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EIGHTH JUDICIAL DISTRICT COURT

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April 28, 2003

Mark Amodei
Chair of Senate Judiciary Committee
401 S. Carson Street
Carson City, Nevada 89701

Re: AB 365

Dear Senator Amodei and Members of the Judiciary Committee:

Unfortunately, I will be unable to attend the May 1, 2003, hearing on AB 365; however, please accept this letter as evidence of my support. I am currently the Presiding Adult Guardianship Judge in Clark County. In this position, I oversee the work of the Guardianship Commissioner, Jennifer Henry, and on occasion hold additional court hearings. It is my understanding that the last substantive review of Chapter 159 of the Nevada Revised Statutes occurred in 1981. Ms. Henry and I discussed the need for a wholesale rewrite of Chapter 159. It is my opinion, as Ms. Henry's, that AB 365 fulfills this need.

AB 365 attempts to import many of the guidelines and procedures found in the various chapters of the probate code in an attempt to make the guardianship statutes all-inclusive. This effort is directly in response to an unpublished Supreme Court order stating that the use of a portion of the probate statutes in a guardianship matter was inappropriate. It has been and continues to be common legal practice to look to the probate code for analogy, due to the similarity in probate and guardianship matters.

The bill seeks to add extra protection for a proposed ward or ward in section 4, which allows the court to appoint a guardian ad litem, as well as section 58, which expands the persons who may be used as an investigator. Additional preservation measures are found throughout the bill with regards to the discretionary ability of the court to recoup fees which were unnecessarily expended due to frivolous causes of action being filed. Provisions have been inserted in the notification section to include minor children of the ward who are under the age of 14 years.

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Sections 64, 65 and 66 remedy timing problems with temporaries while a publication is being pursued. These changes will preserve estate assets for the ward by streamlining a currently inefficient and time consuming process.

With the increase in guardians choosing to represent themselves in guardianship proceedings, many of the provisions of the bill attempt to clarify the role and duties of a guardian. For example, section 97 should result in a guardian seeking assistance from the court or a qualified medicaid practitioner prior to giving gifts which would result in disqualification for eligibility. Section 95 provides guidance for a guardian when the estate of the ward contains investment accounts; a common occurrence in today's society.


A very important change found in section 86 involves a guardian's right to collect information contained in a trust which benefits the ward. Also, section 93, with certain precautions imposed by the court, allows a limited reformation of wills and trusts. Finally, without these specific provisions there is contrary opinions as to whether a sitting Family Court Judge has the ability to preside over trust issues. In light of economics, as well as one judge- one family (forum shopping), specific authority to preside over applicable trust issues must be bestowed to the guardianship court.

Finally, section 47 permits for appeals during the maintenance of a guardianship case. Presently, the Supreme Court will not entertain appeals in an on-going guardianship, with only a few limited exceptions. The result of the inability to appeal "interim" orders can be potentially devastating to a ward, not to mention a multitude of other interested individuals.

In conclusion, I hope you find, as I have, that the changes proposed to Chapter 159 as found in AB 365 are beneficial and appropriate. If you have any questions or concerns, Commissioner Henry will be present at the hearing on May 1, 2003, and can aptly provide responses.

Thank you for your consideration of AB 365. I encourage your active support of this bill.

Sincerely,


Robert W. Lueck
District Court Judge

RWL/lis

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