

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

February 20, 2020 - 12:00 to 2:00 p.m.

Administrative Office of the Courts, Matheson Courthouse

1st floor, Suite W-19 - Conference Room A

AGENDA

	Topic	Presenter	Materials
11:45	Lunch available		
12:00	Meeting begins		
	Welcome, Minutes, Housekeeping	Judge Kelly	
12:10	Updates:		
	Judicial Council report	Judge Kelly	<ul style="list-style-type: none">• <i>Report to the Judicial Council (2020)</i>
	Clerical Education Subcommittee	Subcommittee Chair	
	GRAMP	Shonna Thomas	<ul style="list-style-type: none">• <i>GRAMP Marketing Materials (GSP Flyer, GSP Brochure, CVP Flyer, CVP Brochure)</i>
	Probate Rules Subcommittee	Nancy Sylvester	<ul style="list-style-type: none">• <i>Draft Probate Legislation</i>• <i>Utah Rule of Probate Procedures</i>• <i>Title 75 Chapter 5 Amendments Outline</i>
12:40	Review Process – Annual Reports & Court Visitor Reports:		
	Code of Judicial Administration rule	Nancy Sylvester	
	Checklist / cover sheet	Judge Kelly Shonna Thomas Michelle Wilkes	<ul style="list-style-type: none">• <i>Draft Checklists (Status Report, Accounting Reports)</i>
1:05	Guardianship Test & Resources	Kent Alderman	
1:20	New website – UtahLegalHelp.org	Jeff Daybell	
1:30	WINGS Membership:		
	Elder Law Section – official liaison	Kent Alderman Rob Denton TantaLisa Clayton	
	Other	Group discussion	
	Feedback – making the meetings effective for you & your organization	Group discussion	

Next meeting: April 16, 2020

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**** Click on title to jump to document ****

Report to the Judicial Council (2020)

To: Utah Judicial Council
From: Judge Keith A. Kelly, Chair, Utah WINGS
Re: Utah WINGS Update
Date: January 27, 2020

Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) is a problem solving body that relies on court-community partnerships to:

- Oversee guardianship practice in the Courts;
- Improve the handling of guardianship cases;
- Engage in outreach/education; and
- Enhance the quality of care and quality of life of vulnerable adults.

WINGS meets about every two months. WINGS is effective through participation of key stakeholders who understand and are in a position to improve the Courts' guardianship processes.

WINGS Executive Committee:

1.	Keith A. Kelly	Judge, WINGS Chair	3 rd District
2.	Kent Alderman	Attorney/Partner	Lewis/Hansen Law Firm
3.	Nels Holmgren	Director	Division of Adult and Aging Services
4.	Nan Mendenhall	Director	Adult Protective Services
5.	Andrew Riggle	Public Policy Analyst	Disability Law Center
6.	Nancy Sylvester	Associate General Counsel	Administrative Office of the Courts
7.	Shonna Thomas	GRAMP Program Coordinator	Administrative Office of the Courts

Steering Committee:

1.	James Brady	Presiding Judge	4 th District
2.	David Connors	Presiding Judge	2 nd District
3.	Shane Bahr	District Court Administrator	Administrative Office of the Courts
4.	TantaLisa Clayton	Attorney / Director	Utah Legal Services
5.	Rob Denton	Attorney at Law	
6.	Jeff Daybell	Staff Attorney	Access to Justice, Utah State Bar
7.	Rob Ence	Director	Utah Commission on Aging
8.	Xia Erickson	Director	Office of Public Guardian
9.	Wendy Fayles	Criminal Justice / Mentor	National Alliance on Mental Illness
10.	Cora Gant	Deputy Court Clerk (retired)	4 th District
11.	Michelle Miranda	Clinical Neuropsychologist	University of Utah School of Medicine
12.	Daniel Musto	Administrator	Long-term Care Ombudsman
13.	Alan Ormsby	State Director	AARP
14.	Joanne Sayre	Judicial Case Manager	3 rd District
15.	Nancy Sylvester	Associate General Counsel	Administrative Office of the Courts
16.	James Toledo	Program Manager	Utah Division of Indian Affairs
17.	Norma Valavala-Ballard	Judicial Case Manager	4 th District
18.	Todd Weiler	Senator	23 rd District
19.	Michelle Wilkes	Court Visitor Program Coordinator	Administrative Office of the Courts
20.	KayeLynn Wootton	Assistant Attorney General	Medicaid Fraud Control Unit

General:

- WINGS Membership has increased by 54% since January 2019.
- Members regularly note the value WINGS brings to their respective organizations, highlighting benefits of collaboration, collective expertise, and raised awareness of the issues.

Accomplishments:

1. Native American Collaboration, January 2019 – WINGS Subcommittee on Collaboration with Native American Tribes identified and implemented goals for working with the tribal population, including: (a) improving mutual understanding between state and tribal adult protection systems to resolve issues; (b) establishing a referral procedure; and (c) improving education about state resources available to assist tribes in protecting vulnerable adults.
2. STAGES Conference, March 2019 – An interdisciplinary team was formed to participate in the Strategies and Training to Advance Greater Elder Safety (STAGES) conference in Charlottesville, VA. WINGS participants included representatives from Adult Protective Services, Attorney General's Office - Medicaid Fraud Control Unit, and the Administrative Office of the Courts, as well as a probate judge, clerk, and private probate attorney.
3. Guardianship training, May 2019 – WINGS representatives presented on guardianship in Park City at the Elder Justice Conference - "Elevating Utah's Seniors."
4. Guardianship Signature Program (GSP) Recruitment, June 2019 – A CLE was held in St. George to recruit volunteers for the GSP.
5. Interagency Record Sharing, August 2019 – WINGS facilitated record-sharing processes for the benefit of vulnerable adults. Adult Protective Services, Office of Public Guardian, the Attorney General's Office, and the Court Visitor Program coordinated in developing an internal policy.

Current & Upcoming Projects:

- Clerical Education – The guardianship manual for clerks was first developed in 2013 and is in need of revision. The Clerical Education Subcommittee is working to develop a revised draft, using input from probate clerical staff.
- GSP Monitoring – WINGS is engaged in monitoring to ensure improvements in the GSP, and expanding the network, especially in rural areas.
- Annual Reports and Court Visitor Review Process – WINGS has identified concerns with the processes in place in the different districts for reviewing guardianship annual reports and the reports submitted by Court Visitors. WINGS is developing recommendations for ensuring that problems raised by such reports are flagged by staff and addressed by the assigned judges.
- Financial Exploitation Concerns – WINGS members identified a need for training Court Visitors on accounting/financial issues to aid in their work on audit cases. Adult Protective Services and the Court Visitor Program are working together to coordinate financial exploitation training to offer both an in-person and recorded version. The Commission on Aging is developing additional training opportunities for attorneys and the public related to financial exploitation.
- Guardianship Test – Members have raised concerns about deficiencies in the guardianship test and the general training of proposed guardians. A subcommittee is addressing revisions of the guardianship test and test procedures, as well as developing training and resource materials to provide to new guardians. This should assist in producing greater accountability and understanding among guardians and the general public.

GRAMP Marketing Materials

GSP Flyer

GSP Brochure

CVP Flyer

CVP Brochure

UTAH STATE COURTS



VOLUNTEER OPPORTUNITY

GUARDIANSHIP SIGNATURE PROGRAM

The Guardianship Signature Program connects volunteer attorneys with respondents in guardianship proceedings who need an attorney but do not have one of their own choosing.

The program is a joint effort by the Administrative Office of the Courts and the Utah State Bar, with endorsements by the Board of District Court Judges and the Bar Commission.

To participate in the program, attorneys must:

1. Be able to practice law in Utah
2. Accept the fee limits (pro bono and Modest Means)
3. Complete a free online training on guardianship law

**To sign up, contact the Program Coordinator:
(801) 578-3925.**

**Active and Inactive
attorneys welcome**

**Malpractice insurance
is covered by the Bar**

**You choose the cases
that fit your location
and schedule**

**Gain valuable
experience while
serving the community**

Signing up is simple!

FOR MORE INFORMATION, CONTACT:

GRAMP Program Coordinator
Administrative Office of the Courts
Salt Lake City, UT 84111
Phone: (801) 578-3925
www.utcourts.gov/gramp/gsp



Program Basics

The Guardianship Signature Program connects volunteer attorneys with respondents in guardianship proceedings who need an attorney but do not have one of their own choosing.

The program is a joint effort by the Administrative Office of the Courts and the Utah State Bar.

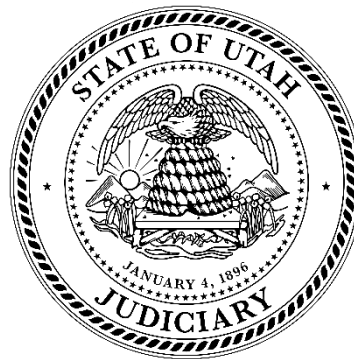
It is endorsed by the Board of District Court Judges and the Bar Commission, and managed through the Guardianship Reporting and Monitoring Program (GRAMP).

UTAH STATE COURTS



For more information contact:

GRAMP Program Coordinator
Administrative Office of the Courts
450 S. State St.
Salt Lake City, UT 84111
(801) 578-3925
www.utcourts.gov/gramp/gsp



The mission of the Utah State Courts is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.



Guardianship Signature Program



How it Works

1. Qualified attorneys choose the locations they are willing to accept cases.
2. When a need for an attorney arises, an email request is sent to recipients in the related area.
3. Attorneys interested in accepting the case simply send an email reply.
4. Attorneys represent their clients until the case has been decided, at which point they withdraw as counsel.



Getting Involved

To qualify for the Guardianship Signature Program, attorneys must:

1. Be admitted to practice law in Utah and a member of the Utah State Bar in good standing
2. Accept the fee limits (Pro Bono and Modest Means)
3. Complete a free online training on guardianship law

**** Malpractice Insurance is covered by the Bar ****

Signing up is simple!

To apply, contact the Program Coordinator at (801) 578-3925 or check out our website: utcourts.gov/gramp/gsp



The Benefits



The Guardianship Signature Program:

- Provides opportunities for substantial and meaningful direct interaction with clients.
- Allows attorneys to concentrate on a specialized area of law and develop skills through experiences that might not be available elsewhere.
- Provides attorneys with the chance to enhance their professional development and network, while also giving back to the community.

UTAH STATE COURTS



VOLUNTEER OPPORTUNITY

COURT VISITOR PROGRAM

Our volunteers:

- Like working with a wide variety of people
- Display excellent listening skills, patience, and tact
- Are able to show objectivity in their work
- Enjoy providing an invaluable service the community

Does this sound like you? Consider becoming a Court Visitor volunteer!

Court Visitors are special appointees of the court. They gather facts from an array of individuals and institutions, and provide this essential information to the judge.

Our volunteers come from all walks of life, with a variety of professional, educational, cultural, and ethnic backgrounds.

**To apply, contact the Court Visitor Program Coordinator:
(801) 238-7030-3925, visitor@utcourts.gov**

**No specialized
experience or education
required**

**Commit to as little as
8 hours a month**

**You choose what fits
your location and
schedule**

**Gain valuable
experience while
serving the community**

Applying is simple!

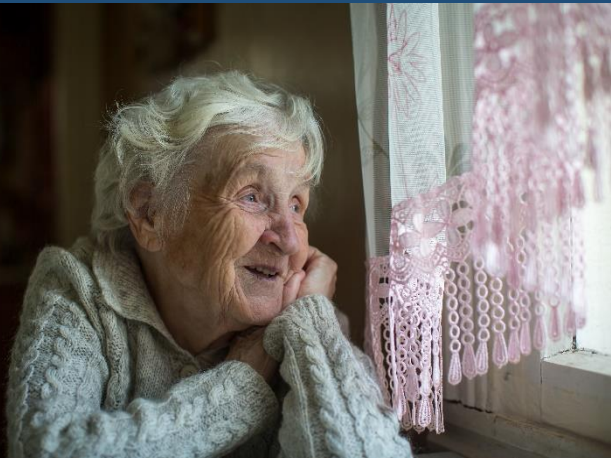
FOR MORE INFORMATION, CONTACT:

Court Visitor Program Coordinator
Administrative Office of the Courts

Salt Lake City, UT 84111

Phone: (801) 238-7030

Email: visitor@utcourts.gov
www.utcourts.gov/gramp/cvp



What is Guardianship?

Guardianship is a legal arrangement through which a person (the guardian) is legally authorized to make decisions for another individual (the protected person).

Only the court can grant a guardianship, therefore, the court oversees the process to ensure that individuals under guardianship receive special protection.

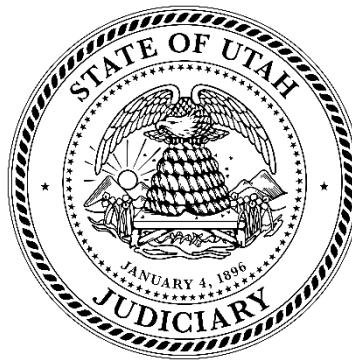
A guardian is a position of high trust, with responsibilities for the protected person and duties to the court.

UTAH STATE COURTS



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The mission of the Utah State Courts is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.



Court Visitor Program

The Court Visitor Program provides an important service in assisting the courts' ability to make informed decisions about guardianship cases.

The program assigns volunteers, called "Court Visitors," to conduct investigations at the direction of the judge.



What is a Court Visitor?

- Court Visitors are special appointees with no personal interest in the proceedings.
- Court Visitors investigate, observe, and report back to the judge.
- Court Visitors serve as the "eyes and ears" of the court.

Volunteer Opportunities

The Court Visitor Program utilizes the assistance of dozens of trained Court Visitors from a variety of backgrounds.

The program is always looking for additional volunteers, with openings across the state.

Responsibilities

Court Visitors regularly interact with Utah's vulnerable adults and persons with disabilities.

Court Visitors can expect to:

- Conduct interviews
- Investigate the individual's current situation and general well-being
- Examine records and documents
- Search for guardians with whom the court has lost contact
- Submit reports to the judge

What are the Benefits?

Improve the lives of vulnerable adults.

Help families become better guardians.

Learn more about guardianship matters.

Advance career options and obtain meaningful experiences.



Am I Qualified?

Volunteers should meet these basic requirements:

- 18 years or older
- Access to a computer and basic computer skills
- Access to reliable transportation
- Ability to work with a wide variety of individuals
- Excellent listening skills, patience, and tact
- The ability to remain objective in making reports to the Court

To learn more or to get an application, contact the Program Coordinator at:
(801) 238-7030 or visitor@utcourts.gov

Draft Probate Legislation

Uniform Act and Procedure Amendments to Title 75, Chapter 5

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29

30

Uniform Act and Procedure Amendments to Title 75, Chapter 5

31 **75-5-101. Jurisdiction of subject matter -- Consolidation of proceedings.**

32 (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

33 (2) When both guardianship and protective proceedings as to the same person are
34 commenced or pending in the same court, the proceedings may be consolidated in accordance
35 with Rule 14 of the Utah Rules of Probate Procedure.

Commented [NS1]: This adds a reference to Probate Procedure Rule 14.

36 **75-5-106. Disclosure of bankruptcy or criminal history.**

37 (a) Before accepting appointment as a guardian or conservator, a person shall disclose to the
38 court whether the person:

39 (1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

40 (2) been convicted of:

41 (A) a felony;

42 (B) a crime involving dishonesty, neglect, violence, or use of physical force; or

43 (C) other crime relevant to the functions the individual would assume as guardian or conservator.

44 (b) A guardian or conservator that engages or anticipates engaging an agent the guardian or
45 conservator knows has been convicted of a felony, a crime involving dishonesty, neglect,
46 violence, or use of physical force, or other crime relevant to the functions the agent is being
47 engaged to perform promptly shall disclose that knowledge to the court.

48 (c) If a conservator engages or anticipates engaging an agent to manage finances of the
49 individual subject to conservatorship and knows the agent is or has been a debtor in a
50 bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose that
51 knowledge to the court.

Commented [NS2]: From Uniform Act Section 117

52 **75-5-107. Compensation of Guardian or Conservator.**

53 (a) Subject to court approval, a guardian is entitled to reasonable compensation for services as
54 guardian and to reimbursement for room, board, clothing, and other appropriate expenses
55 advanced for the benefit of the individual subject to guardianship. If a conservator, other than
56 the guardian or a person affiliated with the guardian, is appointed for the individual, reasonable
57 compensation and reimbursement to the guardian may be approved and paid by the conservator
58 without court approval.

59 (b) Subject to court approval, a conservator is entitled to reasonable compensation for services
60 and reimbursement for appropriate expenses from the property of the individual subject to
61 conservatorship.

Commented [NS3]: From Uniform Act Section 120. Addresses some of the issues that Nevada had.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

62 (c) In determining reasonable compensation for a guardian or conservator, the court, or a
63 conservator in determining reasonable compensation for a guardian as provided in subsection (a),
64 shall consider:

65 (1) the necessity and quality of the services provided;

66 (2) the experience, training, professional standing, and skills of the guardian or conservator;

67 (3) the difficulty of the services performed, including the degree of skill and care required;

68 (4) the conditions and circumstances under which a service was performed, including whether
69 the service was provided outside regular business hours or under dangerous or extraordinary
70 conditions;

71 (5) the effect of the services on the individual subject to guardianship or conservatorship;

72 (6) the extent to which the services provided were or were not consistent with the guardian's plan
73 under Section 316 or conservator's plan under Section 419; and

74 (7) the fees customarily paid to a person that performs a like service in the community.

75 (d) A guardian or conservator need not use personal funds of the guardian or conservator for the
76 expenses of the individual subject to guardianship or conservatorship.

77 (e) If an individual subject to guardianship or conservatorship seeks to modify or terminate the
78 guardianship or conservatorship or remove the guardian or conservator, the court may order
79 compensation to the guardian or conservator for time spent opposing modification, termination,
80 or removal only to the extent the court determines the opposition was reasonably necessary to
81 protect the interest of the individual subject to guardianship or conservatorship.

82
83 **75-5-108. Court visitor.**

84 "Visitor" or "court visitor" means a person who is an appointee of the court, who has no personal
85 interest in the proceeding, and who has training or experience in guardianship, conservatorship,
86 or other protective arrangements. A visitor shall be appointed in accordance with this Chapter.

Commented [NS4]: This new section takes the definition of a visitor from Section 304 of the Uniform Act and modifies it slightly. Visitors are referred to in conservatorship, but there is no definition there. It seems to be a gap that's existed for a while.

87
88 **75-5-207. Court appointment of guardian of minor -- Procedure.**

89 (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of
90 a minor is to be given by the petitioner ~~in the manner prescribed by Section 75-1-401 in~~
91 accordance with Rule 5 of the Utah Rules of Probate Procedure to:

Commented [NS5]: This adds references to Probate Procedure Rule 5.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

- 92 (a) the minor, if the minor is 14 years of age or older;
- 93 (b) the person who has had the principal care and custody of the minor during the 60 days
94 preceding the date of the petition;
- 95 (c) any living parent of the minor;
- 96 (d) any guardian appointed by the will or written instrument of the parent of the minor who
97 died last; and
- 98 (e) the school district in which the petitioner resides and a representative of the school
99 district may participate in the hearing.

100 (2)

101 (a) Upon hearing, if the court finds that a qualified person seeks appointment, venue is
102 proper, the required notices have been given in accordance with Rule 5 of the Utah Rules of
103 Probate Procedure, the requirements of Sections 75-5-204 and 75-5-206 have been met, and the
104 welfare and best interests of the minor will be served by the requested appointment, it may make
105 the appointment.

106 (b) In other cases the court may dismiss the proceedings or make any other disposition of the
107 matter that will best serve the interest of the minor.

108 (3)

109 (a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary
110 guardian of a minor.

111 (b) The authority of a temporary guardian may not last longer than six months.

112 (4) If, at any time in the proceeding, the court determines that the interests of the minor are
113 or may be inadequately represented, it may appoint an attorney to represent the minor, giving
114 consideration to the preference of the minor if the minor is 14 years of age or older.

115 **75-5-208. Consent to service by acceptance of appointment -- Notice.**

116 By accepting a testamentary, instrumental, or court appointment as guardian, a guardian
117 submits personally to the jurisdiction of the court in any proceeding relating to the guardianship
118 that may be instituted by any interested person or any person interested in the welfare of the
119 minor. Notice of any proceeding shall be delivered-given to the guardian in accordance with Rule
120 5 of the Utah Rules of Probate Procedure to the guardian or mailed to him by ordinary mail at his
121 address as listed in the court records and to his address as then known to the petitioner. Letters of
122 guardianship shall indicate whether the guardian was appointed by will, written instrument, or by
123 court order.

Commented [NS6]: This adds references to Probate Procedure Rule 5.

February 13, 2020

Uniform Act and Procedure Amendments to Title 75, Chapter 5

124 **75-5-212. Resignation or removal proceedings.**

125 (1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age,
126 may petition for removal of a guardian on the ground that removal would be in the best interest
127 of the ward. A guardian may petition for permission to resign. A petition for removal or for
128 permission to resign may, but need not, include a request for appointment of a successor
129 guardian.

130 (2) After notice in accordance with Rule 5 of the Utah Rules of Probate Procedure and
131 hearing on a petition for removal or for permission to resign, the court may terminate the
132 guardianship and make any further order that may be appropriate.

133 (3) If, at any time in the proceeding, the court determines that the interests of the ward are, or
134 may be, inadequately represented, it may appoint an attorney in accordance with Rule 9 of the
135 Utah Rules of Probate Procedure to represent the minor, giving consideration to the preference of
136 the minor if the minor is 14 or more years of age.

Commented [NS7]: This adds references to Probate Procedure Rules 5 and 9.

137 **75-5-303. Procedure for court appointment of a guardian of an incapacitated person.**

138 (1) An incapacitated person or any person interested in the incapacitated person's welfare
139 may petition for a finding of incapacity and appointment of a guardian.

140 (2)

141 (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of
142 incapacity.

143 (b) Unless the respondent in a proceeding for appointment of a guardian for an adult is
144 represented by an attorney, the court shall appoint an attorney to represent the respondent,
145 regardless of the respondent's ability to pay. ~~Unless the allegedly incapacitated person has~~
146 ~~counsel of the person's own choice, the court shall appoint an attorney to represent the person in~~
147 ~~the proceeding in accordance with Rule 9 of the Utah Rules of Probate Procedure.~~ ~~+~~The cost of
148 the attorney ~~which~~ shall be paid by the person alleged to be incapacitated, unless the allegedly
149 incapacitated person and the allegedly incapacitated person's parents are indigent.

150 (c) If the court determines that the petition is without merit, the attorney fees and court costs
151 shall be paid by the person filing the petition.

152 (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the
153 incapacitated person, regardless of whether the nominee is specified in the moving petition or
154 nominated during the proceedings, the petitioner shall be entitled to receive from the
155 incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting,
156 or defending the petition.

Commented [NS8]: Updates counsel language to reflect language in Uniform Act section 305. Also adds references to Probate Procedure Rules 9 and 13. Also removes reference to Fourth Stage Alzheimer's, which according to Dr. Norman Foster at the University of Utah, is not a diagnosable condition.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

157 (3) The legal representation of the incapacitated person by an attorney shall terminate upon
158 the appointment of a guardian, unless:

159 (a) there are separate conservatorship proceedings still pending before the court subsequent
160 to the appointment of a guardian;

161 (b) there is a timely filed appeal of the appointment of the guardian or the determination of
162 incapacity; or

163 (c) upon an express finding of good cause, the court orders otherwise.

164 (4)

165 ~~(a) The person alleged to be incapacitated may be examined by a physician appointed by the~~
166 ~~court licensed physician, psychologist, social worker, or other individual who is qualified to~~
167 ~~evaluate the respondent's alleged cognitive and functional abilities and limitations and will not~~
168 ~~be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of~~
169 ~~interest. The individual conducting the evaluation shall promptly file the report with the court.~~
170 ~~who shall submit a report in writing to the court.~~

171 ~~(b) In accordance with Rule 13 of the Utah Rules of Probate Procedure, the person alleged to be~~
172 ~~incapacitated and~~ may be interviewed by a visitor sent by the court. The ~~court~~ visitor ~~also~~ may
173 ~~also~~ interview the person seeking appointment as guardian, visit the present place of abode of the
174 person alleged to be incapacitated ~~and or~~ the place it is proposed that the person will be detained
175 or reside if the requested appointment is made, conduct other investigations or observations as
176 directed by the court, and submit a report in writing to the court.

177 (5)

178 (a) The person alleged to be incapacitated shall be present at the hearing in person and see or
179 hear all evidence bearing upon the person's condition. ~~If the any interested person or party~~
180 ~~seeking the guardianship~~ requests a waiver of presence of the person alleged to be incapacitated,
181 the court shall order an investigation by a court visitor in accordance with Rule 13 of the Utah
182 Rules of Probate Procedure, ~~the costs of which shall be paid by the person seeking the~~
183 ~~guardianship.~~

184 (b) The investigation by a court visitor is not required if there is clear and convincing
185 evidence from a physician that the person alleged to be incapacitated has

186 ~~(i) fourth stage Alzheimer's Disease;~~

187 ~~(ii)~~ extended comatosis; or

188 ~~(iii)~~

Commented [NS9]: Updated based on Section 306 of the Uniform Act.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

- 189 (A) an intellectual disability; and
190 (B) an intelligence quotient score under 25.
- 191 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present
192 evidence, to cross-examine witnesses, including the court-appointed physician and the visitor,
193 and to trial by jury. The issue may be determined at a closed hearing without a jury if the person
194 alleged to be incapacitated or the person's counsel so requests.
- 195 (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-
196 201(22), is not required if:
- 197 (i) the person is the biological or adopted child of the petitioner;
198 (ii) the value of the person's entire estate does not exceed \$20,000 as established by an
199 affidavit of the petitioner in accordance with Section 75-3-1201;
200 (iii) the person appears in court with the petitioner;
201 (iv) the person is given the opportunity to communicate, to the extent possible, the person's
202 acceptance of the appointment of petitioner;
203 (v) no attorney from the state court's list of attorneys who have volunteered to represent
204 respondents in guardianship proceedings is able to provide counsel to the person within 60 days
205 of the date of the appointment described in Subsection (2);
206 (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the
207 person; and
208 (vii) the court appoints a visitor ~~under Subsection (4)~~ in accordance with Rule 13 of the Utah
209 Rules of Probate Procedure.

210 **75-5-304. Findings--Limited guardianship preferred--Order of appointment**

- 211 (1) The court may appoint a guardian as requested if it is satisfied that the person for whom a
212 guardian is sought is incapacitated and that the appointment is necessary or desirable as a means
213 of providing continuing care and supervision of the incapacitated person.
- 214 (2)(a) The court shall prefer a limited guardianship and may only grant a full guardianship if no
215 other alternative exists. If the court does not grant a limited guardianship, a specific finding shall
216 be made that nothing less than a full guardianship is adequate.
- 217 (b) An order of appointment of a limited guardianship shall state the limitations of the
218 guardianship. Letters of guardianship for a limited guardianship shall state the limitations of the

Commented [NS10]: This section is a request from practitioners to clarify the court's ability to tailor the guardian's powers in its orders, specifically with respect to fluctuating capacity like in mental health cases.

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219 guardianship unless the court determines for good cause shown that a limitation should not be
220 listed in the letters.

221 (c) The court is authorized to tailor the powers of the guardian to the specific needs of the ward
222 upon presentation of clear and convincing evidence.

223 (3) A guardian appointed by will or written instrument, under Section 75-5-301, whose
224 appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over
225 any guardian who may be appointed by the court, but the court may proceed with an appointment
226 upon a finding that the testamentary or instrumental guardian has failed to accept the
227 appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court
228 may dismiss the proceeding or enter any other appropriate order.

229 **75-5-305. Acceptance of appointment -- Consent to jurisdiction.**

230 By accepting appointment, a guardian submits personally to the jurisdiction of the court in
231 any proceeding relating to the guardianship that may be instituted by any interested person or
232 any person interested in the welfare of the ward. Notice of any proceeding shall be ~~delivered~~
233 given to the guardian as provided in Rule 5 of the Utah Rules of Probate Procedure ~~or mailed to~~
234 him by ordinary mail at his address as listed in the court records and to his address as then
235 known to the petitioner.

236

237 **75-5-308. Visitor in guardianship proceeding**

238 A visitor shall be appointed in accordance with this Chapter and Rule 13 of the Utah Rules of
239 Probate Procedure. ~~A visitor is, with respect to guardianship proceedings, a person who is trained~~
240 ~~in law, nursing, or social work and is an officer, employee, or special appointee of the court with~~
241 ~~no personal interest in the proceedings.~~

242 **75-5-309. Notices in guardianship proceedings.**

243 (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person
244 other than the appointment of an emergency guardian or temporary suspension of a guardian,
245 notice of hearing, in accordance with Rule 5 of the Utah Rules of Probate Procedure, shall be
246 given to each of the following:

247 (a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children
248 of the ward or person;

249 (b) any person who is serving as guardian or conservator or who has care and custody of the
250 ward or person;

Commented [NS11]: This adds references to Probate Procedure Rule 5.

Commented [NS12]: The definition of visitor has been moved to the general provisions sections. The "how" of the court visitor program, such as the case types, how reports get to the judge, etc., is found in Rule 13.

Commented [NS13]: This adds references to Probate Procedure Rules 5, 8, 4, and 13.

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251 (c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult
252 relatives, if any can be found;

253 (d) any guardian appointed by the will of the parent who died later or spouse of the
254 incapacitated person; and

255 (e) Adult Protective Services if Adult Protective Services has received a referral under Title
256 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning the
257 welfare of the ward or person alleged to be incapacitated or concerning the guardian or
258 conservator or proposed guardian or conservator.

259 (2) The notice shall be in the form provided in Rule 8 of the Utah Rules of Probate Procedure
260 and shall include in plain language and large type and the form shall have the final approval of
261 the Judicial Council. The notice shall indicate the time and place of the hearing, the possible
262 adverse consequences to the person receiving notice of rights, a list of rights, including the
263 person's own or a court-appointed counsel, and a copy of the petition.

264 (3) Notice shall be served personally in accordance with Rule 4 of the Utah Rules of Probate
265 Procedure on the alleged incapacitated person and the person's spouse and parents if they can be
266 found within the state. Notice to the spouse and parents, if they cannot be found within the state,
267 and to all other persons except the alleged incapacitated person shall be given ~~as provided in~~
268 Section 75-1-404 in accordance with Rule 5 of the Utah Rules of Probate Procedure. Waiver of
269 notice by the person alleged to be incapacitated is not effective unless the person attends the
270 hearing or the person's waiver of notice is confirmed in an interview with the court visitor
271 appointed pursuant to Section 75-5-303 and Rule 13 of the Utah Rules of Probate Procedure.

272 **75-5-310. Emergency guardians.**

273 (1) If an incapacitated person has no guardian and an emergency exists or if an appointed
274 guardian is not effectively performing the guardian's duties and the court further finds that the
275 welfare of the incapacitated person requires immediate action, it may, without notice, appoint an
276 emergency guardian for the person for a specified period not to exceed 30 days pending notice
277 and hearing.

278 (2) Upon request by an interested person after the appointment of an emergency guardian,
279 the court shall hold a hearing within ~~14 days~~ the time frame provided in Rule 8 of the Utah Rules
280 of Probate Procedure and pursuant to Section 75-5-303.

281 **75-5-310.5. Temporary guardians.**

282 (1) If, after notice, in accordance with Rule 5 of the Utah Rules of Probate Procedure, and
283 hearing as required by Section 75-5-303, the court finds good cause, the court may:

284 (a) appoint a temporary guardian;

Commented [NS14]: This adds references to Probate Procedure Rule 8.

Commented [NS15]: This adds references to Probate Procedure Rule 5.

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285 (b) convert an emergency guardian to a temporary guardian if an emergency guardian has
286 been appointed under Section 75-5-310; or

287 (c) appoint a different person as temporary guardian to replace an emergency guardian
288 appointed under Section 75-5-310.

289 (2) Unless the allegedly incapacitated person has already obtained counsel in this proceeding
290 or an attorney has been already appointed for the person, the court shall appoint an attorney to
291 represent the person in the proceeding.

292 (3) Until a full hearing and further order of the court, the temporary guardian shall be
293 charged with the care and custody of the ward and may not permit the ward to be removed from
294 the state. The authority of any permanent guardian previously appointed by the court is
295 suspended so long as a temporary guardian has authority.

296 (4) A temporary guardian may be removed at any time, and shall obey all orders and make
297 any reports required by the court.

298 (5) A temporary guardian has all of the powers and duties of a permanent guardian as set
299 forth in Section 75-5-312.

300 ~~75-5-311. Who may be guardian for adult—order of priority. Who may be guardian--~~
301 ~~Priorities~~

302 (a) Except as otherwise provided in subsection (c), the court in appointing a guardian for an adult
303 shall consider persons qualified to be guardian in the following order of priority:

304 (1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent
305 in another jurisdiction;

306 (2) a person nominated as guardian by the respondent, including the respondent's most recent
307 nomination made in a power of attorney, if the incapacitated person was 14 years of age or older
308 when the nomination was executed and, in the opinion of the court, that person acted with
309 sufficient mental capacity to make the nomination;

310 (3) an agent appointed by the respondent under [a power of attorney for health care];

311 (4) a spouse [or domestic partner] of the respondent;

312 (5) a family member or other individual who has shown special care and concern for the
313 respondent; and

314 (6) the Office of Public Guardian under Title 62A, Chapter 14, Office of Public Guardian Act.

Commented [NS16]: Replace 75-5-311 with Section 309 of the Uniform Act, except keep the language about the Office of Public Guardian, which is in the current code section (see (a)(6) here) and the language about capacity to make a nomination (see (a)(2) here).

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315 (b) If two or more persons have equal priority under subsection (a), the court shall select as
316 guardian the person the court considers best qualified. In determining the best qualified person,
317 the court shall consider the person's relationship with the respondent, the person's skills, the
318 expressed wishes of the respondent, the extent to which the person and the respondent have
319 similar values and preferences, and the likelihood the person will be able to perform the duties of
320 a guardian successfully.

321 (c) The court, acting in the best interest of the respondent, may decline to appoint as guardian a
322 person having priority under subsection (a) and appoint a person having a lower priority or no
323 priority.

324 (d) A person that provides paid services to the respondent, or an individual who is employed by a
325 person that provides paid services to the respondent or is the spouse, [domestic partner,] parent,
326 or child of an individual who provides or is employed to provide paid services to the respondent,
327 may not be appointed as guardian unless:

328 (1) the individual is related to the respondent by blood, marriage, or adoption; or

329 (2) the court finds by clear-and-convincing evidence that the person is the best qualified person
330 available for appointment and the appointment is in the best interest of the respondent.

331 (e) An owner, operator, or employee of [a long-term-care institution] at which the respondent is
332 receiving care may not be appointed as guardian unless the owner, operator, or employee is
333 related to the respondent by blood, marriage, or adoption.

334 (1) As used in this section:

335 (a) "Specialized care professional" means a person who is certified as a National Certified
336 Guardian or National Master Guardian by the Center for Guardianship Certification or similar
337 organization.

338 (b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole
339 proprietorship, or other type of business organization that is owned, operated by, or employs a
340 specialized care professional.

341 (2) The court shall appoint a guardian in accordance with the incapacitated person's most recent
342 nomination, unless that person is disqualified or the court finds other good cause why the person
343 should not serve as guardian. That nomination shall have been made prior to the person's
344 incapacity, shall be in writing and shall be signed by the person making the nomination. The
345 nomination shall be in substantially the following form:

346 Nomination of Guardian by an Adult

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347 ~~I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do~~
348 ~~hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as~~
349 ~~my guardian in the event that after the date of this instrument I become incapacitated.~~

350 Executed at _____ (city, state) on this _____ day of
351 _____

352

353 (Signature)

354 ~~(3) Except as provided in Subsection (2), persons who are not disqualified have priority for~~
355 ~~appointment as guardian in the following order:~~

356 ~~(a) a person who has been nominated by the incapacitated person, by any means other than that~~
357 ~~described in Subsection (2), if the incapacitated person was 14 years of age or older when the~~
358 ~~nomination was executed and, in the opinion of the court, that person acted with sufficient~~
359 ~~mental capacity to make the nomination;~~

360 ~~(b) the spouse of the incapacitated person;~~

361 ~~(c) an adult child of the incapacitated person;~~

362 ~~(d) a parent of the incapacitated person, including a person nominated by will, written~~
363 ~~instrument, or other writing signed by a deceased parent;~~

364 ~~(e) any relative of the incapacitated person with whom he has resided for more than six months~~
365 ~~prior to the filing of the petition;~~

366 ~~(f) a person nominated by the person who is caring for him or paying benefits to him;~~

367 ~~(g) a specialized care professional, so long as the specialized care professional does not:~~

368 ~~(i) profit financially or otherwise from or receive compensation for acting in that capacity, except~~
369 ~~for the direct costs of providing guardianship or conservatorship services; or~~

370 ~~(ii) otherwise have a conflict of interest in providing those services;~~

371 ~~(h) any competent person or suitable institution; or~~

372 ~~(i) the Office of Public Guardian under Title 62A, Chapter 14, Office of Public Guardian Act.~~

373 **75-5-312. General powers and duties of guardian -- Penalties.**

374 (1) A guardian of an incapacitated person has only the powers, rights, and duties respecting
375 the ward granted in the order of appointment under Section 75-5-304.

Commented [NS17]: This adds references to Probate Procedure Rule 5 and clarifies that reports are to be filed with the court.

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- 376 (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties
377 respecting the ward that a parent has respecting the parent's unemancipated minor child.
- 378 (3) In particular, and without qualifying Subsections (1) and (2), a guardian has the following
379 powers and duties, except as modified by order of the court:
- 380 (a) To the extent that it is consistent with the terms of any order by a court of competent
381 jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody
382 of the person of the ward and may establish the ward's place of abode within or without this
383 state.
- 384 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and
385 maintenance of the ward and, whenever appropriate, arrange for the ward's training and
386 education. Without regard to custodial rights of the ward's person, the guardian shall take
387 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
388 commence protective proceedings if other property of the ward is in need of protection.
- 389 (c) A guardian may give any consents or approvals that may be necessary to enable the ward
390 to receive medical or other professional care, counsel, treatment, or service.
- 391 (d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or
392 friends.
- 393 (e) If no conservator for the estate of the ward has been appointed, the guardian may:
- 394 (i) institute proceedings to compel any person under a duty to support the ward or to pay
395 sums for the welfare of the ward to perform that duty;
- 396 (ii) compel the production of the ward's estate documents, including the ward's will, trust,
397 power of attorney, and any advance health care directive; and
- 398 (iii) receive money and tangible property deliverable to the ward and apply the money and
399 property for support, care, and education of the ward:
- 400 (A) except that the guardian may not use funds from the ward's estate for room and board that
401 the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for
402 the service is approved by order of the court made upon notice to at least one adult relative in the
403 nearest degree of kinship to the ward in which there is an adult; and
- 404 (B) the guardian shall exercise care to conserve any excess for the ward's needs.
- 405 (f)
- 406 (i) A guardian is required to report the condition of the ward and of the estate that has been
407 subject to the guardian's possession or control, as required by the court or court rule.

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- 408 (ii) A guardian is required to immediately notify all interested persons if the guardian
409 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
- 410 (A) the guardian's own observations; or
- 411 (B) information from the ward's physician or other medical care providers.
- 412 (iii) A guardian is required to immediately notify persons who request notification and are not
413 restricted in associating with the ward pursuant to Section 75-5-312.5 of:
- 414 (A) the ward's admission to a hospital for three or more days or to a hospice program;
- 415 (B) the ward's death; and
- 416 (C) the arrangements for the disposition of the ward's remains .
- 417 (iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of
418 the guardian's intent to move the ward and to ~~serve~~ give the notice in accordance with Rule 5 of
419 the Utah Rules of Probate Procedure, on to all interested persons at least 10 days before the
420 move. The guardian shall take reasonable steps to notify all interested persons and to file the
421 notice with the court as soon as practicable following the earlier of the move or the date when the
422 guardian's intention to move the ward is made known to the ward, the ward's care giver, or any
423 other third party.
- 424 (v)
- 425 (A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all
426 estates in excess of \$50,000, excluding the residence owned by the ward, ~~send~~ file a report with a
427 full accounting to the court on an annual basis.
- 428 (B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian
429 shall fill out an informal annual report and ~~mail~~ file the report ~~to~~ with the court.
- 430 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the
431 beginning and end of the reporting year, income received during the year, disbursements for the
432 support of the ward, and other expenses incurred by the estate. The guardian shall also report the
433 physical conditions of the ward, the place of residence, and a list of others living in the same
434 household. The court may require additional information.
- 435 (D) The forms for both the informal report for estates under \$50,000, excluding the residence
436 owned by the ward, and the full accounting report for larger estates shall be approved by the
437 Judicial Council.
- 438 (E) An annual report shall be examined and approved by the court.

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- 439 (F) If the ward's income is limited to a federal or state program requiring an annual
440 accounting report, a copy of that report may be submitted to the court in lieu of the required
441 annual report.
- 442 (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal
443 report annually to the court. The report shall be examined and approved by the court.
- 444 (vii) The guardian shall also render an annual accounting of the status of the person to the
445 court that shall be included in the petition or the informal annual report as required under this
446 Subsection (3)(f). If a fee is paid for an accounting of an estate, a fee may not be charged for an
447 accounting of the status of a person.
- 448 (viii) If a guardian:
- 449 (A) makes a substantial misstatement on filings of annual reports;
- 450 (B) is guilty of gross impropriety in handling the property of the ward; or
- 451 (C) willfully fails to file the report required by this Subsection (3)(f), after receiving written
452 notice from the court of the failure to file and after a grace period of two months has elapsed, the
453 court may impose a penalty in an amount not to exceed \$5,000.
- 454 (ix) The court may also order restitution of funds misappropriated from the estate of a ward.
455 The penalty shall be paid by the guardian and may not be paid by the estate.
- 456 (x) The provisions and penalties in this Subsection (3)(f) governing annual reports do not
457 apply if the guardian or a coguardian is the parent of the ward.
- 458 (xi) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means
459 those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-
460 309.
- 461 (g) If a conservator has been appointed:
- 462 (i) all of the ward's estate received by the guardian in excess of those funds expended to
463 meet current expenses for support, care, and education of the ward shall be paid to the
464 conservator for management as provided in this code; and
- 465 (ii) the guardian shall account to the conservator for funds expended.
- 466 (4)
- 467 (a) A court may, in the order of appointment, place specific limitations on the guardian's
468 power.

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469 (b) A guardian may not prohibit or place restrictions on association with a relative or
470 qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-
471 312.5.

472 (c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason
473 of the relationship described in Subsection (2).

474 (5) Any guardian of one for whom a conservator also has been appointed shall control the
475 custody and care of the ward and is entitled to receive reasonable sums for services and for room
476 and board furnished to the ward as agreed upon between the guardian and the conservator, if the
477 amounts agreed upon are reasonable under the circumstances. The guardian may request the
478 conservator to expend the ward's estate by payment to third persons or institutions for the ward's
479 care and maintenance.

480 (6) A person who refuses to accept the authority of a guardian with authority over financial
481 decisions to transact business with the assets of the protected person after receiving a certified
482 copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the
483 court determines that the person did not act in good faith in refusing to accept the authority of the
484 guardian.

485 (7) A guardian shall, to the extent practicable, encourage the ward to participate in decisions,
486 exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to
487 manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall
488 consider the expressed desires and personal values of the ward.

489 **75-5-312.5. Association between an adult ward and a relative of the adult ward.**

490 (1) As used in this section:

491 (a) "Associate" or "association" means:

492 (i) visitation of an adult ward by a relative or qualified acquaintance; or

493 (ii) communication between an adult ward and a relative or qualified acquaintance in any
494 form, including by telephone, mail, or electronic communication.

495 (b) "Qualified acquaintance" means an individual, other than a relative of the adult ward,
496 who:

497 (i) has established a significant, mutual friendship with the adult ward; or

498 (ii) is clergy in the adult ward's religion or religious congregation.

499 (c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling,
500 step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.

Commented [NS18]: This adds references to Probate Procedure Rules 5 and 13.

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- 501 (2)
- 502 (a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the
503 right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.
- 504 (b) If an adult ward is unable to express consent to visitation by a relative or a qualified
505 acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a
506 prior relationship between the adult ward and the relative or qualified acquaintance of the adult
507 ward.
- 508 (c) A guardian may not permit a relative or qualified acquaintance of an adult ward to
509 associate with the adult ward:
- 510 (i) if a court order prohibits the association;
- 511 (ii) in a manner prohibited by court order; or
- 512 (iii) if the adult ward expresses a desire to not associate with the relative or qualified
513 acquaintance.
- 514 (3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue
515 an order:
- 516 (a) prohibiting or placing conditions on association between an adult ward and a relative or
517 qualified acquaintance of the adult ward; or
- 518 (b) granting the guardian the authority to prohibit or place conditions on association between
519 an adult ward and a relative or qualified acquaintance of the adult ward.
- 520 (4) A guardian may, at any time after the initial guardianship proceeding:
- 521 (a) petition the court to issue an order described in Subsection (3) or to rescind or modify an
522 order described in Subsection (3); or
- 523 (b) petition, subject to notice, the court on an emergency basis to issue a temporary order
524 until further order of the court described in Subsection (3) or to rescind or modify an order
525 described in Subsection (3).
- 526 (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward
527 may, at any time after the initial guardianship proceeding, petition the court to rescind or modify
528 an order described in Subsection (3).
- 529 (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a
530 qualified acquaintance of the adult ward may do one or more of the following, as applicable:

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- 531 (a) petition the court to issue an order to show cause why the guardian should not be held in
532 contempt of court;
- 533 (b) seek an injunction to enforce compliance by the guardian with the law and any applicable
534 court order; or
- 535 (c) petition the court to have the guardian removed as guardian of the adult ward.
- 536 (7) For a hearing on a petition filed under this section, a court:
- 537 (a) may appoint a court visitor [in accordance with Rule 13 of the Utah Rules of Probate](#)
538 [Procedure](#) to meet with the adult ward to determine the wishes of the adult ward regarding
539 association;
- 540 (b) shall, [in accordance with Rule 5 the Utah Rules of Probate Procedure](#), give notice and
541 [provide](#) an opportunity to be heard to the guardian, the adult ward, and the relative or qualified
542 acquaintance;
- 543 (c) shall preserve the right of the adult ward to be present at the hearing; and
- 544 (d) may order supervised visitation by the relative or qualified acquaintance before the
545 hearing.
- 546 (8) A court may not enter an order prohibiting or placing restrictions on association between
547 an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance
548 of the evidence that:
- 549 (a) the adult ward desires the prohibition or restriction;
- 550 (b) if the adult ward had the capacity to make a knowing and intelligent decision regarding
551 the association, the adult ward would prohibit the association or impose the restriction; or
- 552 (c) the prohibition or restriction is the least restrictive means necessary to protect the health
553 or welfare of the adult ward.
- 554 (9) In making the determination described in Subsection (8), the court may consider any
555 relevant evidence, including:
- 556 (a) the wishes of the adult ward, expressed during or before the guardianship;
- 557 (b) the history of the relationship between the adult ward and the relative or qualified
558 acquaintance;
- 559 (c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified
560 acquaintance; or

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561 (d) whether a protective order was ever issued against the relative or qualified acquaintance
562 with respect to the adult ward.

563 (10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:

564 (a) seeking an order prohibiting association or placing restrictions on association with a
565 relative or qualified acquaintance of the adult ward;

566 (b) modifying an order to place additional prohibitions or restrictions on association with a
567 relative or qualified acquaintance of the adult ward; or

568 (c) opposing an action described in Subsection (6)(a) or (b).

569 (11) The relative or qualified acquaintance shall have the burden of proof if the relative or
570 qualified acquaintance is seeking to modify an order previously entered by a court under this
571 section.

572 (12)

573 (a) If, in a proceeding under this section, the court finds that the petition was filed frivolously
574 or in bad faith, the court shall award attorney fees to a party opposing the petition.

575 (b) If, in a proceeding under this section, the court finds that the guardian is in contempt of
576 court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:

577 (i) may award attorney fees to the prevailing party; and

578 (ii) may impose a sanction, not to exceed \$1,000, against the guardian.

579 (c) A court shall prohibit attorney fees awarded under this section from being paid by the
580 adult ward or the adult ward's estate.

581 **75-5-316. Expedited guardianship proceedings.**

582 (1)

583 (a) With regard to persons who are residents of the Utah State Developmental Center, the
584 expedited process provided by this section may be applied to obtain a limited guardianship.

585 (b) For purposes of this section:

586 (i) "Limited guardianship" means a guardianship solely for the purpose of granting consent
587 for medical care and for participation in approval of the ward's individualized program plan.

588 (ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of
589 guardianship proceedings under this section.

Commented [NS19]: This adds references to Probate Procedure Rule 4.

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- 590 (2) Any person interested in the incapacitated person's welfare may file a petition for a
591 finding of incapacity and appointment of a guardian. That person may seek the limited
592 guardianship pro se, using the forms described in this section. Any fee for filing a petition for a
593 limited guardianship shall be waived if the guardian is proceeding under this section.
- 594 (3) Upon filing a petition for limited guardianship under this section, the court shall set a date
595 for hearing.
- 596 (4) The ward has the right to be present at the hearing and to see and hear all evidence
597 relating to his condition.
- 598 (5) At that hearing the court shall review the affidavit of the superintendent of the Utah State
599 Developmental Center, described in Subsection (11), and determine whether notice has been
600 given to the appropriate persons described in Subsection (6).
- 601 (6) If the proposed guardian is not a parent or relative of the ward, ~~personal~~ notice shall be
602 ~~given to~~ served on the ward's spouse, parents, and any adult children of the ward in accordance
603 with Rule 4 of the Utah Rules of Probate Procedure. ~~Personal~~ Notice shall also be ~~given~~ served
604 on ~~to~~ other persons as the court may direct.
- 605 (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the
606 hearing, and may request independent evaluation by a physician appointed by the court. The
607 physician shall submit his findings to the court in writing.
- 608 (8) The court may grant the petition for a limited guardianship and sign the Order of
609 Appointment if the court finds that:
- 610 (a) the appropriate parties have been ~~given properly served~~ noticed;
- 611 (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State
612 Developmental Center and any affidavit or testimony of persons entitled to receive notice or
613 requested to present evidence under this section; and
- 614 (c) it is necessary and desirable to establish the guardianship.
- 615 (9) Venue for these expedited guardianship proceedings shall be the same as that described
616 in Section 75-5-302.
- 617 (10) A petition for a limited guardianship shall include the following information:
- 618 (a) the interest of the petitioner;
- 619 (b) the name, age, residence, and address of the ward;
- 620 (c) verification that the ward is a resident of the Utah State Developmental Center;

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- 621 (d) the name and address of the nearest relative of the ward; and
- 622 (e) the reason for appointment of guardianship.
- 623 (11) The petitioner shall also provide the court with an affidavit of the superintendent of the
624 Utah State Developmental Center that includes the following information:
- 625 (a) that the ward is a resident of the Utah State Developmental Center;
- 626 (b) the date the ward was originally admitted to the Utah State Developmental Center;
- 627 (c) the diagnosis of the ward, including a description of the ward's disabling condition, the
628 level of the ward's intellectual disability, and any medical or physical conditions of the ward;
- 629 (d) that the Utah State Developmental Center is certified as an intermediate care facility for
630 people with an intellectual disability;
- 631 (e) that because of that certification, the Utah State Developmental Center receives financial
632 participation from the United States Government for its operation and maintenance costs; and
- 633 (f) that federal regulations under Title XIX require the ward to have a guardian appointed for
634 the sole purpose of giving consent for medical and dental care and of participation in and
635 approval of the ward's individual program plan.
- 636 (12) If the court finds that, under the requirements of this section the proposed limited
637 guardian should be appointed, it shall enter an order establishing that limited guardianship in
638 substantially the following form:
- 639 The court finds that:
- 640 (a) appointment of a limited guardianship for (named ward) is necessary and desirable as a
641 means of providing continuing care and supervision and to ensure his welfare;
- 642 (b) the ward is incapacitated;
- 643 (c) (named guardian) is appointed as the limited guardian of (named ward); and
- 644 (d) the guardianship is a limited guardianship solely for the purpose of:
- 645 (i) granting permission for medical and dental care on behalf of the ward; and
- 646 (ii) participation in the development and approval of the ward's individual program plan.
- 647 (13) Appointment of guardianship under this section places no additional responsibility or
648 liability on the guardian with regard to the ward. The limited guardianship is solely for consent
649 for medical care and approval of the ward's individualized program plan, and shall not be
650 construed to increase or create liability or responsibility for the guardian.

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651 **75-5-402. Protective proceedings -- Jurisdiction of affairs of protected persons.**

652 After the service of notice, as provided in Rule 4 of the Utah Rules of Probate Procedure, in a
653 proceeding seeking the appointment of a conservator or other protective order and until
654 termination of the proceeding, the court in which the petition is filed has:

655 (1) Exclusive jurisdiction to determine the need for a conservator or other protective order
656 until the proceedings are terminated;

657 (2) Exclusive jurisdiction to determine how the estate of the protected person which is
658 subject to the laws of this state shall be managed, expended, or distributed to or for the use of the
659 protected person or any of his dependents;

660 (3) Concurrent jurisdiction to determine the validity of claims against the person or estate of
661 the protected person and his title to any property or claim.

662 **75-5-405. Notice**

663 (1) In a proceeding for the appointment or removal of a conservator or other protective
664 arrangement, notice of hearing shall be given to each of the following:

665 (a) the ward or the person to be protected and spouse, parents, and adult children of the ward or
666 person;

667 (b) any person who is serving as guardian or conservator or who has care and custody of the
668 ward or person;

669 (c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult
670 relatives, if any can be found;

671 (d) any guardian or conservator appointed by the will of the parent who died later or spouse of
672 the incapacitated person; and

673 (e) Adult Protective Services if Adult Protective Services has received a referral under Title 62A,
674 Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning the welfare
675 of the ward or person to be protected or concerning the guardian or conservator or proposed
676 guardian or conservator.

677 (2) The notice shall be in plain language and large type and the form shall have the final approval
678 of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible
679 adverse consequences to the person receiving notice of rights, a list of rights, including the
680 person's own or a court appointed counsel, and a copy of the petition.

681 (3) Notice shall be served personally on the ward or person to be protected and the person's
682 spouse and parents if they can be found within the state in accordance with Rule 4 of the Utah
683 Rules of Probate Procedure. Notice to the spouse and parents, if they cannot be found within the

Commented [NS20]: This brings over the notice provisions of current code section 75-5-309. For some unknown reason, the provisions differed, which meant less protection for the person to be protected in a conservatorship proceeding. This brings the two provisions into alignment and refers to the Probate Rules for the service provisions.

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684 state, and to all other persons except the person to be protected shall be given as provided in Rule
685 5 of the Utah Rules of Probate Procedure. Waiver of notice by the person to be protected is not
686 effective unless the person attends the hearing or, unless minority is the reason for the
687 proceeding, the person's waiver of notice is confirmed in an interview with the visitor.

688 ~~(1) On a petition for appointment of a conservator or other protective order, the person to be~~
689 ~~protected and his spouse or, if none, his parents, must be served personally with notice of the~~
690 ~~proceeding at least 10 days before the date of the hearing if they can be found within the state,~~
691 ~~or, if they cannot be found within the state, they must be given notice in accordance with Section~~
692 ~~75-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or,~~
693 ~~unless minority is the reason for the proceeding, waiver is confirmed in an interview with the~~
694 ~~visitor.~~

695 ~~(2) Notice of a petition for appointment of a conservator or other initial protective order, and of~~
696 ~~any subsequent hearing, must be given to any person who has filed a request for notice under~~
697 ~~Section 75-5-406 and to interested persons and other persons as the court may direct. Except as~~
698 ~~otherwise provided in Subsection (1) above, notice shall be given in accordance with Section 75-~~
699 ~~1-401.~~

700 **75-5-406. Protective proceedings -- Request for notice -- Interested person.**

701 Any interested person who desires to be notified before any order is made in a protective
702 proceeding may file with the ~~registrar~~ clerk of court a request for notice subsequent to payment
703 of any fee required by statute or court rule. In accordance with Rule 5 of the Utah Rules of
704 Probate Procedure, ~~The clerk shall mail give a copy of the notice of the demand~~ request to the
705 conservator if one has been appointed. A request is not effective unless it contains a statement
706 showing the interest of the person making it and his address, or that of his attorney, and is
707 effective only as to matters occurring after the filing. Any governmental agency paying or
708 planning to pay benefits to the person to be protected is an interested person in protective
709 proceedings.

Commented [NS21]: This adds references to Probate Procedure Rule 5 and clarifies that the clerk of court receives requests for notice.

710 **75-5-407. Procedure concerning hearing and order on original petition.**

711 (1) Upon receipt of a petition for appointment of a conservator or other protective order
712 because of minority, the court shall set a date for the hearing on the matters alleged in the
713 petition. If, at any time in the proceeding, the court determines that the interests of the minor are
714 or may be inadequately represented, it may, in accordance with Rule 9 the Utah Rules of Probate
715 Procedure, appoint an attorney to represent the minor, giving consideration to the choice of the
716 minor if 14 years of age or older. An attorney appointed by the court to represent a minor has the
717 powers and duties of a guardian ad litem.

Commented [NS22]: This adds references to Probate Procedure Rules 9 and 13 and adds clarifying language from Section 407 of the Uniform Act about physician evaluations..

718 (2) Upon receipt of a petition for appointment of a conservator or other protective order for
719 reasons other than minority, the court shall set a date for hearing. Unless the person to be

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720 protected has already retained counsel, the court may appoint an attorney to represent the person
721 to be protected who then has the powers and duties of a guardian ad litem.

722 (3) The legal representation of the protected person by an attorney shall terminate upon the
723 appointment of a conservator, unless:

724 (a) there are separate guardianship proceedings still pending before the court subsequent to
725 the appointment of a conservator;

726 (b) there is a timely filed appeal of the appointment of the conservator; or

727 (c) upon an express finding of good cause, the court orders otherwise.

728 (4) If the alleged disability is mental illness, mental deficiency, physical illness or disability,
729 advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person
730 to be protected be examined by a ~~physician designated by the court,~~licensed physician,
731 psychologist, social worker, or other individual who is qualified to evaluate the respondent's
732 alleged cognitive and functional abilities and limitations and will not be advantaged or
733 disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The
734 individual conducting the evaluation promptly shall file a report in a record with the court,
735 preferably a physician who is not connected with any institution in which the person is a patient
736 or is detained. The court may ~~send~~ appoint a visitor to interview the person to be protected in
737 accordance with Rule 13 of the Utah Rules of Probate Procedure. ~~The visitor may be a guardian~~
738 ad litem or an officer or employee of the court.

739 (5) After hearing, upon finding that a basis for the appointment of a conservator or other
740 protective order has been established, the court shall make an appointment or other appropriate
741 protective order.

742 ~~75-5-410. Who may be conservator; order of priority. Who may be appointed conservator--~~
743 ~~Priorities~~

744 (a) Except as otherwise provided in subsection (c), the court in appointing a conservator shall
745 consider persons qualified to be a conservator in the following order of priority:

746 (1) a conservator, other than a temporary or emergency conservator, currently
747 acting for the respondent in another jurisdiction;

748 (2) a person nominated as conservator by the respondent, including the
749 respondent's most recent nomination made in a power of attorney for finances, if the respondent
750 was 14 years of age or older when the nomination was executed and, in the opinion of the court,
751 that person acted with sufficient mental capacity to make the nomination;

Commented [NS23]: From Section 410 of the Uniform Act.
Added capacity language from current code section to (a)(2).

Uniform Act and Procedure Amendments to Title 75, Chapter 5

752 (3) an agent appointed by the respondent to manage the respondent's property
753 under a power of attorney for finances;

754 (4) a spouse [or domestic partner] of the respondent; and

755 (5) a family member or other individual who has shown special care and concern for the
756 respondent.

757 (b) If two or more persons have equal priority under subsection (a), the court shall select as
758 conservator the person the court considers best qualified. In determining the best qualified
759 person, the court shall consider the person's relationship with the respondent, the person's skills,
760 the expressed wishes of the respondent, the extent to which the person and the respondent have
761 similar values and preferences, and the likelihood the person will be able to perform the duties of
762 a conservator successfully.

763 (c) The court, acting in the best interest of the respondent, may decline to appoint as conservator
764 a person having priority under subsection (a) and appoint a person having a lower priority or no
765 priority.

766 (d) A person that provides paid services to the respondent, or an individual who is employed by a
767 person that provides paid services to the respondent or is the spouse, [domestic partner,] parent,
768 or child of an individual who provides or is employed to provide paid services to the respondent,
769 may not be appointed as conservator unless:

770 (1) the individual is related to the respondent by blood, marriage, or adoption; or

771 (2) the court finds by clear-and-convincing evidence that the person is the best qualified person
772 available for appointment and the appointment is in the best interest of the respondent.

773 (e) An owner, operator, or employee of [a long-term-care institution] at which the respondent is
774 receiving care may not be appointed as conservator unless the owner, operator, or employee is
775 related to the respondent by blood, marriage, or adoption.

776 (1) The court may appoint an individual, or a corporation with general power to serve as trustee,
777 as conservator of the estate of a protected person. The following are entitled to consideration for
778 appointment in the order listed:

779 (a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the
780 appropriate court of any other jurisdiction in which the protected person resides;

781 (b) an individual or corporation nominated by the protected person if he is 14 or more years of
782 age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

783 (c) the court shall appoint a conservator in accordance with the protected person's most recent
784 nomination, unless the potential conservator is disqualified or the court finds other good cause

Uniform Act and Procedure Amendments to Title 75, Chapter 5

785 why that person should not serve as conservator. The nomination shall be in writing and shall be
786 signed by the person making the nomination. The nomination shall be in substantially the
787 following form:

788 **Nomination of Conservator**

789 I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do
790 hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as
791 the conservator of my property in the event that after the date of this instrument I become
792 incapacitated or have other need for protection.

793 Executed at _____ (city, state)

794 on this _____ day of _____

795 _____

796 (Signature)

797 (d) a person who has been nominated by the protected person, by any means other than that
798 described in Subsection (1)(c), if the protected person was 14 years of age or older when the
799 nomination was executed and, in the opinion of the court, that person acted with sufficient
800 mental capacity to make the nomination;

801 (e) the spouse of the protected person;

802 (f) an adult child of the protected person;

803 (g) a parent of the protected person, or a person nominated by the will of a deceased parent;

804 (h) any relative of the protected person with whom he has resided for more than six months prior
805 to the filing of the petition;

806 (i) a person nominated by the person who is caring for him or paying benefits to him.

807 (2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) may nominate in
808 writing a person to serve in his stead. With respect to persons having equal priority, the court is
809 to select the one who is best qualified of those willing to serve. The court, for good cause, may
810 pass over a person having priority and appoint a person having less priority or no priority.

811 **75-5-412. Terms and requirements of bonds.**

812 (1) The following requirements and provisions apply to any bond required under Section 75-
813 5-411:

Commented [NS24]: This adds references to Probate Procedure Rule 5.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

814 (a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and
815 severally liable with the conservator and with each other;

816 (b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of
817 the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary
818 duties of the conservator and naming the surety as a party defendant. Notice of the proceeding
819 shall be ~~delivered given~~ to the surety in accordance with Rule 5 of the Utah Rules of Probate
820 Procedure; ~~or mailed to him by registered or certified mail at his address as listed with the court~~
821 ~~where the bond is filed and to his address as then known to the petitioner;~~

822 (c) On petition of a successor conservator or any interested person, a proceeding may be
823 initiated against a surety for breach of the obligation of the bond of the conservator;

824 (d) The bond of the conservator is not void after the first recovery but may be proceeded
825 against from time to time until the whole penalty is exhausted.

826 (2) No proceeding may be commenced against the surety on any matter as to which an action
827 or proceeding against the primary obligor is barred by adjudication or limitation under this code.

828 **75-5-413. Acceptance of appointment -- Consent to jurisdiction.**

829 By accepting appointment, a conservator submits personally to the jurisdiction of the court in
830 any proceeding relating to the estate that may be instituted by any interested person. Notice of
831 any proceeding shall be given delivered to the conservator in accordance with Rule 5 of the Utah
832 Rules of Probate Procedure; ~~or mailed to him by registered or certified mail at his address as listed~~
833 ~~in the petition for appointment, or as thereafter reported to the court, and to his address as then~~
834 ~~known to the petitioner.~~

835 **75-5-416. -Petitions for orders subsequent to appointment.**

836 (1) Any person interested in the welfare of a person for whom a conservator has been
837 appointed may file a petition in the appointing court for an order:

838 (a) requiring bond or security or additional bond or security, or reducing bond;

839 (b) requiring an accounting for the administration of the conservatorship estate;

840 (c) directing distribution;

841 (d) removing the conservator and appointing a temporary or successor conservator; or

842 (e) granting other appropriate relief, including any relief available under Title 75, Chapter 7,
843 Utah Uniform Trust Code, if the protected person is a grantor, settlor, trustee, or beneficiary of a
844 trust.

Commented [NS25]: This adds references to Probate Procedure Rule 5.

Commented [NS26]: This adds references to Probate Procedure Rule 5.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

845 (2) A conservator may petition the appointing court for instructions concerning the
846 conservator's fiduciary responsibility.

847 (3) Upon notice, in accordance with Rule 5 of the Utah Rules of Probate Procedure, and
848 hearing the court may give appropriate instructions or make any appropriate order.

849 **75-5-417. General duty of conservator.**

850 (1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth
851 in Section 75-7-902.

852 (2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned
853 by the ward, ~~send~~ file a report with a full accounting to the court on an annual basis. For estates
854 less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an
855 informal annual report and ~~mail~~ file the report to the court. The report shall include the
856 following: a statement of assets at the beginning and end of the reporting year, income received
857 during the year, disbursements for the support of the ward, and other expenses incurred by the
858 estate. The court may require additional information. The forms for both the informal report for
859 estates under \$50,000, excluding the residence owned by the ward, and the full accounting report
860 for larger estates shall be approved by the judicial council. This annual report shall be examined
861 and approved by the court.

862 (3) Corporate fiduciaries are not required to fully petition the court, but shall submit their
863 internal report annually to the court. The report shall be examined and approved by the court.

864 (4)

865 (a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving
866 written notice of the failure to file and after a grace period of two months have elapsed, a
867 conservator or corporate fiduciary:

868 (i) makes a substantial misstatement on filings of any required annual reports;

869 (ii) is guilty of gross impropriety in handling the property of the ward; or

870 (iii) willfully fails to file the report required by this section.

871 (b) The court may also order restitution of funds misappropriated from the estate of a ward.

872 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid
873 by the estate.

874 (5) These provisions and penalties governing annual reports do not apply if the conservator is
875 the parent of the ward.

Commented [NS27]: This clarifies that reports are to be filed with the court.

Uniform Act and Procedure Amendments to Title 75, Chapter 5

876 **75-5-428. Claims against protected person -- Enforcement.**

877 (1) A conservator must pay from the estate all just claims against the estate and against the
878 protected person arising before or after the conservatorship upon their presentation and
879 allowance. A claim may be presented by either of the following methods:

880 (a) The claimant may deliver or mail to the conservator a written statement of the claim
881 indicating its basis, the name and address of the claimant, and the amount claimed.

882 (b) The claimant may file a written statement of the claim, in the form prescribed by rule,
883 with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim
884 is considered presented on the first to occur of receipt of the written statement of claim by the
885 conservator, or the filing of the claim with the court.

886 (2) A presented claim is allowed if it is not disallowed by written statement mailed by the
887 conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls
888 any statute of limitation relating to the claim until 30 days after its disallowance.

889 (3) A claimant whose claim has not been paid may petition the court for determination of his
890 claim at any time before it is barred by the applicable statute of limitation, and, upon due proof,
891 procure an order for its allowance and payment from the estate. If a proceeding is pending
892 against a protected person at the time of appointment of a conservator or is initiated against the
893 protected person thereafter, the moving party must give notice of the proceeding to the
894 conservator in accordance with Rule 5 of the Utah Rules of Probate Procedure if the outcome is
895 to constitute a claim against the estate.

896 (4) If it appears that the estate in conservatorship is likely to be exhausted before all existing
897 claims are paid, preference is to be given to prior claims for the care, maintenance, and education
898 of the protected person or his dependents and existing claims for expenses of administration.

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Commented [NS28]: This adds references to Probate Procedure Rule 5.

Utah Rule of Probate Procedures

1 **Draft Rules to Accompany Recommended Changes to Title 75, Chapter 5¹**

2 **Utah Rules of Probate Procedure**

3 RULE 1. GENERAL PROVISIONS..... 2

4 RULE 2. DEFINITIONS..... 3

5 RULE 3. COMMENCEMENT OF PROBATE PROCEEDING..... 4

6 RULE 4. PROCESS..... 5

7 RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS 8

8 RULE 6. TIME..... 11

9 RULE 7. PLEADINGS ALLOWED..... 12

10 RULE 8. HEARINGS..... 13

11 RULE 9. APPOINTMENT OF ATTORNEY FOR RESPONDENT IN GUARDIANSHIP,

12 CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS..... 15

13 RULE 10. FORM OF PLEADINGS AND OTHER PAPERS..... 17

14 RULE 11. SIGNING OF PLEADINGS, MOTIONS, AFFIDAVITS, AND OTHER PAPERS;

15 REPRESENTATIONS TO COURT; SANCTIONS..... 18

16 RULE 12. DEFENSES, OBJECTIONS, COUNTERCLAIMS, AND CROSS CLAIMS..... 19

17 RULE 13. COURT VISITOR..... 20

18 RULE 14. CONSOLIDATION..... 22

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¹ These rules have not been reviewed yet by the Supreme Court and are still subject to change.

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Utah Rules of Probate Procedure, Rule 1

RULE 1. GENERAL PROVISIONS.

(a) **Title.** These rules may be known and cited as the Utah Rules of Probate Procedure, or abbreviated URPP.

(b) **Scope of rules.** These rules govern the procedure in the state courts of Utah in all proceedings filed under Title 75 of the Utah Code.

(c) **Purpose of rules.** The purpose of the probate rules is to provide the fair, prompt, economical, and equitable resolution of proceedings and they shall be liberally construed and applied to achieve those purposes.

(d) **Effective date.** These rules govern all petitions filed after the rules take effect and all further activity in proceedings then pending. If, in the opinion of the court, applying a rule in a pending proceeding when the rule takes effect would not be feasible or would be unjust, the Utah Rules of Civil Procedure apply.

(e) **Jurisdiction and venue unaffected.** These rules shall not be construed to extend or limit the jurisdiction of the courts of this state or the venue of actions therein.

(f) **Probate Proceeding.** A probate proceeding is a civil action.

Utah Rules of Probate Procedure, Rule 2

RULE 2. DEFINITIONS.

For purposes of these rules:

1) “Interested person,” as that term is defined in Utah Code Section 75-1-201, is a person or entity who is required to be served notice under Title 75 or, who has participated in the proceedings. The meaning of “interested person” as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

2) “Participated in the proceedings” means filing a request for notice of the proceedings or filing a written objection or written response to a petition filed under Title 75 of the Utah Code.

3) “Parties” means, in proceedings under Title 75 of the Utah Code, the petitioner, respondent, and interested persons. “Party” means any one of the parties.

4) “Respondent” means “allegedly incapacitated person,” “incapacitated person,” “person alleged to be incapacitated,” “person to be protected,” “protected person,” and “ward” as those terms are used in Title 75, Chapter 5 of the Utah Code. “Respondent” also means, in proceedings under the other chapters of Title 75, a person or entity who has the legal right to respond to an informal or formal probate petition.

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Utah Rules of Probate Procedure, Rule 3

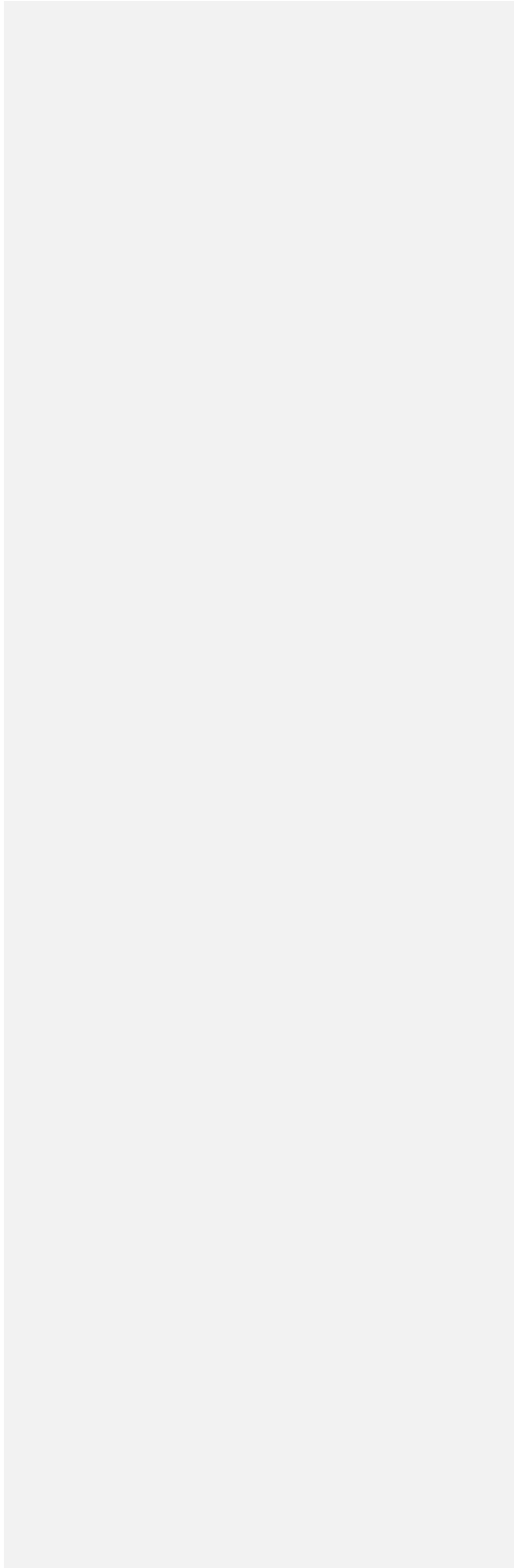
RULE 3. COMMENCEMENT OF PROBATE PROCEEDING.

(a) How commenced. A proceeding under Title 75 of the Utah Code is commenced by the filing of a petition with the court, together with the tender of the appropriate filing fee.

(b) Dishonored payment. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the petition.

DRAFT



Utah Rules of Probate Procedure, Rule 4

RULE 4. PROCESS.

(a) Requirement for, and signing of, summons. In proceedings where a summons is required, the summons must be signed and issued by the petitioner or the petitioner's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and petition are accepted in accordance with paragraph (d)(3), a copy of the summons and petition in a proceeding commenced under [Rule 3](#) must be served no later than 120 days after the petition is filed, unless the court orders a different period under [Rule 6](#).

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the respondent and any person required to be served in accordance with this rule or served personally under Title 75;

(c)(1)(C) state the name, address and telephone number of the petitioner's attorney, if any, and otherwise the petitioner's address and telephone number;

(c)(1)(D) state the time within which the respondent and any interested person is required to respond or object to the petition in writing;

(c)(1)(E) notify the respondent and any interested person that a failure to respond in writing to the petition, may result in action being taken that adversely affects the respondent's or interested person's rights or abilities to dispute the relief sought; and

(c)(1)(F) state that the petition is on file with the court.

(c)(2) If service is by publication, the summons must also briefly state the subject matter and the relief demanded, and that the petition is on file with the court.

(d) Methods of service. The summons and petition may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and petition must be by one of the following methods:

(d)(1) *Personal service.* The summons and petition may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and petition, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

107 (d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B),
108 (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and petition to the individual
109 personally, or by leaving them at the individual's dwelling house or usual place of abode
110 with a person of suitable age and discretion who resides there, or by delivering them to an
111 agent authorized by appointment or by law to receive process;

112 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and
113 petition to the minor and also to the minor's father, mother, or guardian or, if none can be
114 found within the state, then to any person having the care and control of the minor, or with
115 whom the minor resides, or by whom the minor is employed;

116 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind,
117 or incapable of conducting the individual's own affairs, by delivering a copy of the
118 summons and petition to the individual and to the guardian or conservator of the individual
119 if one has been appointed; the individual's legal representative if one has been appointed,
120 and, in the absence of a guardian, conservator, or legal representative, to the person, if any,
121 who has care, custody, or control of the individual;

122 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the
123 state or any of its political subdivisions, by delivering a copy of the summons and petition
124 to the person who has the care, custody, or control of the individual, or to that person's
125 designee or to the guardian or conservator of the individual if one has been appointed. The
126 person to whom the summons and petition are delivered must promptly deliver them to the
127 individual;

128 (d)(1)(E) Upon other persons or entities as provided in rule 4(d)(1) or Rule 4(d)(2)(B)
129 of the Utah Rules of Civil Procedure.

130 (d)(2) *Service by mail or commercial courier service.*

131 (d)(2)(A) The summons and petition may be served upon an individual other than one
132 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any
133 state or judicial district of the United States provided the defendant signs a document
134 indicating receipt.

135 (d)(2)(B) Service by mail or commercial courier service shall be complete on the date
136 the receipt is signed as provided by this rule.

137 (d)(3) *Acceptance of service.*

138 (d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary
139 expenses of serving the summons and petition.

140 (d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor
141 under 14 years old or an individual judicially declared to be incapacitated, of unsound
142 mind, or incapable of conducting the individual's own affairs, a party may accept service
143 of a summons and petition by signing a document that acknowledges receipt of the
144 summons and petition.

145 (d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service
146 of a summons and petition on behalf of the attorney's client by signing a document that
147 acknowledges receipt of the summons and petition.

148 (d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of
149 the summons and petition retains all defenses and objections, except for adequacy of
150 service. Service is effective on the date of the acceptance. Filing the acceptance of service
151 with the court constitutes proof of service under Rule 4(e).

152 (d)(4) *Service in a foreign country.* Service in a foreign country must be in accordance with
153 rule 4(d)(4) of the Utah Rules of Civil Procedure.

154 (d)(5) *Other service.* If the identity or whereabouts of a party is unknown and cannot be
155 ascertained through reasonable diligence, if service upon all of the parties is impracticable
156 under the circumstances, or if there is good cause to believe that a party is avoiding service,
157 the party seeking service may file a motion to allow service by some other means in accordance
158 with rule 4(d)(5) of the Utah Rules of Civil Procedure.

159 **(e) Proof of service.**

160 (e)(1) The person effecting service must file proof of service stating the date, place, and
161 manner of service, including a copy of the summons. If service is made by a person other than
162 by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or
163 marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described
164 in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

165 (e)(2) Proof of service in a foreign country must be made as prescribed in these rules for
166 service within this state, or by the law of the foreign country, or by order of the court.

167 (e)(3) When service is made pursuant to paragraph (d)(2)(C), proof of service must include
168 a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to
169 the court.

170 (e)(4) Failure to file proof of service does not affect the validity of the service. The court
171 may allow proof of service to be amended.

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Utah Rules of Probate Procedure, Rule 5

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) When service is required.

(a)(1) *Initiating petition and other notices.* Any person required under Title 75 to be given an initiating petition or other notice other than personally or in accordance with Rule 4 must be served in accordance with this rule.

(a)(2) *Papers that must be served.* Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(2)(A) a petition after the initiating petition has been filed;

(a)(2)(B) an objection, response, counter-petition, or amended petition;

(a)(2)(C) a notice of hearing in accordance with Rule 8;

(a)(2)(D) a notice of mediation;

(a)(2)(E) a paper relating to disclosure or discovery;

(a)(2)(F) a motion filed with the court other than a motion that may be heard ex parte;
and

(a)(2)(G) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(3) *Serving interested persons who have not appeared or filed a request for notice.* No service is required on an interested person who has not appeared or filed a request for notice except that:

(a)(3)(A) an interested person must be served as ordered by the court; and

(a)(3)(B) an interested person who has appeared or filed a request for notice must be served as provided in paragraph (b).

(b) How service is made.

(b)(1) *Whom to serve.* If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under [Rule 75 of the Utah Rules of Civil Procedure](#) and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

206 (b)(2) *When to serve.* If a hearing or other event is scheduled 10 days or less from the date
207 of service, a party must serve a paper related to the hearing or other event by the method most
208 likely to be promptly received. Otherwise, a paper that is filed with the court must be served
209 before or on the same day that it is filed.

210 (b)(3) *Methods of service.* A paper is served under this rule by:

211 (b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court
212 submitting it to the electronic filing service provider, if the person being served has an
213 electronic filing account;

214 (b)(3)(B) emailing it to

215 (b)(3)(B)(i) the most recent email address provided by the person to the court under
216 Rule 10(a)(3) or Rule 76 of the Utah Rules of Civil Procedure, or

217 (b)(3)(B)(ii) to the email address on file with the Utah State Bar;

218 (b)(3)(C) mailing it to the person's last known address;

219 (b)(3)(D) handing it to the person;

220 (b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in
221 charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

222 (b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person
223 of suitable age and discretion who resides there; or

224 (b)(3)(G) any other method agreed to in writing by the parties.

225 (b)(4) *When service is effective.* Service by mail or electronic means is complete upon
226 sending.

227 (b)(5) *Who serves.* Unless otherwise directed by the court:

228 (b)(5)(A) every paper required to be served must be served by the party preparing it;
229 and

230 (b)(5)(B) every paper prepared by the court will be served by the court.

231 (c) **Serving numerous interested persons.** If a proceeding involves an unusually large number
232 of parties, the court, upon motion or its own initiative, may make appropriate orders regarding
233 service under this rule:

234 (d) **Certificate of service.** A paper required by this rule to be served, including electronically
235 filed papers, must include a signed certificate of service showing the name of the document served,
236 the date and manner of service and on whom it was served. Except in the juvenile court, this
237 paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service
238 to all parties is made under paragraph (b)(3)(A).

239 (e) **Filing.** Except as provided in [Rule 7 [orders] and Rule 26 [filing of disclosures,
240 discovery]], all papers after the initiating petition that are required to be served must be filed with
241 the court. Parties with an electronic filing account must file a paper electronically. A party without
242 an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge
243 of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the
244 clerk of court or the judge.

245 (f) **Filing an affidavit or declaration.** If a person files an affidavit or declaration, the filer
246 may:

247 (f)(1) electronically file the original affidavit with a notary acknowledgment as provided
248 by [Utah Code Section 46-1-16\(7\)](#);

249 (f)(2) electronically file a scanned image of the affidavit or declaration;

250 (f)(3) electronically file the affidavit or declaration with a conformed signature; or

251 (f)(4) if the filer does not have an electronic filing account, present the original affidavit or
252 declaration to the clerk of the court, and the clerk will electronically file a scanned image and
253 return the original to the filer.

254 The filer must keep an original affidavit or declaration of anyone other than the filer safe and
255 available for inspection upon request until the action is concluded, including any appeal or until
256 the time in which to appeal has expired.

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Draft: February 14, 2020

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Utah Rules of Probate Procedure, Rule 6

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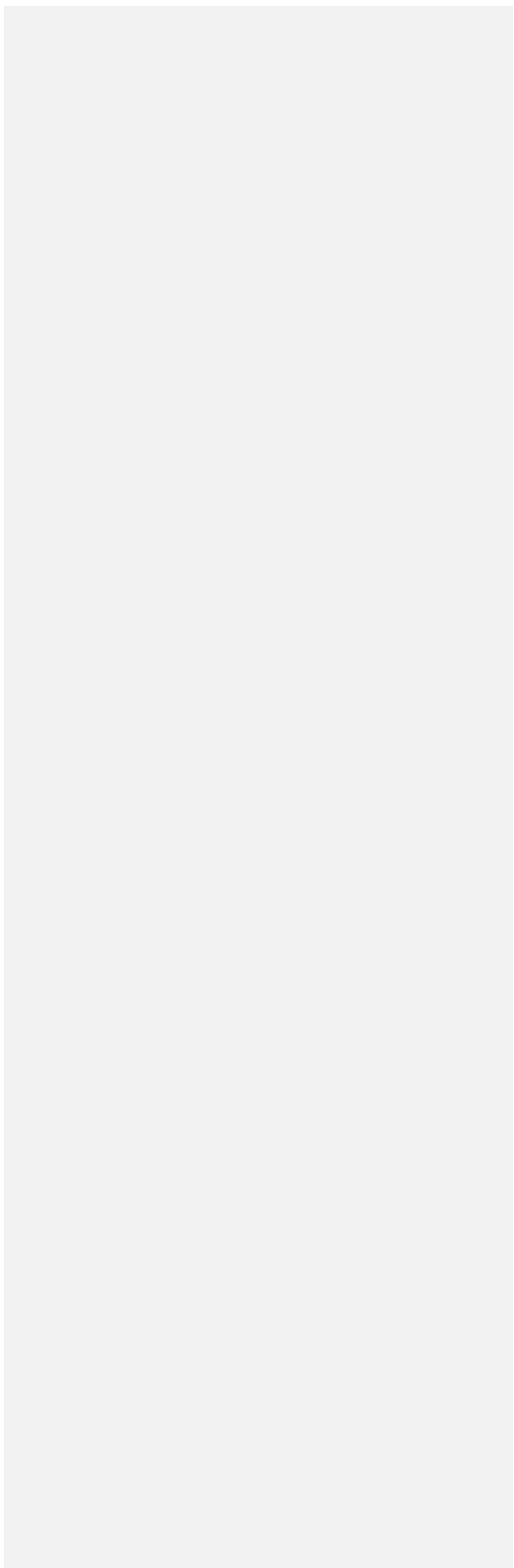
RULE 6. TIME.

260

To be drafted.

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DRAFT



Draft: February 14, 2020

262 Utah Rules of Probate Procedure, Rule 7

263 **RULE 7. PLEADINGS ALLOWED.**

264 To be drafted.

265

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Utah Rules of Probate Procedure, Rule 8

RULE 8. HEARINGS.

(a) **Hearing upon filing of initiating petition.** Upon the filing of an initiating petition, the probate clerk shall schedule a hearing on the petition.

(a)(1) The petitioner shall give notice of the time and place of the hearing in accordance with Rule 5 of these rules.

(a)(2) The notice shall be in plain language and large type. The notice shall state the time and place of the hearing, the respondent's rights, and the possible adverse consequences of being subject to the guardianship or conservatorship or other protective proceedings. The notice shall include a copy of the petition.

(b) **Respondent's presence at hearing on initiating petition.** In guardianship, ~~conservatorship, or other protective proceedings,~~ the respondent and the proposed guardian ~~or conservator~~ shall attend the hearing on the initiating petition unless excused by the court for good cause prior to the hearing. In conservatorship or other protective proceedings, the court shall determine whether the respondent must attend.

(b)(1) If the petitioner moves to excuse the respondent's presence at the hearing, the court shall order an investigation by a court visitor in accordance with Rule 13 unless a court visitor is not required under Utah Code Section 75-5-303(5)(b).

(b)(2) The respondent is entitled to be represented by counsel at the hearing.

(b)(3) The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(c) **Trial on respondent's alleged incapacity.** In guardianship or conservatorship proceedings, if the respondent or an interested person objects to the petition on the ground that the respondent is not incapacitated, the court shall schedule a trial on the issue in accordance with [Rule ___ [trial rule] of the Utah Rules of Probate Procedure.]

(d) **Hearings on subsequent petitions or motions.** The court may hold a hearing on any subsequent petition or motion filed in a probate proceeding.

(d)(1) *Request for hearing.* A party may request a hearing in the motion or petition, in a memorandum or objection, or in the request to submit for decision. A request for a hearing must be separately identified in the caption of the document containing the request.

(d)(2) *Notice of hearing on subsequent petitions or motions.* Notice of a hearing on any subsequent petition or motion shall be provided to the petitioner, the respondent and any

Commented [NS1]: Flagged for discussion by committee. Statute doesn't require that respondent attend in conservatorship and other protective proceedings. There are due process reasons for requiring attendance, but there would be an additional fiscal impact to the Court Visitor Program if it were required. Proposed language in redline.

298 interested person who has filed an answer or objection to the initiating petition or requested
299 notice in accordance with Title 75 of the Utah Code.

300 (e) **Hearing on emergency guardian.** If the court, without notice, has appointed an emergency
301 guardian for the respondent pursuant to Utah Code Section 75-5-310, the court shall hold a hearing
302 on the initiating petition within 14 days or as soon as practicable, but no later than 30 days after
303 the appointment.

304 (f) **Postponement of hearing.** The court may postpone a hearing for good cause upon such
305 terms as are just.

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Utah Rules of Civil Procedure, Rule 9

308 **RULE 9. APPOINTMENT OF ATTORNEY FOR RESPONDENT IN GUARDIANSHIP,**
309 **CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS.**

310 (a) **Adult respondents.** Unless the respondent in a proceeding for appointment of a guardian
311 for an adult is represented by an attorney, or the court determines that counsel is not required under
312 Utah Code Section 75-5-303(5)(d), the court shall appoint a qualified attorney to represent the
313 respondent, regardless of the respondent's ability to pay. The cost shall be paid by the respondent
314 unless the respondent and the respondent's parents are indigent. The court may appoint a qualified
315 attorney to represent the respondent in conservatorship and other protective proceedings, the cost
316 of which shall be paid by the respondent unless the respondent and the respondent's parents are
317 indigent.

Commented [NS2]: Updated to better reflect the statute.

318 (a)(1) The attorney's representation of the respondent shall terminate upon the
319 appointment of a guardian or conservator unless:

320 (a)(1)(i) there are other pending protective proceedings,

321 (a)(1)(ii) there is a timely appeal of the appointment of the guardian or conservator or
322 the determination of incapacity, or

323 (a)(1)(iii) the court determines otherwise upon an express finding of good cause.

324 (a)(2) If the court determines the petition is without merit, the fees and costs of the
325 respondent's attorney shall be paid by the petitioner.

326 (b) **Minor respondents.**

327 (b)(1) If, at any time during a guardianship, conservatorship, or other protective
328 proceedings involving a minor respondent, the court determines that the respondent's interests
329 are or may be inadequately represented, it may appoint a qualified attorney to represent the
330 respondent, the cost of which shall be paid by the respondent unless the respondent and the
331 respondent's parents are indigent.

332 (b)(2) If the minor respondent is 14 years of age or older, the court shall give consideration
333 to the minor's choice of counsel.

334 (b)(3) An attorney appointed by the court to represent a minor respondent has the powers
335 and duties of a guardian ad litem.

336 (b)(4) The attorney's representation of the minor respondent shall terminate upon the
337 appointment of a guardian or conservator unless there are other pending protective
338 proceedings, a timely appeal of the appointment of the guardian or conservator or the

339 determination of incapacity, or the court determines otherwise upon an express finding of good
340 cause.

341 (b)(5) If the court determines the petition is without merit, the fees and costs of the
342 respondent's attorney shall be paid by the petitioner.

343 (c) **Appointment of qualified attorneys.** If the court appoints an attorney under paragraphs
344 (a) or (b), the court shall appoint a qualified attorney, as defined in this paragraph, to represent the
345 respondent.

346 (c)(1) An attorney is qualified to represent respondents in guardianship, conservatorship,
347 and other protective proceedings if the attorney:

348 (c)(1)(A) has relevant training, knowledge, and experience in guardianship,
349 conservatorship, and protective proceedings or has other qualifications deemed acceptable
350 by the court;

351 (c)(1)(B) is disinterested; and

352 (c)(1)(C) agrees to comply with the Utah Rules of Professional Conduct, generally,
353 and with Rules 1.6, 1.7, 1.8, and 1.14 of the Utah Rules of Professional Conduct
354 specifically.

355 (c)(2) A motion seeking appointment of a specific attorney shall be supported by an
356 affidavit or declaration establishing that the proposed attorney is qualified under this rule. If
357 the respondent is indigent, the motion shall include an affidavit of impecuniosity.

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Draft: February 14, 2020

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Utah Rules of Civil Procedure, Rule 10

361

RULE 10. FORM OF PLEADINGS AND OTHER PAPERS.

362 To be drafted.

363

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Draft: February 14, 2020

364

Utah Rules of Probate Procedure, Rule 11

365

**RULE 11. SIGNING OF PLEADINGS, MOTIONS, AFFIDAVITS, AND OTHER
PAPERS; REPRESENTATIONS TO COURT; SANCTIONS.**

366

367 To be drafted.

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DRAFT

Draft: February 14, 2020

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Utah Rules of Civil Procedure, Rule 12

371

RULE 12. DEFENSES, OBJECTIONS, COUNTERCLAIMS, AND CROSS CLAIMS.

372

373 To be drafted.

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Utah Rules of Probate Procedure, Rule 13

RULE 13. COURT VISITOR.

(a) **Definition.** “Court visitor” is defined in Utah Code section 75-5-108.

(b) **Appointment and role of court visitor.** Upon its own initiative or motion of a party, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(b)(1) whether to excuse the respondent from attending the hearing under Section [75-5-303](#)(5)(a);

(b)(2) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections [75-5-309](#)(3) or [75-5-405](#)(1);

(b)(3) to investigate the respondent’s circumstances and well-being, including when an attorney is not appointed under [75-5-303](#)(d);

(b)(4) to gather additional information from the guardian or conservator about an annual report;

(b)(5) to locate guardians, conservators, and respondents;

(b)(6) to investigate the proposed guardian’s future plans for the respondent’s residence under Section [75-5-303](#)(4); or

(b)(7) to conduct any other investigation or observation as directed by the court.

(c) **Motion to excuse respondent or confirm waiver of hearing.** The petitioner, the respondent, or any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex parte motion at least 21 days prior to the hearing.

(c)(1) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (b) unless one is not required under Utah Code section [75-5-303](#).

(c)(2) Upon appointment to conduct an inquiry into whether to excuse the respondent from the hearing, the court visitor will:

(c)(2)(A) interview the petitioner, the proposed guardian, and the respondent;

(c)(2)(B) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the appointment is made;

405 (c)(2)(C) interview any physician or other person who is known to have treated,
406 advised, or assessed the respondent's relevant physical or mental condition;

407 (c)(2)(D) confirm a waiver of notice if submitted by the respondent; and

408 (c)(2)(E) conduct any other investigation the court directs.

409 (d) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(b) through (2)(g), the
410 court visitor will conduct the inquiry in accordance with the court's order or appointment.

411 (d) **Language access.** If the court visitor does not speak or understand the respondent's,
412 proposed guardian's, proposed conservator's, or petitioner's primary language, the court visitor
413 must use an interpretation service approved by the Administrative Office of the Courts to
414 communicate with the respondent, proposed guardian, proposed conservator, or petitioner.

415 (f) **Court visitor report.**

416 (f)(1) **Service of the court visitor report.** A report made by a court visitor must be filed
417 and served by the court visitor program upon all parties in accordance with [Rule 5](#) of the
418 Utah Rules of Civil Procedure.

419 (f)(2) **Notice of filing.** Unless the court does not need to act on the report, the court
420 visitor will file with the court visitor report a notice of filing, which the clerk of court will
421 treat as a request to submit for decision.

422 (f)(3) **Report on request to excuse respondent.** In cases involving a motion to excuse
423 the respondent from the hearing, the court visitor will file with the report a court-approved
424 proposed order.

425 (g) **Termination of court visitor appointment.** The appointment of the court visitor
426 terminates and the court visitor is discharged from the court visitor's duties upon the date
427 identified in the order of appointment. The court may extend the appointment with or without a
428 request from a party.

429 (h) **Court findings.** When a court visitor has filed a report with a notice of filing, the court
430 will make findings and an order based on the report of the court visitor at least two days prior to
431 any hearing related to a report or within fourteen days of receiving the report if no hearing is
432 scheduled.

433

434 Utah Rules of Probate Procedure, Rule 14

435 **RULE 14. CONSOLIDATION.**

436 **(a) Consolidation.** When multiple protective proceedings as to the same person are
437 commenced or pending in the same court, the court may order a joint hearing or trial of any or all
438 the matters in issue in the proceedings; it may order all the proceedings consolidated; and it may
439 make such orders concerning proceedings therein as may tend to avoid unnecessary costs or
440 delay.

441 (a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case
442 filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The
443 order denying or granting the motion shall be filed in each case.

444 (a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be
445 used for all subsequent papers and the case shall be heard by the judge assigned to the first
446 case. The presiding judge may assign the case to another judge for good cause.

447 **(b) Separate trials.** The court in furtherance of convenience or to avoid prejudice may order
448 a separate trial of any claim, cross claim, counterclaim, or of any separate issue or of any number
449 of claims, cross claims, counterclaims, or issues.

450

Title 75 Chapter 5 Amendments Outline

Uniform Act Updates to Current Code			
Title	Uniform Act Section	Cost	Notes
Disclosure of bankruptcy or criminal history.	Section 117	\$0.00	Create new 75-5-106
Compensation of guardian or conservator.	Section 120	\$0.00	Create new 75-5-107
Appointment and role of visitor	Section 304	\$0.00	Create new section 75-5-108. This new section takes the definition of a visitor from Section 304 of the Uniform Act and modifies it slightly. Visitors are referred to in conservatorship, but there is no definition there. It seems to be a gap that's existed for a while. The rest of this uniform act section is not included because it added a very large fiscal note.
Who may be guardian for adult -- Order of priority.	Section 309	\$0.00	Replace 75-5-311 with Section 309 of the Uniform Act, except keep the language about the Office of Public Guardian, which is in the current code section (see (a)(6) here) and the language about capacity to make a nomination (see (a)(2) here).
Who may be conservator -- Order of priority.	Section 410	\$0.00	Replace 75-5-410 with Section 410 of the Uniform Act. Added capacity language from current code section to (a)(2).
Procedural and Other Updates to Current Code, Including Partial Uniform Act Updates			
Title	Current Code Section	Cost	Notes
Jurisdiction of subject matter -- Consolidation of proceedings.	75-5-101.	\$0.00	This adds a reference to Probate Procedure Rule 14.
Court appointment of guardian of minor -- Procedure.	75-5-207.	\$0.00	This adds references to Probate Procedure Rule 5.
Consent to service by acceptance of appointment -- Notice.	75-5-208.	\$0.00	This adds references to Probate Procedure Rule 5.
Resignation or removal proceedings.	75-5-212.	\$0.00	This adds references to Probate Procedure Rules 5 and
Procedure for court appointment of a guardian of an incapacitated person.	75-5-303.	\$0.00	Updates counsel language to reflect language in Uniform Act section 305. Also adds references to Probate Procedure Rules 9 and 13. Also removes reference to Fourth Stage Alzheimer's, which according to Dr. Norman Foster at the University of Utah, is not a diagnosable condition.

Findings--Limited guardianship preferred--Order of appointment	75-5-304	\$0.00	This section is a request from practitioners to clarify the court's ability to tailor the guardian's powers in its orders, specifically with respect to fluctuating capacity like in mental health cases.
Acceptance of appointment -- Consent to jurisdiction.	75-5-305.	\$0.00	This adds references to Probate Procedure Rule 5.
Visitor in guardianship proceeding.	75-5-308.	\$0.00	The definition of visitor has been moved to the general provisions sections (new section 75-5-108). The "how" of the court visitor program, such as the case types, how reports get to the judge, etc., is found in Probate Rule 13.
Notices in guardianship proceedings.	75-5-309.	\$0.00	This adds references to Probate Procedure Rules 5, 8, 4, and 13.
Emergency guardians.	75-5-310.	\$0.00	This adds references to Probate Procedure Rule 8.
Temporary guardians.	75-5-310.5.	\$0.00	This adds references to Probate Procedure Rule 5.
General powers and duties of guardian -- Penalties.	75-5-312.	\$0.00	This adds references to Probate Procedure Rule 5 and clarifies that reports are to be filed with the court.
Association between an adult ward and a relative of the adult ward.	75-5-312.5.	\$0.00	(7)(a) refer to Rule 13; (7)(b) refer to Rule 5 of the Utah Rules of Probate Procedure.
Expedited guardianship proceedings.	75-5-316.	\$0.00	This adds references to Probate Procedure Rule 4.
Protective proceedings -- Jurisdiction of affairs of protected persons.	75-5-402.	\$0.00	re "service of notice" refer to Rule 4 of the Utah Rules of Probate Procedure.
Notice	75-5-405	\$0.00	Bring over the notice provisions of current code section 75-5-309. For some unknown reason, the provisions differed, which meant less protection for the person to be protected in a conservatorship proceeding. This brings the two provisions into alignment and refers to the Probate Rules for the service provisions.
Protective proceedings -- Request for notice -- Interested person.	75-5-406.	\$0.00	This adds references to Probate Procedure Rule 5 and clarifies that the clerk of court receives requests for notice.

Procedure concerning hearing and order on original petition.	75-5-407.	\$0.00	This adds references to Probate Procedure Rules 9 and 13 and adds clarifying language from Section 407 of the Uniform Act about physician evaluations..
Terms and requirements of bonds.	75-5-412.	\$0.00	This adds references to Probate Procedure Rule 5.
Acceptance of appointment -- Consent to jurisdiction.	75-5-413.	\$0.00	This adds references to Probate Procedure Rule 5.
General duty of conservator.	75-5-417.	\$0.00	This clarifies that reports are to be filed with the court.
Claims against protected person -- Enforcement.	75-5-428.	\$0.00	This adds references to Probate Procedure Rule 5.
Utah Rules of Probate Procedure			
Topic	Rule	Cost	Notes
General Provisions.	Rule 1	\$0.00	Discusses generally the purpose of the rules and what a probate proceeding is.
Definitions	Rule 2	\$0.00	Defines terms used in the rules and references the code.
Commencement Of Probate Proceeding	Rule 3	\$0.00	Discusses how a probate proceeding is commenced. Mirrors civil rule provision.
Process	Rule 4	\$0.00	Discusses service. Mirrors much of civil rule provision but makes it specific to probate.
Service And Filing Of Pleadings And Other Papers	Rule 5	\$0.00	Discusses non-Rule 4 service. Mirrors much of civil rule provision but makes it specific to probate.
Time	Rule 6	\$0.00	To be drafted
Pleadings Allowed	Rule 7	\$0.00	To be drafted
Hearings	Rule 8	\$0.00	Discusses court procedures around probate hearings.
Appointment Of Attorney For Respondent In Guardianship, Conservatorship, And Other Protective Proceedings	Rule 9	\$0.00	Discusses the appointment of counsel in Title 75, Chapter 5 proceedings.
Form Of Pleadings And Other Papers	Rule 10	\$0.00	To be drafted
Signing Of Pleadings, Motions, Affidavits, And Other Papers; Representations To Court; Sanctions	Rule 11	\$0.00	To be drafted
Defenses, Objections, Counterclaims, And Cross Claims.	Rule 12	\$0.00	To be drafted
Court Visitor	Rule 13	\$0.00	Discusses the "how" of the court visitor program, such as the case types, how reports get to the judge, etc.
Consolidation	Rule 14	\$0.00	Discusses consolidation of multiple protective proceedings involving the same person.

Draft Checklists

Status Report

Accounting Report (adult)

Accounting Report (minor)

Status Report Checklist

1. Compare the contact information at the top of the report with CORIS and note any updates.
2. Review the items below. If the answer is **YES** to any of the questions, please forward to the judge for further review.

Report Item	Question	Comments?
4	Are the dates inconsistent with the previous report? Are any time periods missing?	<input type="checkbox"/> YES
5	Is this number zero?	<input type="checkbox"/> YES
6	Is this section blank?	<input type="checkbox"/> YES
8	If the ward moved, is the reason blank or unclear?	<input type="checkbox"/> YES
12	Is "below average" marked?	<input type="checkbox"/> YES
13	Is "unhappy" marked?	<input type="checkbox"/> YES
14	Is "yes" marked?	<input type="checkbox"/> YES
16 - 17	Did the ward receive treatment for an injury?	<input type="checkbox"/> YES
19 - 22	Is there a significant decline in functioning? OR Is there a significant improvement in functioning?	<input type="checkbox"/> YES
25	Is "modified as follows" marked?	<input type="checkbox"/> YES

Accounting Report Checklist

1. Compare the contact information at the top of the report with CORIS and note any updates.
2. Review the items below. If the answer is **YES** to any of the questions, please forward to the judge for further review.

Report Item	Question	Comments?
3	Are the dates inconsistent with the previous report? Are any time periods missing?	<input type="checkbox"/> YES
Balance Summary	Is the Beginning Balance different from the Ending Balance on the previous report (accounting or inventory)?	<input type="checkbox"/> YES
	Are there items on the previous report (accounting or inventory) not listed on this Accounting Report?	<input type="checkbox"/> YES
	Are there major changes (Gains and Losses) in any of the categories?	<input type="checkbox"/> YES
	Is any Ending Balance negative?	<input type="checkbox"/> YES
Summary of Receipts & Payments	Is the total under Gains and Losses for Cash and Cash Accounts (under Balance Summary) different from the total for Receipts and Payments?	<input type="checkbox"/> YES
Payments	Are the Protected Person's expenses (payments) more than their income (receipts total)?	<input type="checkbox"/> YES
	Are the expenses listed inconsistent with the lifestyle and/or abilities of the protected person (per Status Report)? Examples – Automobile expenses listed for a protected person unable to drive. Home improvement expenses listed for a ward living in a facility.	<input type="checkbox"/> YES
	Are there amounts listed under "Charge for Conservator's Services" or "Charge for Guardian's Services"? (The court must approve that the guardian and conservator can be paid for their services.)	<input type="checkbox"/> YES

Accounting Report Checklist

Schedule A	If applicable, are any copies of tax assessments missing?	<input type="checkbox"/> YES
Schedule B	If applicable, are any copies of account statements missing?	<input type="checkbox"/> YES
Schedule F	Are any copies of bank statements missing?	<input type="checkbox"/> YES
	Are the bank statement balances different than the ending balance(s) listed on the report?	<input type="checkbox"/> YES
	Have there been significant changes to the beginning and ending balances of accounts?	<input type="checkbox"/> YES
	Do any transactions appear questionable or unusual? Examples – Look at any major purchases in the areas of home remodels, furnishings etc. Look at the payments and verify that some funds have been spent on the protected person’s personal needs, activities, etc. Look at the amount paid to the guardian/conservator and if that amount is reasonable for services provided (see “Payments” section above).	<input type="checkbox"/> YES
	Are there signs that the accounts are comingled? Examples –	<input type="checkbox"/> YES

Accounting Report Checklist

Case Study – Adult

- The Protected Person is 79 years old and a former teacher.
- Guardianship was appointed in 2016.
- Per the 2019 Status Report, the guardian states the protected person is in decline. Specifically, that she doesn't "remember me" and doesn't remember her grandchildren. She is incontinent, her vision is worsening, and she has dementia, forgetting information after 10 minutes. She is able to feed herself, but that is all she is able to do at this point.
- Her expenses for the year totaled over \$125,000. However, her income is only \$76,000.

Payments during the reporting period

Item	Category	(Amount)
1	Mortgage/Rent	\$0.00
2	Utilities (gas, electricity, water and sewage, phone, internet, etc.)	\$20,058.55
3	Home Maintenance (Include maintenance, cleaning, repairs, etc.)	\$29,003.07
4	Home Improvement (Include additions, remodeling, etc.)	\$19,378.83
5	Home Furnishings	\$4,881.97
6	Health Care (physicians, dentists, psychiatrists, psychologists, etc.)	\$38,673.17
7	Food	\$2,564.39
8	Education	\$15.97
9	Clothes	\$1,399.31
10	Personal Effects	\$4,398.96
11	Activities	\$1,480.35
12	Transportation	\$12.08
13	Taxes	\$4,027.32
14	Charge for Conservator's Services	\$0.00
15	Charge for Guardian's Services	\$0.00
16	Charge for Other Professional Services	\$0.00
17	Court Fees	\$0.00
18	Other (Describe)	\$0.00
19	Total	\$125,893.97

Review:

- Information related to housing is inconsistent with the protected person's lifestyle:
 - There is no mortgage or rent amount listed. (The Status Report states she resides in a facility.)
 - Why are her utilities almost \$2,000 a month?
 - Why is home maintenance over \$29,000?
 - Why is home improvement over \$19,000?
 - The 2018 Accounting Report shows the guardian already spent over \$28,000 on home maintenance and improvement.
 - Why are home furnishing over \$4,000?

Accounting Report Checklist

- Comparing with the Inventory Report - submitted 4 years ago (see below), the following concerns are noticed:
 - Several accounts were listed as “jointly owned (i.e., bank, IRA, Money Markets, CDS, certificates, Charles Schwab). The current Accounting Report does not list any of these accounts.
 - The protected person originally had over \$291,150 in real estate. The current Accounting Report listed none.
 - The protected person originally had over \$215,000 in stocks and bonds. Their value is now less than \$95,000.

Summary

Schedule	Property	Property Value and Debt Amount
A	Real Estate	\$291,150.00
B	Stocks and Bonds	\$215,000.00
C	Money Owed to Ward	\$0.00
D	Miscellaneous Property	\$0.00
E	Debts and Encumbrances	\$(0.00)
F	Cash and Cash Accounts	\$23,000.00
	Total Net Value	\$529,150.00

Schedule B – Stocks and Bonds

Item	Description	Value on Date of
1	IRA	\$100,000.00
2	Credit Union Regular Shares	\$2,000.00
3	Credit Union Money Market	\$15,000.00
4	Credit Union Life Savings CD	\$7,000.00
5	Jointly Owned Certificate	\$2,500.00
6	Jointly Owned Account Value	\$83,000.00
7	Jointly Owned Cash and Cash Investments	\$900.00
	Total	\$210,400.00

Accounting Report Checklist - Minor

1. Compare the contact information at the top of the report with CORIS and note any updates.
2. Review the items below. If the answer is **YES** to any of the questions, please forward to the judge for further review.

Report Item	Question	Comments?
Reporting Period	<p>Are the dates inconsistent with the previous report? Are any time periods missing?</p>	<input type="checkbox"/> YES
Expenses	<p>Are the expenses listed inconsistent with the age of the protected person?</p> <p style="padding-left: 40px;">Examples –</p> <p style="padding-left: 40px;">Automobile expenses listed for a protected person too young to drive.</p> <p style="padding-left: 40px;">Rent expenses for a minor.</p>	<input type="checkbox"/> YES
Financial Assets	<p>Are any copies of bank statements missing?</p> <hr/> <p>Is any bank information missing (e.g., name of financial institution, address)?</p> <hr/> <p>Have there been significant changes to the beginning and ending balances of accounts?</p>	<p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> YES</p>
3 - 8	<p>Are there any items (Schedules) missing?</p> <hr/> <p>Does the information listed on the report differ from the information listed on the corresponding Schedule?</p> <hr/> <p>Is Schedule 7 (Debts owed by the minor) or Schedule 8 (Credit cards owned by the minor) included? These are possible red flags.</p>	<p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> YES</p>
9	<p>Is the information in this section insufficient to explain the changes?</p> <hr/> <p>If “No changes” is listed, is this inconsistent with the other information in the report?</p>	<p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> YES</p>

Accounting Report Checklist - Minor

Case Study – Minor

- The protected person is 10 years old.
- Mom is the guardian.

(2) Expenses.

Type of Expense	Amount
Automobile (insurance, maintenance, gasoline, loan)	\$890
Clothing	\$722
Education	\$2,636
Entertainment	\$950
Health care expenses	\$26,682
Health care insurance premiums	\$3,000
Public transportation	\$400
Rent or mortgage	\$12,000
Other (Describe)	
Taxes	\$880
Utilities	\$300
Total	\$48,460

Review:

- Expense information does not appear consistent with the protected person's age:
 - Why does a 10 year old have an automobile expense?
 - Why is a 10 year old paying for clothes?
 - Why is a 10 year old paying taxes?
 - Why is a 10 year old paying utilities?
 - Why is a 10 year old paying rent?