

Working Interdisciplinary Network of Guardianship Stakeholders

April 5, 2018 Summary Minutes

Attendees: Judge David Connors, Judge James Brady, Judge Keith Kelly, Shannon Alvey, Nancy Sylvester, Wendy Fayles, Michelle Wilkes, Kent Alderman, Robert Denton, Andrew Riggle, Cora Gant, Daniel Musto, James Toledo, Nan Mendenhall, Kaye Lynn Wootton, Karolina Abuzyarova

Excused: Todd Weiler, Dustin Hummers, Nels Holmgren, TantaLisa Clayton, Nicholas Stiles, Mary Jane Ciccarello, Kaye Lynn Wootton, Nan Mendenhall

No show: Joanne Bueno Sayre

Legislative session update: Judge Connors welcomed participants and passed the word to Nancy Sylvester to provide an update on legislative changes that took place in the last legislative session:

H.B. 167 Incapacitated Person Revisions

- Clarifies that court-appointed counsel for the respondent will be paid by the alleged incapacitated person unless they and their parents are indigent.
- Adds a provision to 75-5-303(5)(d) (H.B. 101 (2016)) that states counsel for the respondent is not necessary if no attorney from Guardianship Signature Program is able to provide counsel to the person within 60 days of the date the court initiates the appointment of counsel *and* the court appoints a court visitor.
- Extends the HB 101 repealed to July 1, 2028.
- Provides that notice of hearing shall be given to Adult Protective Services if APS has received a referral concerning the welfare of the ward or alleged incapacitated person or concerning the guardian or conservator or proposed guardian or conservator.
- Adds the Office of Public Guardian to the list of persons given priority for appointment as guardian.

S.B.182 Guardianship Amendments

- Adds to the guardian's duties under section 75-5-312 that a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward of (1) the ward's admission to a hospital for three or more days or to a hospice program, (2) the ward's death, and (3) the arrangements for the disposition of the ward's remains.
- Adds to the guardian's duties, to the extent practicable, encouraging the ward to participate in decisions, exercising self-determination, acting on the ward's own behalf, and developing or regaining the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward.
- Enacts section 75-3-317 as follows:
 - A person who may be a guardian of an incapacitated person under Section 75-5-301 may initiate guardianship proceedings for a minor who is at least 17 years, six months of age and who is alleged to be incapacitated and request that a guardianship order take effect immediately on the day the minor turns 18 years of age.
 - The petitioner shall provide with the petition a written report of an evaluation of the minor by a physician or psychologist. If the evaluation is conducted

within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report in lieu of ordering any additional evaluation and the court may grant the request.

- A physician's or psychologist's written report shall include the following information:
 - a specific description of the physical, psychiatric, or psychological diagnosis of the person;
 - a comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions, with or without assistance, regarding that person;
 - an analysis of the tasks of daily living the alleged incapacitated person is capable of performing independently or with assistance;
 - a list of the medications the alleged incapacitated person is receiving, the dosage of the medications, and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge;
 - a prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan; and
 - other information the physician or psychologist considers appropriate.
- Notwithstanding the priorities in Section 75-5-311, if the petition for appointment of a guardian for the incapacitated person is filed when the respondent is at least 17 years, six months or within 2 years after the day the incapacitated person turns 18 years of age, unless the court finds the appointment to be contrary to the incapacitated person's best interest:
 - the court shall appoint as the incapacitated person's guardian any person who, by court order, had sole legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age; or
 - if two individuals had joint legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age, the court shall appoint both individuals as the incapacitated person's co-guardians.
- If the court finds the appointment of an individual as provided above is contrary to the incapacitated person's best interest or if the individual is unwilling to be appointed or serve as a guardian, the court may apply the priorities in Section 75-5-311 in appointing a guardian.
- The court may appoint more than one person as the incapacitated person's co-guardians if the appointment is required as provided above or the court finds that the appointment is in the incapacitated person's best interest. If the court appoints co-guardians, the co-guardians shall share legal decision-making for the incapacitated person and neither co-guardian's rights or responsibilities are superior except as otherwise ordered by the court.

S.B.193 Persons with Disabilities Amendments

- Provides that an act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under the following additional circumstances:
 - o the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to: (a) appraise the nature of the act; (b) resist the act; (c) understand the possible consequences to the victim's health or safety; or (d) appraise the nature of the relationship between the actor and the victim.
- This is an expansion of the circumstances under which a person with a mental disease or defect is incapable of consenting.

HD 402 passed as well, and Nancy Sylvester said she will need to add it as well. The bill addresses when a person refuses to accept the authority of a guardian, provides for a court to modify an order or issue a temporary order, addresses when a conservator may use the assets of the estate. Committee had a brief discussion of the changes that were made and whether fiscal note was attached to bill to help with implementation.

Minutes: Committee approved the minutes.

Tribal Courts: James Toledo provided an update on his work with the tribes and information he received. Nan Mendenhall and Nels Holmgren are conducting outreach with the tribes and Nan was not in attendance as she was working on the reservation.

James will update the chart with information he found and will email Karolina. James informed that Utah Navajo Commission is a branch of government and is on the Utah side of the reservation. In addition, Navajo nation has its own healthcare system.

Judge Keith Kelly was interested whether the nation has its own counsel and who within the tribe handles guardianship cases. Nancy Sylvester informed that Ute tribe, for example has its own counsel that is based in Colorado. Judge Keith Kelly was curious whether there is a statutory provision that protects vulnerable adults on tribal land. James Toledo stated that usually certain tribes will provide written authorization for the state to come in and utilize protective services or have jurisdiction over certain areas, in this case guardianship and/or conservatorship appointments.

Judge Kelly said that a good source of information or contact might be a social worker that is working there. Judge Connors spoke about his experience with cases involving minors, e.g. when there is a case of adoption and relinquishment of the parental rights under the Indian Child Welfare Act. Judge Keith Kelly asked what if the Native American population is residing off the reservation. In that case it might be state jurisdiction; however, for example, drug treatment does not extend on reservation. Judge Kelly remembered the cases when U.S. Attorney Office prosecuted crimes on abuse and neglect on the reservation.

James Toledo said that Utah Legal Services has an Indian Law Section and covers tribal jurisdiction in Salt Lake County. In addition, an Urban Indian Center expressed interest in collaboration and James will notify Adult Protective Services.

Nancy Sylvester pointed out that National Indian Law Library has information about the laws of Navajo nation, Ute Tribe and other tribes.

Annual Assessment: Karolina pointed out that Brenda Uekert helped clean up the strategic goals chart, particularly the part on outcome measurement. Brenda helped narrow down the outcomes to the specific measurable details, e.g. number of people trained, percentage of people represented by the Guardianship Signature Program. Karolina asked WINGS participants to bring up any gaps that they think exist and how WINGS partnership can help their respective agencies achieve goals.

Judge Connors asked members to go around the room and bring up any items that are important to address.

1. Wendy Fayles of NAMI said that she works with a lot of families that want to know more about guardianship process and she referred them to the Courts website, however there is a continuing need in **public education** and reaching out to families to provide information of advance life planning and guardianship process.
2. Office of Public Guardian has around 80 cases and 140 cases are delegated to the contracting agency; most of the cases OPG takes are now life threatening situations. Shannon Alvey of OPG indicated the gap in services to be provided by the Guardian Ad Litem Office for Adults or **Guardianship Ombudsman** that does not exist in Utah. These services would provide coordination of potential guardianship cases that fall through the cracks and do not qualify or fall under the services of the Adult Protective Services or Office of Public Guardian.
3. Andrew Riggle brought up that currently there are working groups being formed to work on the **Uniform Probate Code** and its implementation in Utah. Kent Alderman informed that legislators Hilliard and Snow contacted Elder Law Section to make edits to the current Utah Probate Code that would align with the Uniform Probate Code. Karolina asked Kent whether the working document could be circulated among the WINGS members and Kent said that that it is possible.

Andrew Riggle wondered if guardianship plans could be included as an amendment and also whether the Court Visitor Program could also be codified to outline the scope of the program.

4. Cora Gant brought up a problem with the **cover sheet for guardianship pro se petitions**. Front counter clerks in Provo enter into information from the cover sheet into Coris, but crucial information, including information on the other parties, is missing. Cover sheet is not user friendly. Cora asked front counter personnel to look up information in the petition, however, they are not trained enough to perform that duty and Cora has done training and the problem still remains the same. Cora has to enter filing information over again into Coris and that is not an efficient way to do business. Cover sheet for guardianship needs to be itemized, one cover sheet for estate, one cover sheet

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for guardianship with explanation/definitions of the parties in legal terms. E.g.: for guardianship of minors there is no space to include even the minor's name.

Committee discussed that this issue has to be brought up to the Forms Committee. Perhaps clerk of court in the Fourth District can provide assistance and request a change. If it is an OCAP matter, then Kim Allard has to be contacted.

5. Michelle Wilkes, Volunteer Coordinator for Court Visitors brought up that 2/3rds of the whereabouts cases are **minor guardianship cases**. The program has a high success rate with locating 94.5% of the guardians and protected persons.

The problem comes up if the judge needs to do a **minor's well-being** inquiry and the Volunteer Court Visitors are not trained on working with minors and the program was not set up on working on minor guardianship cases. This is the gap where there is no alleged abuse or neglect where Division of Child and Family or Child Protective Services could get involved; however the well-being inquiry is in order. The problem also exists if the minor is in a different state.

Next meetings: June 7, August 2, October 4, Dec. 6, 2018.