

## 2020 Report

### Adult Guardianship Advocacy Program and Minor Guardianship Advocacy Program

---



## **Executive Summary**

In 2015, Justice James Hardesty and the Nevada Supreme Court created the Commission to Study the Creation and Administration of Guardianships in Nevada's Courts after allegations of exploitation, neglect and other abuses of persons in guardianship became widely known. The Commission's report, which concluded in September of 2016, recommended statutory and policy changes in guardianship. The 2017 Nevada Legislature enacted numerous guardianship reforms to address the problems identified by the Commission. NRS 159.0485, which became effective on January 1, 2018, mandates that counsel be appointed to represent a proposed protected person in every guardianship matter. Since that time, the guardianship court has appointed Legal Aid Center to represent every person facing guardianship in Clark County if they are 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 their goals. When the individual is unable to form a traditional client-attorney relationship, the attorney represents the individual's statutory, civil and constitutional rights. The Legal Aid Center Guardianship Advocacy Program (GAP) attorneys have quickly become experts in the field of guardianship law. The GAP unit currently consists of fourteen attorneys, five legal assistants and two legal advocates.

## **Goal of Representation**

The purpose of Legal Aid Center's legal representation in adult guardianships action 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.

In 2019, and following the success of the Guardianship Advocacy Program, Legal Aid Center of Southern Nevada was asked to consider developing a similar advocacy program for minors under guardianship. Legal Aid Center accepted our first minor guardianship case in early 2020 after hiring our first minor guardianship attorney. The Minor Guardianship Advocacy Program (MGAP) now consists of a team of four attorneys and one legal assistant. These cases often involve custody and parental rights matters, as well as abuse and neglect issues. These attorneys advocate for their minor clients by ensuring that their voices and wishes are heard and considered and their legal interests are protected. In 2020, our minor guardianship attorneys litigated a very impressive eleven evidentiary hearings.

### **Representation**

Below is a chart showing the numbers of individuals represented in 2020 in GAP and MGAP.

Adult Guardianship Advocacy Program Cases				Minor Guardianship Advocacy Program Cases			
2020	Total Opened	Total Closed	Total Active End of Month	2020	Total Opened	Total Closed	Total Active End of Month
Jan	84	96	1,510	Jan	5	0	6
Feb	75	64	1,555	Feb	9	0	15
Mar	61	55	1,595	Mar	19	0	34
Apr	51	41	1,608	Apr	10	0	44
May	42	29	1,608	May	22	0	66
Jun	62	45	1,654	Jun	30	6	95
Jul	58	66	1,663	Jul	28	13	109
Aug	54	42	1,677	Aug	47	5	152
Sep	61	51	1,678	Sep	50	10	192
Oct	65	46	1,700	Oct	52	18	225
Nov	49	46	1,720	Nov	48	21	252
Dec	48	71	1,704	Dec	23	51	223
Totals:	710	652		Totals:	343	124	

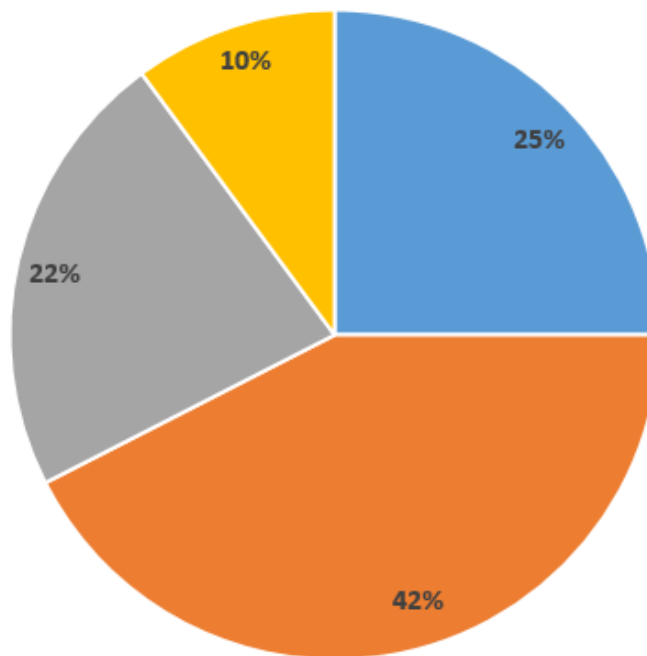
In 2020, our GAP attorneys worked on **2,598** protected person cases and **349** minor guardianship cases involving 490 children.

### **Outcomes**

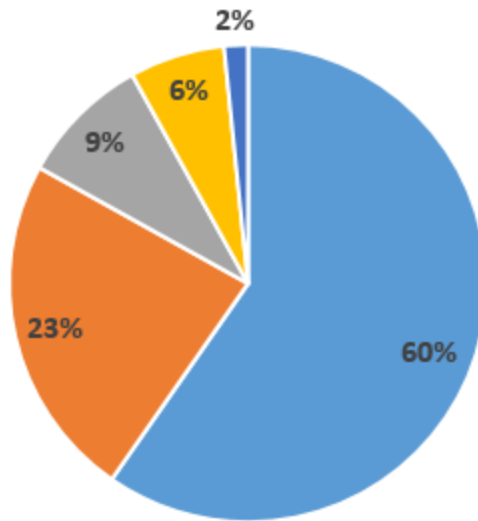
Below are the outcomes for the 652 adult guardianship cases closed in 2020. Guardianship was either denied or avoided in 25% of the cases handled. These cases reflect Legal Aid Center attorneys' ability to identify less restrictive alternatives to guardianship for the proposed protected person or to establish that a guardianship was not necessary. Another 23% of the cases were terminated for cause after the guardianship was granted because the protected person had recovered from a medical event or developed skills and support systems such that they no longer

needed a guardian to manage their affairs. Finally, 42% of the adult cases were terminated due to death and during the pendency of the guardianship, the guardian was changed or removed, assets were protected and rights were enforced.

In the Minor Guardianship Advocacy Program, the Legal Aid Attorneys enforced the rights of minors in 136 closed cases which often meant that the minor's wishes as to the guardianship or the guardian were heard and considered before the court granted the guardianship. These cases included circumstances where minors were in favor of the proposed guardianship, but requested visitation orders to allow them to maintain relationships with parents and other family members. This number also reflects denial of guardianship when the guardianship petition was filed in an attempt to avoid custody or dependency proceedings.



- Guardianship denied/avoided
- Guardianship ultimately terminated due to death; during case pendency protected person's rights enforced, guardian changed or removed, and/or estate assets protected or recovered
- Guardianship ultimately terminated for cause; during case pendency protected person's rights enforced, guardian changed or removed, and/or estate assets protected or recovered
- Brief Service; Counsel & Advice; Deceased; Referred after Assessment



- Rights enforced
- Rights enforced/Gship denied/dismitted/avoided
- Rights enforced/assets protected or recovered/avoided dependency or other proceedings/Gship terminated for cause or other
- Rights enforced/obtained transfer to proper forum
- Brief service; Other

#### **Money and Property Recovered/Avoided**

Adult Guardianship	Minor Guardianship
Avoided = \$150,370.92	Received = \$2,216.67

## **Demographics of Ages**

<b>Adult Guardianship Clients</b>		<b>Minor Guardianship Clients</b>	
<b>Ages of Clients in 2020</b>	<b>Count</b>	<b>Ages of Clients in 2020</b>	<b>Count</b>
Information not provided	36	Information not provided	12
0-17	2	0-3	73
18-30	599	4-7	100
31-40	194	8-10	86
41-50	167	11-16	180
51-60	228	17-19	38
61-70	340	20+	1
71-80	489	<b>Grand Total</b>	490
81-90	397		
90+	151		
<b>Grand Total</b>	2,603		

## **Conclusion**

The right to counsel in guardianship cases has significantly changed the landscape of guardianship in the State of Nevada. Many wrongful adult guardianship actions were prevented through the appointment of counsel, and many existing adult guardianships were dissolved as a result of independent legal counsel. Having independent legal counsel receive no funding from the estate and have no financial motivation to drag cases through extensive court proceedings changes the dynamic of these actions and results in a client-centered approach to a case. Adding minor guardianship representation this year has been rewarding. In some ways, minor guardianship law is similar to that of adult guardianships, but the case dynamics are much different, with minor guardianship cases requiring an extensive knowledge of interviewing children and an understanding the intersection of minor guardianship, abuse and neglect law, and custody law. But in every case, there is no doubt that having the child's voice be heard for the first time through independent legal counsel has changed the outcomes of children's lives.

## **Sample Cases:**

*\*Vince (Minor Guardianship case)*

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

Every kid deserves to feel safe, regardless of how old they are. As a kid grows taller and matures, it's easy to lose sight that underneath all that height and maturity they're still a kid.

Adulthood was quickly approaching for Vince\*. Vince's parents separated years ago. He had a strained relationship with his mother and, since the separation he lived solely with his father. His father had alcohol issues and was developing early onset dementia. That combination led to

physical altercations which lead to police involvement and to Vince having to stay with a relative. Child Protective Services investigated and confirmed both the police involvement and that the father had dementia. However, they did not substantiate the physical abuse because there was not enough evidence against the father. One of the factors CPS considers is how vulnerable the child is based on their age. Since Vince is old enough to call for help in an emergency CPS considered him less vulnerable.

Because CPS would not intervene, the relative filed for minor guardianship over Vince and the Court appointed Legal Aid Center of Southern Nevada, Inc. to represent him.

Upon meeting with Vince, the Legal Aid Center attorney could tell Vince was mature, smart and had a lot going for him. However, being smart and mature didn't change the fact Vince felt afraid of his father. His father had violent outbursts that were hard to predict. That lack of stability and security really had Vince on edge. Because the thing about fear is no matter how old or tall you are, fear will make you feel small, it makes you feel vulnerable, it will make you feel alone.

In minor guardianship cases, where parents are alive and presumably able to care for their own children, the parents must consent to the guardianship or there must be a finding that they are unfit to parent before the Court can grant the guardianship. While Vince and his mother had a strained relationship and she was not involved in his life, she was nonetheless considered fit under the legal standard, i.e., she was capable of providing food, shelter, and clothing for Vince. There were not any safety concerns about mother, such as allegations of substance abuse or violence. However, Vince's mother lived in a different state. If Vince went to live with her, it would mean uprooting his life in Nevada to live with a parent who was distant and cold to him. Vince did not want this.

On Vince's behalf, the Legal Aid Center attorney met with his mother and listened to her concerns and her feelings about a relative petitioning for guardianship of her child. She was angry with everyone and felt betrayed. The Legal Aid Center attorney communicated Vince's wishes and desires to his mother and specifically advocated for Vince's wish to repair the relationship with her but on his terms. With that, Vince's mother agreed to consent to the guardianship ahead of the hearing.

At the hearing, Vince's father appeared and objected to the guardianship. Vince, through his Legal Aid Center attorney, argued that while CPS could not substantiate the physical abuse, the safety concerns remained. Vince deserved a home where he wasn't afraid, where he felt safe, where he could attend school and continue to make friends, and where he was happy. The Court agreed, finding that grounds were met to grant the guardianship.

Vince is safe, happy, supported and he isn't alone. The guardianship will be dismissed when Vince becomes an adult. He will start college shortly thereafter and hopefully have a bright future, in part, because his voice was heard in court.

*\*Tim (Adult Guardianship case)*

Tim, a fifty-eight year old man, was hospitalized against his will. The hospital then refused to release him for over ninety days. When initially admitted to the hospital, a doctor, who had only observed Tim for a few minutes, wrote a report stating that Tim needed a guardian to manage every aspect of his life. Tim became trapped in the hospital as a result of this doctor's opinion. The hospital petitioned the court to appoint a guardian for Tim. Tim strongly objected to someone else choosing where he would live, how his money would be spent, and what medical care he would receive, among other things. Fortunately for Tim, the court appointed Legal Aid Center of Southern Nevada to represent him in his guardianship matter.

At the hearing on the hospital's petition, Tim's Legal Aid Center attorney appeared with Tim and fought for Tim's independence, relying on Tim's long history of caring for himself independently. The hospital argued that because Tim was between housing, it was unsafe to release him from the hospital. The hospital further argued, without any evidence, that Tim could not be trusted to manage his own affairs. However, Tim, with Legal Aid Center counsel's assistance, clearly explained to the judge how he had previously managed his affairs and of his future plan to live with his brother until he located housing for himself, which he could easily afford on his Social Security retirement income. The judge was satisfied and denied the hospital's petition to appoint a guardian. The hospital was ordered to release Tim immediately.

Tim reports that he moved into his brother's home as soon as the hospital released him, and is in the process of locating his own apartment. Tim is eternally grateful that his attorney listened to him and fought for his ability to live independently and manage his own affairs.

\*name has been changed