

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

WebEx information:

Thursday, Feb 18, 2021, 12:00 pm | 2 hours |

AGENDA

	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none"> • Housekeeping • Welcome New or Visiting Members • Minutes 	Judge Kelly	<i>December 2020 minutes</i>
12:15	Rule Review Subcommittee - Update <ul style="list-style-type: none"> • CJA Rule 6-501 • Guardianship for school purposes 	Nancy Sylvester Brant Christiansen Kent Alderman	<i>Rule 6-501 – Comments from Elder Law Section</i> <i>Summary – School Guardianships for Minors</i>
12:35	Report Back – Annual Report to the Judicial Council	Judge Kelly	<i>Report to Judicial Council (2021)</i>
12:45	WINGS Projects Updates:		
	<ul style="list-style-type: none"> • Clerical Manual 	Shonna Thomas	<i>Case Management for Adult Guardianship and Conservatorship</i>
	<ul style="list-style-type: none"> • Guardianship Manual 	Brant Christiansen	<i>Basic Guidelines for Court-Appointed Guardians and Conservators</i>
	<ul style="list-style-type: none"> • Report Review Coversheet (annual & court visitor) 	Judge Kelly Nancy Sylvester Shonna Thomas	<i>Review of Guardianship Reports</i>
1:30	Guardianship Forms Revision	Shonna Thomas	
1:40	2021 Legislative Session	Group discussion	
1:50	Other Business: <ul style="list-style-type: none"> • Probate Rules Subcommittee • Membership Renewals <ul style="list-style-type: none"> ○ Judge Kelly ○ TantaLisa Clayton 	Judge Kelly	
2:00	Meeting adjourned		

Next meeting:

April 15, 2021 (via WebEx)

Comments from the Elder Law Section
RE: Changes to Rule 6-501 (effect of approval of annual accounting)

- (1) My comment on the proposed rule is that the protection of actual or implied waiver should only extend to matters fully and accurately disclosed. This seems consistent with existing requirements for knowing waiver. Fraud seems too high a standard.

Approval by the court of a status report or accounting should only mean that, to the court's knowledge, notice has been given to everyone entitled to notice, no objection has been received, and the court does not sua sponte wish to require more than what has been done. Of itself, such approval should not foreclose claims nor start an appeal time. It just marks compliance with a procedural waypoint. Giving it the status of a final judgment smacks of hubris.

Matters that are actually contested and resolved should be given final judgment status but there are not a lot of those.

The usual rule tolling limitations on claims against an ongoing fiduciary until the relationship ends seems to me to still be a good policy.

The point of the rules should be to put the burden on the fiduciary to make full and accurate disclosures. The better the disclosures, the better the protection from waivers.

- (2) I suggest another exception to the rule. I have served as a conservator for minor children with respect to personal injury settlements. In most cases, the amount allocated to the minor is structured with no payments being made until the minor is an adult. I get the annual accounting notices from the courts and explain in my report that there are no assets of the conservatorship to report and therefore no accounting to be made. My main role was to represent the minor with respect to the settlement and allocation of the settlement. The clerks do not know what to do with this. Thus, I suggest another exception that provides that if no assets are to be received while the minor is a minor, that no accounting or report be required.
- (3) Is there the same need for finality for the status report as there is for the other ones, which involve finances? My concern is that the appropriateness of a guardian's actions may not be readily apparent, or sufficiently contraindicated to justify challenging the guardian with a year's period of time. If objections are waived, does this mean that, in challenging a guardian, one would never be able to bring evidence of acts taken or not taken more than one year ago?

As far as the balance that is sought to be struck, the scope of notice of the reports may be important. Some protected persons may receive regular care by some type of provider, either in their own home or in a facility. If those providers always received a copy of the reports, then the protected person would be better protected. The same is true if there is some type of case manager that coordinates care/treatment/services for the individual. I

believe these types of entities receive notice. Is there something that always requires them to be notified of the report, and to receive the report?

- (4) I would suggest a little language change. Where are you say 'An objection not made within 30 days is waived'

I would suggest instead saying more of a complete sentence - 'If an objection is not made within 30 days, the right to an objection is waived.'

I think it's better to be a little bit more explanatory in your sentence. I think it's great what you're doing. Best wishes in that.

- (5) I think that the rule needs to be clear that it is improper to ask for removal/substitution of guardian/conservator in an objection and that separate objections and petitions for removal of guardian/conservator needs to be filed. I currently have a case where we came on late in the game as professional fiduciaries and all along the way the parties used the objection system to slander the other side and ask for removal and their own appointment in the objections rather than file a petition for removal/substitution. This rule is really interested in the sufficiency of the information provided and that, for instance, "[t]he report, inventory and accounting shall contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period." (5). I have parties asking for a play-by-play itemized accounting and play-by-play detailed report on the status of the ward, what he did, who he interacted with, a detailed calendar of the interactions, what he ate, etc. I would also like to see the portion about if there is an objection (no matter how improper) that there must be a hearing. Especially if there is not a provision for bad faith objections and the award of attorney fees.

I am in favor of the 30 day cut off. I think that it may need to state that it is still subject to URCP Rule 6 extensions of time in appropriate circumstances.

WINGS

Summary of Minor Guardianship/School Guardianship Issues

Issue: Schools and/or the Utah High School Activities Association have told students/parents that guardianship is required for students living with nonparents, in order for them to attend school and compete in athletics. Court-appointed guardians for minors may only be granted as full guardianships—thus terminating most parental rights.

Background: This issue was discussed previously, the concern centered on how to make the OCAP system more user-friendly for cases related to guardianship for school purposes only / limited guardianships of minors. Utah Courts appear to be granting limited guardianships for minors, even though they do not appear to be authorized by statute to do so. Additionally, Court website pages, guardianship manuals, Court rules, and the OCAP system all reference such limited guardianships.

Statutes:

- §75-5-201: A person becomes a guardian of a minor by: (1) acceptance of a testamentary appointment, (2) Appointment through a local school board under §53G-6-303, or (3) upon appointment by the court.
- §75-5-204: The Court may appoint a guardian for a minor IF all parental rights of custody have been suspended or terminated by circumstances or court order.
- §75-5-209:
 - o (1) Residual parental rights = as defined in §78A-6-105
 - o (2) Guardian has powers and responsibilities of parent not deprived of custody, except the guardian is not obligated to provide for the minor from their own funds and the guardian is not liable to 3rd parties for acts of the minor.
 - o (5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties
- §78A-6-105: Residual parental rights and duties means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:
 - o Responsibility for support
 - o Right to consent to adoption
 - o Right to determine the child's religious affiliation; and
 - o Right to reasonable parent-time unless restricted by the court.
- §75-5-103: allows a parent, via a properly-executed power of attorney, to delegate to another person any of the parent's powers regarding care, custody, or property of the minor, including making decisions related to schooling.
- §53G-6-303: Allows the school district authority to appoint a legal guardian, but such guardian has same authority and responsibility as court-appointed guardian.

- Note: “(iii) the affiant is aware that designation of a guardian under this section is equivalent to a court-ordered guardianship under Section 75-5-206 and will suspend or terminate any existing parental or guardianship rights in the same manner as would occur under a court-ordered guardianship;”

Possible Solutions:

- 1) Suggest a statutory change to allow for limited guardianships
- 2) Encourage schools to instead accept powers of attorney/delegations of powers.

To: Utah Judicial Council
 From: Judge Keith A. Kelly, Chair, Utah WINGS
 Re: Utah WINGS Update
 Date: January 25, 2021

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 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.	Brant Christiansen	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
8.	Michelle Wilkes	Court Visitor Program Coordinator	Administrative Office of the Courts

Steering Committee:

1.	James Brady	Judge	4 th District
2.	David Connors	Judge	2 nd District
3.	Kent Alderman	Attorney/Partner	Lewis Hansen Law Firm
4.	Shane Bahr	District Court Administrator	Administrative Office of the Courts
5.	TantaLisa Clayton	Attorney / Director	Utah Legal Services
6.	Rob Denton	Attorney	Attorney at Law
7.	Jeff Daybell	Staff Attorney	Access to Justice, Utah State Bar
8.	Rob Ence	Director	Utah Commission on Aging
9.	Xia Erickson	Director	Office of Public Guardian
10.	Wendy Fayles	Criminal Justice / Mentor	National Alliance on Mental Illness
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.	Nancy Sylvester	Associate General Counsel	Administrative Office of the Courts
15.	James Toledo	Program Manager	Utah Division of Indian Affairs
16.	Norma Valavala-Ballard	Judicial Case Manager	4 th District
17.	Todd Weiler	Senator	23 rd District
18.	Kaye Lynn Wootton	Assistant Attorney General	Medicaid Fraud Control Unit

Accomplishments:

- CJA Rule 6-507. Approval for this new rule was an important accomplishment for WINGS in 2020. This rule codifies and details the Court Visitor Program. It also defines the process required for review of the reports submitted by Court Visitors. Reports will now be accompanied by a Request to Submit for Decision, to place review of the reports on tracking. In accordance with Rule 3-101, Judges will have 60 days to review and make findings on the report. The new rule went into effect on November 1, 2020.
- Court Order Revision. Due to COVID-19, all Court Visitor activities were moved to remote/virtual platforms. A Court Visitor raised concerns about ensuring privacy and confidentiality and limiting undue influence during Court Visitor interviews in these new environments. WINGS collaborated with the Court Visitor Program to resolve this concern. Approved language was added to the existing court orders for assigning a Court Visitor that placed restrictions on recording interviews and emphasized confidentiality practices.
- Court Partnerships. WINGS has developed and maintained positive relationships within other areas of the court system, including the Clerks of Court, Court Services, and various court committees such as the Juvenile Rules committee and the Probate subcommittee. WINGS members have attended meetings and collaborated with these entities throughout 2020, as well as invited individuals to WINGS meetings to discuss current and new issues and to offer suggestions and recommendations.
- Community Partnerships. WINGS provided an audience and networking connection for several community programs, allowing them to share information, and expand access and reach to their important services. For example, WINGS hosted Kate Nance, an Elder Law attorney working with Adult Protective Services to develop pro bono virtual clinics for vulnerable adults aimed at reducing the risks of financial exploitation in this population. Similarly, the Commodity Supplemental Food Program presented in a WINGS meeting and provided their materials for WINGS stakeholders to share within their organizations.
- National WINGS Recognition. Utah WINGS continues to have a presence and positive reputation on the national stage. For example, the National WINGS organization and the Massachusetts Guardianship Policy Institute invited the Court Visitor Program to present at the Colloquium on Guardianship Oversight in December 2020.
- Court Visitor Appreciation. An Appreciation Event was held in February 2020, to celebrate the hard work and contribution of the Court Visitor volunteers. Several WINGS members attended and were able to share with Court Visitors their experiences with the Court Visitor Program, including the value they bring to the courts and guardianship cases.

Current & Upcoming Projects:

In April 2020, WINGS meetings moved online due to the COVID-19 pandemic; however, ongoing WINGS projects have not been disrupted. Current and upcoming projects include:

- Guardianship Education / Manuals. WINGS has been working on updating materials used in guardianship processes. These include the guardianship manual used by court staff and the

basic guidelines manual provided to proposed and newly appointed guardians. In 2020, both manuals underwent the revision and review process from WINGS stakeholders and WINGS subcommittees. They are now moving into the final phase of the process, which includes review of the final draft and approval from the appropriate court committees.

- Reminder Notice System. WINGS has been interested in improving compliance with annual reporting by guardians/conservators. The current system in place for annual guardianship reports includes sending notice to guardians/conservators when reports are past due. The 4th district clerks have also implemented a reminder system to reach out to guardians 60 days *before* their reports are due. Through collaboration between WINGS stakeholders, 4th district probate staff, Clerks of Court, and Court Services, a Reminder Notice System is ready to be implemented in a few volunteer districts, to determine its efficacy and success rate in other areas of the state. WINGS anticipates rollout of this system in early 2021.
- Annual Report Review Process. WINGS continues to work to address concerns related to a standard review of submitted annual reports in guardianship cases. This item was brought before both the Clerks of Court and the Board of District Court Judges for discussion and input. Based upon their feedback, in late 2020, WINGS created a draft coversheet to assist judges in their review process. This coversheet draft will be submitted for review and approval in early 2021.
- CJA Rule 6-501. This rule reflects the annual report review process. WINGS stakeholders identified gaps in the rule where additional language could help clarify. In December 2020, WINGS formed a subcommittee to review the language in this rule and make recommendations for suggested language additions. The subcommittee will meet in January 2021 to begin this project.
- Guardianship for School Purposes / Limited Guardianship of a Minor. WINGS was approached to look more closely at guardianships of minors. Concern was raised about authorization of limited guardianship of minors and the use of alternatives to guardianship. WINGS stakeholders plan to delve deeper into this concern in 2021, and compile suggestions for possible solutions.

In the District Court of Utah

_____ Judicial District _____ County

Court Address: _____

In the Matter of Protection for	Review of Guardianship Reports
Protected Person	Case Number
	Judge

The following reports are submitted for review: (check all that apply)

<input type="checkbox"/>	Inventory Report	<input type="checkbox"/>	Annual Financial Accounting	<input type="checkbox"/>	Report on Status of the Ward
<input type="checkbox"/>	Court Visitor Report	<input type="checkbox"/>	Proof of Minor's Insurance Deposit	<input type="checkbox"/>	Termination

The Judge, having reviewed the above report(s), hereby:

<input type="checkbox"/>	Approves the report as submitted
<input type="checkbox"/>	Requests the following additional information from the filer:
<input type="checkbox"/>	Requests a Court Visitor be appointed for the following:
<input type="checkbox"/>	Requests a hearing be set for the following:
<input type="checkbox"/>	Other (describe):

Date: _____ Judge Signature ► _____