

Working Interdisciplinary Network of Guardianship Stakeholders

April 18, 2019 Summary Minutes

Attendees: James Brady, James Toledo, Robert Denton, Kent Alderman, Nan Mendenhall, TantaLisa Clayton, Cora Gant, Michelle Wilkes, David Connors, Keith Kelly, Todd Weiler, Michael Drechsel, Shane Bahr, Joanne Bueno Sayre, Andrew Riggle, Nicholas Stiles, Wendy Fayles, Rob Denton

Excused: Nels Holmgren, Karolina Abuzyarova, Kaye Lynn Wotton, Dustin Hammers, Daniel Musto

No show: Rebecca Edwards

*Xia Erickson has not been receiving WING emails since December 2018; this is an error. She is now added to the WINGS distribution list.

Committee approved the minutes. Judge Brady expressed appreciation to Nini Rich, Dir. of the Court Alternative Dispute Resolution Department, who served as monitor at the prior meeting.

STRATEGIC GOALS

Judge Brady suggested brainstorming about what WINGS wants to accomplish, and have the group determine what is important to them and their agencies. Judge Brady discussed monitoring guardianship numbers with CORIS and receiving quarterly reports. Judge Keith Kelly, Judge Connors, Andrew Riggle, and Michelle Wilkes would like to receive quarterly reports. Shane will accomplish this task.

EVALUTAION AND EDUCATION

Throughout Utah, judges have been receiving training with bench books, bench cards, and checklists. Andrew Riggle inquired about the effectiveness of these materials and if changes are occurring. Judge Brady and Judge Connors responded that they travelled throughout Utah and provided presentation on guardianship to each district. Rob Denton asked if Bench cards have enough information to alert judges to procedural issues. Judge Brady states the bench card does address those issues. Kent Alderman states the new bench book has more detail to address it as well.

PROBATE CALENDAR/PROCEDERUAL

There was a discussion about how probate calendars vary from district to district and how that effects training, and streamlining for attorneys and judges. Judge Kelly and attorneys mentioned the probate calendar is quite different in Salt Lake, Provo, Farmington, Ogden, rural areas, etc. In 3rd and 4th districts, one judge is presiding over the initial proceeding and if an issue arises, it is referred to mediation to a different judge. However, in 2nd district, it is the same assigned judge from the initial proceeding. Judge Kelly says, once guardianship cases become a rule 7 motion, or contest about a will, or personal rep or trust, it becomes like most other cases, and you have motions and set evidentiary hearings.

It was mentioned in rural areas, there is not one clerk who is specifically assigned in guardianship matters. It is more of a generalist role. Kent states most rural areas have a law and motion calendar and the initial judge is the assigned judge throughout the case. In comparison in 3rd District there is an expedited program; where about there is 25 cases are completed in 30 minutes. There are pro's and con's using the expedited process. For example, it is streamlined and expedited for judges and attorneys, however is there enough consideration going into these guardianships? Additionally, until recently, 99% of all guardianships have been plenary guardianship. However, the gold standard is the guardian should only have the powers that are necessary. The statute requires the least restrictive alternative should be used before a

plenary guardianship is granted. The judge must make a determination on the record and rule as to why a plenary guardianship should be granted instead of limited guardianship. Joanne says 3rd District court is now doing so. Judge Brady suggests judges should review the bench card, and have the attorney or Court Visitor explain to the judge why a plenary guardianship is necessary, so the judge can make those findings on the record.

There was concern that if a new judge is not familiar with guardianship, what do they do? Typically, they contact the judge in their district that is the most familiar with guardianship. Additionally, Judge Brady and Judge Connors offered their services if any judges needs to contact them, regardless of district location.

It was noted that many attorneys are not aware of informal versus formal proceedings and other matters that are specific to guardianship. There was a discussion about talking to the Utah State Bar's education specialist and provide a CLE on training in guardianships. Shane Bahr stated that the courts (Mike Dreschel, Michelle Wilkes, and Judge Scott) provided a CLE last November to the bar about guardianships.

MEDIATION

A major portion of the meeting was focused on mediation. Before a guardianship case is in front of the assigned judge, should mediation be required? Judge Brady states Trial Judges run into mostly procedural violations vs. substantive violations; such as was appropriate notice sent, did respondent attend the hearing, was the respondent represented? Judge Brady stated training districts on the procedural issues is more effective. Since most issues are resolved on the initial hearing, it is not an efficient way to use court resources, however if mediation is used before going to an assigned judge, and issues can be resolved, it will be more efficient and more cost effective.

It is noted by many, that the public, who is not represented, are at a disadvantage during mediations. The mediation pilot program was mentioned and perhaps rolling it out to the other districts. However, Judge Connors stated we need mediators who are skilled in guardianship and conservatorship issues. Joanne stated on the court's website, there is a roster of mediators who specialize in probate issues.

One solution is to use volunteer attorneys and mediators to address more timely matters. Judge Brady suggested working with the bar and perhaps getting non-active attorneys, interns, law school students and utilizing them. Guardianship Signature Program is using the U of U law school and particularly one professor has been a large aid to 3rd District. Judge Kelly wanted to hear about expanding mediation statewide. Mike responds, that the Probate Working Group is considering rolling out Rule 26.4. If adopted, this rule would address judicial administration, mandatory mediation, discovery contests, etc. in guardianship cases. In order not to create duplication efforts, Shane suggests WINGS be aware of what the Probate Working Group is working on. Judge Kelly will speak with Judge Laura Scott on the Probate Working Group about Rule 26.4 and inviting her to WINGS. It is suggested that WINGS could focus on implementation.

Rural districts came up about what resources are there for them – especially in regards to mediation? Judge Connors stated: there is a presentation of District Court Judges and perhaps contacting the presenter to take a few minutes to understand needs and what is available in the rural districts.

CIVIL COMMITMENT ISSUES Tanta Lisa asks if judges are trained on civil commitment. Most judges are trained on a civil commitment process; however depending on the districts there may be judicial staff who specialize on the issue. Courts receive 99% of the requests from mental health authorities. Families are having a difficult time with the courts supplying a pickup order. It was suggested that a proposed pick up order be included in the family's packet for judge's to review. Judge Connors also states when reviewing the applications, the application must include they are a danger to themselves or others. Ex. Abusing the 911 system and family is frustrated does not equate to a danger to themselves or others.

SB 53 and Legislative Session

Andrew Riggle asked about SB53 and if the WINGS group could pick some items from the bill and use it for the interim. Mike stated what ceased the bill from moving forward, was the \$5 million dollar price tag. Senator Hillyard did not expect such a high cost. However, when requiring every judge to review annual reports, every case must have a Court Visitor, along with the other tasks listed, it was the fiscal note that killed the bill.

LOBBYING

It is a conflict of interest for the courts to lobby for any legislation. The courts may make a suggestion to bills already proposed. However, a subsection of non-court employed, WINGS members may be able to lobby.

OTHER STAKEHOLDERS IN THE COMMUNITY

WINGS Members, who are not employed in the courts, mentioned about bringing other stakeholders who would be interested in this type of work. TantaLisa will contact Utah Commission on Aging. Andrew Riggle will reach out to: AARP, Utah Parent Center, and Independent Living Center. It was stated and agreed by many that instead of just inviting other organizations to WINGS Meetings, WINGS should develop a specific need and seek their expertise. The particular need is 1) working together to make court procedures more clear and user friendly 2) analyzing potential issues that may come up to other stakeholders in the community.

TRIBAL

James Toledo met with the Paiute Tribe in Cedar City. James updated them on WINGS and relationships with APS, and database sharing. The Paiute Tribe is very interested in trainings and resources provided to their specific area. However, it is cautioned that it must be location specific and not everyone will have internet access.

One of the most important aspects are the relationships formed in each district and with the judges. Paiute Tribe has a positive relationship with the local courts. Relationships and trust vary from district to district depending on judges. The problem they foresee is that when new judges come on board and there is a lack of training.

The Paiute Tribe is also excited about developing relationships with law enforcement and district courts. The overall theme is that the courts should learn from Cedar City courts and build on their success to other districts.

Judge Connors asked about Cultural Competency/Sensitivity for tribes and the education department putting it on in districts.