

## Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

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

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

### Agenda

	Topic	Presenter	Materials
12:00	Meeting begins		
	<b>Welcome, Minutes, Housekeeping</b>		<i>June 2020 meeting minutes</i>
12:05	<b>Privacy in Remote Interviews (CVP)</b>	Nancy Sylvester Michelle Wilkes	
12:15	<b>Presentation – CSFP</b>	Arie Van De Graff	<i>CSFP – Presentation Materials</i>
12:35	<b>WINGS Projects Updates:</b>	Judge Kelly Shonna Thomas	
	<ul style="list-style-type: none"> <li>• Annual reminder notice</li> </ul>		
	<ul style="list-style-type: none"> <li>• Clerical manual               <ul style="list-style-type: none"> <li>○ 75-5-312(3)(f)(v)(3)</li> <li>○ Coversheet (4<sup>th</sup>)</li> </ul> </li> </ul>	Judge Kelly Shonna Thomas	<i>Guardianship Process (CVP version)</i> <i>Probate Report for Review and Approval (coversheet)</i>
1:00	<b>Committee Feedback –</b>	Judge Kelly Kent Alderman	<i>Basic Guidelines – Guardians and Conservators (Master Copy – Comments)</i>
	<ul style="list-style-type: none"> <li>• Guardianship test / manual</li> </ul>		<i>Basic Guidelines – Supplemental Comments (forms)</i>
	<ul style="list-style-type: none"> <li>• Guardianship for Minors / School</li> </ul>	Norma Valavala-Ballard	(pending)
	<ul style="list-style-type: none"> <li>• GSP Recruitment</li> </ul>	Shonna Thomas	
1:45	<b>Membership:</b>	Judge Kelly	
	<ul style="list-style-type: none"> <li>• Replacing retired/retiring members               <ul style="list-style-type: none"> <li>○ Welcome Brant Christiansen</li> </ul> </li> <li>• Invite to district court judge(s) &amp; probate staff</li> </ul>		
2:00	Meeting adjourned		

## 1. Housekeeping

- Meeting brought to order at 12:04pm
- Judge Kelly welcomed guest presenters Arie Van De Graaff and Kaylee Anderson.
- A motion was made to approve the minutes from the previous meeting (June 18, 2020). The motion was seconded and approved.
- Meeting adjourned at 1:52pm.

## 2. Privacy in Remote Interviews

Concern was expressed regarding the possibility of Court Visitor interviews being recorded or otherwise observed with interviews taking place electronically due to COVID-19. There is also the possibility of undue influence to occur during the interview, as the Court Visitor has less control over who remains in the room.

Unlike codes relating to mediation and privacy, there is no rule currently in place specific to privacy in Court Visitor interviews, so enforcing it is problematic.

### Discussion –

- During in-person interviews, Court Visitors could ensure, just by being in the same room that the interviewee is not being coerced or intimidated by anyone else in the room. Electronic interviews lack the ability to get a sense of whether undue influence is occurring or if the individual is free to give candid answers.
- Because the Court Visitor is talking to the individual at the request of the judge, they are not subject to a confidentiality privilege.
- Michelle completes the court orders for the judge to sign, with a space in the order to indicate who the Court Visitor will be interviewing. It may be possible to add a sentence following the list – something to the effect of interviews must be conducted privately, without influence.
- An update to the order itself could propose that language and be brought to the Board of Court Judges for approval.
- In the interim, Michelle could place language in the order on a case-by-case basis that indicates that even though the interview may be conducted remotely due to COVID-19, the individual is entitled to be interviewed without others present, to give candid answers without undue influence or intimidation.
- This language is probably valuable for the future, not just during the COVID-19 pandemic.
- It would be helpful to add in something indicating that the interview is not to be recorded by the guardian or any other individual. There is some existing language coming out in the WebEx orders about not recording and the hearing being private. It may be possible to use some of that wording here as well.

### Decisions made –

- Nancy and Michelle will work to modify the proposed order to include language about recording, privacy, and undue influence. They will include Judge Connors and Judge Kelly on the proposed draft, so that there is consensus on the proposal language.
- Nancy will take the proposed changes to the Board of District Court Judges next week.
- In the interim, Michelle will add in language to each proposed order for the judge to sign.

### 3. Presentation - CSFP

Arie Van De Graaff and Kaylee Anderson presented on the CSFP – Commodity Supplemental Food Program. The CSFP has been in Utah since 2010. It is a food program for individuals 60 and older. The CSFP can be combined with SNAP and Meals on Wheels. To apply for the program, the individual needs to complete a simple application

The CSFP partners with the food bank to package a 10-day supply of food items, which are then boxed up and sent throughout the state. They have over 100 distribution sites currently, and serve 25 out of Utah's 29 counties, with the other four coming soon.

They are also working to reach more of the underserved populations. Through data collected they have learned the following:

- Hispanic-headed household experience greater rates of food insecurity than the national average.
- Hispanic individuals are usually twice as likely to experience food insecurity.
- Hispanic seniors living below the poverty line in Utah are being served at less than half the rate of White, non-Hispanic seniors.

Therefore, they are looking to do more outreach in Hispanic communities, as well as other minority groups. The biggest challenge of the CSFP is getting the word out. Shonna will send to WINGS the link to the intro video and CSFP webpage, to be distributed as appropriate.

### 4. WINGS Projects Updates

#### Annual reminder notice:

Judge Kelly, Shonna, and Nancy met with Meredith Mannebach (Program Administrator) and Clayson Quigley (Court Services Director), both with the Administrative Office of the Courts. The discussion centered on the best approach to take to implement a reminder notice system for annual reports, using the model in place in 4<sup>th</sup> District. (It has been determined that IT changes to the CORIS system are not likely needed to implement, although it may be helpful to have a permanent change in CORIS to aid in this project in the future.)

The recommendation is to create a general proposal based upon what 4<sup>th</sup> District is doing, and present the proposal to the Clerks of Court meeting in either September or October. It would be helpful to collaborate with the Clerks, to get their input, feedback, and buy-in.

It was also recommended to present the proposal in terms of cost and time savings, as the reminder notice system is intended to save time, energy, and aggravation often expended when trying to track down guardians.

#### Decisions made –

- Shonna will arrange to have this item listed on the Clerks of Court meeting agenda, inviting Norma to participate to share her experience using the system.
- This item will be added to the Executive Committee meeting in September and the WINGS agenda for the October meeting.

#### Clerical manual:

The subcommittee met in August to discuss the progress and next steps with the clerical manual. This project is temporarily on hold as we wait for the new probate clerk in 3<sup>rd</sup> District and look for additional clerical staff to provide feedback.

One issue that arose from reviewing the manual relates to how annual reports are handled across the state. Utah statute requires the court (i.e., judge) review and approve of annual reports. However, in some districts, it appears that this is not taking place.

Discussion –

- In some cases, attorneys have been known to inform their clients that the reports did not need to be filled out because the courts weren't looking at them anyway. This is a big concern since the intention of the review statute is to root out abuse. Unless the courts actually review these reviews, this requirement of guardians is perfunctory.
- A CJA rule may be needed to address the issue of processing these reports.
- It doesn't appear that any district is intentionally failing to follow up on responsibilities; it is more a matter of education and putting together a process or set of procedures that will assist districts in complying with the statute.
- Having a checklist to assist in the review would be helpful, to identify possible red flags and areas of concern. Perhaps, depending on what comes about with a new CJA rule, the clerical staff could use the checklist initially, to identify those red flags, before passing the report to the judge.
- The Financial Accounting report is difficult to complete, not user-friendly, and developed with accounting language, not laymen's terms. It should be something WINGS considers working on as well.
- Consider taking this to the Clerks of Court and TCE meetings to discuss this issue; this may be the best way to come to a resolution.

Decisions made –

- Judge Kelly and Shonna will work Shane to discuss next steps for getting a procedure in place or a proposed CJA rule.
- This item will be added to the agenda for the September Executive Committee meeting.

## 5. Committee Feedback

### **Guardianship test / manual:**

Prospective guardians need better training and a more rigorous testing process to ensure that they understand what they're supposed to do as guardians.

This project is ongoing. There are two parts that can be addressed presently – having a better manual to help train the guardians, and improving the test that coincides with the manual. In the future, the intention is to move the test to an online version that incorporates a learning module and quiz questions requiring a passing score. This is on hold as it requires technology changes.

Discussion –

- Some WINGS members have provided feedback already (Andrew and Kaye Lynn). Their comments have been combined into one document and shared in the materials for this meeting. If others can provide input as well, all the comments can be combined to make it easier to see the group's feedback.
- The manual revision may be a good opportunity to include not just statutory aspects of guardianship, but other items such as the National Guardian Standards.
- Although extra work, one option could be to include both, with a clear distinction made between them. For example, the main document would list out the statutory requirements, while footnotes or some other method would add supplemental information from the National

Standards, for those guardians who are truly looking for guidance and help on performing their responsibilities.

- Kent was unable to attend this meeting, so further discussion will take place in September.

#### Decisions made –

- WINGS members should send feedback to Shonna on the guardianship manual prior to the September Executive Committee meeting. (Updates to the test questions will follow once the manual is complete.)
- Shonna will combine all comments into one document to send to the Executive Committee members.
- This item will be discussed at the Executive meeting in September, to determine what progress can be made with the current budgetary and IT constraints.

#### **Guardianship for minors / school:**

There has been confusion in the process for petitioning for guardianship for a minor for school purposes only. Petitioners misunderstand that “school purposes only” does not include sports, driver’s education, or other extracurricular activities, so they do not apply for full guardianship. However, school districts require full guardianship for any of these activities.

In OCAP, if you check Yes for school purposes only, it generates the document. However, if you check No, it branches to two additional options – Full or Limited guardianship, and this is where it allows a degree of specificity to be made to what the proposed limited guardianship would cover.

Is it possible to simply remove the “school purposes” option, and just list the options as full or limited guardianship?

Question asked – Would this be modifying the OCAP program?

Yes, although the preference would be to omit completely the school purposes option.

Question asked – In conversations with the schools, have they provided any reason why they are wanting a full guardianship in place, is it school policy?

A few years ago, there was an email that indicated full guardianship was required for enrollment in extracurricular activities. Just last week, Alpine implemented a new policy, wherein the petitioner does not need to file guardianship for school purposes, as long as they have a Power of Attorney.

#### Discussion –

- A lot of parents when they agree to guardianship for school purposes truly only mean for school purposes only, and nothing beyond. A court order stating full guardianship terminates the rights of those parents, at least temporarily.
- It may be a better approach to have discussions with the school districts and school athletic associations to help them understand what is meant by school purposes.
- One option is to define in the order what school purposes covers, e.g., authority to enroll the minor in any school activity. Another option is to revise the form in OCAP to include a broader definition of school-related. It may also need to include a statutory fix.
- Some school districts may not like guardianship/transfer students, perhaps as a cost or liability issue. If OCAP is tweaked, it may be helpful to ensure that school districts receive more upfront notice, that what is being requested is going to be more than just attending classes, that extracurricular activities may be involved as well.
- It may make sense to ask the school districts if revising the language to show that school-purposes includes extracurricular activities would be enough for their purposes.

Decisions made –

- Norma will follow up with the school districts on revising language to better describe what school purposes entails. She will share any response received with Judge Kelly, Judge Connors, Nancy, and Shonna.
- This item will be added to the agenda for the October WINGS meeting.

**GSP recruitment:**

The GSP has been floundering over the past year, both in terms of bringing in new participants and in having participating attorneys volunteer for cases. A recent example is a request that went out in 4<sup>th</sup> District. It received no response, so it was sent again to all 8 districts, with the note that work on the case was being conducted remotely. Yet, there was still no response.

With COVID ongoing, it is important to think of other ways to increase participation in the program.

Discussion –

- One barrier may be the difficulty in simply getting in touch with the client. With the restrictions in care facilities and nursing homes, communicating with clients is a problem across the state.
- It may help to communicate with those applying for guardianship, that the respondent is going to need to be in touch with their attorney and any assistance the proposed guardian could offer to help facilitate this would be welcomed.
- Perhaps a call out to the Elder Law section would encourage additional interest.
- From the court's perspective, it needs to be made clear that an attorney for the respondent can represent their client through remote contact. Likewise, we need attorneys to realize that although there is a greater degree of difficulty in meeting with clients, the need is still there.

Decisions made –

- Shonna will send GSP materials to Brant, to be shared with his contacts in the Bar.
- Shonna will reach out to clerical staff to include in GSP requests that remote work is possible, to entice or assuage concerns of participating attorneys.
- This item will be added to the agenda for the next WINGS meeting.

**6. Membership**

Brant Christiansen was introduced to the group. He will be taking Kent's place on the committee. Brant is the Chair-Elect of the Elder Law section of the Bar.

There are a few other changes taking place in the WINGS membership. There will be a new 3<sup>rd</sup> district probate clerk (not yet identified), as Joanne is retiring. It will be important to invite this individual to participate in WINGS, given the volume of cases that go through this district.

It would be helpful if current WINGS members think of other individuals who may be valuable to invite. In particular, identifying other individuals (e.g., district court judges and probate staff, colleagues) who can take the place of current members, when needed, will help ensure a degree of continuity.

Decisions made –

- Send suggestions for potential WINGS members to Shonna.
- There is a lack of clarity in the bylaws on how members of the Executive Committee are appointed. This item will be discussed at the September Executive Committee meeting and the WINGS October meeting.

**7. Other**

Judge Kelly and Judge Connors excused themselves, to allow the WINGS committee to discuss a case question.

A general/hypothetical case question was brought before the group, related to the transfer of guardianship from one state to another, and the recognition of the authority of a guardian if/when the guardianship has not yet been formally transferred to Utah.

Discussion –

- Discussion centered on the privacy and dignity of the protected person.
- Statute does state that the guardian has a responsibility to take into account the ward’s desires and preferences to the greatest extent possible.
- There is a webpage on the court’s website describing how to transfer guardianship from another state to Utah.
- Another suggestion is to look at the Uniform Adult Guardianship and Protective Proceedings Jurisdiction (75-5b).

Decisions made –

- Andrew plans to discuss this item with the legal staff at the DLC.
- Any additional thoughts or suggestions, reach out to Kaye Lynn.

**Action Items**

<ul style="list-style-type: none"> <li>– Modify language in the proposed Court Visitor order. Share proposed language with Judge Kelly and Judge Connors.</li> <li>– Take the proposed changes to the Board of District Court Judges.</li> </ul>	<p>Nancy Sylvester Michelle Wilkes</p>
<ul style="list-style-type: none"> <li>– Send information about the CSFP to WINGS members.</li> </ul>	<p>Shonna Thomas</p>
<ul style="list-style-type: none"> <li>– Present to the Clerks of Court on the annual reminder notice proposal.</li> <li>– Report back to WINGS in October.</li> </ul>	<p>Shonna Thomas Norma Valavala-Ballard</p>
<ul style="list-style-type: none"> <li>– Present to the Clerks of Court and TCEs on a proposed CJA rule addressing the statute for annual report reviews.</li> </ul>	<p>Judge Kelly Shonna Thomas</p>
<ul style="list-style-type: none"> <li>– Send feedback on the guardianship manual to Shonna, which will be combined into one document for the Executive Committee.</li> </ul>	<p>WINGS stakeholders Shonna Thomas</p>
<ul style="list-style-type: none"> <li>– Follow up with school districts on revising language to better describe what guardianship for school purposes entails.</li> <li>– Share responses received with Judge Kelly, Judge Connors, Nancy Sylvester, and Shonna Thomas.</li> </ul>	<p>Norma Valavala-Ballard</p>
<ul style="list-style-type: none"> <li>– Send GSP materials to Brant, to be shared with his contacts in the Bar.</li> <li>– Reach out to clerical staff in including in requests that remote work is possible, to entice or assuage concerns of participating attorneys.</li> </ul>	<p>Shonna Thomas</p>

<ul style="list-style-type: none"> <li>– Send suggestions for potential WINGS members to Shonna.</li> </ul>	WINGS stakeholders
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<b>Deferred / Continuing Items</b>	
<ul style="list-style-type: none"> <li>– Annual Report reminder notice</li> <li>– Annual report review – statutory requirement</li> <li>– Guardianship test</li> <li>– School-purposes only guardianship language</li> <li>– Executive Committee membership / WINGS bylaws</li> </ul>	Executive Committee

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<b>Next Meeting(s):</b>	October 15, 2020 December 17, 2020
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