

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

December 19, 2019 - 12:00 to 2:00 p.m.

Administrative Office of the Courts, Matheson Courthouse

1st floor Large Conference Room B and C

Attended			Excused
Judge Keith Kelly	Rob Ence	Alan Ormsby (phone)	Shane Bahr
Judge James Brady	Xia Erickson	Andrew Riggle	Joanne Sayre
Judge David Connors	Wendy Fayles	Shonna Thomas	Daniel Musto
Kent Alderman	Cora Gant	James Toledo	Nancy Sylvester
Allison Barger	Dustin Hammers	Norma Valavala-Ballard	Nels Holmgren
TantaLisa Clayton	Nan Mendenhall	Todd Weiler	<u>Not Present:</u>
Jeff Daybell	Michelle Miranda	Michelle Wilkes	
Rob Denton		Kaye Lynn Wootton	

Agenda		
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TOPIC	PRESENTER	MATERIALS
1. Welcome, Minutes, Housekeeping	Judge Kelly	<ul style="list-style-type: none"> WINGS Meeting Minutes - October 17, 2019 (draft)
2. Review Process: Annual Reports, Court Visitor Reports	Judge Kelly Michelle Wilkes Shonna Thomas	<ul style="list-style-type: none"> Report Review Process
3. Probate Subcommittee Legislative Recommendations	Nancy Sylvester	<ul style="list-style-type: none"> Probate Subcommittee Legislative Recommendations
4. Updates		
<ul style="list-style-type: none"> Financial Exploitation, Commission on Aging 	TantaLisa Clayton	
<ul style="list-style-type: none"> Clerical Education Subcommittee 	Subcommittee Chair Joanne Sayre	
5. WINGS Membership Expiration & Bylaws	Judge Kelly	<ul style="list-style-type: none"> Utah WINGS Bylaws, Proposed Revision
6. Judicial Council Update	Judge Kelly Shonna Thomas	<ul style="list-style-type: none"> Utah WINGS Update – Judicial Council WINGS Strategic Goals: 2013 - 2019
7. Guardianship Test	Kent Alderman	
8. Recruiting Stakeholders	Kent Alderman Judge Kelly	<ul style="list-style-type: none"> WINGS Membership
9. Other business		

1. Housekeeping
<ul style="list-style-type: none"> Meeting called to order at 12:14pm. The group went around and introduced themselves, as there were many new attendees. A Motion was made to approve the minutes from the previous meeting (October 17, 2019). The motion was seconded and approved.

2. Review Process: Annual Reports, Court Visitor Reports

The Annual reports and Court Visitor reports are important for catching problems. If there isn't a formal process within the court system, these problems may be overlooked or not processed properly. There are two main concerns identified - submission and filing of annual reports, and reviewing reports after they have been filed. Is it something we should try to push to have some type of formal tracking system, or maybe even a rule change to make clear that there needs to be some type of specific review?

Shonna updated WINGS on how each district handles the review process for reports. The data shows there is inconsistency amongst the districts in regards to whether (a) reports are assigned to individual judges or a designated probate judge, (b) these reports receive a clerical review before being forwarded to the judge, and (c) the district uses a cover sheet to assist in the review process.

Question asked – How big of a problem is this (ballpark figure)? Do we see it occurring on a regular basis?

- Numbers are difficult to gauge with OPG because they only sees cases where a problem has already been established.
- It comes up fairly often with APS. As an estimate, when dealing with situations where there is a concern about abuse or misuse of assets by a guardian, perhaps 10-15 cases a quarter.
- APS sees large numbers of problems with guardians, but they also deal with Rep Payees who serve in that capacity for multiple Protected Persons – such as a group home provider.

Question asked – What usually brings the matter to your attention? Is it usually a family member?

- It can depend. For example, OPG and APS may be contacted if the Protected Person is in a provider home and their bills aren't being paid.

Discussion –

- When a Motion is filed, there is a tracking started. If a judge fails to act on that motion, the judge is required to report to the judicial council and the judicial performance evaluation commission. This helps ensure that motions and filings, etc., are not lost in the system, and there is prompt resolution of disputes. But, we don't have this same system in place for reports.
- There is no other way for the court to find out if there is abuse or exploitation in that guardianship unless these reports trigger it or a family member calls APS.
- Gauging the overall scope of the problem (e.g., estimated number of cases) may help in expressing to the board of district court judges the urgency of the issue.
- If reports are not reviewed regularly, the courts may give the impression of condoning the submissions as correct or acceptable.
- Oftentimes, problems in reports are a matter of educating the guardian (via the Court Visitor Program), who may not fully understand how to complete the financial reports, etc.
- In some cases, the guardian is the parent of an adult child, and the parent doesn't need to file reports.
- When it comes to misuse of funds, APS mainly deals with cases where the guardian is the child of the protected person, or with DSPD.

Suggestions offered –

- What if we changed the submission so that they were required to file the previous year's report along with the current year? It may force the guardian to at least look at the previous one. It may also provide the AG's office with a false statement if they were intentionally misleading.
- In divorce cases, there is a checklist used to make sure that all items are submitted and appropriate and ready to be acted upon. Something similar could be created for reports, as a statewide administrative process. If something like this were created, what would need to be included?
- It might be worth talking with Shane Bahr (AOC) and Judge Scott (Probate Rules Subcommittee) to suggest a provision in the new legislative recommendations rules (if they are approved), or possibly in the Rule of Civil Procedure, such as Rule 7, which requires a request to submit for decisions on motions. Potentially there could be other requests, related to these reports, under Rule 7.
- For those who do not understand how to complete a financial report, something as simple as the letters of guardianship not being issued until the initial inventory is submitted might help the process. One

challenge to this is if there are pressing issues, but potentially you could require it within a certain amount of time, with an order to show cause going out automatically if the inventory is not filed.

- The Disability Law Center can act as an additional resource, especially when it comes to large rep payee/provider type situations.

Decisions made -

- APS, AG office, and OPG will email Judge Kelly, Judge Brady, and Judge Connors on the kinds of things their respective agencies think would be important to include in a checklist. (Any other stakeholder may email suggestions as well.)
- The judges will discuss the responses, and reach out to the various entities – Judge Scott, Civil Procedure Committee, Clerks, etc., and figure out a proposal to take to the board and the AOC.
- This item will be put on agenda for next time, both for the main WINGS meeting and the Executive Committee meeting in January.

3. Probate Subcommittee Legislative Recommendations

Background on the subcommittee's purpose was provided. The subcommittee started their process by working on proposed rules for contested guardianship and probate matters, related to rules of civil procedure and the normal procedure for those types of cases. Specifically, the rule indicates that any contested probate or guardianship matter goes directly to mediation. It also provides more structure in terms of how the litigation would proceed, when the initial disclosures are due, provides for the operation of a pre-mediation conference, etc. Those rules have been approved and will be effective on January 1, 2020.

The Utah Supreme Court asked the subcommittee to go a step further and create a separate entity, called the Utah Rules of Probate Procedure, to make the actual procedure accessible to judges, attorneys, and pro se parties, and to take the procedure out of the code. The subcommittee is on pause right now, as they seek feedback and comment from practitioners and address concerns about what constitutes procedure versus substance. The subcommittee plans to take it back up in January.

Discussion -

- We have the memo dated Oct 10, 2019 from the AOC, which lays out what has occurred with the subcommittee thus far.
- In a previous conversation, Judge Kelly indicated a willingness to Judge Scott to sit in on the subcommittee if they were interested.
- WINGS has so many shareholders who represent different interests in the community related to probate procedure. Stakeholder input on these rules, whether through your organization or in a general WINGS meeting, would be helpful in giving direction to subcommittee.
- Some parts of the law and code are clearly delineated as belonging to the judicial branch, others as belonging to the legislative branch. The difficulty arises in those gray areas that seemingly span both branches.
- We have this fundamental issue, where you have rules of procedure and you have law. For example, there are a lot of rules of evidence that are in the Utah code, but the Utah constitution gives the Utah supreme court the authority to make court rules. There has been progress made in resolving potentially conflicting provisions between rules and statutes.

Decisions made -

- This will remain on the agenda for the foreseeable future, as a general follow up with the subcommittee.
- Throughout the process, WINGS members should confer with their organization, provide feedback on the rules, and/or make suggestions for changes to the subcommittee.

4. Updates

Financial Exploitation, Commission on Aging (TantaLisa Clayton w/ Rob Ence and Nan Mendenhall):

The grant has ended with the Department of Justice – Office of Victims of Crime. This grant was used to find ways to reduce financial abuse and elder exploitation. They partnered with APS and the Commission on Aging.

APS –

- Created a training manual for law enforcement and APS workers, explaining how to investigate financial exploitation. Trainings were conducted in St. George and SLC, and were well-received.
- Worked on referring victims of scams to Utah Legal Services, but this was not as successful, as victims are often too embarrassed.
- Working on improving Emergency Placement for senior victims. If an older adult falls victim to a crime and they need shelter, they are unlikely to be eligible for domestic violence shelters, due to their health and care needs. There are no emergency shelters in Utah for this population. They are working with assisted living facilities and nursing homes to utilize their hospitality beds, so that when a crisis occurs, the victim has a place to go.

Utah Legal Services –

- In 2018, they administered two surveys, one to older adults (using AARP's Facebook page), and one to members of the Utah state bar on the new financial power of attorney form.
- From analysis of the surveys they have developed a training.
- They recently completed a training in November to the Estate Planning and Elder Law section

Commission on Aging -

- The Commission's role on this grant was to provide a communications tool that fulfilled three purposes: (1) to help people identify affinity fraud and what makes someone vulnerable to it, (2) to report issues - it is difficult for victims to make a report at times, and (3) to do enough education to aid in prevention.
- Tasked with creating a series of a videos (four minimum) which tell victims' stories, and four podcasts, as well as public service announcements, as a start to creating a library of resources for public education. One video had to be in Spanish, and one had to be in the Navajo language. The Commission has a YouTube channel with all the videos listed. (A sample of the videos produced was shown to the group.)

Discussion –

- One of the roles the Commission can play is as a connector helping people navigate these challenges.
- The courts have public service posters for different things, such as what is fair in the Utah justice system. It could be helpful to partner with the Commission to access materials for use in a similar manner.
- The court has the self-help center. The Commission appears to have materials that could be helpful maybe in a more practical sense, whereas the self-help center is more focused on things like filings. It might be good to make a connection between the Commission and the self-help center.

Decisions made -

- Rob Ence, Shonna Thomas, and Michelle Wilkes will work together to look at the materials available and ways to disseminate them to the public.
- Other WINGS members – if there are materials within your organization that would be useful in a similar manner, reach out to the group so we can talk about how these items can be part of the court's self-help process.
- Add to the agenda for an update at the next meeting.

Clerical Education Subcommittee (Joanne Sayre, by proxy):

Joanne provided an email update, which was read to the group –

The group has not made a decision about the acting chair and I don't volunteer for it since I hope to retire by the end of next year! The only thing I did since the last meeting was to get it touch with Kent Alderman and Rob Denton to see if they were still interested in being part of the committee. They both want to remain on the committee and Rob said he would start reviewing the current Clerk's Manual. So, the committee members at this point are: Kent Alderman, Rob Denton, Xia Erickson, Norma V (from Provo), and Judge Kelly, and you and me.

Decisions made –

- Add this as an agenda item for the next Executive Committee meeting and get the process moving there.
- Keep this on the agenda for the next WINGS meeting as well.

5. WINGS Membership Expiration & Bylaws

There is a proposed revision to the WINGS Bylaws, to address membership and a succession plan. The proposed revision was approved by the Executive Committee and now goes to the full group for approval. The proposed language is in red on the materials, and the added language would be as follows,

“Individuals serving as representatives of their organizations may continue to serve for a longer term, as determined by their organization.”

Decisions made –

- Senator Weiler called the question. Kent Alderman and Judge Connors both seconded.
- A vote was called, with none opposed. Bylaw revision approved.
- The Executive Committee will follow up on making this official.

6. Judicial Council Update

The annual report to the Judicial Council is scheduled for July 27, 2020.

Discussion –

- This won't just be an oral report to the Council, but we will provide them with a written report as well.
- Using the minutes from the 2019 meetings, a draft document was prepared listing the accomplishments from the last year and the plans for the future.
- The Council is going to look for in the report whether WINGS continues to be an effort the courts should be involved in to the extent it is.
- WINGS hasn't always had enthusiastic participation, but the strong attendance today indicates investment in the committee. One of the keys things that this group allows us to do is create a lot of synergy and it provides a practical way to resolve problems and point out issues.
- The WINGS Bylaws indicate we need to have an annual review of committee goals and plans. At the inception of WINGS there was a list of items generated of goals for WINGS. In 2018, a table was created with an updated list of items to accomplish. These materials have been provided to WINGS members, and should be considered for the upcoming year.

Decisions made –

- Review the draft document. If there anything missing from the accomplishments of last year, or if there anything listed that is incorrect, reach out to Shonna and she will make the corrections.
- Shonna will find out when the written report needs to be submitted to the council (how far in advance?).
- Add this item to the Executive Committee agenda for January.

7. Guardianship Test

Guidelines were developed in 2007 to give potential guardians some background on their responsibilities and duties if appointed by the court. These guidelines haven't been updated since. Feedback regarding the guidelines indicate that the language is a bit vague in some areas, and that attorneys were not giving the guidelines to their clients to review. The current plan is to update the guidelines to include samples of the different paperwork required of a guardian – e.g., the annual report, accounting, and inventory. Also want to include the main codes related to guardianship, those two sources have important information in them and they have been amended over the last several years.

Discussion –

- What is needed now is for someone to work with Kent to look over the updates and edits, and help put this together, so the guidelines for court-appointed guardianship and conservatorship can be amended.
- Ideally, these guidelines would be handed to the guardian at the hearing, and the judge can comment on them and ask questions related to the guardians understanding.
- This may be something to bring back to the Bar, and particularly attorneys who deal with guardianship and conservatorship on a regular basis. Attorneys should be going over these guidelines with their clients.
- The Court Visitor Program has some volunteers unwilling to take on Whereabouts cases because they feel it is the court's problem– properly teaching guardians beforehand.

Suggestions offered -

- This issue might be best addressed during the application or petition part of the process.
- In divorce cases, when children are involved, you have to take a class – you can take it online, and then you have to file a certificate of completion. Guardianship could be a similar process.
- You could create an online test where the proposed guardian must reach a specific score and certify that they have completed the test and understand their obligations and requirements.
- The OCAP program does have that online test that people can go through.
- A class could be offered, instead of (or in conjunction with) the guidelines. Proposed guardians or newly appointed guardians could be required to complete the class. Some Court Visitors have offered to volunteer their time weekly (after guardianship hearings) to teach an hour-long class. One consideration with this is that there may be pushback on mandatory classes being too burdensome.
- It might be appropriate to have the Elder Law section of the bar get involved. Feedback from them on what training should be done, and whether we should we use technology where they take an online test.

Decisions made -

- Kent Alderman and Allison Barger (w/ Nancy Sylvester) will follow up with the Elder Law section and prepare to report back at the next meeting.
- Michelle Wilkes will provide information on what Court Visitors are seeing during Whereabouts cases.
- Add to the agenda for the next meeting.

8. Recruiting Stakeholders

The WINGS Bylaws list a suggested group of stakeholders. The materials provided for this meeting include this list or organizations or roles, and the name of any individual currently involved in WINGS in that role.

Discussion –

- We would like to accomplish our mandate by expanding the stakeholders, as indicated on the membership list.
- Several members are missing who could be beneficial to include in the group, such as a private guardian, and a resident from a rural community.

Suggestions offered –

- The courts have a conference line, so participation by phone is possible.
- If you are planning on retiring or rotating out of WINGS, it is best if you could replace yourself.
- It might be nice if the Elder Law section could identify a person who would be an official liaison to leadership within the section.

Decisions made –

- Review the list provided. Note if any of your information is incorrect. Also, consider who you could suggest to fill any of the empty spots. Email Shonna with your correction and suggestions.
- The Executive Committee will discuss the emailed suggestions at the next meeting.
- Kent, Rob, and TantaLisa (with support from Allison) will follow up with the Elder Law section to gauge their thoughts on identifying an official liaison.
- TantaLisa will reach out to Becky Allred, a former member, to see if she is interested in participating.

9. Other business

- The group discussed the schedule for the 2020 meetings.
- The full WINGS meeting will continue to be held on the 3rd Thursday, every other month, from noon to 2pm. If changes to this schedule need to occur they can be brought up at the February 2020 meeting.
- Executive Committee meetings will continue to take place every other month, opposite of full meetings.
- Executive Committee meetings are general held the 2nd or 3rd week of the month, but will be scheduled individually.
- A motion was made to adjourn the meeting. The motion was seconded, and approved.
- Meeting adjourned at 2:03pm.

Action Items	
<ul style="list-style-type: none"> – Checklist for Annual and Court Visitor Reports – Email Judge Kelly, Judge Brady, and Judge Connors on the kinds of things your agencies think would be important to include in a checklist. <p>Please complete by January 15th, 2020.</p>	APS, AG office, and OPG Any other WINGS stakeholder
<ul style="list-style-type: none"> – Checklist for Annual and Court Visitor Reports – Reach out to the various entities – Judge Scott, Civil Procedure Committee, Clerks, etc., and figure out a proposal to take to the board and the AOC. 	Judge Kelly Judge Brady Judge Connors
<ul style="list-style-type: none"> – Review available materials and ways to disseminate them to the public. 	Rob Ence Shonna Thomas Michelle Wilkes
<ul style="list-style-type: none"> – Share materials from your organization that could be used as part of the court’s self-help process. 	All WIINGS stakeholders
<ul style="list-style-type: none"> – Review the draft document for the Judicial Council update. Reach out to Shonna with additions or corrections. <p>Please complete ASAP.</p>	All WINGS stakeholders
<ul style="list-style-type: none"> – Find out when the written report needs to be submitted to the Judicial Council. 	Shonna Thomas
<ul style="list-style-type: none"> – Follow up with the Elder Law section and prepare to report back at the next meeting. 	Kent Alderman Allison Barger (w/ Nancy Sylvester)
<ul style="list-style-type: none"> – Provide information on what Court Visitors are seeing during Whereabouts cases. 	Michelle Wilkes
<ul style="list-style-type: none"> – WINGS Membership List – Review the list provided. Email Shonna with any corrections, and suggestions for open spots. 	All WINGS stakeholders
<ul style="list-style-type: none"> – Follow up with the Elder Law section, re: official liaison 	Rob Denton Kent Alderman TantaLisa Clayton Allison Barger (support)

Deferred / Continuing Items	
<ul style="list-style-type: none"> – Checklist for Annual and Court Visitor Reports – Clerical Education Subcommittee – Bylaws revision – Judicial Council update – WINGS membership 	Executive Committee
<ul style="list-style-type: none"> – Probate Rules Subcommittee – Materials for self-help process, via Commission on Aging – Clerical Education Subcommittee – Guardianship test 	WINGS

Next Meeting(s):	February 20, 2020 April 16, 2020 June 18, 2020 August 20, 2020 October 15, 2020 December 17, 2020
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