

Guardianship of a Minor Child

Chapter 159 of the Nevada Revised Statutes addresses Guardianships.

NRS 159.061, which includes **Nevada's Parental Preference Doctrine** and the Court's considerations in determining qualifications and suitability of guardians, provides in pertinent part:

NRS 159.061 Preference for parent of minor; other considerations in determining qualifications and suitability of guardian; appointment of public guardian or private fiduciary.

1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. The appointment of a parent as a guardian of the person must not conflict with a valid order for custody of the minor. **In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:**

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS; and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood, adoption or marriage of the proposed guardian to the proposed ward. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

(1) Spouse.

(2) Adult child.

(3) Parent.

(4) Adult sibling.

(5) Grandparent or adult grandchild.

(6) Uncle, aunt, adult niece or adult nephew.

(e) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(f) Any request for the appointment of any other interested person that the court deems appropriate.

4. If the court finds that there is no suitable person to appoint as guardian pursuant to subsection 3, the court may appoint as guardian:

(a) The public guardian of the county where the ward resides, if:

(1) There is a public guardian in the county where the ward resides; and

(2) The proposed ward qualifies for a public guardian pursuant to chapter 253 of NRS;

(b) A private fiduciary who may obtain a bond in this State and who is a resident of this State, if the court finds that the interests of the ward will be served appropriately by the appointment of a private fiduciary; or

(c) A private professional guardian who meets the requirements of NRS 159.0595.

NRS 159.1905 **Petition for termination or modification**; appointment of attorney to represent ward; burden of proof; issuance of citation; penalties for not filing petition in good faith.

1. A ward, the guardian or another person may petition the court for the termination or modification of a guardianship. The petition must state or contain:

(a) The name and address of the petitioner.

(b) The relationship of the petitioner to the ward.

(c) The name, age and address of the ward, if the ward is not the petitioner, or the date of death of the ward if the ward is deceased.

(d) The name and address of the guardian, if the guardian is not the petitioner.

(e) The reason for termination or modification.

(f) Whether the termination or modification is sought for a guardianship of the person, of the estate, or of the person and estate.

(g) A general description and the value of the remaining property of the ward and the proposed disposition of that property.

2. Upon the filing of the petition, the court may appoint an attorney to represent the ward if:

(a) The ward is unable to retain an attorney; and

(b) The court determines that the appointment is necessary to protect the interests of the ward.

3. The petitioner has the burden of proof to show by clear and convincing evidence that the termination or modification of the guardianship of the person, of the estate, or of the person and estate is in the best interests of the ward.

4. The court shall issue a citation to the guardian and all interested persons requiring them to appear and show cause why termination or modification of the guardianship should not be granted.

5. If the court finds that the petitioner did not file a petition for termination or modification in good faith or in furtherance of the best interests of the ward, the court may:

(a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the ward; and

(b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses and for any other pecuniary losses which are incurred by the estate of the ward and associated with the petition.

Parent(s) Did Not Consent to Guardianship:

In Hudson v. Jones, 138(2 P.3d 429 006), the Nevada Supreme Court concluded that when a district court grants a nonparent joint legal and primary physical custody of a child, the Parental Preference Doctrine does not apply to subsequent motions to modify custody. Instead, a parent seeking to modify custody must show that the circumstances of either the parent or nonparent have been materially altered and that the child's welfare would be substantially enhanced by the change in custody.

Parent(s) Consented to Guardianship:

In Locklin v. Duka, 112 Nev. 1489, 929 P.2d 930(1996), the Nevada Supreme Court held that in Nevada, extraordinary circumstances sufficient to overcome the parental preference doctrine are those circumstances which result in serious detriment to the children. The Court outlined the factors the district court may consider when evaluating whether extraordinary circumstances exist, which include:

abandonment or persistent neglect of the child by the parent; likelihood of serious physical or emotional harm to the child if placed in the parent's custody; extended, unjustifiable absence of parental custody; continuing neglect or abdication of parental responsibilities; provision of the child's physical, emotional and other needs by persons other than the parent over a significant period of time; the existence of a bonded relationship between the child and the non parent custodian sufficient to cause significant emotional harm to the child in the event of a change in custody; the age of the child during the period when his or her care is provided by a non-parent; the child's well-being has been substantially enhanced under the care of the non-parent; the extent of the parent's delay in seeking to acquire custody of the child, the demonstrated quality of the parent's commitment to raising the child; the likely degree of stability and security in the child's future with the parent; the extent to which the child's right to an education would be impaired while in the custody of the parent; and any other circumstances that would substantially and adversely impact the welfare of the child.

Pursuant to NRS 159.1905(3), “ The petitioner has the burden of proof to show by clear and convincing evidence that the termination or modification of the guardianship of the person, of the estate, or of the person and estate is in the best interests of the ward.”

The statute must be read in conjunction with Litz v. Bennum, 111 Nev.35, 38, 888 P.2d 438, 440 (1995) and In the Matter of the Guardianship of the Person and Estate of D.R.G. Dwight G., vs Connie E.P., 119 Nev 32, 62 P. 3d 1127 (2003) – In the absence of exceptional, extraordinary circumstances, the best interests of a child are served by being in the custody of a fit parent who is qualified and suitable.