



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 61

1-1-1981

Health and Welfare; Guardianships-Appointment for Persons of Limited Capacity and Revised Procedure for Appointment

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Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Health and Welfare; Guardianships-Appointment for Persons of Limited Capacity and Revised Procedure for Appointment*, 1981 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1981/iss1/61>

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son, Chapter 548 provides that written consent of the woman's parent or guardian prior to performing the abortion is no longer required.²²

Finally, Chapter 548 requires that a physician maintain a record of any abortion performed for at least five years after it is performed.²³ The record must contain the written consent of the woman,²⁴ a statement of the information that was provided to the woman,²⁵ and a description of efforts made to give any required notice.²⁶ In addition to these recordation requirements, Chapter 760 requires each hospital to submit a monthly report to the state registrar of vital statistics containing information on the number of patients hospitalized for a complication arising from an abortion, the nature of the complication, and the type of abortion performed.²⁷

22. Compare N.R.S. §442.— 3 with STATUTES OF NEVADA 1977, c. 473, §94, at 961. See also *H.L. v. Matheson*, 49 U.S.L.W. 4255 (1981) (a statute setting out a mere requirement of parental notice when possible, does not violate the constitutional rights of an immature, dependent, minor); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 53 (1976) (similar statute held that a state may not constitutionally impose a blanket parental consent requirement as a condition for an unmarried minor's abortion during the first twelve weeks of the pregnancy); *Roe v. Wade*, 410 U.S. 113, 153 (1973).

23. See N.R.S. §442.—.

24. *Id.* §442.—.

25. *Id.* §442.—.

26. *Id.* §442.— 3. See also *id.* §442.— (any person who violates provisions regarding notice and recordation is guilty of a misdemeanor).

27. See *id.* §442.—.

Health and Welfare; guardianships—appointment for persons of limited capacity and revised procedure for appointment

N.R.S. §§159.031, 159.045, 159.051, 159.063 (repealed); §§159.—, 159.— (new); §§159.013, 159.015, 159.017, 159.021, 159.029, 159.035, 159.043, 159.047, 159.049, 159.053, 159.055, 159.061, 159.075, 159.177, 159.179, 159.201 (amended).

SB 674 (Committee on Judiciary); STATS 1981, Ch 758

Chapter 758 provides for the appointment of a special guardian for a person of limited capacity¹ and establishes new procedures for appointing all guardians, including the special guardian.² Chapter 758 also clarifies the procedure for the termination of a guardianship.³

1. N.R.S. §159.— 2.

2. See *id.* §§159.—, 159.—, 159.—, 159.047 2(a).

3. See *id.* §159.—.

Special Guardian

Under existing law, a general guardian⁴ can be appointed for a minor⁵ or a person determined to be legally incompetent.⁶ Chapter 758 provides legal protection to those who do not meet the definition of legal incompetency or insanity but are of limited capacity,⁷ thus able to make only some of the decisions necessary for their own care and management of their property.⁸ Chapter 758 provides for the appointment of a special guardian⁹ for a person of limited capacity to be granted the power to manage the ward's estate or perform any other act specifically ordered and approved by the court.¹⁰ This power must be exercised in a manner least restrictive of the ward's personal freedom and most consistent with the need for supervision.¹¹

Procedures for Appointment of Special and General Guardian

Prior to the enactment of Chapter 758, any person could petition for the appointment of a guardian.¹² Chapter 758 restricts the right to petition to a proposed ward,¹³ a governmental agency, a nonprofit organization, or a concerned person.¹⁴ Chapter 758 also eliminates the requirement that the petition state whether the proposed ward was an incompetent or a minor,¹⁵ but does require the petition to state, in addition to the necessary information¹⁶ concerning the proposed ward and the guardian, (1) whether the appointment of a general or special guardian is sought, (2) the reasons for seeking the appointment of a guardian, (3) the specific guardian powers requested, (4) the name and address of the petitioner, (5) the relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment, and (6) the names and addresses of the known relatives of the proposed ward.¹⁷

4. *Id.* §159.017 (definition of guardian).

5. *Id.* §159.023 (definition of minor).

6. STATUTES OF NEVADA 1969, c. 246, §13, at 412 (enacting N.R.S. §159.035); N.R.S. §159.019 (definition of incompetent).

7. *See* N.R.S. §§159.—, 159.— 2.

8. *Id.* §159.—. *Accord* Katz v. Superior Court, 73 Cal. App. 3d 952, 966, 144 Cal. Rptr. 234, 242 (1977) (persons eligible for appointment of a conservator).

9. *See* N.R.S. §159.— (definition of special guardian). *See also id.* §159.061 1, 2, 3, 4 (factors for consideration in selection of guardian).

10. *Id.* §159.—.

11. *See id.* §159.—. *See also id.* §§159.177, 159.179, 159.201 (special guardian of ward's property must follow the same accounting procedures required of a general guardian of an estate).

12. STATUTES OF NEVADA 1969, c. 246, §18, at 413 (enacting N.R.S. §159.045).

13. *See* N.R.S. §159.025 (definition of proposed ward).

14. *Id.* §159.— 1.

15. *Compare id.* §159.— with STATUTES OF NEVADA 1969, c. 246, §18, at 413.

16. *See* N.R.S. §159.—.

17. *See id.* §159.— 2(a), (d), (f), (g), (j), (k).

Upon the filing of a petition, Chapter 758 permits the court to appoint an investigator to locate persons who perform services needed by the proposed ward and resources available to the proposed ward.¹⁸ The investigator must file with the court a written report stating his or her opinion of the nature of the proposed ward's incapacity and the powers a guardian would need to assist the proposed ward.¹⁹

Under existing law, after the petition has been filed, the clerk must issue a citation to provide notice of the time and place of the hearing.²⁰ Chapter 758 requires the citation to state that the proposed ward (1) may be judged to be incompetent, (2) may have his or her rights affected as specified in the petition, (3) has the right to appear at the hearing and to oppose the petition, and (4) has the right to be represented by an attorney and that an attorney will be appointed for the ward if he or she is unable to retain one.²¹ In addition, Chapter 758 provides that when the proposed ward is an incompetent or a person of limited capacity, the citation must be served by certified mail²² on the proposed ward and the spouse and adult children or, if there is no spouse, on the parents or siblings of the proposed ward.²³ In addition, the citation must be served on an officer of any institution having custody of the proposed ward.²⁴ If the proposed ward is a minor, the parents, any institution having control of the minor, and the minor must be served with the citation.²⁵ When service is required and the certified letter is returned as undeliverable, publication of the hearing will be sufficient notice if published at least twenty days before the date set for the hearing.²⁶

After the filing of the petition and the service of the citation, a hearing will be held to determine the need for the appointment of a general or special guardian.²⁷ Chapter 758 places the burden of establishing the necessity for the appointment on the petitioner.²⁸ Furthermore, if the proposed ward is present in the state he or she must attend the hearing unless excused by the court.²⁹ If the proposed ward is not present in the state, attendance is required only if it is necessary in the

18. *Id.* §159.— 1, 2.

19. *Id.*

20. *Id.* §159.047 1.

21. *Id.* §159.— 1, 2, 3, 4.

22. *See id.* §159.053 1.

23. *See id.* §159.047 2(a)(1).

24. *Id.* §159.047 2(a)(2), (3).

25. *Id.* §159.047 2(b)(1), (2), (3).

26. *See id.* §159.053 2, 5.

27. *See id.* §159.047 1.

28. *See id.* §159.055 1.

29. *Id.* §159.— 1.

interest of justice.³⁰

The court will dismiss the petition if it finds the proposed ward competent and not in need of a guardian.³¹ Upon a determination that the proposed ward is in need of a guardian, Chapter 758 requires the court to make an order appointing a guardian and specifying whether the guardian is a guardian of the person, of the estate, the person and the estate, or is a special guardian.³² Chapter 758 also provides that before the guardian is empowered, a copy of the order appointing the guardian must be served personally or by mail on the ward.³³

Under prior law, the court could appoint a temporary guardian without any party requesting the appointment.³⁴ Under Chapter 758, the court may appoint the temporary guardian only after the petitioner has filed a request with the court.³⁵ The petitioner must present facts which show that the proposed ward faces a substantial and immediate risk of financial loss or physical harm and that the ward does not have the capacity to respond to that risk.³⁶ Additionally, the petitioner must notify all persons entitled to notice of the request for a temporary guardian.³⁷ Chapter 758 limits the temporary guardian's powers to those necessary to assist in an emergency³⁸ and to a period of only ten days.³⁹ Within ten days after the appointment of a temporary guardian the court may hold a hearing to determine the need to extend the temporary guardianship.⁴⁰ If the court determines by clear and convincing evidence that there is a need to extend the temporary guardianship until a general or special guardian can be appointed, it may do so; but in no event may the temporary guardian have power for more than thirty days.⁴¹

In a related change, Chapter 758 revises the procedure for appointing a guardian named in a will.⁴² Under prior law, when the nomination of the guardian was by will the court could appoint the guardian without a petition or any notice of the hearing.⁴³ Chapter 758

30. *Id.* §159.— 2.

31. *Id.* §159.— 1.

32. *Id.* §159.055 2(a). *See also id.* §159.— (prohibiting a guardian of the person from consenting to experimental medical treatment or sterilization of a ward unless specifically empowered to do so by the court).

33. *See id.* §159.—.

34. *See* STATUTES OF NEVADA 1979, c. 515, §16, at 994 (amending N.R.S. §159.051).

35. *See* N.R.S. §159.— 1.

36. *See id.* §159.— 1(a), (b).

37. *See id.* §§159.— 1(c), 159.047 2(a).

38. *See id.* §159.— 2.

39. *See id.* §159.— 3.

40. *See id.*

41. *See id.*

42. *See id.* §159.—.

43. STATUTES OF NEVADA 1969, c. 246, §27, at 416 (enacting N.R.S. §159.063).

requires that the person nominated by the will file a petition before exercising the powers of a guardian,⁴⁴ giving relatives of the proposed ward notice of the hearing and an opportunity to oppose an improper appointment.⁴⁵

Termination of Guardianship

Chapter 758 provides that every guardianship, whether special or general, must be reviewed annually by the court.⁴⁶ Under existing law, a court may remove a guardian upon motion of the court or upon a petition filed by any interested person or by the ward.⁴⁷ Chapter 758 provides that when the ward files the petition to terminate or modify the guardianship, the court may appoint an attorney to represent the ward if the ward is unable to retain an attorney.⁴⁸ Finally, Chapter 758 establishes that any action relating to the appointment of a guardian that was commenced under the existing law before July 1, 1969, must be completed under the law of this chapter.⁴⁹

Conclusion

Chapter 758 authorizes the appointment of a special guardian to manage the affairs of a person of limited capacity to an extent commensurate with the person's abilities.⁵⁰ Chapter 758 also establishes the procedures governing the appointment of a special guardian,⁵¹ a temporary guardian,⁵² and an investigator,⁵³ and limits the class of persons who may petition for the appointment of a guardian.⁵⁴ Furthermore, Chapter 758 requires that all guardianships be reviewed annually⁵⁵ and permits the court to appoint an attorney to represent any ward who petitions to modify or terminate the guardianship.⁵⁶

44. See N.R.S. §159.—.

45. See *Badenhoof v. Johnson*, 11 Nev. 87, 89 (1876).

46. N.R.S. §159.—.

47. See *id.* §159.185 2.

48. *Id.* §159.—.

49. *Id.* §159.029.

50. See generally *id.* §159.—.

51. See generally *id.* §§159.013, 159.015, 159.043, 159.049.

52. See *id.* §159.—.

53. See *id.* §159.—.

54. See *id.* §159.— 1.

55. See *id.* §159.—.

56. See *id.* §159.—.