

Report on Guardianship Advocacy Program
For 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 at Legal Aid Center of Southern Nevada. This report describes the accomplishments achieved in 2018.

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 seven 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

Below is a chart showing the numbers of individuals represented in 2018.

Year/ Month	Number of New Filings per 8th J.D.	Total New Cases Opened for Representation	Total Cases Closed	Total Active
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
18-Oct	56	90	32	1007
18-Nov	58	61	19	1049
18-Dec	45	68	34	1083
Total	757	976	218	1083

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

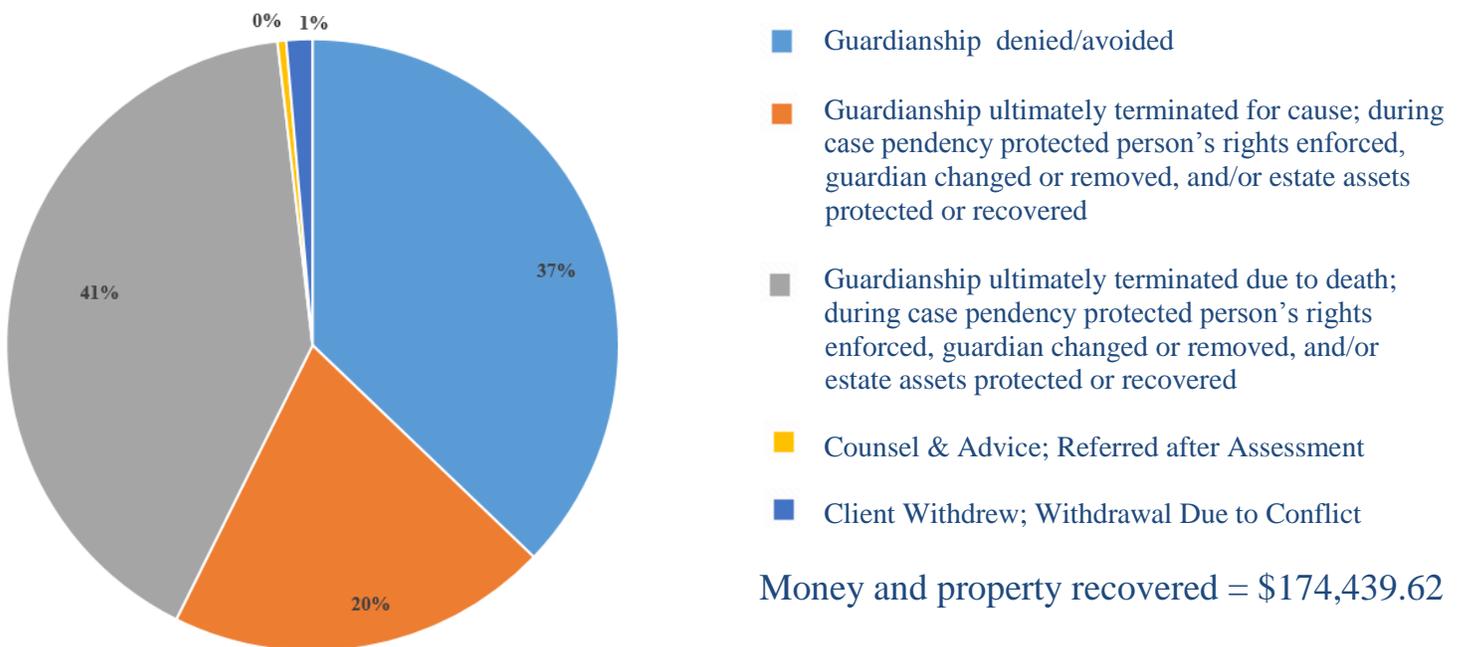
Pro Bono Representation

In anticipation of the need to establish an adult guardianship pro bono program to augment the staff resources devoted to these important cases, 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 218 cases closed in 2018. As can be seen, 37% of the cases handled had the guardianship action denied or avoided. Another 20% of the cases resolved in the guardianship being terminated and the case dismissed. In 41% of the cases, the guardian was changed, assets were recovered, or rights were enforced.

**Adult Guardianship Statistics of Closed Cases
1/01/18 – 12/31/18**



Money and property recovered = \$174,439.62

Age breakdown for closed cases in first year.

Ages of Clients in Closed Cases – 2018	Count
18-30	29
31-40	6
41-50	6
51-60	20
61-70	40
71-80	33
81-90	66
90+	18
Grand Total	218

Sample Cases:

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

*Franklin**

Franklin,* a seventy-two year old widower, had lived alone in his home ever since his wife died some decades earlier. Franklin had one child, Tom, who chose not to visit or speak with his father following his mother’s passing. Franklin was aging and began forgetting things he had always known, like his address and even his wife’s name. Franklin was eventually diagnosed with Alzheimer’s disease. Franklin also developed chronic health problems, for which he had to be hospitalized. The hospital contacted Tom and encouraged him to apply for guardianship over Franklin, opining that Franklin could no longer handle his own affairs.

Although Tom had not spoken to his father in many years, Tom hired an attorney to file for guardianship over Franklin. As Franklin’s only surviving family, Tom was easily awarded a guardianship. Tom’s first act as guardian was to clear out Franklin’s home and list it for sale. All the while, Franklin remained in the hospital, neglected by Tom who had not even visited his father once. Unfortunately, at that time, attorneys were not yet being assigned to protect persons in guardianship cases, so Franklin had no one watching out for him and protecting his rights.

The hospital repeatedly reached out to Tom to let him know that Franklin’s health was stable and that Franklin was cleared to either return home with periodic in-home care or move to an assisted living facility. Tom refused each of the hospital’s requests to develop a discharge plan for his father. Franklin remained in a hospital bed for over one year waiting to be discharged.

Finally, the hospital grew impatient with Tom's refusal to manage Franklin's affairs and hired an attorney to petition the court for relief. In response, the judge appointed an attorney from Legal Aid Center of Southern Nevada to represent Franklin and determine whether Franklin had any objection to his son continuing as guardian.

Franklin's Legal Aid Center attorney met with Franklin in his hospital room. During the meeting, Franklin told his attorney that he was unhappy remaining in the hospital and was tired of his hard hospital bed. Although he loved his son, Franklin did not want Tom to continue to manage his affairs. At Franklin's direction, his Legal Aid Center attorney filed a petition to remove Franklin's son as guardian and to appoint the Clark County Public Guardian's Office as Franklin's successor guardian.

At the hearing, Tom grudgingly agreed to the public guardian's appointment but demanded that Franklin pay him over \$11,000 in guardian fees for his services. Tom's attorney similarly demanded that Franklin pay over \$29,000 in attorney's fees that Tom had incurred. Franklin's Legal Aid Center attorney adamantly opposed the fee requests. Although Nevada law allows the judge to award reasonable guardian and attorney's fees, Tom and his attorney had done Franklin far more harm than good. Tom and his attorney had allowed Franklin to remain in a hospital bed for over sixteen months even though Franklin had been cleared for discharge, forcing Franklin to incur over \$164,242.00 in hospital debt. They had even failed to provide Franklin with clothing when requested by the hospital social worker.

The judge agreed with Franklin's Legal Aid Center attorney and, in light of the overwhelming evidence of Tom's inability or unwillingness to perform his duties, denied Tom's and his attorney's fee requests in their entirety.

With all of Franklin's possessions and money returned, Franklin's successor guardian had ample funds to provide for Franklin's care and comfort. The successor guardian immediately found Franklin a comfortable place to live, and Franklin reports that he is beyond pleased with his new home and grateful to his Legal Aid Center attorney for freeing him from his hospital bed.

*Stella**

Legal Aid Center of Southern Nevada was appointed to represent Stella,* an eighty-seven year old widow. Stella's husband had passed away some five years ago, leaving Stella with sufficient financial resources to care for herself for years to come.

Stella had four children, two daughters and two sons. As Stella started to decline, Stella's daughters moved into Stella's home to care for her. Unfortunately, the daughters also began isolating Stella from her sons. After a lengthy court battle, the sons were awarded guardianship over Stella over the daughters' objection.

One of the sons' first acts as guardians was to move Stella to their home state to live with them. When Stella's Legal Aid Center attorney contacted Stella, Stella indicated she was happy with the move and loved living with her sons. After only a few months, however, Stella's health

significantly declined, and Stella's sons placed her in a nursing home. Stella's attorney again reached out to Stella. This time, Stella said she did not want to be in the nursing home and wanted to return to her home in Nevada. Stella's greatest fear was dying in a nursing home.

Stella's Legal Aid Center attorney immediately contacted the sons and demanded that Stella be returned to Nevada, but the sons refused. Stella's attorney then asked the court to require Stella's return, but the sons objected, claiming the move would be a financial burden.

When Stella's attorney contacted Stella to discuss her options, it was apparent that Stella was less coherent than usual and in distress. Stella told her attorney, "I've got to get myself out of here." Stella's attorney contacted the head nurse and was shocked to learn that Stella had fallen and had literally been lying on the floor bleeding during their entire phone conversation. In fact, the attorney learned that Stella had fallen no less than eight times in the last month.

Based on the inadequate care Stella was receiving and the guardians' lack of oversight, Stella's attorney filed with the court to have the sons removed as guardians and to have Stella immediately returned to her home. The court ordered the sons to return Stella or face contempt charges. Stella's sons were upset, but fearful of going to jail, they complied.

When Stella's attorney next visited Stella in her home in Nevada, Stella was on hospice and close to death. But she was happy to be home. Stella could barely speak during the visit, but she knew where she was. She told her Legal Aid Center attorney, "I am home."

One of Stella's sons was present during the visit and, despite the fight over Stella's return, thanked Stella's attorney and said he was happy his mother could die in her home as she had always wanted.

A few weeks later, Stella passed away peacefully in her home. Stella's fear of living her last days in a nursing home did not become a reality. Stella was surrounded by her family.

*Judy**

Judy,* a young adult, has suffered from mental health issues her entire life. However, as long as Judy took her medication, she was able to manage her illness and her affairs. Judy lived with her mother, who helped support Judy. Unfortunately, Judy went off her medication, had an episode, and disappeared from her home without a word to anyone.

Judy's mother was distraught at her daughter's disappearance. She called Judy's friends, all of whom said they had not heard from Judy. She also called local hospitals, but the hospitals refused to release any information, claiming the information was confidential under HIPAA and that they were unable to disclose whether Judy had been admitted unless her mother had a power of attorney or guardianship.

Exasperated, Judy's mother filed an emergency guardianship petition seeking immediate appointment as Judy's guardian so she could speak with the hospitals regarding Judy. The court appointed an attorney from Legal Aid Center of Southern Nevada to represent Judy. Happily,

before the hearing on Judy's mother's petition, Judy phoned her mother from a local hospital, one that Judy's mother had previously contacted that had refused to disclose whether Judy was a patient. Judy explained that the hospital had treated and stabilized her; she said she was feeling much better and asked to return home. Judy's mother elatedly drove to the hospital and took Judy home.

To prevent a similar situation from occurring in the future, Judy's Legal Aid Center attorney proposed a solution that provided both Judy and her mother peace of mind. Judy agreed to give her mother powers of attorney that would allow Judy's mother to contact the hospitals and obtain information about whether Judy had been admitted. Judy loved the solution because the powers of attorney were much less restrictive than a full-blown guardianship. At Judy's direction, her Legal Aid Center attorney drafted the powers of attorney, and, with documents in hand, Judy's mother dismissed the restrictive guardianship case.

Judy reports that she has been free from incident since. Judy states that she and her mother are both happy and thankful to have the powers of attorney and the peace of mind.

*Harold**

Harold,* an eighty-two year old widower, fainted due to exhaustion while boxing and moving all of his belongings. Harold had been forced to move after his landlord raised his rent beyond what Harold could afford on his fixed Social Security income. Harold was taken by ambulance to the hospital so that his health could be monitored.

Harold stayed at the hospital for a couple of days to recover from his fall. Although his doctor noted that Harold was in good physical health, the hospital refused to discharge Harold because he had no home to return to. During Harold's hospital stay, his landlord had removed Harold's possessions and stored them. To make matters worse, because of the hospitalization, Harold had been unable to complete a rental agreement with his new landlord, so the new landlord had given away what was to be Harold's new apartment.

Despite its refusal to discharge Harold, the hospital still wanted to free up Harold's bed – so it initiated a guardianship case against Harold. One of Harold's doctors wrote an opinion stating that Harold could no longer handle his own affairs and was mentally incapacitated. Based on that opinion, the hospital enlisted a private professional guardian to petition the court for guardianship over Harold. The stated purpose of the guardianship was to enroll Harold in medical benefits – which would pay Harold's outstanding hospital bill – and then find a group home for Harold when his medical benefits would no longer fund his hospital stay.

Harold believed that he was fully able to handle his own affairs, and he objected to remaining in the hospital against his will. He also objected to having a private professional guardian appointed to choose where he would live and to control his finances, medical decisions, and every other aspect of his life. Harold maintained that he did not need to remain in the hospital because he had a close friend who would allow Harold to live with her until Harold was able to

recover his belongings and locate a new apartment. In response to Harold's objections, the court appointed Legal Aid Center of Southern Nevada to represent Harold.

After meeting Harold and determining his wishes, Harold's Legal Aid Center attorney advised the court that Harold was not in need of a guardian and requested an immediate unbiased re-evaluation, citing Harold's long history of caring for himself independently. Persuaded, the judge said that before any guardianship would be ordered, Harold would have the chance to obtain a comprehensive evaluation from a specialist of his choice, be it a geriatric specialist, psychiatrist, or neurologist, any of whom would be better qualified to diagnose a senior's mental incapacity than the hospital's doctor.

Harold met with a psychiatrist who evaluated Harold and reported that Harold was aware and oriented, that he was cognitively intact, and that his insights were good. The psychiatrist had found Harold perfectly capable of managing his own affairs, directly contradicting the hospital's previous opinion.

Confronted with the psychiatrist's comprehensive evaluation, the hospital had no choice but to withdraw its petition for guardianship. The judge ordered that Harold did not need a guardian. Harold reports that he has recovered his belongings and is now happily living with his close friend. Harold states that he is grateful to his Legal Aid Center attorney for freeing him from the hospital and for advocating for him when no one else would.

*Names have been changed to protect confidentiality.