

# Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, December 9, 2021, 12:00 pm | 2 hours |

## AGENDA

	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none"> <li>Housekeeping</li> <li>Minutes</li> </ul>	Judge Kelly	<i>WINGS Minutes (October 2021 – draft)</i>
12:10	Stakeholder Updates		
	<ul style="list-style-type: none"> <li>GRAMP</li> <li>Legislative Update</li> <li>Other</li> </ul>	Stakeholders	
12:35	Utah Commission on Aging Website Tour	Rob Ence	
12:45	Ongoing Projects		
	<ul style="list-style-type: none"> <li>Rules 6-501 &amp; 6-507</li> </ul>	Allison Barger Shonna Thomas	<i>(Recent revisions sent prior to meeting)</i>
	<ul style="list-style-type: none"> <li>Judicial Council committee</li> </ul>	Judge Kelly	<i>Rule 1-205 and WINGS rule (FINAL DRAFT)</i>
	<ul style="list-style-type: none"> <li>Utah Code 75-5-303</li> </ul>	Group Discussion	<i>Code 75-5-303 (to discuss)</i>
1:30	Future Projects		
	<ul style="list-style-type: none"> <li>Judicial Council annual report</li> </ul>	Shonna Thomas	
	<ul style="list-style-type: none"> <li>Summit recommendations table</li> </ul>	Group discussion	<i>2021 NGN Summit Recommendations – Utah Status</i>  <i>National Guardianship Summit - Recommendations (May 2021)</i>
1:50	Other Business		
	<ul style="list-style-type: none"> <li></li> </ul>		
2:00	Meeting adjourned		

**Next meeting:** February 17, 2021 (via WebEx)

1 **Rule 6-501. Reporting requirements for guardians and conservators.**

2 **Intent:**

3 To establish standards and procedures for annual reports and accountings that guardians and  
4 conservators are required to file under the requirements sufficient to satisfy the Utah Uniform  
5 Probate Code.

6 **Applicability:**

7 This rule applies to individuals seeking appointment as guardians and conservators and  
8 individuals who are appointed by the court as guardians, and conservators, with the following  
9 exceptions:

10 ~~This rule does not apply if a parent is a the conservator or a guardian or co-guardian is the parent~~  
11 ~~of the wardprotected person.~~

12 ~~Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the~~  
13 ~~purpose of attending school.~~

14 ~~Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust~~  
15 ~~Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.~~

16 ~~Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the guardianship is~~  
17 ~~limited to the purpose of attending school. A person interested in the minor may request a report~~  
18 ~~under Utah Code Section 75-5-209.~~

19 ~~Paragraph (6)(D) does not apply to the guardian of a minor if the minor's estate consists of funds~~  
20 ~~that are is deposited in an a restricted account, which is an account requiring judicial approval for~~  
21 ~~withdrawal, or if there is no estate. A person interested in the minor may request an accounting~~  
22 ~~under Utah Code Section 75-5-209 to a conservator who is appointed for the purpose of for a~~  
23 ~~minor 1) funds distributed, until the minor reaches the age of majority, or 2) no structured settlement~~  
24 ~~payments are to be made, until the minor reaches the age of majority~~

25 **Statement of the Rule:**

26 **(1) Definitions.**

27 (A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and  
28 Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

29 (B) "Interested person" means the respondent, if he or she is of an appropriate age and mental  
30 capacity to understand the proceedings, the respondent's guardian and conservator, the

31 respondent's spouse, adult children, parents and siblings, and any other person interested in  
32 the welfare, estate, or affairs of the respondent who requests notice under Utah Code Section  
33 75-5-406. If no person is an interested person, then interested person includes at least one of  
34 the respondent's closest adult relatives, if any can be found. For purposes of minor  
35 guardianship, interested persons include the persons listed in Utah Code Section 75-5-207.

36 (C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

37 (D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

38 (E) "Protected person" means a minor or an incapacitated person for whom the court appoints  
39 a guardian or a protected person for whom the court appoints a conservator.

40 (F) "Report" means the inventory, accounting, or annual report on the status of the protected  
41 person under Utah Code Sections 75-5-209 and 75-5-312, and the final accounting under  
42 Sections 75-5-210 and 75-5-419

43 (G) "Respondent" means a person who is alleged to be incapacitated and for whom the  
44 appointment of a guardian or conservator is sought.

45 (2) Exceptions.

46 (A) Paragraph (4) does not apply to the following:

47 \_\_\_\_ (i) a guardian licensed under Utah Code Section 75-5-311(1)(a);

48 \_\_\_\_ (ii) the Office of Public Guardian; or

49 \_\_\_\_ (iii) a conservator licensed under Utah Code Section 7-5-2.

50 (B) Paragraphs (6), (7), (8), (9), and (10) do not apply do not apply if a parent is a guardian or  
51 a conservator of the protected person.

52 (C) Paragraph (7)(C) does not apply to the guardian of a minor if the minor's estate consists  
53 of funds that are deposited in a restricted account, which requires judicial approval for  
54 withdrawal, or if there is no estate.

55 (D) Paragraph (9) does not apply to a conservator who is appointed for the purpose of  
56 receiving a personal injury settlement for a minor if 1) no funds are to be distributed until the  
57 minor reaches the age of majority, or 2) no structured settlement payments are to be made  
58 until the minor reaches the age of majority.

59 **(34) Examination and private information record.**

60 (A) Before the court enters an order appointing a guardian or conservator, the proposed  
61 guardian or conservator ~~shall~~must file a verified statement showing satisfactory completion of  
62 a court-approved examination on the responsibilities of a guardian or conservator.

63 (B) ~~After~~Before the court enters ~~an~~the order of appointment, the proposed guardian or  
64 conservator ~~shall~~must file ~~within 7 days~~ a completed and verified Private Information Record  
65 form provided by the Administrative Office of the Courts.

66 (C) The guardian or conservator ~~shall~~must continue to keep the court apprised of any changes  
67 to the guardian or conservator's contact information.

68 (42) **Recordkeeping.** The guardian ~~shall~~must keep contemporaneous records of significant  
69 events in the life of the ward-protected person and produce them if requested by the court. The  
70 conservator ~~shall~~must keep contemporaneous receipts, vouchers or other evidence of income  
71 and expenses and produce them if requested by the court. The guardian and conservator  
72 ~~shall~~must maintain the records until the appointment is terminated and then deliver them to the  
73 wardprotected person, if there is no successor, to the successor guardian or conservator, or to  
74 the personal representative of the protected personward's estate.

75

76 ~~(3)~~ **Definitions.**

77 ~~(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and~~  
78 ~~Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.~~

79 ~~(B) "Interested persons" means the wardprotected person, if he or she is of an appropriate~~  
80 ~~age and mental capacity to understand the proceedings, the wardprotected person's guardian~~  
81 ~~and conservator, the wardprotected person's spouse, adult children, parents and siblings, and~~  
82 ~~anyone any otheran interested person requesting notice under Utah Code Section 75-5-406.~~  
83 ~~If no person is an interested person, then interested person includes at least one of the~~  
84 ~~wardprotected person's closest adult relatives, if any can be found. For purposes of minor~~  
85 ~~guardianship, interested persons include the persons listed in Utah Code Section 75-5-207.~~

86 ~~(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.~~

87 ~~(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.~~

88 ~~(E) "Report" means the inventory, accounting, and annual report on the status of the~~  
89 ~~wardprotected person required byunder Utah Code Sections 75-5-209 and Section 75-5-312,~~  
90 ~~and the final accounting under Sections 75-5-210 and 75-5-419.~~

91 ~~(F) "WardProtected person" means a minor or an incapacitated person for whom the court~~  
92 ~~appoints a guardian or a protected person for whom the court appoints a conservator.~~

93 ~~(54)~~ **Report forms.** Subject to the requirements of Paragraph ~~(65)~~:

94 (A) forms substantially conforming to the Judicial Council-approved forms ~~produced by the~~  
95 ~~Utah court website~~ are acceptable for content and format ~~for the report and accounting filed~~  
96 ~~under the Utah Uniform Probate Code;~~

97 (B) a corporate fiduciary may file its internal report or accounting; and

98 (C) if the wardprotected person's estate is limited to a federal or state program requiring an  
99 annual accounting, the fiduciary may file a copy of that accounting.

100 ~~(65)~~ Information required in reports, cover sheet, and service. Report information, cover sheet,  
101 and service.

102 (A) The annual report, ~~inventory~~, and annual accounting ~~shall~~must contain sufficient  
103 information to put interested persons on notice of all significant events and transactions during  
104 the reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court may  
105 direct that a report or accounting be prepared with content and format as it deems necessary.

106 (B) The annual report and annual accounting must include the Judicial Council-approved  
107 report coversheet, which ~~must be filed as if it were a proposed order~~document.

108 (C) The guardian, conservator, or both must serve a copy of the report, inventory, and  
109 accounting under Rule 5 of the Utah Rules of Civil Procedure on all interested persons. The  
110 annual report and annual accounting must include the following ~~caution~~language at the top  
111 right corner of the first page, in bold type: You have the right to object to theis report or  
112 accounting within 28 days of service. If you do not object within that time, your  
113 objection may be waived.

114 ~~(67)~~ **Annual ~~S~~status reports.**

115 ~~(6)~~(A) The guardian ~~shall~~must file with the appointing court a report on the status of the  
116 wardprotected person no later than 60 days after the anniversary of the appointment. The  
117 status report must be in substantially the same form as the status report form approved by the  
118 Utah Judicial Council, including the required attachments. The guardian ~~shall~~must file the  
119 report with the court that appointed the guardian unless that court orders a change in venue  
120 under Utah Code Section 75-5-313. The reporting period is yearly from the appointment date  
121 unless the court changes the reporting period on motion of the guardian. The guardian may

122 not file the report before the close of the reporting period. For good cause the court may  
123 extend the time for filing the report, but a late filing does not change the reporting period.

124 ~~.(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that~~  
125 ~~the person may object within 30 days after the notice was served.~~

126 ~~(6)(CB) If an interested person objects, the person shall specify in writing the entries to which~~  
127 ~~the person objects and state the reasons for the objection. The person shall file the objection~~  
128 ~~with the court and serve a copy on all interested persons. If an objection is filed, the judge~~  
129 ~~shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.  
130 If the judge finds that the report is in order, the judge ~~shall~~must approve it.

131 ~~(6)(DC) If there is no conservator, the guardian shall~~must file the inventory and accounting  
132 required of a conservator under Utah Code Section 75-5-312.

133 ~~(78) Inventory reports.~~

134 (A) Within 90 days after the appointment, the conservator ~~shall~~must file with the appointing  
135 court the inventory required by Utah Code Section 75-5-418. The inventory must be in  
136 substantially the same form as the inventory form approved by the Utah Judicial Council,  
137 including the required attachments. ~~For good cause t~~he court may extend the time for filing  
138 the inventory for good cause.

139 ~~(CB) If an interested person objects, the person shall specify in writing the entries to which~~  
140 ~~the person objects and state the reasons for the objection. The person shall file the objection~~  
141 ~~with the court and serve a copy on all interested persons. If an objection is filed, the judge~~  
142 ~~shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.  
143 If the judge finds that the inventory is in order, the judge ~~shall~~must approve it.

144 ~~(89) Annual Accounting reports.~~

145 (A) The conservator ~~shall~~must file with the appointing court an accounting of the estate of the  
146 wardprotected person no later than 60 days after the anniversary of the appointment. The  
147 accounting must be in substantially the same form as the accounting form approved by the  
148 Utah Judicial Council, including the required attachments. The conservator ~~shall~~must file the  
149 accounting with the court that appointed the conservator unless that court orders a change in  
150 venue under Utah Code Section 75-5-403. The reporting period is yearly from the appointment  
151 date unless the court changes the reporting period on motion of the conservator. The  
152 conservator may not file the accounting before the close of the reporting period. For good

153 cause the court may extend the time for filing the accounting, but a late filing does not change  
154 the reporting period.

155 ~~\_(8)(B) The conservator shall serve a copy of the accounting on all interested persons with  
156 notice that the person may object within 30 days after the notice was served.~~

157 ~~(CB) If an interested person objects, the person shall specify in writing the entries to which  
158 the person objects and state the reasons for the objection. The person shall file the objection  
159 with the court and serve a copy on all interested persons. If an objection is filed, the judge  
160 shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.  
161 If the judge finds that the accounting is in order, the judge ~~shall~~must approve it.

162 ~~(9)10~~ **Final accounting.**

163 (A) The conservator ~~shall~~must file with the court a final accounting of the estate of the  
164 ~~ward~~protected person with the motion to terminate the appointment.

165 ~~\_(9)(B) The conservator shall serve a copy of the accounting on all interested persons with  
166 notice that the person may object within 30 days after the notice was served.~~

167 ~~(CB) If an interested person objects, the person shall specify in writing the entries to which  
168 the person objects and state the reasons for the objection. The person shall file the objection  
169 with the court and serve a copy on all interested persons. If an objection is filed, the judge  
170 shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.  
171 If the judge finds that the accounting is in order, the judge ~~shall~~must approve it.

172 **(11) Objections.**

173 (A) If an interested person objects to a report or accounting, the person must file a written  
174 objection with the court and serve a copy on all interested persons within 28 days from the  
175 date of service of the report or accounting. The objection must include a request to submit.

176 (B) The objection must specify in writing the entries to which the person objects and state the  
177 reasons for the objection.

178 (C) An objection to a report or accounting may not contain a request to remove or substitute  
179 the guardian or conservator. Any request for removal or substitution of the guardian or  
180 conservator must be filed as a separate petition consistent with Utah Code Section 75-5-307  
181 or 75-5-415.

182 (D) If an objection is filed, the court may conduct a hearing upon the request of a party.

183 (E) At the hearing, the court may require the guardian or conservator to supplement or amend  
184 the report or accounting if the court determines there is good cause for the objection.

185 (F) If the court determines that the objection is unfounded or is filed in bad faith, the court may  
186 deny the objection and approve the report or accounting.

187 (12) Waiver. If an interested person does not object to a report or accounting within 28 days of  
188 service, the interested person waives any objection unless:

189 (A) the objection relates to matters not fairly disclosed by the report or accounting; or

190 (B) the time for objection is extended by the court under Rule 6 of the Utah Rules of Civil  
191 Procedure. If the request for an extension is made before the time has run, the court may  
192 extend the time for good cause. If the request is made after the time has run, the court may  
193 extend for excusable neglect.

194 (13) Report approval.

195 (A) Approval. The court must examine and approve reports as required by Utah Code  
196 sections 75-5-312 and 75-5-417. Approving a report means the judge has reviewed it, to the  
197 court's knowledge notice has been given to every person entitled to notice, no objection has  
198 been received, the report meets the requirements set forth by the report form, and the court  
199 has not requested additional information or scheduled a hearing. Such approval does not  
200 foreclose a valid claim permitted under paragraphs (11)(A) or (11)(B), nor does it start an  
201 appeal time.

202 (B) Notice to interested persons. When a court approves a report, the court must note that  
203 approval on the Judicial Council-approved coversheet and place the coversheet in the case  
204 file. When a court does not approve a report, the court must indicate on the coversheet, or in  
205 an order, the reasons for non-approval, any additional actions required, and serve the  
206 coversheet or order on all interested persons entitled to notice.

207 (14~~3~~) Report on a minor. Under Utah Code Section 75-5-209, a person interested in the welfare  
208 of a minor may petition the court for a report from the guardian on the minor's welfare or the  
209 minor's estate. If the court orders a report from the guardian, the status report must be in  
210 substantially the same form as the status report form for guardianships of adults approved by the  
211 Utah Judicial Council, including the required attachments.

212 *Effective May/November 1, 20\_\_~~18~~*

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## **Rule 1-205. Standing and Ad Hoc Committees.**

### **Intent:**

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

### **Applicability:**

This rule shall apply to the internal operation of the Council.

### **Statement of the Rule:**

#### **(1) Standing Committees.**

(1)(A) **Establishment.** The following standing committees of the Council are hereby established:

- (1)(A)(i) Technology Committee;
- (1)(A)(ii) Uniform Fine Schedule Committee;
- (1)(A)(iii) Ethics Advisory Committee;
- (1)(A)(iv) Judicial Branch Education Committee;
- (1)(A)(v) Court Facility Planning Committee;
- (1)(A)(vi) Committee on Children and Family Law;
- (1)(A)(vii) Committee on Judicial Outreach;
- (1)(A)(viii) Committee on Resources for Self-represented Parties;
- (1)(A)(ix) Language Access Committee;
- (1)(A)(x) Guardian ad Litem Oversight Committee;
- (1)(A)(xi) Committee on Model Utah Civil Jury Instructions;
- (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;
- (1)(A)(xiii) Committee on Pretrial Release and Supervision; ~~and~~
- (1)(A)(xiv) Committee on Court Forms; ~~and~~
- (1)(A)(xv) Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

#### **(1)(B) Composition.**

- (1)(B)(i) The **Technology Committee** shall consist of:
- (1)(B)(i)(a) one judge from each court of record;
  - (1)(B)(i)(b) one justice court judge;
  - (1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;

- (1)(B)(i)(d) two court executives;
- (1)(B)(i)(e) two court clerks; and
- (1)(B)(i)(f) two staff members from the Administrative Office.
- (1)(B)(ii) The **Uniform Fine Schedule Committee** shall consist of:
  - (1)(B)(ii)(a) one district court judge who has experience with a felony docket;
  - (1)(B)(ii)(b) three district court judges who have experience with a misdemeanor docket; and
  - (1)(B)(ii)(c) four justice court judges.
- (1)(B)(iii) The **Ethics Advisory Committee** shall consist of:
  - (1)(B)(iii)(a) one judge from the Court of Appeals;
  - (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
  - (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
  - (1)(B)(iii)(d) one juvenile court judge;
  - (1)(B)(iii)(e) one justice court judge; and
  - (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- (1)(B)(iv) The **Judicial Branch Education Committee** shall consist of:
  - (1)(B)(iv)(a) one judge from an appellate court;
  - (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
  - (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
  - (1)(B)(iv)(d) one juvenile court judge;
  - (1)(B)(iv)(e) the education liaison of the Board of Justice Court Judges;
  - (1)(B)(iv)(f) one state level administrator;
  - (1)(B)(iv)(g) the Human Resource Management Director;
  - (1)(B)(iv)(h) one court executive;
  - (1)(B)(iv)(i) one juvenile court probation representative;
  - (1)(B)(iv)(j) two court clerks from different levels of court and different judicial districts;
  - (1)(B)(iv)(k) one data processing manager; and
  - (1)(B)(iv)(l) one adult educator from higher education.
  - (1)(B)(iv)(m) The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.
- (1)(B)(v) The **Court Facility Planning Committee** shall consist of:
  - (1)(B)(v)(a) one judge from each level of trial court;
  - (1)(B)(v)(b) one appellate court judge;
  - (1)(B)(v)(c) the state court administrator;
  - (1)(B)(v)(d) a trial court executive;

(1)(B)(v)(e) two business people with experience in the construction or financing of facilities; and

(1)(B)(v)(f) the court security director.

(1)(B)(vi) The **Committee on Children and Family Law** shall consist of:

(1)(B)(vi)(a) one Senator appointed by the President of the Senate;

(1)(B)(vi)(b) the Director of the Department of Human Services or designee;

(1)(B)(vi)(c) one attorney of the Executive Committee of the Family Law Section of the Utah State Bar;

(1)(B)(vi)(d) one attorney with experience in abuse, neglect and dependency cases;

(1)(B)(vi)(e) one attorney with experience representing parents in abuse, neglect and dependency cases;

(1)(B)(vi)(f) one representative of a child advocacy organization;

(1)(B)(vi)(g) the ADR Program Director or designee;

(1)(B)(vi)(h) one professional in the area of child development;

(1)(B)(vi)(i) one mental health professional;

(1)(B)(vi)(j) one representative of the community;

(1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;

(1)(B)(vi)(l) one court commissioner;

(1)(B)(vi)(m) two district court judges; and

(1)(B)(vi)(n) two juvenile court judges.

(1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The **Committee on Judicial Outreach** shall consist of:

(1)(B)(vii)(a) one appellate court judge;

(1)(B)(vii)(b) one district court judge;

(1)(B)(vii)(c) one juvenile court judge;

(1)(B)(vii)(d) one justice court judge; one state level administrator;

(1)(B)(vii)(e) a state level judicial education representative;

(1)(B)(vii)(f) one court executive;

(1)(B)(vii)(g) one Utah State Bar representative;

(1)(B)(vii)(h) one communication representative;

(1)(B)(vii)(i) one law library representative;

(1)(B)(vii)(j) one civic community representative; and

(1)(B)(vii)(k) one state education representative.

(1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The **Committee on Resources for Self-represented Parties** shall consist of:

(1)(B)(viii)(a) two district court judges;

(1)(B)(viii)(b) one juvenile court judge;

(1)(B)(viii)(c) two justice court judges;

(1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an urban district and one from a rural district;

(1)(B)(viii)(e) one representative from the Self-Help Center;

(1)(B)(viii)(f) one representative from the Utah State Bar;

(1)(B)(viii)(g) two representatives from legal service organizations that serve low-income clients;

(1)(B)(viii)(h) one private attorney experienced in providing services to self-represented parties;

(1)(B)(viii)(i) two law school representatives;

(1)(B)(viii)(j) the state law librarian; and

(1)(B)(viii)(k) two community representatives.

(1)(B)(ix) The **Language Access Committee** shall consist of:

(1)(B)(ix)(a) one district court judge;

(1)(B)(ix)(b) one juvenile court judge;

(1)(B)(ix)(c) one justice court judge;

(1)(B)(ix)(d) one trial court executive;

(1)(B)(ix)(e) one court clerk;

(1)(B)(ix)(f) one interpreter coordinator;

(1)(B)(ix)(g) one probation officer;

(1)(B)(ix)(h) one prosecuting attorney;

(1)(B)(ix)(i) one defense attorney;

(1)(B)(ix)(j) two certified interpreters;

(1)(B)(ix)(k) one approved interpreter;

(1)(B)(ix)(l) one expert in the field of linguistics; and

(1)(B)(ix)(m) one American Sign Language representative.

(1)(B)(x) The **Guardian ad Litem Oversight Committee** shall consist of:

(1)(B)(x)(a) seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The **Committee on Model Utah Civil Jury Instructions** shall consist of:

(1)(B)(xi)(a) two district court judges;

- (1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;
- (1)(B)(xi)(c) four lawyers who primarily represent defendants; and
- (1)(B)(xi)(d) one person skilled in linguistics or communication.

(1)(B)(xii) The **Committee on Model Utah Criminal Jury Instructions** shall consist of:

- (1)(B)(xii)(a) two district court judges;
- (1)(B)(xii)(b) one justice court judge;
- (1)(B)(xii)(c) four prosecutors;
- (1)(B)(xii)(d) four defense counsel;
- (1)(B)(xii)(e) one professor of criminal law; and
- (1)(B)(xii)(f) one person skilled in linguistics or communication.

(1)(B)(xiii) The **Committee on Pretrial Release and Supervision** shall consist of:

- (1)(B)(xiii)(a) two district court judges;
- (1)(B)(xiii)(b) one juvenile court judge;
- (1)(B)(xiii)(c) two justice court judges;
- (1)(B)(xiii)(d) one prosecutor;
- (1)(B)(xiii)(e) one defense attorney;
- (1)(B)(xiii)(f) one county sheriff;
- (1)(B)(xiii)(g) one representative of counties;
- (1)(B)(xiii)(h) one representative of a county pretrial services agency;
- (1)(B)(xiii)(i) one representative of the Utah Insurance Department;
- (1)(B)(xiii)(j) one representative of the Utah Commission on Criminal and Juvenile Justice;
- (1)(B)(xiii)(k) one commercial surety agent;
- (1)(B)(xiii)(l) one state senator;
- (1)(B)(xiii)(m) one state representative;
- (1)(B)(xiii)(n) the Director of the Indigent Defense Commission or designee; and
- (1)(B)(xiii)(o) the court's general counsel or designee.

(1)(B)(xiv) The **Committee on Court Forms** shall consist of:

- (1)(B)(xiv)(a) one district court judge;
- (1)(B)(xiv)(b) one court commissioner;
- (1)(B)(xiv)(c) one juvenile court judge;
- (1)(B)(xiv)(d) one justice court judge;
- (1)(B)(xiv)(e) one court clerk;
- (1)(B)(xiv)(f) one appellate court staff attorney;
- (1)(B)(xiv)(g) one representative from the Self-Help Center;
- (1)(B)(xiv)(h) the State Law Librarian;

- (1)(B)(xiv)(i) the Court Services Director;
- (1)(B)(xiv)(j) one representative from a legal service organization that serves low-income clients;
- (1)(B)(xiv)(k) one paralegal;
- (1)(B)(xiv)(l) one educator from a paralegal program or law school;
- (1)(B)(xiv)(m) one person skilled in linguistics or communication; and
- (1)(B)(xiv)(n) one representative from the Utah State Bar.

(1)(B)(xv) The **Working Interdisciplinary Network of Guardianship**

**Stakeholders (WINGS)** performs the duties described in rule X-XXXX, and shall consist of:

(1)(B)(xv)(a) Judiciary representatives:

- (i) two or more district court judges;
- (ii) two or more district court judicial support staff with experience in guardianship matters;
- (iii) one representative from the Guardianship Reporting and Monitoring Program (GRAMP)
- (iv) one representative from the Court Visitor Program; and
- (v) the General Counsel or designee.

(1)(B)(xv)(b) Community stakeholder representatives:

- (i) one representative from Adult Protective Services;
- (ii) one representative from Disability Law Center;
- (iii) one representative from Adult and Aging Services;
- (iv) one representative from Office of Public Guardian;
- (v) one representative from the Utah State Bar;
- (vi) one representative from Office of the Attorney General;
- (vii) one representative from the Utah legislature;
- (viii) one representative from the Utah Commission on Aging;
- (ix) one representative from Utah Legal Services; and
- (x) the Long-Term Care Ombudsman or designee.

(1)(B)(xv)(c) Individual community representatives:

three or more community stakeholders representing mental health community, medical community, private legal community that specializes in guardianship matters, aging-adult services community, educator from a legal program or law school, organization serving low-income, minorities, or marginalized communities, citizens under or involved in guardianship, and other organizations with a focus including, but not limited to guardianship, aging, legal services, or disability.

- (1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.
- (1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.
- (1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.
- (2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.
- (3) **General provisions.**
- (3)(A) **Appointment process.**
- (3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:
- (3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;
- (3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information

- regarding the prospective appointee's present and past committee service;
- (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and
- (3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.
- (3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.
- (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.
- (3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.
- (3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.

*Effective May 12, 2020*



## **Rule X-XXX. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).**

### **Intent:**

To bring together stakeholders from various disciplines to improve the state's guardianship and conservatorship services and processes.

### **Applicability:**

This rule shall apply to all members of the WINGS committee.

### **Statement of the Rule:**

- (1) The WINGS committee shall provide leadership to identify the needs in guardianship and conservatorship matters and to secure and coordinate resources to meet those needs.
- (2) The WINGS committee shall:
  - (2)(A) assess available services, forms, and rules for guardianship and conservatorship and gaps in those services, forms, and rules;
  - (2)(B) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving guardianship and conservatorship processes;
  - (2)(C) support policy initiatives for the enhancement of guardianship, conservatorship, and related infrastructure;
  - (2)(D) identify and develop education and outreach opportunities regarding guardianships, conservatorships, and their alternatives;
  - (2)(E) provide training and support to those engaging the guardianship/conservatorship system;
  - (2)(F) promote high standards for guardians and conservators;
  - (2)(G) promote collaboration between WINGS members and other stakeholders;
  - (2)(H) regularly evaluate the needs and priorities of WINGS's efforts; and
  - (2)(I) strive to maintain interdisciplinary representation of members drawn from the organizations, entities, and individuals related to guardianship and conservatorship matters.
- (3) The Chair of WINGS shall be a Utah District Court judge.
- (4) The WINGS Executive Committee shall consist of the Utah WINGS chair, the GRAMP Coordinator, the Court Visitor Program Coordinator, a staff attorney from the Administrative Office of the Courts, and up to three members of Utah WINGS, as determined by the chair.
- (5) One of the purposes of WINGS is to receive input from community stakeholder organizations. Community stakeholder organizational representatives (Rule 1-205(1)(B)(xv)(b)) will be designated by their organizations and not subject to the term limitations of Rule 1-205(3)(B).

**Effective 5/8/2018**

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

<p>(1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.</p>	
<p>(2)</p> <ul style="list-style-type: none"><li>(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.</li><li>(b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.</li><li>(c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.</li><li>(d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.</li></ul>	<p>(b) – the wording here is inconsistent with the wording in Code 75-5-407 (dealing with conservators), which says, “<i>Unless the person to be protected has already retained counsel...</i>”</p> <p>What capacity must the respondent have in order to <u>choose</u> their own attorney?</p>
<p>(3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:</p> <ul style="list-style-type: none"><li>(a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;</li><li>(b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or</li><li>(c) upon an express finding of good cause, the court orders otherwise.</li></ul>	
<p>(4) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.</p>	<p>Confusion over what is meant by a “physician appointed by the court.”</p>

<p>(5)</p> <p>(a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.</p>	<p>Define what is meant by "in person"?</p> <p>A respondent cannot be excused from the hearing if the respondent does not have counsel (per (5)(d)). Does this need to be made clearer?</p>
<p>(b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:</p> <p>(i) fourth stage Alzheimer's Disease;</p> <p>(ii) extended comatosis; or</p> <p>(iii)</p> <p>(A) an intellectual disability; and</p> <p>(B) an intelligence quotient score under 25.</p>	<p>Fourth stage Alzheimer's and an IQ score of 25 are not legitimate criteria. Update medical criteria to language used in diagnoses.</p> <p>Consider adding in functional criteria?</p>
<p>(c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.</p>	<p>Discuss including clarifying language that addresses the issues surrounding Court Visitors being called to testify.</p>
<p>(d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:</p> <p>(i) the person is the biological or adopted child of the petitioner;</p> <p>(ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;</p> <p>(iii) the person appears in court with the petitioner;</p> <p>(iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;</p> <p>(v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);</p> <p>(vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and</p> <p>(vii) the court appoints a visitor under Subsection (4).</p>	<p>Top line, add language: "Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if <b>each of the following criteria are met:</b>"</p> <p>(i) is there value in adjusting/adding criteria to account for parents caring for adult children between the ages of 18-21 with incapacity?</p> <p>(iii) – this means that if the respondent has been excused from the hearing, per (5)(a), counsel cannot be waived. Should this be made clearer?</p> <p>(iv) – What does this look like? If is expressed only during the hearing? To a Court Visitor?</p> <p>(v) – The 60 days language is confusing and should be clarified.</p> <p>(vi) – keep the "and" and the end of the sentence, in addition to adding the redline language above.</p>

Recommendation	Status in Utah	Priority Level (High, Med, Low)
<b>1.1</b> The National Guardianship Network (NGN) should convene a task force with representatives that include NGN members; national disability and aging organizations; persons currently at risk of or formerly subject to guardianship; and family and professional guardians to develop an enforceable bill of rights.		
<b>1.2</b> States and courts must ensure that all judicial proceedings which may impact any of an adult's rights to legal capacity provide meaningful due process.		
<b>1.3</b> States and courts must ensure full access to a full or partial restoration of rights as soon as possible after a right is legally restricted.		

<b>Recommendation</b>	<b>Status in Utah</b>	<b>Priority Level (High, Med, Low)</b>
<b>2.1</b> States, the federal government, and the National Guardianship Network organizations should provide education, training, and outreach programs about supported decision-making.		
<b>2.2</b> Governments and organizations should expand supported decision-making practice and principles through promotion and expansion of sustainable (funded) pilot projects targeting diverse populations.		
<b>2.3</b> Statutes, court rules, policies, and processes in every state should require courts to consider supported decision-making as one of the alternatives to guardianship at appointment and periodically thereafter		

Recommendation	Status in Utah	Priority Level (High, Med, Low)
<p><b>3.1</b> States should adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Uniform Act), including the provisions mandating representation by a lawyer of all adult respondents. State guardianship laws need to ensure better avenues, stronger protections, and greater independence for individuals being considered for guardianship, and persons seeking to terminate or modify guardianship orders.</p>		
<p><b>3.2</b> States should eliminate plenary guardianship, allowing people to retain the maximum of rights, and if guardianship is imposed, require tailored guardianship orders in all cases.</p>		
<p><b>3.3</b> Every state should have a guardianship diversion program tasked with facilitating alternatives to guardianship, reducing the likelihood that guardianships will be granted where not necessary, and monitoring for the continued need for the guardianship. Such programs could be operated as a multi-disciplinary approach in collaboration with schools, adult protective services, healthcare, aging and disability service providers, the legal community, and other entities.</p>		
<p><b>3.4</b> States should provide accessible, practical and tailored training to individuals and entities known to be pipelines to plenary guardianship (e.g., lawyers, judges, schools, nursing homes, health care providers, evaluators, investigators, adult protective services) on (1) the impact of guardianship; (2) legal and ethical obligations to exhaust alternatives to guardianship before pursuing it; (3) alternatives to guardianship including supported decision-making, formal and informal services and supports, advance directives, voluntary fiduciaries, other legal and non-legal interventions; and (4) orders that are limited in scope and limited in time.</p>		

	Recommendation	Status in Utah	Priority Level (High, Med, Low)
4.1	The state's highest court should require ongoing collection of timely guardianship data.		
4.2	States and courts should enhance the wellbeing and safety of all adults who have court-appointed guardians by implementing a post-appointment, person-centered monitoring system.		
4.3	The state's highest court and state legislature should establish, and identify or appropriate funding for, advocacy measures to safeguard the rights of adults subject to guardianship and to augment the court's review process.		
4.4	The U.S. Department of Health and Human Services Administration for Community Living should take the lead, in partnership with relevant federal agencies, national aging and disability organizations, and Protection and Advocacy agencies, to promote state and local collaborations at the policy level concerned about adult abuse or guardianship (i.e., adult/elder abuse multi-disciplinary and multi-system networks and teams, Working Interdisciplinary Networks of Guardianship Stakeholders) to address abuse by guardians		

Recommendation	Status in Utah	Priority Level (High, Med, Low)
<p><b>5.1</b> States should regulate court-appointed professional guardians through licensure or certification, or both, with sufficient funding for an agency to implement and oversee licensure and certification and to vet, train, test and discipline these guardians, with flexibility in implementation, and with standards for education and training.</p>		
<p><b>5.2</b> National Guardianship Network member organizations should address fiduciary conflicts by expanding, developing, and encouraging education for all stakeholders.</p>		
<p><b>5.3</b> State courts and other stakeholders should encourage training, education and support to enhance autonomy, and reduce reliance on approaches that restrict individual rights.</p>		
<p><b>5.4</b> The National Center for State Courts and National College of Probate Judges should support states to develop rules, forms and procedures to implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.</p>		



	Recommendation	Status in Utah	Priority Level (High, Med, Low)
6.1	Congress should establish a Guardianship Court Improvement Program modelled on the successful Child Welfare Court Improvement Program, and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship.		
6.2	<p>The Guardianship Court Improvement Program should include:</p> <ul style="list-style-type: none"> <li>• Inter-agency and multi-disciplinary collaboration among guardianship stakeholders, building upon groups such as Working Interdisciplinary Networks of Guardianship Stakeholders.</li> <li>• Funding authorized at a level similar to the \$30 million per year currently authorized for the Child Welfare Court Improvement Program and allocated on a formula basis.</li> <li>• Wide latitude given to participating courts to set priorities and create implementation plans after an initial assessment and planning period.</li> </ul>		
6.3	The Guardianship Court Improvement Program legislation should include creation of a national, non-profit capacity-building and/or resource center with appropriate expertise to provide training, technical assistance, and collaborative learning opportunities to participating courts and to coordinate national efforts.		

**Fourth National Guardianship Summit:  
Maximizing Autonomy and Ensuring  
Accountability**

**May 2021**

**Recommendations Adopted by Summit  
Delegates**

## Preface

During the week of May 10, 2021, the [National Guardianship Network](#), with the support of the State Justice Institute, the Borchard Foundation Center on Law and Aging, and the Syracuse University College of Law, brought together 125 advocates, family guardians, judges, lawyers, scholars, and other stakeholders for the [Fourth National Guardianship Summit](#). These participants gathered virtually for four days to discuss the current state of the nation's adult guardianship system and develop recommendations for reform and improvement around the theme of maximizing autonomy and ensuring accountability.

Six working groups convened during the week to address the rights of persons subject to guardianship; supporting decision-making; limited guardianship, protective arrangements, and diverting guardianship pipelines; rethinking monitoring and addressing abuse by guardians; fiduciary responsibilities and tensions; and developing guardianship court improvement programs.

Seventy-five summit participants served as delegates for National Guardianship Network member and other sponsoring organizations, and had the opportunity to vote on the draft recommendations developed by each working group. On the final day of the summit, for five hours participants discussed, debated, and amended the recommendations offered by the working groups. At the conclusion of the summit, delegates approved the following **22 final recommendations to improve and reform the adult guardianship system** in the United States.

For purposes of these recommendations:

**Guardianship** includes adult guardianship, conservatorship and any other corresponding terms used by a state or tribe. The term includes both guardianship of the person and guardianship of the property unless otherwise specified.

**State or states** includes the District of Columbia and all U.S. territories.

**Supported decision-making** means “a series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to make and communicate to others decisions about the individual’s life.” (Prof. Robert Dinerstein)

The National Guardianship Network intends to reach out to Indian tribes to discuss the recommendations and how the recommendations may be applicable to various tribes.

## Recommendations of the Fourth National Guardianship Summit

### I. Rights-Based Guardianships - Enhancing Rights of Persons Subject to Guardianship

Recommendation 1.1: The National Guardianship Network (NGN) should convene a task force with representatives that include NGN members; national disability and aging organizations; persons currently at risk of or formerly subject to guardianship; and family and professional guardians to develop an enforceable bill of rights.

- The bill of rights will identify the rights of adults subject to guardianship for passage by state legislatures, inclusion in court rules and policies, and adopted in state guardianship regulatory, licensing, training, monitoring and reporting requirements, as applicable. Such bill of rights should be in plain language understandable by adults subject to guardianship.
- The task force will identify those inherent rights which cannot be restricted, those rights which can be restricted but cannot be delegated, and those rights which can be restricted but only with further due process protections which ensure the decision is consistent with the adult's preferences and values, regardless of a determination of legal decision-making status or appointment of a guardian.
- The task force will consider, but not be limited to, the following specific rights to ensure dignity, privacy, autonomy, and the opportunity to fully participate in all decisions which affect them: marriage, divorce, relationships and association, communication, due process and notice, voting, education, employment, health care (including reproductive health and end of life), place of residence, community integration, free practice of religion, and personal choices.

Recommendation 1.2: States and courts must ensure that all judicial proceedings which may impact any of an adult's rights to legal capacity provide meaningful due process, which includes:

- Right to a qualified and compensated lawyer, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing.
- Reasonable notice provided in the adult's preferred language in an understandable and accessible format, served in a manner that ensures timely receipt.
- An impartial, valid, and reliable assessment by a compensated and qualified person conducting a capacity assessment who has knowledge and training about decision-making in the area(s) related to the proceedings, inclusive of the adult's preferred reasonable accommodations and method of communication.

- Protection of the adult's right to participate in the proceeding consistent with their preferences, including preferred communication accommodations, after the right to appear and the purpose of the proceeding have been explained to the adult through the means the adult understands.

Recommendation 1.3: States and courts must ensure full access to a full or partial restoration of rights as soon as possible after a right is legally restricted. The process to restore rights includes:

- A clearly defined statute, regulation, court rule or policy which sets forth the procedures and the evidentiary burden and timelines.
- Representation of the adult whose rights were legally restricted by a qualified and compensated lawyer, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing.
- A process triggered by informal or formal means.
- Notice to the adult whose rights have been legally restricted of the opportunity to restore their rights, annually and upon a change in the applicable law, regulation, rule or policy.
- A meaningful periodic review by a court or other appropriate entity, inclusive of the perspective of the adult whose rights were restricted, of whether it is necessary to continue to restrict the adult's rights.
- A guardian trained on the rights restoration process and the guardian's obligations in regards to the restoration of rights, the training to occur initially upon appointment and upon a change in the applicable law, regulation, rule or policy.
- Courts and lawyers trained on the rights restoration process.
- A prohibition on guardian interference with the restoration of rights, and as appropriate guardian facilitation of the restoration of rights.

Any party seeking to restore any right or rights of an adult whose rights have been legally restricted need only demonstrate the right to restoration by a preponderance of the evidence.

## **II. Supporting Decision-Making**

Recommendation 2.1: States, the federal government, and the National Guardianship Network organizations should provide education, training, and outreach programs about supported decision-making (see preface definition).

- Direct education, training and outreach to stakeholders including state courts, guardians, the education system, families, anyone at risk of or subject to guardianship, health care providers, and other third parties, including government officials, financial institutions, advocates and protective entities, lawyers, Working Interdisciplinary Networks of Guardianship Stakeholders, and the general public.

- Develop campaigns and training curricula around availability, feasibility, and utilization of supported decision-making.
- Include in education, training, and outreach experiences from and presented by decision-makers and supporters.
- Target education, training, and outreach to marginalized populations and individuals across the lifespan/spectrum of support for diversity of disabilities.

Recommendation 2.2: Governments and organizations should expand supported decision-making practice and principles through promotion and expansion of sustainable (funded) pilot projects targeting diverse populations.

- Focus pilot programs on diverse populations as defined by differing disability issues and conditions (including, but not limited to, intellectual and developmental, physical, psycho-social, mental health, substance use, traumatic brain injury, communication, dementia, and other cognitive impairments), linguistic and cultural and intersectional identities, and across the life span.
- Establish, replicate, and scale up promising or best practices for sustainable supported decision-making practices and models.
- Identify gaps where supported decision-making best practices are not evident or used (e.g., older adults at risk of guardianship, geographical, and other marginalized populations) as a basis for determining funding priorities.
- Fund pilot projects targeting older adults at risk of guardianship.

Recommendation 2.3: Statutes, court rules, policies, and processes in every state should require courts to consider supported decision-making as one of the alternatives to guardianship at appointment and periodically thereafter by requiring that:

- Petitioners for guardianship plead affirmatively that supported decision-making as one of the alternatives has been tried or why it is not feasible.
- Before guardianship can be imposed, the court find by clear and convincing evidence that supported decision-making is not feasible.
- Courts institute procedures for periodic review of the need to continue guardianship, which includes an affirmative determination that supported decision-making and other less restrictive alternatives are not feasible.

Recommendation 2.4: The Department of Justice and other federal and state agencies should recognize that supported decision-making can be a reasonable accommodation under the Americans with Disabilities Act of 1990, as amended, in supporting an individual in making their own decisions and retaining their right to do so.

### **III. Limited Guardianship, Protective Arrangements and Diverting Pipelines**

Recommendation 3.1: States should adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Uniform Act), including the provisions mandating representation by a lawyer of all adult respondents. State

guardianship laws need to ensure better avenues, stronger protections, and greater independence for individuals being considered for guardianship, and persons seeking to terminate or modify guardianship orders.

- Key provisions of the Uniform Act include, among others: (1) prohibit guardianships where less restrictive alternatives would meet an adult's functional needs; (2) require specific court findings before certain critical rights (e.g., to marry, vote, choose visitors) are abridged; (3) require petitioners to state whether less restrictive alternatives have been tried and justify any failure to do so; (4) create mechanisms that adults subject to guardianship and others can use to trigger modification or termination of an order; (5) clarify that a lawyer for a respondent, or adults subject to guardianship, must represent the adult's wishes; and (6) enable protective orders (or single transaction orders) instead of guardianship, thus expanding alternatives to guardianship.
- States should align practice with the requirements of the Uniform Act.
- Standardized evaluations and forms should contain details in plain language that provide courts with sufficient information to fully understand the adult's abilities.
- In all guardianship proceedings, including termination or modification, state law should require the appointment of a qualified and compensated lawyer to represent the adult's expressed wishes, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing.

Recommendation 3.2: States should eliminate plenary guardianship, allowing people to retain the maximum of rights, and if guardianship is imposed, require tailored guardianship orders in all cases.

- The person should retain the right to make certain choices such as association, free practice of religion, personal choice, marriage, and voting unless the court makes a specific finding that a restriction is essential.
- All jurisdictions should review existing plenary guardianship orders to determine if continuation is justified, with the presumption being that continuation is not warranted.

Recommendation 3.3: Every state should have a guardianship diversion program tasked with facilitating alternatives to guardianship, reducing the likelihood that guardianships will be granted where not necessary, and monitoring for the continued need for the guardianship. Such programs could be operated as a multi-disciplinary approach in collaboration with schools, adult protective services, healthcare, aging and disability service providers, the legal community, and other entities.

- Diversion should include education and facilitation about specific tools such as use of powers of attorney, health care consent statutes, and supported decision-making.
- The diversion program should design and implement ongoing training and public information about alternatives to guardianship.

Recommendation 3.4: States should provide accessible, practical and tailored training to individuals and entities known to be pipelines to plenary guardianship (e.g., lawyers, judges, schools, nursing homes, health care providers, evaluators, investigators, adult protective services) on (1) the impact of guardianship; (2) legal and ethical obligations to exhaust alternatives to guardianship before pursuing it; (3) alternatives to guardianship including supported decision-making, formal and informal services and supports, advance directives, voluntary fiduciaries, other legal and non-legal interventions; and (4) orders that are limited in scope and limited in time.

#### **IV. Rethinking Guardianship Monitoring and Addressing Abuse**

Recommendation 4.1: The state's highest court should require ongoing collection of timely guardianship data through the following steps:

- Establish a multidisciplinary user group to review and adopt data standards reflective and inclusive of the community's diversity, based upon the National Open Court Data Standards and the Conservatorship Accountability Project standards.
- Develop and implement technology that includes mechanisms to validate reports, flag potential problems, and track monitoring.
- Establish a multidisciplinary user group reflective and inclusive of the community's diversity to develop monitoring reports of the status and well-being of adults, and to manage cases effectively, develop and evaluate policy, conduct research, and budget.

Recommendation 4.2: States and courts should enhance the wellbeing and safety of all adults who have court-appointed guardians by implementing a post-appointment, person-centered monitoring system that includes the following elements:

- Uniform statewide forms available online and in hard copy, in multiple languages, with clear instructions and sample completed forms in plain language.
- Written care and financial management plans serving as baselines for subsequent reports, which can be filed electronically or in hard copy.
- In addition to regular review of guardian reports and accountings, periodic in-person visits, verification of financial reports, and status review of the appropriateness of the choice of guardian and implementation of less restrictive options to enhance autonomy.
- An independent statewide entity to investigate the guardian's conduct in appropriate cases.

Recommendation 4.3: The state's highest court and state legislature should establish, and identify or appropriate funding for, advocacy measures to safeguard the rights of adults subject to guardianship and to augment the court's review process, including:



- Annual judicial in-person review.
- Continuing representation by a qualified lawyer for the adult appointed at the outset of the case, preferably a legal services, public defender, or other public service lawyer to minimize expenses to the estate.
- A complaint process for response to guardianship conduct that is accessible, user-friendly, transparent and effective for all, including those with access and functional needs which is in compliance with Title V of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.
- An advocacy program for adults subject to guardianship using trained volunteers to visit and advocate for the adult's rights and preferences throughout the case, similar to the Court-Appointed Special Advocate Program (CASA) for children, but which does not supplant the right to a lawyer.

Recommendation 4.4: The U.S. Department of Health and Human Services Administration for Community Living should take the lead, in partnership with relevant federal agencies, national aging and disability organizations, and Protection and Advocacy agencies, to promote state and local collaborations at the policy level concerned about adult abuse or guardianship (i.e., adult/elder abuse multi-disciplinary and multi-system networks and teams, Working Interdisciplinary Networks of Guardianship Stakeholders) to address abuse by guardians:

- Developing protocols for case reporting and management that include the collection and recording of reports made, identification of the lead system responsible, and facilitation of cross-referrals as necessary.
- Ensuring membership representation from adult protective services, law enforcement, the courts, and self-advocates or self-advocacy organizations.
- Educating professionals and the public about how to report abuse by guardians and how the problem is addressed by its multiple responsible systems.

## **V. Addressing Fiduciary Responsibilities and Tensions**

Recommendation 5.1: States should regulate court-appointed professional guardians through licensure or certification, or both, with sufficient funding for an agency to implement and oversee licensure and certification and to vet, train, test and discipline these guardians, with flexibility in implementation, and with standards for education and training.

Recommendation 5.2: National Guardianship Network member organizations should address fiduciary conflicts by expanding, developing, and encouraging education for all stakeholders about:

- Person-centered planning and supported decision-making.
- Options for alternative dispute resolution.
- Less restrictive alternatives.

- Services delivered in the most integrated setting, in compliance with the Americans with Disabilities Act of 1990, as amended.
- Tools for resolving fiduciary conflict, including mediation, eldercaring coordination, Protection and Advocacy agencies, appointment of a guardian ad litem, use of Achieving a Better Life Experience (ABLE) accounts and special needs trusts.

States and organizations should address fiduciary conflicts through revisions of the relevant uniform acts, and statutes and rules addressing the gap in subject matter jurisdiction when conflict issues arise.

Recommendation 5.3: State courts and other stakeholders should encourage training, education and support to enhance autonomy, and reduce reliance on approaches that restrict individual rights to:

- Provide information on less restrictive alternatives to guardianship to adults who use or may use these arrangements, including supported decision-making, as well as family members, lawyers, judges and other professionals.
- Establish options for assistance with completing and submitting guardianship reporting forms, such as volunteer lawyers, law school clinics, lawyer for the day, and booklets for lay people.
- Support, educate, and train family and friends about guardianship issues.
- Encourage more states to establish Working Interdisciplinary Networks of Guardianship Stakeholders groups.

Recommendation 5.4: The National Center for State Courts and National College of Probate Judges should support states to develop rules, forms and procedures to implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

## **VI. Guardianship Court Improvement Programs**

Recommendation 6.1: Congress should establish a Guardianship Court Improvement Program modelled on the successful Child Welfare Court Improvement Program, and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship by:

- Effectuating consistent and meaningful data collection.
- Improving oversight and accountability.
- Avoiding unnecessary or overbroad guardianship.
- Enhancing collaboration and education among courts, agencies, and organizations that have an impact on adults subject to, or potentially subject to, guardianship.

Recommendation 6.2: The Guardianship Court Improvement Program should include:

- Inter-agency and multi-disciplinary collaboration among guardianship stakeholders, building upon groups such as Working Interdisciplinary Networks of Guardianship Stakeholders.
- Funding authorized at a level similar to the \$30 million per year currently authorized for the Child Welfare Court Improvement Program and allocated on a formula basis.
- Wide latitude given to participating courts to set priorities and create implementation plans after an initial assessment and planning period.

Recommendation 6.3: The Guardianship Court Improvement Program legislation should include creation of a national, non-profit capacity-building and/or resource center with appropriate expertise to provide training, technical assistance, and collaborative learning opportunities to participating courts and to coordinate national efforts.