

Report on First Full Year of Operations
Under Nevada's Right to Counsel Law
for Individuals Under or Facing
Guardianship

October 30, 2018



Executive Summary

In 2014, senior citizens and adults with disabilities, their family members, friends, and neighbors began raising alarm bells to anyone who would listen concerning the guardianship court process. Soon, the problems became well known. Guardians were being appointed without notice, oftentimes when they were not needed. Family members were being bypassed as guardians in favor of professional guardians who proceeded to loot an individual's estate and isolate the individual from loved ones. As a result of these cases, Legal Aid Center of Southern Nevada was asked to provide legal representation to these victims. Emergency seed funding was provided from a private donor and from Attorney General foreclosure settlement funds. The Nevada Supreme Court formed a Guardianship Commission to address these issues. The commission, chaired by Justice James Hardesty, recommended groundbreaking legislation, including the right to counsel for individuals facing or under guardianship. On October 1, 2017, institutional funding began to support the representation of these individuals with the goal of having every person facing guardianship guaranteed the right to counsel. This report describes the actions taken since that time to implement a right to counsel in Clark County.

Model Created

The new legislation provides that an individual facing or under guardianship in Clark County has the right to legal counsel, and for all cases in Clark County (72% of Nevada's population), the court shall appoint an attorney from Legal Aid Center of Southern Nevada if the individual is unable to retain their own counsel. Legal Aid Center provides client-directed representation to those facing guardianship, meaning the attorney follows the individual's direction and works to achieve the client's stated goals. If the individual is unable to form a traditional client-attorney relationship, the attorney represents the individual's legal and constitutional interests. It is not a guardian ad litem model. A small program following a guardian ad litem model had previously existed in Clark County and was judged unsuccessful. Legal Aid Center has thus far hired eight well-qualified attorneys to represent these clients. This legal aid model allows the attorneys to become experts in the field of elder law and guardianship, to attend trainings in the law, and to share best practices with each other. In addition to providing top-notch representation, this model is also financially prudent. If a private sector model was utilized, and contract counsel were paid \$250 an hour, assuming each case took 10 hours a year, \$7,500,000 in funding would be required. Representation utilizing the nonprofit model costs less than 30% of this sum.

Goal of Representation

The purpose of Legal Aid Center's legal representation is to provide the following:

- To ensure that the least restrictive alternative to guardianship is explored and selected before guardianship is considered so as to maximize the independence and legal rights of those who would otherwise be placed under guardianship.

- To provide a voice in court proceedings for seniors and individuals with disabilities who want to contest a guardianship, either because it is deemed unnecessary or because the guardian is abusing their power.
- To protect and represent the due process rights of seniors and individuals with disabilities who are currently saddled with an inappropriate guardian who ignores their needs, exploits them, and/or overbills them.
- To advocate the wishes of seniors and individuals with disabilities in a guardianship action when they want to remain in their home, or, when this is not possible, live in a place of their choosing where they feel safe and comfortable.
- To stop guardians from unilaterally liquidating the property, keepsakes, and heirlooms of a person under a guardianship.
- To ensure that seniors or individuals with disabilities are fully able to communicate their wishes directly to the guardianship court and have those wishes acted upon.
- To recover the property and/or funds of an individual under guardianship through the civil law process when these assets were improperly taken by a guardian.

Representation

In October, 2017, Legal Aid Center began representation of seniors and adults with disabilities in every new case filed, in cases set for status checks, and in cases of concern to the court. Below is a chart showing the progress of representation:

Year/ Month	Number of New Filings per 8th J.D.	Total New Cases Opened for Representation	Total Cases Closed	Total Active
17-Oct	70	42	5	228
17-Nov	59	58	4	282
17-Dec	49	50	4	326
18-Jan	58	86	12	402
18-Feb	64	76	1	477
18-Mar	80	93	11	557
18-Apr	62	111	17	647
18-May	73	93	21	720
18-Jun	57	63	17	766
18-Jul	78	72	17	821
18-Aug	77	84	23	884
18-Sept	49	79	14	950
Total	776	907	146	950

In the next year, Legal Aid Center will continue to provide representation for every adult over whom a guardianship action is filed. An additional seven attorneys will be hired.

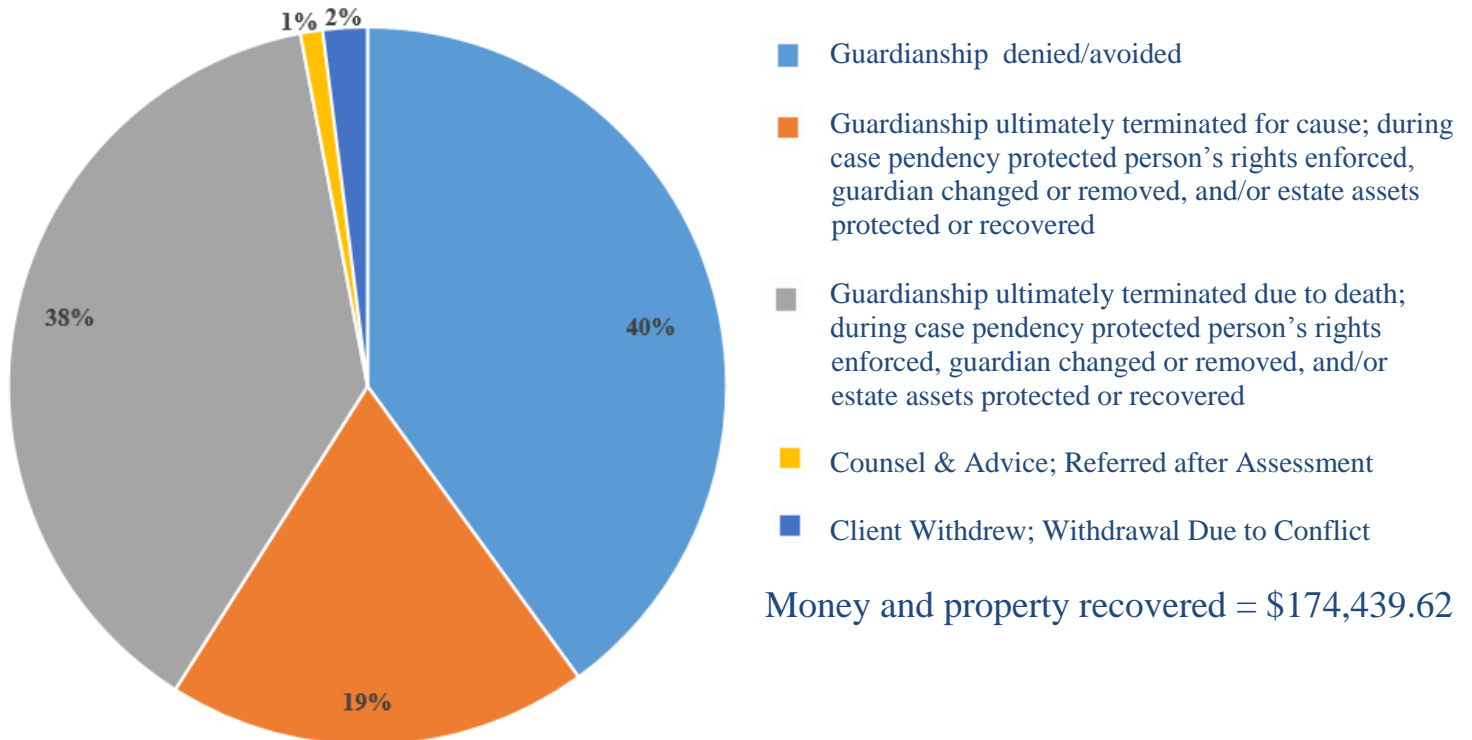
Pro Bono Representation

In anticipation of the need to establish an adult guardianship pro bono program, Legal Aid Center created a training manual for volunteer attorneys who agree to represent adults under guardianship. There are many reasons for the need to create a guardianship pro bono program: it allows the community to handle a variety of cases on a pro bono basis, it creates a more cost-effective model for the provision of legal services, and it allows private sector lawyers to see the great unmet legal need in the community. The pro bono training manual and additional resources are found on Legal Aid Center’s Pro Bono Project website here: <http://www.lacsnpobono.org/resources-and-training/guardianship/>. These comprehensive materials are available to be used as a model for the entire state of Nevada.

Outcomes

Below are the outcomes for the 146 cases closed in year one. As can be seen, 40% of the cases handled had the guardianship action denied or avoided. Another 19% of the cases resolved in the guardianship being terminated and the case dismissed. In 38% of the cases, the guardian was changed, assets were recovered, or rights were enforced.

Adult Guardianship Statistics of Closed Cases
10/1/17 – 9/30/18



Money and property recovered = \$174,439.62

Age breakdown for closed cases in first year.

Ages of Clients in Closed Cases – Year 1	Count
18-30	19
31-40	4
41-50	3
51-60	13
61-70	32
71-80	21
81-90	44
90+	10
Grand Total	146

Sample Cases:

There is probably no better way to illustrate the effect of counsel and the reforms than through an examination of actual cases:

*Ginger**

The police removed Ginger, a seventy-six year old woman, from her home and took her to a local hospital against her will. The manager at Ginger’s apartment complex had called the police and told them Ginger was elderly and unable to care for herself. At the hospital, a doctor – a general practitioner with no specialized training – observed Ginger for only a few minutes and wrote a statement saying that, in his opinion, Ginger needed a guardian to control every aspect of her life. This doctor was not a geriatric specialist, psychiatrist, or neurologist, each of whom would have been better equipped to diagnose mental incapacity in a senior.

With the doctor’s opinion in hand, the hospital hired a private professional guardian to petition the court for guardianship over Ginger. The stated purpose of the guardianship was to enroll Ginger in medical benefits (to pay for Ginger’s hospital stay) and then find a group home where Ginger would live (when her medical benefits ran out).

Despite Ginger’s protestations that she could handle her own affairs and did not wish to remain in the hospital against her will, the hospital refused to release her. Ginger strongly objected to the idea of having a private company choose where she would live and control her finances, medical decisions, and every other aspect of her life. In response to Ginger’s objections, the court appointed Legal Aid Center of Southern Nevada to represent Ginger.

The Legal Aid Center attorney fought the guardianship and demanded a trial to determine Ginger's ability to manage her own affairs, pointing to Ginger's long history of caring for herself independently. At trial, Ginger made clear that she did not want to relinquish her autonomy. She testified that she was competent and wholly able to provide for herself and that she did not want her affairs managed by a stranger. At the conclusion of the trial, the judge agreed and freed Ginger from her guardianship.

Ginger now reports that she is ecstatic to be on her own once again and is grateful that her Legal Aid Center attorney fought for her when no one else would listen.

*Mr. Mendez**

Mr. Mendez entered into a consent based guardianship following an automobile accident. Through the guardianship, the guardian's attorney established a special needs trust to protect Mr. Mendez's automobile accident personal injury litigation award. The guardian's attorney continued to bill thousands of dollars in yearly attorney's fees for serving as the guardian's attorney although the guardianship was unneeded. A staff attorney at Legal Aid Center of Southern Nevada filed a petition to terminate the unneeded guardianship. This petition was granted by the Court. Mr. Mendez still desired his guardian/wife to handle his affairs, so Mr. Mendez was appointed a Pro-Bono attorney to prepare Spanish language powers of attorney for financial and healthcare decisions. The powers of attorney allowed Mr. Mendez's wife/guardian to enjoy the same responsibilities that she managed throughout the guardianship, but in the least restrictive means possible, saving Mr. Mendez thousands of dollars in fees per year.

*Ms. Holly**

Ms. Holly is an eighty-seven year old woman who has lived with memory loss and advanced Alzheimer's dementia for five years. Ms. Holly lives with her son, who quit his job in California to move to Nevada to provide care for his mother. Ms. Holly and her son survive on Ms. Holly's limited social security income of \$1,200 per month. Ms. Holly's son has been unable to work because he provides full-time care for Ms. Holly. When Ms. Holly's Alzheimer's progressed to the point she could no longer manage her own affairs, the court awarded Ms. Holly's son guardianship.

Upon reviewing Ms. Holly's finances, her son was surprised to discover that Ms. Holly's estate had been plundered by Ms. Holly's nephew and daughter. Upon learning of the misappropriation, Ms. Holly's son notified the guardianship court, and the court appointed Legal Aid Center of Southern Nevada to represent Ms. Holly's interests and investigate the missing assets.

Ms. Holly's Legal Aid Center attorney quickly discovered that Ms. Holly's nephew had stolen \$100,000 from Ms. Holly. The attorney also discovered that Ms. Holly's daughter had caused her mother to sign over ownership of forty acres of valuable land, had stolen an heirloom diamond necklace, and had forced Ms. Holly to sign over ownership of shares of stock, all after Ms. Holly had already been diagnosed with Alzheimer's dementia. The Legal Aid Center

attorney immediately filed a recovery action in the guardianship case, demanding the return of all of Ms. Holly's stolen assets.

At trial, the judge sided with Ms. Holly and ordered that her daughter return the forty acres of valuable land, the heirloom diamond necklace, and the stocks. The judge also found that the nephew's bad acts warranted the imposition of double damages and awarded Ms. Holly \$200,000 from her nephew, double the misappropriated amount.

Without Legal Aid Center's assistance, Ms. Holly and her son would have no money with which to support themselves during Ms. Holly's golden years. Ms. Holly and her son now have funds to provide for Ms. Holly's care and comfort.

*Frank**

Frank is a ninety year old man, diagnosed with dementia, who had spent several years living with a female friend, Jane. Eventually, Jane decided she could no longer care for Frank, so she obtained a guardianship and placed Frank in a group home. An attorney from Legal Aid Center of Southern Nevada was appointed to advocate on Frank's behalf in his guardianship case.

Upon meeting Frank, the Legal Aid Center attorney quickly learned that Jane, Frank's guardian, was unreasonably possessive when it came to Frank, refusing even to allow his in-state grandchildren or out-of-state children to visit him. Frank made clear that he wanted to see his family, and he was extremely unhappy that Jane had prevented his family from visiting. Frank's Legal Aid Center attorney immediately asked the court to admonish the guardian and asked that Frank be allowed to visit with whomever he wished. The court agreed.

Shortly afterwards, Frank's Legal Aid Center attorney helped facilitate a trip for Frank to visit his children and family in Minnesota. Frank was so happy in Minnesota that he decided he did not want to return to Nevada. Frank's Legal Aid Center attorney fought to allow Frank to remain in Minnesota with his family as he wished, and eventually the judge ordered that Frank would not be required to return to Nevada.

Frank's guardianship has since been terminated. Frank reports that he is happy and content to remain in Minnesota with his family and loved ones.

*Names have been changed to protect confidentiality.