

Working Interdisciplinary Network of Guardianship Stakeholders

April 26, 2017 Summary Minutes

Attendees: David Connors, Kent Alderman, Nancy Sylvester, Kaye Lynn Wootton, Andrew Riggle, Karolina Abuzyarova, Nels Holmgren, Wendy Fayles, Dustin Hammers, Joanne Bueno Sayre, Rhett Dutson, James Toledo, Michelle Wilkes, Rob Denton, Todd Weiler

Excused: James Brady, Shannon Alvey, Nan Mendenhall, Daniel Musto

No show: Joseph Taylor

Introduction: Committee Chair, Judge Connors asked committee members to introduce themselves. Committee approved February minutes.

Grant Applications: On behalf of WINGS, Karolina Abuzyarova, WINGS and Court Visitor Program Coordinator, applied for two grants with a total amount of \$70,000.

One is ASPIRE grant (\$40,000) that stands for Achieving Success by Promoting Readiness for Education and Employment. ASPIRE provides training to families with children with disabilities on SSI to reduce the household's dependence on public benefits by increased educational attainment and increased career achievement. It is a six state consortium of Arizona, Colorado, Montana, North Dakota, South Dakota and Utah. ASPIRE's Executive Director, Carol Ruddell, was looking for an agency to provide guardianship and life planning training for children with disabilities turning 18. WINGS has already been providing public classes with the grant support from the Utah State University and has similar perspective on guardianship as last resort like ASPIRE. Department of Workforce Services solicited WINGS qualifications and signed a contract to provide training including individual consultations to families by September 2018.

Second grant is Elder Justice Innovation grant (\$30,000) WINGS Focus of Court Oversight provided by the American Bar Association and the National Center for State Courts. Utah WINGS will focus on developing judicial response protocol in cases of abuse and exploitation and protocol in establishing limited guardianship and exploring guardianship alternatives. Grant was submitted and response would be received by May 1, 2017. As of 5/17/17, ABA awarded the grant to Utah WINGS and was working on budget and contract details. Grant will fund implementation of judicial protocol through judicial education in all eight districts of the Utah State Courts to establish a uniform process in guardianship proceeding.

Legislative Update: Nancy Sylvester provided legislative update and that Utah Legislature did not appropriate funds for the Court Visitor Program this year. Nan Mendenhall from APS, Shannon Alvey with Office of Public Guardian, Kaye Lynn Wootton with Medicaid Fraud Control Unit of the Utah Attorney General's Office and two volunteer court visitors joined WINGS Chair, Judge Connors and Nancy Sylvester at the Capitol Hill in February during legislative hearing. A 35-page memo was presented to legislators including judicial testimonies and specific cases where vulnerable adults benefitted from involvement of the Court Visitor Volunteer Program. Since the program inception in 2011, 69 district court judge utilized services of the volunteer court visitors. If one time funding is approved by the Judicial Council on May 22, the Courts will most likely approach Utah Legislature in 2018. A lot of support was already generated in 2017, and the chance to secure funding is slightly higher next year. As of 5/22/17 Judicial Council approved one time funding for FY 2018 for the guardianship programs.

Karolina asked Nels Holmgren to provide an update on whether Adult Protective Services was able to make changes to their statute as was planned. Nels indeed confirmed that APS' bill was approved and now allows the agency to provide emergency services. With the edited law in

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place, now vulnerable adults with mental illness do not have to be booked in the jail for the purpose of protection, but APS could find them placement for a few days through their networks.

In addition, Nancy Sylvester pointed out that Utah might consider adopting Minnesota Courts' notice to terminate guardianship that is sent out with a reminder to submit annual reports. Nancy will draft a copy of the notice and it will go for review of the Board of District Court Judges and Standing Forms Committee. Andrew Riggle pointed out that the language might have to be adapted so that a person with intellectual or other limitations can understand.

Other issues: Judge Connors asked WINGS members if there are any issues that they are interested in bringing up.

Andrew Riggle said that a group of self-advocates is putting together classes and resources on alternatives to guardianship and supported decision-making. In collaboration with Developmental Disabilities Council, Self-Advocates group, Disability Law Center is putting together a 2017 Celebration of Self-Determination Conference on July 10th, at the Red Lion Hotel, 161 west 600 south, in Salt Lake City: <https://www.utahddcouncil.org/wp-content/uploads/2017/05/Self-Determination-Celebration-with-Registration-Link-07.10.2017.pdf>. A well-known East coast attorney representing vulnerable adults, Jonathan Martinez, is going to be the keynote speaker. For the next meeting Andrew suggested to invite a group of Self-Advocates to make a presentation on their efforts. Amy Notwell is a contact for the Self-Advocates group.

Joanne Bueno Sayre informed the group about a documentary produced by KUED, part of it was filed in Judge Parker's courtroom. Joanne sent out a link after the meeting and Karolina forwarded to the committee a 26-minute documentary on the young adults on the autistic spectrum and their caregivers: video.kued.org/video/2366035553/.

Subcommittees break out discussions:

I. Abuse and Exploitation

Present: Judge Connors, Kaye Lynn Wootton, James Toledo, Michelle Wilkes, Rob Denton, Nancy Sylvester, Nels Holmgren.

The subcommittee discussed limits of the Adult Protective Services. Mr. Holmgren noted that APS can't remove anyone from a home, unlike Child Protective Services with kids. When someone passes away, their protective need goes away. Assuming someone has capacity, APS must respect their wishes. Utah is a mandatory reporting state, so there is a central intake number. APS investigates with the goal of resolving protective needs. A big part of self-neglect is convincing people they need resources. Another big part is financial exploitation. So APS's primary role is really stitching together resources, i.e. disability services, law enforcement, coordination with OPG. APS also doesn't have the teeth that CPS has. Division of Child and Family Services has the authority to take drastic measures that APS can't.

The subcommittee then discussed the process behind referrals. Once a referral is made, APS works with law enforcement and county attorneys. Every referral APS gets goes to Kaye Lynn's office. If they have a case that is really strong, APS calls the Medicaid fraud chief directly. Ms. Wootton noted that when a victim has passed away, her office looks at these quickly. If law enforcement feels like it doesn't have enough to charge, it won't refer up the chain. Depending on the extent of financial abuse, police may or may not be involved. Emotional abuse could involve police. Sometimes law enforcement will just turn it over to Medicaid fraud directly.

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Mr. Holmgren noted that APS hired a forensic auditor, who is terrific. Currently the financial exploitation side of things is the largest growth area. In an ideal case, APS and OPG can work together and put a guardian in place quite fast. A subcommittee member noted that Sheriff Winder said 20 years ago, child abuse wasn't obvious in terms of triage, but now they can do it in their sleep. He said adult abuse is the next frontier.

When asked about the process involved when the court sees abused, Judge Connors said he and other judges will ask counsel to call APS. Because the judge will be the ultimate arbiter, they shouldn't make the calls themselves.

The subcommittee then asked, "What do we want this to look like 5-10 years from now?"

A subcommittee member gave the example of when law enforcement officers get in a tough spot. They raided a meth house, but then do they leave the meth addict there to care for his 85-year-old mother as he has been doing? The victim may not be cooperative. Ms. Wootton then gave the example of a Logan case. Police officers didn't want to be involved because the victim wasn't cooperative, so sent they sent the case to the Medicaid Fraud Control Unit. The community has resources, but there is a need for more direction and education.

The subcommittee then discussed Native American issues. The subcommittee discussed the example of a native elder on tribal lands who is subject to ongoing abuse but there is no judicial process in his tribe. Does the FBI get involved? Mr. Holmgren said APS is working on an arrangement with the Piute Tribe, for example, to provide services. He said there is a hybrid approach with tribal lands: tribal resources and state resources are coordinated. However, APS has jurisdictional issues; they need to have an agreement in place. With that in mind, the Navajo nation is very well equipped to handle a variety of scenarios. Mr. Holmgren said a woman in his office will give tours of reservations to provide a better understanding of scope, logistics, and distances. Ms. Wootton then raised the question of whether her office has jurisdiction over the tribal nations. It appears that it does. She was interested in touring the Navajo Nation.

The subcommittee then came up with a to-do list:

- We need some base scenarios, best practices within them.
- In what cases does APS step in? We need APS triaging. What would they like this to look like?
- What does OPG do--what is their protocol? What would they like this to look like? Nan and Shannon should talk about this at the next meeting.
- Education on self-neglect cases: we need to connect with Area Agencies on Aging (Meals on Wheels Program)?
- What are the resources in each district?
- Input from judges: here are the situations that we've been dealing with.
- Guardianship issues--which tribes use the state system? If a tribe is using the state court system, what are the resources on tribal lands? What about an alleged perpetrator on tribal land? Or a Caucasian person abusing on a reservation? Who has jurisdiction?
- Need contact numbers for tribes. James Toledo can provide this information.

II. Limited Guardianship

Present: Senator Todd Weiler, Wendy Fayles, Dustin Hammers, Joanne Bueno Sayre, Rhett Duttson, Kent Alderman, Karolina Abuzyarova.

Kent Alderman started by providing an overview of the limited guardianship and that it is presumed by the Utah Probate Code. Only a judge can adjudicate capacity, it is judicial determination and a legal term. While medical evidence of incapacity is a contributing part of the clear and convincing evidence presented to the court, a physician or a social worker cannot

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adjudicate capacity. While full or plenary guardianship removes all decision-making powers from the person with diminished capacity to the court-appointed guardian, if limited guardianship is appointed by the judge, it could be narrowed down to one or several areas of person's life that they need help with in making decisions, e.g.: medical, residential, financial, educational, etc.

Karolina stated that the need is to educate the court clerks and the judges on the due process in guardianship matters. Wendy Fayles spoke about importance to explain the difference between full and limited guardianship. Dustin Hammers from the Center on Alzheimer's Care Imaging and Research emphasized importance to focus on particular abilities.

Kent Alderman made a point regarding the cost-benefit analysis for families in obtaining a limited guardianship. In case capacity declines, the cost of coming back to the court to adjust the scope of guardianship will add up for families. Another concern is paying for the medical evaluation of capacity or social assessment.

Responding to Kent's concern of the cost-benefit for the families to seek limited guardianship rather than full guardianship, Karolina responded that as an institution that sets standards for the public and attorneys, Utah State Courts has to come up with the standards of practice in legal guardianship proceedings. First components in crafting limited guardianship that come to mind are: medical assessment of capacity, social assessment, investigation and report by the volunteer court visitor, legal representation by an independent zealous advocate.

Rhett Duttson, Probate Case Manager, confirmed that currently judges on probate calendar who rotate every six month, primarily rely on attorneys representing the parties in the court to prove limited guardianship. Most of the appointments are plenary guardianships. Kent Alderman noted that procedures differ from one judicial district to another, with a total of eight judicial districts.

Going back to the issue of the cost of medical evaluation, Karolina referred back to the article written by WINGS member Norman Foster (ex-officio) on billing for medical capacity evaluations. Dustin Hammers looked up the codes and found the following CPT codes that could be used for Guardianship evaluations:

- For Neurology, Geriatrician, Primary Care - E&M Code for Office Consult: 99201-99245
- For Psychologists or Psychiatrists - Psychiatric Evaluation Code: 90791-90792, 90899

Dustin also brought up a publication issued by the American Psychological Association and American Bar Association on Judicial Determination of Capacity in Older Adult that he found useful in preparing a talk on guardianship for the Rocky Mountain Geriatric Conference. Karolina stated that the bench book would be a great resource and a base for developing judicial protocol in establishing limited guardianship.

A to-do list for the limited guardianship subcommittee would be:

1. Distribute among subcommittee members bench book on Judicial Determination of Capacity.
2. Invite Mary Jane Ciccarello and Judge Brady from the Fourth Judicial District to be part of the subcommittee.
3. Follow up on cost-benefit of seeking limited guardianship for the public, while establishing judicial protocol on limited guardianship that is presumed by Utah Code.

Meetings in 2017: June 28, Aug. 23, Oct. 25, Dec.27.