will issue a citation requiring the guardian and all interested persons to appear and show cause why the termination or modification should not be granted.<sup>134</sup>

If the court finds the petitioner filed the petition in bad faith and not to further protected minor's best interests, the court can sanction the petitioner and preclude the petitioner from seeking attorney's fees.<sup>135</sup>

#### 2. **A PARENT'S TERMINATION PRIOR TO EMANCIPATION**

If there has been a material change in circumstances since the guardianship was created, including both that a parent now meets the suitability requirements of NRS 159A.061, and the welfare of the protected minor would be substantially enhanced by the termination of the guardianship and the placement of the protected minor with the parent, a parent may petition to terminate a protected minor's guardianship.<sup>136</sup> The parent has the burden of proof by clear and convincing evidence.<sup>137</sup>

If a parent consented to the guardianship when it was created, the parent has a lower bar to termination, and must only prove by clear and convincing evidence that the parent now meets the suitability requirements of NRS 159A.061.<sup>138</sup>

#### 3. **TERMINATION BY AGE**

Once the protected minor reaches eighteen years old, or on the date which the protected minor graduates from high school or becomes nineteen years of age, whichever occurs sooner, the guardian immediately loses all authority other than to wrap up the affairs of the guardianship and distribute the guardianship estate.<sup>139</sup> If a guardianship shall extend until the protected minor turns nineteen or graduates from high school, the protected minor and the guardian must consent to the extension of the guardianship, and the consent must be filed with the court at least fourteen days before the protected minor's eighteenth birthday.<sup>140</sup>

#### 4. **REMOVAL OF THE GUARDIAN**

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<sup>132</sup> NRS 159A.1905(e)-(f).

<sup>133</sup> NRS 159A.1905(3).

<sup>134</sup> NRS 159A.1905(4).

<sup>135</sup> NRS 159A.1905(5).

<sup>136</sup> NRS 159A.1915(1).

<sup>137</sup> NRS 159A.1915(1).

<sup>138</sup> NRS 159A.1915(2).

<sup>139</sup> NRS 159A.191(1)&(5).

<sup>140</sup> NRS 159A.191(1)(e)(2).



The court can remove a guardian if the court determines that (a) the guardian has become mentally incompetent, unsuitable, or otherwise incapable of exercising authority and performing the guardian's duties; (b) the guardian is no longer qualified to act as a guardian under NRS 159A.061; (c) the guardian has filed for bankruptcy within the previous five years; (d) the guardian has mismanaged the protected minor's estate; (e) the guardian has negligently failed to perform any duty under the law or court order and the negligence has resulted (or likely could have resulted) in injury to the protected minor or the protected minor's estate; (f) the guardian has intentionally failed to perform any duty as provided by law or court order, regardless of injury; (g) the guardian has violated any right of the protected minor that is set forth in NRS 159A; (h) the protected minor's best interests will be served by the appointment of a different guardian; or (i) the guardian is a private professional who is no longer qualified.<sup>141</sup> However, the guardian may not be removed if the sole reason is the lack of money to pay the guardian's fees.<sup>142</sup>

The court shall not remove a guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the protected minor.<sup>143</sup> For determining whether removal is in the best interest, the court will consider (a) the ability of the guardian to provide for the basic needs of the protected minor, including, food, shelter, clothing and medical care; (b) the safety of the home in which the protected minor is residing; (c) the length of time that the protected minor has been in the care of the present guardian; (d) the current well-being of the protected minor, including whether the protected minor is prospering in the environment being provided by the present guardian; (e) the emotional bond existing between the present guardian and the protected minor, and (f) the mental and physical health of the present guardian. If the person petitioning the court to replace the present guardian was previously removed from the care, custody or guardianship of the protected minor, then the court must also consider (1) The level of participation before the petition was filed by the petitioner in the welfare of the protected minor; and (2) If applicable, whether the petitioner has received instruction in parenting, participated in a program of rehabilitation or undergone counseling for any problem or conduct that the court, in appointing the present guardian, considered as an indication of the previous unfitness of the petitioner; and (g) The mental and physical health of the present guardian.<sup>144</sup>

A petition for removal of a guardian can be brought by the protected minor, any relative within the second degree of consanguinity, the public guardian, or any other interested person.<sup>145</sup> The petition must state the reason for removing the guardian and show cause for the removal.<sup>146</sup>

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<sup>141</sup> NRS 159A.185(1).

<sup>142</sup> NRS 159A.185(2).

<sup>143</sup> NRS 159A.186(1).

<sup>144</sup> NRS 159A.186(2).

<sup>145</sup> NRS 159A.1853(1).

<sup>146</sup> NRS 159A.1853(2).

When the petition is filed, the court will issue and serve a citation on the guardian and all interested persons directing them to appear and show cause why the court should not remove the guardian.<sup>147</sup> If it appears the protected minor or estate could suffer loss or injury before the hearing, the court can suspend the powers of the guardian and compel the guardian to surrender the protected minor and the protected minor's assets.<sup>148</sup> If the guardian fails to appear at the hearing, the court can hold the guardian in contempt, require the guardian to appear, issue a bench warrant for the guardian, and issue an order addressing any harm the guardian has caused.<sup>149</sup>

If the court grants the petition and removes the guardian, it can appoint another guardian in the same manner and subject to the same requirements as the original appointment.<sup>150</sup> If the court appoints a new guardian of the person, the protected minor must be served with the petition; however, if the protected minor does not object to the appointment, the protected minor need not attend the hearing.<sup>151</sup>

If the court denies the petition, the petitioner cannot file another petition unless warranted by materially changed circumstances.<sup>152</sup> If the court finds the petitioner filed in bad faith or not in the protected minor's best interests, the court can sanction the petitioner and preclude the petitioner from seeking attorney's fees.<sup>153</sup>

#### **5. RESIGNATION OF THE GUARDIAN**

If a guardian wants to resign, the guardian must file a petition tendering the guardian's resignation, which the court will notice to all persons entitled to notice under NRS 159A.047.<sup>154</sup> Before the court approves the resignation, it must appoint a successor guardian, unless the protected minor has multiple guardians and one is remaining and qualified to act alone.<sup>155</sup>

Before approval, the court will also require the guardian to submit an accounting of the estate through the end of the guardian's term.<sup>156</sup> However, this requirement can be waived if there is another guardian remaining who can file the annual accounting and be responsible for any discrepancies.<sup>157</sup> If the guardian fails to file the accounting, the court can impose sanctions.<sup>158</sup>

#### **6. WINDING UP THE GUARDIANSHIP**

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<sup>147</sup> NRS 159A.1855(1)-(2).

<sup>148</sup> NRS 159A.1855(3).

<sup>149</sup> NRS 159A.1857.

<sup>150</sup> NRS 159A.187(1).

<sup>151</sup> NRS 159A.187(2).

<sup>152</sup> NRS 159A.1853(3).

<sup>153</sup> NRS 159A.1853(4).

<sup>154</sup> NRS 159A.1873.

<sup>155</sup> NRS 159A.1875.

<sup>156</sup> NRS 159A.1877(1).

<sup>157</sup> NRS 159A.1877(3).

<sup>158</sup> NRS 159A.1877(2).

To wind up the affairs of the guardianship, the guardian must pay all expenses of the estate's administration, including those incurred in winding it up.<sup>159</sup> The guardian must also complete performance of the estate's contractual obligations.<sup>160</sup> With the court's permission, the guardian can continue any activity believed to be appropriate or necessary or commenced before the termination.<sup>161</sup> If the guardianship is terminated for some reason other than the protected minor's death, the guardian must examine and pay or reject all claims presented to the guardian for obligations incurred prior to the termination.<sup>162</sup>

After the guardianship's affairs are wound up, the guardian must deliver the protected minor's property to the protected minor, the protected minor's personal representative, or the successor guardian, and obtain a receipt of delivery.<sup>163</sup> If necessary, the guardian can ask the court to modify the title to protected minor's property, on a pro rata basis, to reflect how the title was held before the guardianship so that the property is distributed to the intended beneficiary or former joint owner.<sup>164</sup>

Once the guardian files receipts that show compliance with the court's orders, the court will enter an order discharging the guardian and exonerating the guardian's bond.<sup>165</sup> A guardian is not relieved of liability until an order discharging the guardian has been entered and filed with the court.<sup>166</sup>

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<sup>159</sup> NRS 159A.193(2)(a).

<sup>160</sup> NRS 159A.193(2)(b).

<sup>161</sup> NRS 159A.193(2)(c).

<sup>162</sup> NRS 159A.193(2)(d).

<sup>163</sup> NRS 159A.197(1).

<sup>164</sup> NRS 159A.197(2).

<sup>165</sup> NRS 159A.199(1).

<sup>166</sup> NRS 159A.199(2).