

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, April 20, 2023, 12:00 pm | 2 hours |

AGENDA

	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none">Housekeeping, minutesWelcome guests & new members:<ul style="list-style-type: none">Sue Crismon, Office of Legal Services InnovationAlianne Sipes, Long-term Care OmbudsmanJudge Brian Cannell, 1st District Court	Judge Kelly	– <i>WINGS Minutes (February 2023 – draft)</i>
12:10	Highlight: Attorneys for Incapacitated Individuals		
	<ul style="list-style-type: none">Legal “sandbox” to complement the Guardianship Signature Program	Sue Crismon	
	<ul style="list-style-type: none">Legal Aid funding changes	Wendy Naylor	
12:50	WINGS Membership		
	<ul style="list-style-type: none">WINGS term limits	Judge Kelly Shonna Thomas	- <i>Rules 1-205 and 3-421</i> - <i>WINGS Membership List</i>
1:20	New Projects		
	<ul style="list-style-type: none">Planning the 2023 New Judge Orientation (NJO)	Group Discussion	- <i>NJO 2021 Materials</i> - <i>Judges’ Conference 2022 Materials</i>
1:50	Other Business		
	<ul style="list-style-type: none">CJA Rule updatesUtah Code 75-5-303 – Deferred to June meeting	Shonna Thomas	
2:00	Meeting adjourned		

Next meeting:

June 16, 2023 (via WebEx)

UTAH COURTS

UCJA Rule 1-205 (Code of Judicial Administration)

This rule is "Out for Comment" ([view](#))

Rule 1-205. Standing and Ad Hoc Committees.

Effective: 5/23/2022

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) Uniform Fine Committee;

(1)(A)(ii) Ethics Advisory Committee;

(1)(A)(iii) Judicial Branch Education Committee;

(1)(A)(iv) Court Facility Planning Committee;

- (1)(A)(v) Committee on Children and Family Law;
 - (1)(A)(vi) Committee on Judicial Outreach;
 - (1)(A)(vii) Committee on Resources for Self-represented Parties;
 - (1)(A)(viii) Language Access Committee;
 - (1)(A)(ix) Guardian ad Litem Oversight Committee;
 - (1)(A)(x) Committee on Model Utah Civil Jury Instructions;
 - (1)(A)(xi) Committee on Model Utah Criminal Jury Instructions;
 - (1)(A)(xii) Committee on Pretrial Release and Supervision; and
 - (1)(A)(xiii) Committee on Court Forms;
 - (1)(A)(xiv) Committee on Judicial Fairness and Accountability; and
 - (1)(A)(xv) Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)
- (1)(B) Composition.

Condensed - subsections (1)(B)(i) - (1)(B)(xiv) removed for readability.

(1)(B)(xv) The **Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)** performs the duties described in rule 3-421, 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:

- (i) mental health community;
- (ii) medical community;
- (iii) private legal community that specializes in guardianship matters;
- (iv) aging-adult services community;
- (v) educator from a legal program or law school;
- (vi) organization serving low-income, minorities, or marginalized communities;
- (vii) citizens under or involved in guardianship; and
- (viii) 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. Except for the Committee on Judicial Fairness and Accountability, 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.

UTAH COURTS

UCJA Rule 3-421 (Code of Judicial Administration)

Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Effective: 11/1/2022

Intent:

To establish a committee of 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) **Chair.** The Chair of WINGS shall be a Utah District Court judge.

(4) **Executive Committee.** 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) **Community stakeholders.** 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).

Last Name	First Name	Representing	Designation	Original Appointment	Current Appointment	Term End	Rule Reference
Bahr	Shane	AOC	Standing Committee Member				Rule 1-205 (3)(A)(i)
Box	Sarah	Self Help Center	Standing Committee Member	02/17/22	02/17/22		Rule 1-205 (1)(B)(xv)(c)(viii)
Brady	James	4th District Judge	Standing Committee Member	09/01/15	09/01/21		Rule 1-205 (1)(B)(xv)(a)(i)
Brown	Deborah	Guardianship Services	Standing Committee Member	04/15/21	04/15/21		Rule 1-205 (1)(B)(xv)(c)(iii)
Cannell	Brian	1st District Judge	Standing Committee Member	TBD	TBD		Rule 1-205 (1)(B)(xv)(a)(i)
Christiansen	Brant	USB - Elder Law Section	Executive Committee Member	08/20/20	08/20/20	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(v)
Clayton	TantaLisa	Utah Legal Services	Standing Committee Member	12/01/17	12/04/20	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(ix)
Cox	Katie	Disability Law Center	Standing Committee Member	10/21/21	10/21/21	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(ii)
Denton	Rob	Attorney at Law	Standing Committee Member	04/26/17	04/26/20		Rule 1-205 (1)(B)(xv)(c)(iii)
Embree	Lindsay	U of U Medical School	Standing Committee Member	10/20/22	10/20/22		Rule 1-205 (1)(B)(xv)(c)(ii)
Ence	Rob	UCOA	Standing Committee Member	12/01/19	12/01/22	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(viii)
Fayles	Wendy	NAMI	Standing Committee Member	8/1/2013*	08/12/21		Rule 1-205 (1)(B)(xv)(c)(i)
Francis	Leslie	U of U Law School	Standing Committee Member	04/15/21	04/15/21		Rule 1-205 (1)(B)(xv)(c)(v)
Haacke	Stacy	AOC	Executive Committee Member				Rule 1-205 (1)(B)(xv)(a)(v)
Holmgren	Nels	DAAS	Executive Committee Member	8/1/2013*	08/12/21	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(iii)
Johnson	Rachelle	Probate Clerk - 4th D	Standing Committee Member	02/16/23	02/16/23		Rule 1-205 (1)(B)(xv)(a)(ii)
Kelly	Keith	3rd District Judge	WINGS Chair	02/01/18	02/01/21		Rule 1-205 (1)(C)
Larsen	Eve	Davis Health Dept.	Standing Committee Member	06/16/22	06/16/22		Rule 1-205 (1)(B)(xv)(c)(iv)
Mendenhall	Nan	APS	Executive Committee Member	8/1/2013*	08/12/21	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(i)
Naylor	Wendy	OPG	Standing Committee Member	10/20/22	10/20/22	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(iv)
Ormsby	Alan	AARP	Standing Committee Member	10/01/19	10/01/22		Rule 1-205 (1)(B)(xv)(c)(iv)
Riggle	Andrew	Disability Law Center	Executive Committee Member	12/01/16	12/01/22	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(ii)

Sargent	Keri	AOC	Executive Committee Member				Rule 1-205 (3)(A)(i)
Sipes	Alianne	LTCO	Standing Committee Member	02/16/23	02/16/23	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(x)
Thomas	Shonna	AOC	Executive Committee Member / Staff	09/01/19	09/01/22		Rule 1-205 (1)(B)(xv)(a)(iii)
Thomson	Katie	Probate Clerk - 3rd D	Standing Committee Member	02/18/21	02/18/21		Rule 1-205 (1)(B)(xv)(a)(ii)
Thorson	Holly	Court Visitor Program	Standing Committee Member	01/27/22	01/27/22		Rule 1-205 (1)(B)(xv)(a)(iv)
Toledo	James	Division of Indian Affairs	Standing Committee Member	09/01/15	09/01/21		Rule 1-205 (1)(B)(xv)(c)(vi)
Weiler	Todd	State Legislature	Standing Committee Member	04/01/17	04/01/20	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(vii)
Wilkes	Michelle	Court Visitor Program	Executive Committee Member	04/01/17	04/01/20		Rule 1-205 (1)(B)(xv)(a)(iv)
Wooton	Kaye Lynn	MFCU	Standing Committee Member	10/01/16	10/01/22	Determined by Agency	Rule 1-205 (1)(B)(xv)(b)(vi)

Guardianship: In The Courts



1

INTRODUCTION

An adult is presumed to have legal capacity to make decisions in life.

- This can change with evidence the individual is deemed incapacitated.
- A substitute decision-maker (e.g., guardian) may be appointed.

Guardianship statutes are an example of the state's inherent *parens patriae* power, delegated to the courts, to protect those who cannot care for themselves.

- The court has an ongoing obligation and responsibility toward protected persons under a guardianship order.

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INCAPACITY DEFINED

Utah Code § 75-1-201(22)

"Incapacitated" or "incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions; or
- (c) provide for necessities such as food, shelter, clothing, health care, or safety.

3

GUARDIANSHIP FROM THE BENCH

General Considerations

- **Guardianship vs. Conservatorship**
- **Limited vs. Plenary**
- **Adult vs. Minor**

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GUARDIANSHIP FROM THE BENCH

Specifics

- Case Timelines
- District Differences (e.g., Probate Judge)
- Key Guardianship Statutes

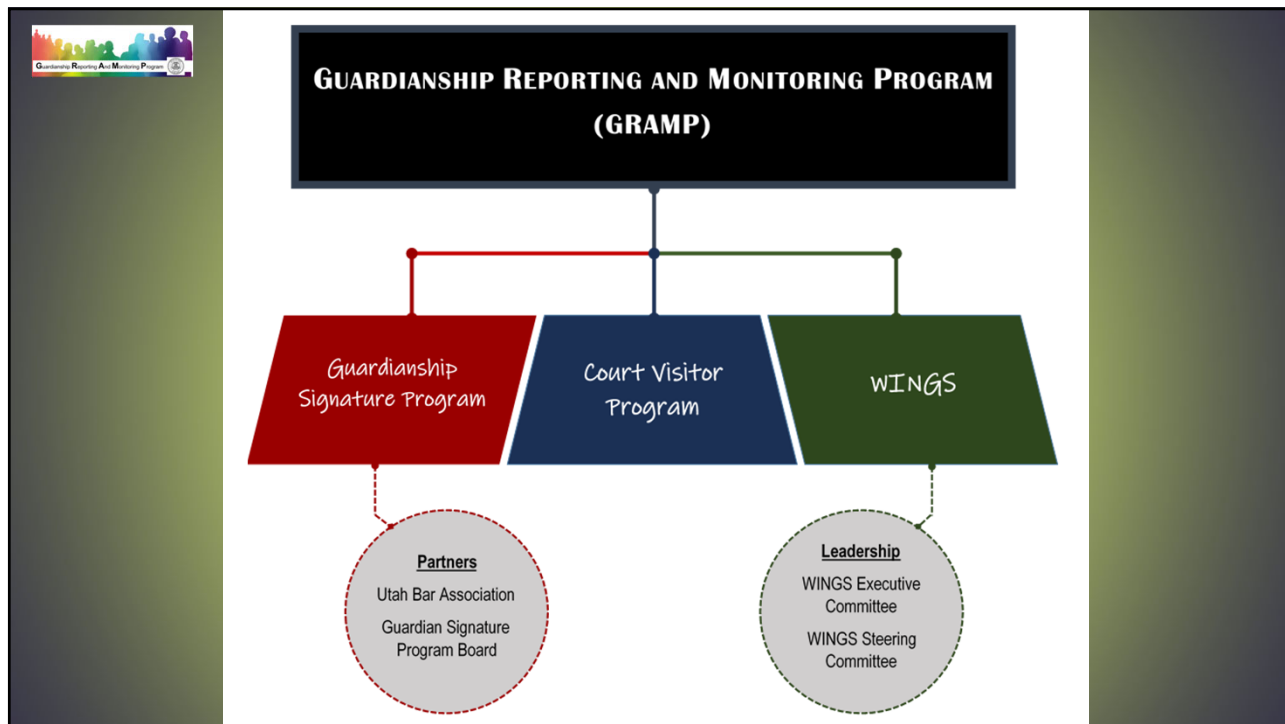
5



Guardianship Reporting And Monitoring Program



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GUARDIANSHIP SIGNATURE PROGRAM (GSP)

- Utah law requires that a respondent be represented by an attorney.
- The GSP connects volunteer attorneys with respondents who need an attorney but do not have one of their own choosing.
- GSP is a partnership between the Utah State Bar and the AOC.
- The GSP serves all 8 districts in the state of Utah.

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GSP EXCEPTIONS

The requirement for an attorney can be waived if...

1. The respondent is the biological or adopted child of the petitioner.
2. The respondent's estate does not exceed \$20,000.
3. The respondent appears in court with the petitioner.
4. The respondent has the opportunity to communicate acceptance of a guardian.
5. The court has tried to appoint an attorney for 60 days without any volunteers.
6. The court is satisfied that counsel is not necessary to protect the respondent's interests.

AND

7. The court appoints a **Court Visitor**.

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COURT VISITOR PROGRAM (CVP)

- **The CVP assigns volunteers ("Court Visitors") to investigate guardianship cases, under the direction of the judge.**
- **The CVP accommodates requests for Court Visitors in all 8 districts.**
- **Court Visitors are neutral, unbiased, special appointees of the court.**
- **A Court Visitor can be appointed before or after guardianship is established, but not during mediation.**

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REQUESTING A COURT VISITOR (CV)

- Any party can request a CV OR the judge can decide one is needed.
- CVs conduct interviews, gather information, and report back to the judge.
- CVs are requested for 5 different case types:
 - Excuse the Respondent
 - Circumstances
 - Well-Being
 - Audit
 - Whereabouts

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WINGS

- Working Interdisciplinary Network of Guardianship Stakeholders.
- There are several WINGS groups throughout the country (e.g., Utah WINGS).
- Stakeholders from various disciplines working to improve guardianship and conservatorship services and processes.
- Executive Committee, Steering Committee, and ad hoc subcommittees

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CURRENT WINGS PROJECTS

- **Annual report and Court Visitor report review process**
- **Guardian/Conservator reminder notices**
- **The guardianship test & packet for new guardians**
- **Accounting reports – revision**

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GUARDIANSHIPS

Respondent's Attendance at the Hearing

The respondent must attend the hearing unless there is clear and convincing evidence from a physician that:

- The respondent has fourth stage Alzheimer's disease;
- The respondent is in an extended coma, or
- The respondent has an intellectual disability with an intelligence quotient score under 25

Otherwise, the court must appoint a court visitor to investigate the ability of the respondent to appear. [Utah Code § 75-5-303\(5\)\(a\)](#).

Incapacity

The petitioner must prove that the respondent is incapacitated by clear and convincing evidence. *In re Boyer*, 636 P.2d 1085 (Utah 1981). Incapacity is defined in [Utah Code §75-1-201\(22\)](#).

The respondent *may* be examined by a physician appointed by the court and *may* be interviewed by a visitor sent by the court. [Utah Code §75-5-303\(4\)](#).

ADULT GUARDIANSHIP & CONSERVATORSHIP BENCH CARD

Alternatives to Guardianship

The court shall ensure that all alternatives to guardianship, including powers of attorney and supported decision-making, are fully explored before imposing a guardianship.

Limited vs. Full Guardianship

The guardian's authority should be limited unless nothing less than a full guardianship is adequate. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate. [Utah Code §75-5-304](#).

Right to an attorney

The respondent has the right to an attorney of their choice. [Utah Code §75-5-303\(2\)](#).

If the respondent does not have counsel, the court must appoint one through the [Guardianship Signature Program](#).

An attorney is not required if the court makes these findings on the record under [Utah Code §75-5-303\(5\)\(d\)](#):

- The respondent is the biological or adopted child of the petitioner;
- The value of the respondent's estate does not exceed \$20,000;
- The respondent appears in court with the petitioner;
- The respondent is given the opportunity to communicate, to the extent possible, his or her acceptance of the appointment of petitioner;
- The court is satisfied that counsel is not necessary to protect the respondent's interests,
- No attorney from the Guardianship Signature Program is able to provide counsel within 60 days of court appointment of counsel, and
- The court appoints a court visitor.

If the court finds counsel is necessary, a second hearing will be required.

Continuing Jurisdiction

Court monitoring of guardians is required to ensure the welfare of incapacitated adults, identify abuses, and sanction guardians who demonstrate malfeasance.

See:

- [NCSC - National Probate Court Standards \(2013\)](#)

Reporting Abuse or Exploitation

Judges are mandatory reporters, [Utah Code §62A-3-305](#), [Utah Code § 62A- 4a-403](#).

Report suspected abuse or exploitation:

Minor Child – DCFS:

- 1-855-323-3237
- DCFSintake@utah.gov

Vulnerable Adult – APS:

- 1-800-371-7897
- [Report of Suspected Dependent Adult / Elder Abuse](#)

CONSERVATORSHIPS

Many of the procedures in conservatorships are the same or similar as with guardianships.

See:

- [Utah Code §§ 75-5-401 through 433](#)
- [Bench Book for Adult Guardianship and Conservatorship](#)

Counsel in conservatorships is not required but may be appointed. [Utah Code §75-5-407](#).

COURT VISITOR PROGRAM

The Court Visitor Program can be used to protect vulnerable adults under guardianship, assist guardians, and inform judges' decisions.

A Court Visitor volunteer is a special appointee of the court who has no personal interest in the proceedings. Court Visitors report on observable facts and collected information, and serve as the "eyes and ears" of the court.

See:

- [Utah Code §75-5-308](#)
- <https://www.utcourts.gov/gramp/cvp/>

Visitors are available in all judicial districts and provide the following services at no charge:

- Interview the petitioner and respondent - in their home - as well as other interested parties (e.g., respondent's care providers), and prepare a report for the court.
- Conduct reviews of annual reports and other documents, for the court, and compile a report for the court identifying potential red flags.
- Locate guardians with whom the court has lost contact, educate them on their responsibilities, and provide a report to the court with updated contact information for the guardian.

This is a product of Utah WINGS



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Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.

Revised: May 11, 2020

Adult Guardianship Checklist

Checklist for judges to prepare for a determination of incapacity and appointment of a guardian and/or conservator. This checklist may be used for an initial appointment proceeding or subsequent proceeding, including restoration of capacity. Unless otherwise specified, please see [Utah Code § 75-5-303](#).

Procedural Questions to Address before the Hearing:

- Is venue correct? The Petition may be filed in any county in which the respondent resides or is present. [Utah Code § 75-5-302](#).
 - Yes.
 - No. Hearing cannot proceed without further determination of proper venue.
- Will the respondent attend the hearing?
 - Yes.
 - No. If not, has a court visitor been assigned?
 - Yes. Has the visitor's report been filed?
 - No; Petitioner claims clear and convincing evidence from a physician that respondent has fourth stage Alzheimer's disease, extended coma, or an intellectual disability with an IQ of less than 25.
 - No; Petitioner has not claimed clear and convincing evidence. Assign a court visitor.
- Does the respondent have a lawyer?
 - Yes.
 - No. Appoint a lawyer. See [Guardianship Signature Program](#)
 - No. Petitioner meets exemption requirements under [Utah Code § 75-5-303\(5\)\(d\)](#).
- Does the respondent want to be examined by a physician or interviewed by a court visitor?
 - Yes. Assign physician or court visitor.
 - Has the report been filed?
- Have the respondent and all interested persons been properly served with a copy of the petition and notice of the hearing?
 - Yes.
 - No.
 - [Utah Code § 75-5-309](#) requires that the respondent and interested persons be served with a copy of the petition and notice of hearing.
 - The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. Court-approved forms are available on the court's public website:
[Notice of Hearing, Rights and Adverse Consequences of a Guardianship - Respondent](#)
[Notice of Hearing, Rights and Adverse Consequences of a Guardianship - Interested Person](#)

- The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.
- Do you want more information about the respondent's circumstances?
 - Yes. Assign a court visitor.
 - Has the court visitor's report been filed?
- Is an interpreter needed? [CJA Rule 3-306.04](#)
 - Yes. Contact your local court's interpreter coordinator.
 - What language? _____
 - No.

Are all of the required documents in the file?

The file should contain:

- Petition to appoint.
- Notice of hearing. (Notice must follow requirements of [Utah Code § 75-5-309.](#))
- List of persons to be served with the petition and notice of hearing. (If the petitioner uses court-approved forms, this is called "[Schedule A](#)")
- Proof of service under [URCP 4](#) of petition and notice of hearing at least 10 days before the hearing on:
 - The respondent;
 - The respondent's spouse and parents if they are within Utah;
- Certificate of service under [Utah Code § 75-1-401](#) and [URCP 5](#) of petition and notice of hearing at least 10 days before the hearing on:
 - The respondent's spouse and parents if they are not within Utah;
 - The respondent's adult children;
 - The respondent's closest adult relative if respondent has no spouse, parents, or adult children or if they cannot be found;
 - The respondent's guardian, conservator, caregiver and custodian;
 - The person nominated as guardian by the respondent or by the respondent's parent, spouse, or caregiver;
 - The respondent's health care decision making agent;
 - The respondent's agent under a power of attorney;
 - Adult Protective Services (required if APS has received a referral concerning the welfare of the respondent, or of the guardian/conservator, or of the proposed guardian/conservator), and
 - Any other interested person.
- Clerk's certificate of posting public notice at least 10 days before the hearing;
- Physician's' report and/or other statements or affidavits about respondent's functional capabilities and/or incapacity and need for a guardian

- Sample [Witness Affidavits](#) are available on the court website.
- Sample [Clinical Evaluation Reports](#) are available on the court website.
- Additional samples are available through: [Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges](#)
- ☐ Documentation of alternatives to guardianship or conservatorship that have been attempted;
- ☐ Other documents often filed with the petition, but not necessary until appointment:

- Completion of testing certificate (not required if the petitioner is a parent of the respondent or is asking to be appointed as a co-guardian with a parent of the respondent - [Utah Code § 75-5-312](#)).
- Acceptance of Appointment
- Proposed findings of fact, conclusions of law, and order.

Note that [Utah Code § 75-5-304\(2\)\(a\)](#) states: “The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.”

Extensive findings of fact and orders that offer limited appointment options are available on the court website. See:

[Proposed Findings of Fact and Conclusions of Law](#)

[Proposed Order Appointing Guardian for an Adult](#)

- Letter of guardianship. Sample letters for both limited and plenary guardianship are available on the court website. See:

[Letter of Limited Guardianship](#)

[Letter of Full Guardianship](#)

- Private Information Record in Guardianship and Conservatorship Cases. Available on the court website. See:

[Private Information Record](#)

The file might contain:

- ☐ Waivers of filing fees;
- ☐ Waivers of notice or consents to the appointment from interested persons who would otherwise have to be served;
- ☐ Death certificates or other proof of the death of interested persons who would otherwise have to be served;
- ☐ Documents authorizing and proving alternative service (if the people required to be served cannot be served as required either under [URCP 4](#) or [Utah Code § 75-1-401](#), then the petitioner must have them served by alternative means);
- ☐ Any written objections;
- ☐ Nominations of a guardian;
- ☐ Powers of attorney and/or advance health care directives executed by the respondent;
- ☐ Email to Guardianship Signature Program attorneys;
- ☐ Any related Court Visitor filings;
- ☐ Notice of appearance of counsel;

- Proposed guardianship plan. Sample guidelines for guardianship plans are available on the court website. See:

[Care Planning Considerations](#)

[Judicial Determination of Capacity of Older Adults in Guardianship Proceedings](#)

Questions to consider in determining capacity, appropriate guardian, and limited guardianship:

- Is the respondent's ability to receive and evaluate information; or make and communicate decisions; or provide for necessities such as food, shelter, clothing, health care or safety impaired to the extent that the respondent lacks the ability, even with appropriate technological assistance or personal supports, to meet the essential requirements for financial protections or physical health, safety, or self-care? [Utah Code § 75-1-201\(22\)](#)
- Is the appointment of a guardian necessary or desirable as a means of providing the respondent with continuing care and supervision? [Utah Code § 75-5-304](#)
- Remembering that Utah law prefers a limited guardianship and that incapacity is measured by functional limitations with or without support, is anything less than a full guardianship adequate to provide the respondent with continuing care and supervision? [Utah Code § 75-5-304](#)
- Have alternative approaches been explored? Information can be found on the court's website for [Power of Attorney](#) and [Advance Health Care Directive](#).

Alternatives for financial decision making:

- Use of a representative payee appointed by the Social Security Administration or other federal agency or a fiduciary appointed by the Department of Veterans Affairs to handle government benefits
- Use of a single transaction protective order
- Use of a properly drawn trust
- Use of a properly drawn durable power of attorney
- Establishment of a joint bank account with a trusted person
- Electronic bill paying and deposits
- Supported Decision-Making agreement, with Supporter for the individual and Monitor for the finances.

Alternatives for health care decision making:

- Use of a properly drawn advance health care directive
- Use of a properly drawn power of attorney for medical decisions
- Alternatives for crisis intervention and daily needs
- Use of mediation, counseling and respite support services
- Engagement of community-based services
- Supported Decision-Making agreement for healthcare.
- Use of a Declaration for Mental Health Treatment, [Utah Code 62A-15, Part 10](#).

Alternatives for other decision making, including such issues as residence, education, religion, and personal relationships:

- Use of supported decision making. (See: [National Resource Center for Supported Decision-Making](#))
 - Use of mediation and counseling
 - Engagement of community-based services
- If any of these alternatives exist, why are they not sufficient to support and protect the respondent?
- Is the respondent aware of what a guardianship means?
- Does the respondent agree to _____ serving as guardian? _____
- What decision making authority should the guardian have to accommodate the respondent's functional limitations? [Utah Code § 75-5-304](#) and [Utah Code § 75-5-312](#)
- Medical or other professional care, counsel, treatment, or service
 - Custody and residence
 - Care, comfort, and maintenance
 - Training and education
 - Clothing, furniture, vehicles, and other personal effects
 - Other
- The petitioner proposes that _____ be appointed guardian. [Utah Code § 75-5-311](#) establishes the following priority for who should be appointed guardian:
- A person nominated by the respondent;
 - The respondent's spouse;
 - The respondent's adult child;
 - The respondent's parent;
 - A person nominated by the respondent's deceased spouse;
 - A person nominated by the respondent's deceased parent;
 - Any relative with whom the respondent has resided for more than six months before the petition is filed;
 - A person nominated by the person who is caring for or paying benefits to the respondent;
 - A specialized care provider;
 - Any competent person, or
 - The Office of Public Guardian under [Title 62A, Chapter 14, Office of Public Guardian Act](#).
- Is the person asking to be appointed guardian on the priority list?
- Are there good reasons to appoint _____ even though someone else is higher on the priority list?

- Are there good reasons not to appoint _____ and to appoint someone lower on the list?
- Has every person who has the right to notice had the opportunity to object or agree to the appointment of a guardian?
- Who should be appointed?

Questions a judge might want to ask at a hearing in determining capacity, appropriate guardian, and limited guardianship:

To the respondent to determine if the consequences of the guardianship are understood:

- When you want to spend money, who will tell you if you can?
- If [guardian] wants to move you to a different home, what will happen?
- Do you want [guardian] to make decisions about your money?
- You have the right to say you do not want a guardian, but you would need to say that to me now. So, please tell me, do you want a guardian?

To the petitioner(s) to determine if guardianship is really appropriate:

- Why is a guardianship necessary in this case?
- Have alternative approaches been explored?
- If any of these alternatives exist, why are they not sufficient to support and protect the respondent?
- Why do you want to be the respondent's guardian?
- Do you have any criminal convictions?
- If appointed, what is your plan for the respondent? How will you support the respondent's abilities to make his/her own decisions? Keep in mind that [Utah Code § 75-5-312\(7\)](#) requires a guardian, to the extent practicable, to encourage the person under guardianship to participate in decisions, exercise self-determination, act on their own behalf, and develop or regain the capacity to manage their own personal affairs. The guardian shall consider the person's expressed desires and personal values when making decisions on behalf of the person.
- Do you understand your responsibilities as a guardian?
- You must file an inventory of the respondent's estate within 90 days of appointment and you must file annual reports on the person's well-being and annual financial accountings of the person's estate. These annual reports are due on the anniversary of your appointment.
- Do you understand these responsibilities and are you able to carry them out? You can find information and forms on the court website at www.utcourts.gov.

This is a product of Utah WINGS



This product is supported by grant No. 90EJIG0007-01-00 from the Administration for Community Living, U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.

Revised: May 11, 2020.

Rule 6-507. Court visitors.

Intent:

To set forth the appointment and role of court visitors. To establish a process for the review of court visitor reports.

Applicability:

This rule applies to court visitor reports in guardianship and conservatorship cases.

Statement of the Rule:

(1) **Definition.** A visitor is, with respect to guardianship and conservatorship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

(2) **Appointment and role of court visitor.** Upon its own initiative or motion of a party or an “interested person,” as that term is defined in Utah Code section 75-1-201, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(2)(A) whether to waive the respondent’s presence at the hearing under Section [75-5-303\(5\)\(a\)](#);

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

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

(2)(D) to review annual reports from the guardian and conservator or gather additional financial information;

(2)(E) to locate guardians, conservators, and respondents;

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

(2)(G) to conduct any other investigation or observation as directed by the court.

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

(3)(A) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (2) unless a court visitor is not required under Utah Code section [75-5-303](#).

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

(3)(B)(i) interview the petitioner, the proposed guardian, and the respondent;

(3)(B)(ii) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the guardianship or conservatorship appointment is made;

(3)(B)(iii) interview any physician or other person who is known to have treated, advised, or assessed the respondent’s relevant physical or mental condition;

(3)(B)(iv) confirm a waiver of notice if submitted by the respondent; and

(3)(B)(iv) conduct any other investigation the court directs.

(4) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(B) through (2)(G), the court visitor will conduct the inquiry in accordance with the court's order or appointment.

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

(6) Court visitor report.

(6)(A) **Service of the court visitor report.** Except for court visitor appointments made under paragraph (2)(E), in accordance with [Rule 5](#) of the Utah Rules of Civil Procedure, the court visitor program must file and serve a court visitor report upon all parties and upon any interested person who has requested the appointment of the court visitor.

(6)(B) **Request to Submit for Decision.** The court visitor program will file with each court visitor report a request to submit for decision.

(6)(C) **Report regarding waiver of respondent's presence.** In cases involving a motion to excuse the respondent from the hearing, the court visitor will file with the report a court-approved proposed order. The report, a request to submit for decision, and a proposed order will be filed five days before the hearing.

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

(8) Court findings.

(8)(A) **Reports regarding waiver of respondent's presence.** When a court visitor has filed a report regarding a request to waive the respondent's presence at the hearing, the court will issue findings and an order as to the waiver at least two days prior to the hearing upon which the request has been made.

(8)(B) **All other reports.** When a court visitor has filed a report involving matters other than the waiver of the respondent's presence, the court will issue findings and an order as to those matters in accordance with the timelines of Rule 3-101.

Effective November 1, 2020

Guardianship Cases - Resources

Contact Information

Program Coordinator - Guardianship Reporting and Monitoring Program (GRAMP)

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Program Coordinator – Court Visitor Program

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Associate General Counsel – Administrative Office of the Courts

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Utah State Court Resources

Utah State Courts Bench Book on Adult Guardianship and Conservatorship:

<http://www.utcourts.gov/intranet/dist/distjudge.htm#benchbooks>

A 34-page summary of both adult guardianship and conservatorship with links to relevant statutes. The summary describes court proceedings from initial hearings to post-appointment proceedings. Also included are checklists and sample jury instructions for guardianship trials

Bench card for appointment of legal counsel and court visitor in guardianship cases:

https://www.utcourts.gov/intranet/dist/docs/GC_Bench_Card_Single.pdf

A one-page description of the initial guardianship hearing with details for the appointment of legal counsel and a court visitor.

Abuse Flow Chart:

https://www.utcourts.gov/intranet/dist/docs/Guardianship_Abuse-Flowchart.pdf

A one-page chart with links to relevant statutes on how to handle issues involving abuse, neglect, self-neglect and financial exploitation of vulnerable adults that might occur in post-appointment guardianship proceedings, with references to how to handle exploitation of Social Security benefits.

Guardianship Proceedings Flow Chart:

<https://www.utcourts.gov/visitor/resources/docs/Summary.pdf>

A basic chart of how a guardianship case moves through the court system. The chart is published on the Utah State Courts public website.

Court's public webpage:

<http://www.utcourts.gov/howto/family/gc/>

Resources published on this page include online training modules in English and Spanish about guardianship and alternatives to guardianship, options to consider before turning to guardianship (e.g., power of attorney), guardianship and conservatorship proceedings, post-appointment reporting requirements, materials on how to function as a guardian, and forms.

Stand-alone, court-approved forms:

<https://www.utcourts.gov/howto/family/gc/guardianship/#forms>

List of forms for all aspects of guardianship and conservatorship proceedings available in downloadable Word and PDF format.

OCAP programs for adult guardianship and guardianship of an adult child:

www.utcourts.gov/ocap

An interactive document production program similar to Turbo Tax. OCAP produces initial pleadings for a petitioner and post-appointment reports. The documents produced are similar to the stand-alone forms posted on the court site, but the stand-alone forms offer more details, especially concerning the functional capacities of the respondent and limited guardianship pleadings.

Guardianship Reporting and Monitoring Program (GRAMP):

<https://www.utcourts.gov/gramp/>

Main webpage for the program, with links to the subsidiary programs.

Guardianship Signature Program: <https://www.utcourts.gov/gramp/gsp/>

Court Visitor Program: <https://www.utcourts.gov/gramp/cvp/>

WINGS: <https://www.utcourts.gov/gramp/wings/>

National Resources

Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges:

<https://www.apa.org/pi/aging/resources/guides/judges-diminished.pdf>

Hand book for judges to use in determining capacity issues in adult guardianship proceedings and includes checklists and sample forms (e.g., guardianship plan and limited guardianship order). Also posted on the court intranet site.

National Center for State Courts - 2013 National Probate Court Standards:

<http://ncsc.contentdm.oclc.org/cdm/ref/collection/spcts/id/240>

A detailed book presenting the national standards for state court guardianship practice.

National Center for State Courts - Guardianship/Conservatorship Resource Guide:

<http://www.ncsc.org/Topics/Children-Families-and-Elders/Guardianship-Conservatorship/Resource-Guide.aspx>

A listing of research and resources for more in-depth investigation of guardianship issues.

ABA Commission on Law & Aging:

https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

Webpage on guardianship law practice, with extensive materials including up-to-date information on such issues as supported decision making.

Frequently Asked Questions - GRAMP

GRAMP

1. What is GRAMP?

Guardianship Signature Program

2. What is the Guardianship Signature Program?
3. Can anyone request an attorney?
4. How is an attorney requested?
5. What happens after the request is made?
6. What will an attorney from the Guardianship Signature Program do?
7. Is an attorney always required?

Court Visitor Program

8. What is the Court Visitor Program?
9. What is the Court Visitor role?
10. What does a Court Visitor do?
11. Who Can Request a Court Visitor?
12. How is a Court Visitor requested?

WINGS

13. What is WINGS?
14. What does WINGS do?
15. How is WINGS organized?
16. How does someone get involved in WINGS?

1. What is GRAMP?

The Guardianship Reporting and Monitoring Program (GRAMP) oversees guardianship/conservatorship matters, under the Administrative Office of the Courts. GRAMP is focused on helping the courts manage risks, prevent abuse, and increase public confidence in the guardianship process. GRAMP became operational in 2018, is staffed by two full-time employees and assisted by program volunteers.

GRAMP oversees three distinct, but connected programs related to guardianship. GRAMP is responsible for the following:

- Coordinating the **Guardianship Signature Program**, which connects volunteer attorneys with opportunities to represent respondents in guardianship proceedings, when the respondents do not have counsel of their own choice.
- Managing the **Court Visitor Program**, which utilizes the services of volunteers to investigate, observe, and report on behalf of the court in guardianship- and conservatorship-related matters.
- Facilitating the **WINGS** committee, a group of stakeholders from various disciplines, focused on improving that state's guardianship and conservatorship services and processes.

2. What is the Guardianship Signature Program?

The Guardianship Signature Program is a partnership between the Utah State Bar and the Administrative Office of the Courts.

Utah law requires that the respondent be represented by a lawyer. If the respondent has not chosen a lawyer, the court must appoint one, and may need to continue the hearing until the respondent has a lawyer.

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

The Guardianship Signature Program is a simple concept – qualified attorneys agree to receive email requests for representation in districts of their choosing. When email requests are sent, attorneys interested in accepting an appointment respond to the request and get assigned to the case.

The Guardianship Signature Program services all 8 districts in the state of Utah.

3. Can anyone request an attorney?

In the petition or in a separate form, anyone can request that the judge appoint an attorney to represent the respondent.

Petitioners, their counsel, and court clerks should make every attempt to identify the need for appointed counsel as soon as possible. A timely request gives the appointed attorney time to talk with the client and investigate the case, making the initial hearing as productive as possible.

If necessary, the judge may appoint an emergency guardian or a temporary guardian if certain conditions are met.

4. How is an attorney requested?

A request is made by the petitioner, the petitioner's attorney, or other interested person by completing the form: ***Request to Appoint an Attorney to Represent the Respondent.***

5. What happens after the request is made?

If the judge refers a respondent to the Guardianship Signature Program, clerical staff will notify the attorneys who have volunteered for that district of the need to place the client. The client will be placed with the first attorney to respond to the request. If the clerk is not successful in placing the client, the GRAMP Program Coordinator assists in finding representation for the client.

6. What will an attorney from the Guardianship Signature Program do?

Each case may be different, but attorneys for the Guardianship Signature Program can expect to:

- File for the judge's signature on an order appointing the attorney
- Communicate with the client
- Investigate the nature and extent of the client's claimed incapacity and estate
- Investigate alternatives to guardianship and the proper limited authority of a guardian
- Investigate the priority of the proposed guardian
- Assist the client in nominating a guardian or conservator
- Ensure that the client is present at the hearing unless excused
- Present the client's proposals and contest proposals, as appropriate
- Participate in mediation with or on behalf of the client

7. Is an attorney always required?

The court may waive the requirement of a lawyer for the respondent if **all** the following criteria are met:

- a. The respondent is the biological or adopted child of the petitioner.
- b. The value of the respondent's entire estate does not exceed \$20,000 as established by the petitioner's affidavit.
- c. The respondent appears in court with the petitioner.
- d. The respondent is given the opportunity to communicate, to the extent possible, his or her acceptance of the appointment of petitioner.
- e. The court has tried to appoint an attorney for 60 days, but no attorney from the court's list of attorneys who have volunteered to represent respondents (GSP) is able to provide counsel.
- f. The court is satisfied that counsel is not necessary to protect the respondent's interests.
- g. The court appoints a Court Visitor.

8. What is the Court Visitor Program?

The Court Visitor Program provides an important service in assisting the courts' ability to make informed decisions about guardianship and conservatorship cases. The program assigns volunteers, called "Court Visitors," to investigate guardianship and conservatorship cases, under the direction of the judge.

Judges frequently need a Court Visitor to conduct interviews and gather information to help them:

- Decide whether the respondent may be excused from court hearings
- Decide the nature and extent of the respondent's incapacity
- Decide the nature and extent of the guardian's authority
- Ensure that the court's orders are being followed

The Court Visitor Program accommodates requests for Court Visitors in all eight court districts

9. What is the Court Visitor role?

Court Visitors are neutral, special appointees of the court who have no personal interest in the proceedings. Court Visitors gather facts and information by interviewing individuals and institutions as ordered by the court. Acting as the "eyes and ears" of the court, Court Visitors investigate, observe, and report essential information to the courts.

10. What does a Court Visitor do?

Court Visitors provide an important and integral service in assisting the courts' ability to make informed decisions about guardianship cases. They work on specific types of cases, including:

Excuse the Respondent – if it is proposed that the respondent does not need to attend the hearing, the Court Visitor may be asked to investigate the respondent's ability to appear.

Circumstances – before guardianship is granted, the Court Visitor may be asked to investigate and report about the respondent's circumstances, conditions, and other matters.

Well-Being – after guardianship is granted, the Court Visitor may be asked to report on the protected person's welfare and conditions, and to determine if the protected person's needs are being met.

Audit – the Court Visitor may be asked to conduct a records audit, to ensure the protected person's finances and estate are being properly managed.

Whereabouts – the Court Visitor may be asked to track down and educate the guardian, if the court has lost contact with them and/or if required reports are late, missing, or incomplete.

11. Who Can Request a Court Visitor?

Any party to a case or concerned citizen may request that a Court Visitor be assigned. The court may also choose to assign a Visitor on its own initiative.

A Court Visitor can be appointed before or after guardianship or conservatorship is established. However, a Court Visitor is not appointed to investigate during mediation between the parties.

12. How is a Court Visitor requested?

The steps for an interested party to request a CV are relatively simple. To begin the process:

- (1) Complete the form: ***Request to Assign a Court Visitor***.
- (2) File the original form and certificate of service with court staff.
- (3) After the Court Visitor Program receives a request through official court channels, the Program Coordinator will review the request information, complete a court order and submit for the judge's signature, and assign a CV to the case.

13. What is WINGS?

WINGS stands for the Working Interdisciplinary Network of Guardianship Stakeholders. There are several WINGS groups throughout the country. WINGS is an ongoing, consensus-driven, problem-solving mechanism. It offers a forum for considering how adult guardianship is working in the state, where the pressure points are, and what solutions might work.

The mission of Utah WINGS is to bring together stakeholders from various disciplines to improve the state's guardianship and conservatorship services and processes.

14. What does WINGS do?

To carry out its mission, Utah WINGS:

- Supports policy initiatives for the enhancement of guardianship and related infrastructure.
- Identifies and develops education and outreach opportunities regarding guardianships, conservatorships, and their alternatives.
- Provides training and support to those engaging the guardianship/conservatorship system.
- Identifies resources that may be available in emergency cases where persons of limited decision-making capacity have no guardian.

15. How is WINGS organized?

Utah WINGS is made up of an Executive Committee and a Steering Committee and is currently chaired by Judge Keith Kelly (3rd District). Full WINGS meetings are attended by stakeholders from a wide variety of agencies, organizations, and related fields.

Utah WINGS holds full group meetings every other month. Minutes are taken at each meeting, archived for future reference, and available to the public. In the intervening months, the Executive Committee meets to discuss areas of concerns, projects that need additional dialogue to move forward, and upcoming items. The Executive Committee also sets the agenda for full meetings.

16. How does someone get involved in WINGS?

Utah WINGS includes members from the courts, aging and disability networks, mental health agencies, advocacy groups, medical professionals, service providers, and legal fields. Diverse representation allows WINGS to better understand and address the guardianship issues that affect our communities, and new members are welcome.

Members are expected to attend meetings and participate in the discussion and problem-solving process. For details on participating with WINGS, contact the GRAMP Program Coordinator.

Resources:

Guardianship Reporting and Monitoring Program

<https://www.utcourts.gov/gramp/>

Guardianship Signature Program

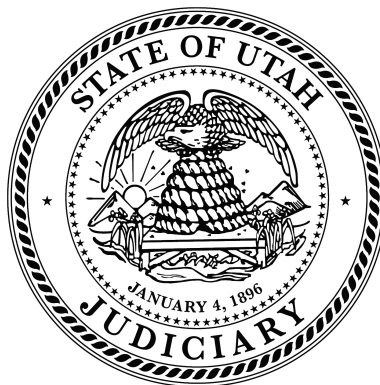
<https://www.utcourts.gov/gramp/gsp/>

Court Visitor Program

<https://www.utcourts.gov/gramp/cvp/>

WINGS

<https://www.utcourts.gov/gramp/wings/>



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

GUARDIANSHIP IN THE COURTS

Highlights & Updates

1



2

Only a prison sentence
or a civil commitment
are more restrictive
on an individual's rights
than guardianship.

3

COURT'S RESPONSIBILITY

- Ensure that guardianship is necessary and alternatives are insufficient.
- Put in place the least restrictive level of guardianship needed.
- Confirm that the level of guardianship remains appropriate across time.
- Safeguard the rights of the protected person.

4

COMMON PITFALLS

1. Limited guardianship is preferred.
2. The Court has continuing jurisdiction in guardianship and conservatorship cases.
3. Probate code requires judicial review of guardianship and conservatorship reports.
4. An attorney is required to represent the respondent.
5. Court Visitors are required in specific instances, and otherwise requested.
6. Court Visitors are the “eyes and ears” of the court, not a party to the case.

5

COMMON PITFALL #1

LIMITED GUARDIANSHIP IS PREFERRED.



6

NO LIMITED GUARDIANSHIP FOR MINORS

- No statutory basis for a limited or school purposes-only guardianship for minors.
- Appointment of guardian for a minor suspends or terminates rights of the parents. (U.C.A. §75-5-204(1); 75-5-209(1),(5))

7

LIMITED GUARDIANSHIP IS PREFERRED

In matters of guardianship, “the loss of freedom may be substantial. Accordingly, a court in appointing a guardian must consider the interest of the ward in retaining as broad a power of self-determination as is consistent with the reason for appointing a guardian of the person.”

In re Boyer, 636 P.2d 1085, 1090-1 (Utah 1981).

8

IS THERE AN
APPROPRIATE
ALTERNATIVE TO
GUARDIANSHIP?

U.C.A. § 75-5-304(1)

Only allows the court to appoint a guardian if it is satisfied that “the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.”

9

IS THERE AN
APPROPRIATE
ALTERNATIVE TO
GUARDIANSHIP?

U.C.A. § 75-5-304(2)(a):

The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.

10

HB 320 (2022 LEGISLATIVE SESSION)

HB 320, to be codified as 75-5-301.5, requires that an incapacitated person for whom a guardian has been appointed:

- remain as independent as possible;
- be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;
- be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in the order of appointment;
- engage in any activity not expressly reserved for the guardian, including marriage, traveling, working, or having a driver license.

11

§75-5-304(2)(B):
AN ORDER OF
APPOINTMENT OF A
LIMITED GUARDIANSHIP
SHALL STATE THE
LIMITATIONS OF THE
GUARDIANSHIP.

Examples from Judicial Counsel Form for Letters of Limited Guardianship

- **The guardian has authority to:**
 - [] make decisions about the protected person's custody and residence;
 - [] make decisions about the protected person's training and education;
 - [] provide for the protected person's care, comfort, and maintenance;
 - [] take reasonable care of the protected person's clothing, furniture, vehicles, and other personal effects;
 - [] commence protective proceedings if the protected person's property needs protection;

12

§75-5-304(2)(B):
AN ORDER OF
APPOINTMENT OF A
LIMITED GUARDIANSHIP
SHALL STATE THE
LIMITATIONS OF THE
GUARDIANSHIP.

Examples from Judicial Counsel Form for Letters of Limited Guardianship

- **The guardian has authority to:**
 - give consent necessary to enable the protected person to receive medical or other professional care, counsel, treatment, or service;
 - institute proceedings to compel a person to perform their duty to support the protected person;
 - receive money and tangible property deliverable to the protected person and apply the money and property for the protected person's support, care, and education;
 - other

13

§75-5-304(2)(B):
AN ORDER OF
APPOINTMENT OF A
LIMITED GUARDIANSHIP
SHALL STATE THE
LIMITATIONS OF THE
GUARDIANSHIP.

Other limitation ideas:

Set an amount of \$ over which guardian has authority but under which PP has authority.

Guardian may step in to assist with obtaining or receiving benefits, but not necessarily to manage.

Guardian's health care authority only extends to risk of death or permanent damage to health.

Require that guardian consult with ward on matters.

Require review of limitations after certain amount of time.

14

COMMON PITFALL #2

**THE COURT HAS CONTINUING JURISDICTION
IN GUARDIANSHIP AND CONSERVATORSHIP CASES.**



15

U.C.A. § 75-5-313

The court where the protected person resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of appointment by will or written instrument was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(Essentially identical to § 75-5-211.)

16

U.C.A. § 75-5-402

After service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

- Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated.
- Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;
- Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

17

ESSENTIALLY, THE COURT HAS JURISDICTION FOR THE LENGTH OF THE GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING.

Proceeding \neq Initial appointment

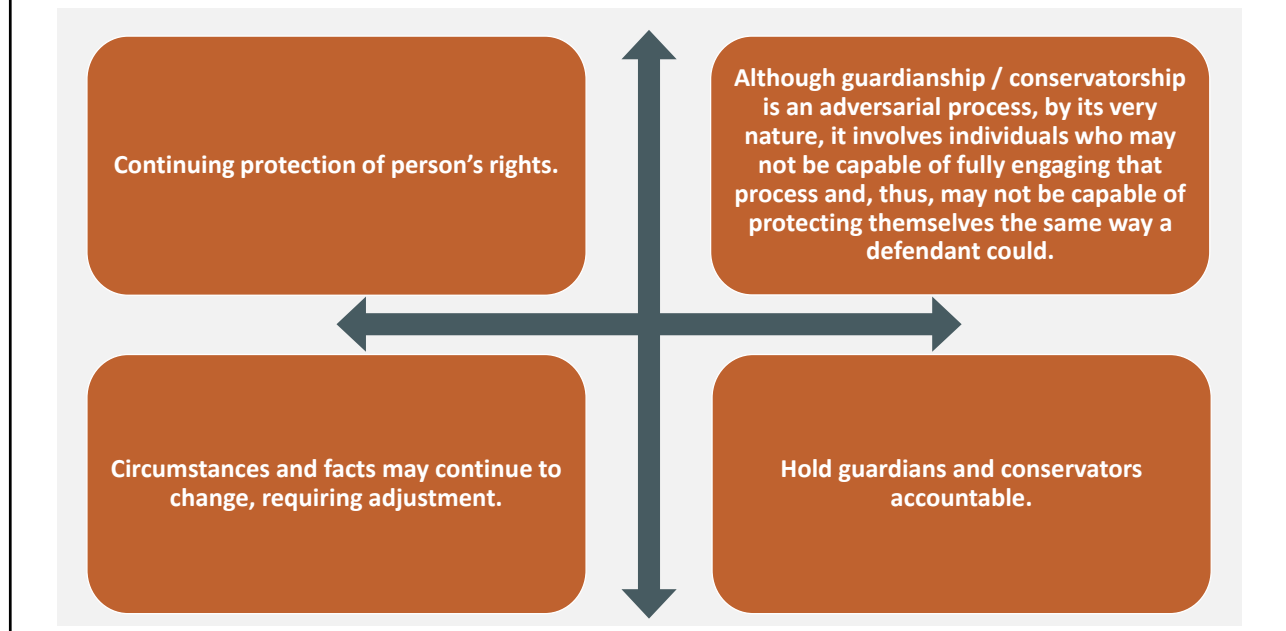
Proceeding = Petition for Appointment



Termination of Guardianship/Conservatorship

18

WHY CONTINUING JURISDICTION?



19

SOMETHING
SUSPICIOUS OR
CONCERNING?

TOOLS AT THE COURT'S DISPOSAL

Reports / Accountings

Court Visitor

Attorney for Protected Person

Emergency Guardian / Temporary Guardian

Protective Orders

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SOMETHING
SUSPICIOUS OR
CONCERNING?

HELPFUL AGENCIES

Adult
Protective
Services

Guardian
Ad Litem

Office of
Public
Guardian

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COMMON PITFALL #3

PROBATE CODE REQUIRES JUDICIAL REVIEW OF
GUARDIANSHIP AND CONSERVATORSHIP REPORTS.



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Utah Code 75-5-312(f)(v)

(A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a **full accounting** to the court on an annual basis.

(B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court.

(C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall **also report the physical conditions of the ward, the place of residence, and a list of others living in the same household**. The court may require additional information.

Utah Code 75-5-417(2)

(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a **full accounting** to the court on an annual basis.

For estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information.

The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.

23

Utah Code 75-5-312(f)(v)

(A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a **full accounting** to the court on an annual basis.

(E) An annual report shall be examined and approved by the court.

(C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall **also report the physical conditions of the ward, the place of residence, and a list of others living in the same household**. The court may require additional information.

Utah Code 75-5-417(2)

(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a **full accounting** to the court on an annual basis.

For estates less than \$50,000, excluding the residence

(2) ...This annual report shall be examined and approved by the court.

income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information.

The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.

24

Message from the
Medicaid Fraud Control Unit,
Utah Attorney General's Office.

25

REPORT
RED FLAGS



"I'm disappointed. If anyone should have seen
the red flags, it's you."

26

STATUS REPORT

17. During the reporting period, the Ward has received the following treatment, therapy or assistive devices:

None Margaret has refused any kind of treatment

18. Currently, the Ward is taking the following medications:

Name: None – she has been stashing/throwing away her hand delivered meds (distributed by myself) every night. Because she refuses to meet with her prescriber, Dr. Sylvia Chan, she is not eligible for any additional refills. She has been off of her prescribed meds for so long, that her condition has worsened to the point where her paranoia and delusions have returned with full force. I am no longer able to care for her properly in her current state.

20. Describe the Ward's everyday functioning, such as ability care for self, make medical decisions, and make daily living decisions:

I am fearful that my mother has a urinary tract infection (which, if so, could be lethal). She is unable to get to the bathroom and refuses any walking aids such as a walker or cane. She has resorted to urinating in a trash can next to where she sits all day on the couch. She is refusing any medical care including a physical check-up.

25. I recommend that the guardianship should be

continued

modified as follows:



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ACCOUNTING REPORT

Schedule	Category	Beginning Balance	Gains and Losses	Ending Balance
A	Real Estate	\$0.00	\$0.00	\$0.00
B	Stocks and Bonds	\$0.00	\$0.00	\$0.00
C	Money Owed to Ward	\$0.00	\$0.00	\$0.00
D	Miscellaneous Property	\$0.00	\$0.00	\$0.00
E	Debts and Encumbrances	\$0.00	\$0.00	\$0.00
F	Cash and Cash Accounts	\$18,192.31	\$-14,332.34	\$3,859.97
	Total	\$18,192.31	\$-14,332.34	\$3,859.97

Summary of Receipts and Payments

1	Receipts Total	\$62,471.48
2	Payments Total	\$(76,803.82)
3	Total	\$-14,332.34

Receipts during the reporting period

Item	Description	Amount
1	Wages	\$0.00
2	Interest	\$0.00
3	Dividends	\$6.74
4	Social Security	\$6,806.20
5	Annuities	\$0.00
6	Insurance	\$0.00
7	Real Estate Sold	\$0.00
8	Stocks/Bonds Sold	\$52,258.54
9	Money owed to Ward that was received	\$0.00
10	Miscellaneous Property Sold	\$0.00
11	Other (Describe) Government stimulus check.	\$3,400.00
12	Total	\$62,471.48

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ACCOUNTING REPORT

- The PP is able to walk to stores.
- The PP's facility provides transportation.

Payments during the reporting period

Item	Category	(Amount)
1	Mortgage/Rent	\$13,863.00
2	Utilities (gas, electricity, water, sewage, phone, internet, etc.)	\$291.40
3	Home Maintenance (Include maintenance, cleaning, repairs, etc.)	\$0.00
4	Home Improvement (Include additions, remodeling, etc.)	\$0.00
5	Home Furnishings	\$85.79
6	Health Care (physicians, dentists, psychiatrists, psychologists, etc.)	\$2,145.82
7	Food	\$386.36
8	Education	\$0.00
9	Clothes	\$273.79
10	Personal Effects	\$0.00
11	Activities	\$0.00
12	Transportation	\$47,093.16
13	Taxes	\$0.00
14	Charge for Conservator's Services	\$1,100.00
15	Charge for Guardian's Services	\$0.00
16	Charge for other Professional Services	\$9,250.00
17	Court Fees	\$44.50
18	Other (Describe)	\$2,270.00
	Funeral expenses.	
19	Total	\$76,803.82

5/6/2020	CHECK 102089234 TO ANDERSON AND SONS MORTUARY	-\$2,270.00	\$4,894.02
5/6/2020	CHECK 102089236 TO DOUG SMITH AUTOPLEX	-\$47,093.16	\$7,164.02

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CJA RULE 6-501- AMENDMENTS

- Covers the reporting requirements for guardians and conservators.
- Establishes the standards and procedures for annual reports.
- Amendment seeks to provide clarification on the review process for judges.
- CJA 6-501(13)(A):

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

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CJA RULE 6-501 - COVERSHEET

- CJA 6-501(6)(B): The annual report and annual accounting must include the Judicial Council-approved report coversheet, which must be filed as a proposed document.
- Coversheet has been approved and is formally titled: *Review of Guardianship or Conservatorship Reports*
- CJA 6-501(13)(B):
When a court approves a report, the court must note that approval on the Judicial Council-approved coversheet and place the coversheet in the case file. When a court does not approve a report, the court must indicate on the coversheet, or in an order, the reasons for non-approval, any additional actions required, and serve the coversheet or order on all interested persons entitled to notice.

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CJA RULE 6-501 - COVERSHEET

- “Review of Guardianship or Conservatorship Reports” coversheet applies to:

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

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

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COMMON PITFALL #4

AN ATTORNEY IS REQUIRED TO REPRESENT THE RESPONDENT.



33

THE ROLE OF THE LAWYER

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STATUTORY REQUIREMENT FOR A LAWYER

Utah Code Ann. § 75-5-303(1)(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.

UNLESS...

35

... ALL OF THESE CONDITIONS ARE MET

- (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:
 - (i) the person is the biological or adopted child of the petitioner;
 - (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;
 - (iii) the person appears in court with the petitioner;
 - (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
 - (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);
 - (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
 - (vii) the court appoints a visitor under Subsection (4).

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ROLE OF THE LAWYER FOR THE RESPONDENT

- To act as counsel for the respondent
 - Representing the respondent's wishes, to the best these can be known.
 - Representing the respondent's best interests.
- Governed by URPC 1.14. - Client with a diminished capacity.

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URPC 1.14

Client with Diminished Capacity.

- a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest., the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

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WHAT IS INCAPACITY?

Incapacity:

- Is determined not by diagnosis but rather functional abilities. Utah Code 75-1-201(22).
- Is measured by functional limitations
- Means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
 - receive and evaluate information;
 - make and communicate decisions; or
 - provide for necessities such as food, shelter, clothing, health care, or safety.

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WHAT IS CLEAR AND CONVINCING EVIDENCE?

- Is the filed information from the medical provider perfunctory or does it describe in detail the functional limitations?
Example – “John has been my patient and can’t provide for his needs, therefore a full guardianship is required.”
- Resources for Judges:
 - Request more documentation from the proposing party.
 - Court-approved “*Report on Clinical Evaluation*” addresses the respondent’s functional abilities and limitations.
 - If appropriate, appoint a temporary guardianship until additional documentation is filed.

40

LIMITED GUARDIANSHIP IS
PREFERRED

Utah Code Ann. § 75-5-304

(1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

(2) (a) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate

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THE LAWYER
FOR THE
RESPONDENT
IS NOT:

A guardian or conservator

A guardian ad litem

A court visitor

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WHAT A LAWYER DOES WITH THE GUARDIANSHIP SIGNATURE PROGRAM

- Meet with the client, as independently as possible.
- Explore alternatives to guardianship:
 - Health care agent, Utah Code Ann § 75-2a-107; under § 75-2a-105(b) an adult without health care decision-making capacity may still have the capacity to appoint an agent.
 - Declaration for Mental Health Treatment, Utah Code Ann. § 62A-15-1002.
 - Financial power of attorney, Utah Code Ann. §§ 75-9-101 et seq.
 - One of these plus conservatorship.
- Consider whether the evidence is sufficient to support a guardianship at all—and, if so, to what extent.

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SOME PERSONAL IMPRESSIONS

- The signature program and the court visitor program do a wonderful job, but they are stretched very thin.
- When the petitioners are pro se, they may lack understanding of what to do -
 - What alternatives to guardianship exist
 - What papers to file
 - What evidence is needed for a full guardianship
 - What will happen when they get to court
- In general, district court judges and court personnel across the state are very thoughtful, helpful, and understanding in these situations.

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One Final Question:

WHAT TO DO AFTER THE GUARDIANSHIP IS ORDERED

- Utah Code Ann § 75-5-303(3) the lawyer's role ends when the guardianship is granted, unless there are separate conservatorship proceedings, there is an appeal, or there is an express finding of good cause by the court
- Does the lawyer need to withdraw?
- Who makes sure that the guardianship continues to be appropriate in the form in which it was ordered, and that the guardian is performing responsibilities appropriately?

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COMMON PITFALL #5

**COURT VISITORS ARE REQUIRED IN SPECIFIC INSTANCES,
AND OTHERWISE REQUESTED.**



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WHAT IS A COURT VISITOR?

- CJA Rule 6-507 codifies the role and parameters of a Court Visitor.
- Court Visitors are volunteers with no personal interest in the proceedings.
- Court Visitors are extension of the judge/court.
- Court Visitors investigate, observe, and report.
- Court Visitors may be appointed before or after the appointment of a guardianship.

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BEFORE APPOINTMENT

Utah Code 75-5-303(5)(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.

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BEFORE
APPOINTMENT

CJA Rule 6-507

- Just because a Court Visitor is appointed, does NOT mean the respondent's presence is waived.
- It is the court's responsibility to review the Court Visitor Report, which will contain opinions from professionals and the parties, including the respondent.
- After reviewing the Report, the court shall issue an order whether to waive the respondent's presence, 2 days before the hearing.

49

BEFORE
APPOINTMENT

Utah Code 75-5-303(5)(d)(vi):

Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:

- (i) the person is the biological or adopted child of the petitioner;
- (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;
- (iii) the person appears in court with the petitioner;
- (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
- (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);
- (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; **and**

(vii) the court appoints a visitor under Subsection (4).

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Court Visitors and attorneys fulfill different purposes in guardianship proceedings.

Court Visitors are not attorneys, they do not provide legal advice, and cannot be used to “replace” an attorney.

Appointing a Court Visitor in conjunction with waiving the attorney requirement is a last resort.

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AFTER APPOINTMENT

Continuing Jurisdiction:

- Locate and educate guardians who have not filed their annual reports to help bring them into compliance.
- Conduct an investigation of the protected person when concerns or red flags are raised through the submitted status and accounting reports.
- Conduct an investigation when concerns or red flags are raised through external agencies (Adult Protective Services, DSPD, Office of Public Guardian), public, or a party to the case.

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COMMON PITFALL #6

COURT VISITORS ARE THE “EYES AND EARS” OF THE COURT, NOT A PARTY TO THE CASE.



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WHAT CAN A COURT VISITOR DO AND NOT DO?

- **Court Visitors are an extension of the court and remain neutral and impartial.**
- **Order Assigning a Court Visitor and CJA Rule 6-507:**
 - The Order contains a “*Notice to the Parties*” explaining the role and parameters of the Court Visitor.
- **The Court Visitor cannot:**
 - Advocate for any party in the case;
 - File or respond to motions;
 - Amend submitted reports; or
 - Take actions beyond those ordered by the court.



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AFTER THE COURT VISITOR REPORT

- Once a Court Visitor report is submitted, the court determines the meaning and impact of the report and what happens next.
- The *Review of Guardianship and Conservatorship Reports coversheet* is used in the judicial review of the Court Visitor report.
- The court may:
 - Schedule and hold a hearing.
 - Ask for additional information from the parties.
 - Order additional follow up from the Court Visitor.
 - Approve the report and with no additional action.

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PANELIST Q & A



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Guardianship Reporting and Monitoring Program (GRAMP) - <https://www.utcourts.gov/gramp/>

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CITATIONS

Common Pitfall #1 (Slides 6 – 14)	
Utah Code 75-5-204(1)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S204.html
Utah Code 75-5-209(1),(5)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S209.html?v=C75-5-S209_2021050520210901
<i>In re Boyer</i> , 636 P.2d 1085, 1090-1 (Utah 1981)	https://law.justia.com/cases/utah/supreme-court/1981/16853-0.html
Utah Code 75-5-304(1) Utah Code 75-5-304(2)(a) Utah Code 75-5-304(2)(b)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S304.html?v=C75-5-S304_2017050920170509
HB 320 (2022 Legislative session)	https://le.utah.gov/~2022/bills/static/HB0320.html
Common Pitfall #2 (Slides 15 – 21)	
Utah Code 75-5-313	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S313.html?v=C75-5-S313_1800010118000101
Utah Code 75-5-211	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S211.html?v=C75-5-S211_1800010118000101
Utah Code 75-5-402	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S402.html?v=C75-5-S402_1800010118000101
Common Pitfall #3 (Slides 22 – 32)	
Utah Code 75-5-312(f)(v)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S312.html?v=C75-5-S312_2018031920180319
Utah Code 75-5-417(2)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S417.html?v=C75-5-S417_1800010118000101
CJA 6-501(13)(A)	https://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2018/03/6-501-effective-5-1-18.pdf (Redline draft in presentation materials packet)
<i>Review of Guardianship or Conservatorship Reports</i>	Materials packet

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CITATIONS

Common Pitfall #4 (Slides 33 – 45)	
Utah Code 75-5-303(1)(b) Utah Code 75-5-303(3)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S303.html?v=C75-5-S303_2018050820180508
URPC 1.14	https://casetext.com/rule/utah-court-rules/utah-rules-of-professional-conduct/client-lawyer-relationship/rule-114-client-with-diminished-capacity
Utah Code 75-1-201(22)	https://le.utah.gov/xcode/Title75/Chapter1/75-1-S201.html?v=C75-1-S201_1800010118000101
Report on Clinical Evaluation	https://www.utcourts.gov/howto/family/gc/guardianship/
Utah Code 75-5-304	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S304.html?v=C75-5-S304_2017050920170509
Utah Code 75-2a-107	https://le.utah.gov/xcode/Title75/Chapter2A/75-2a-S107.html?v=C75-2a-S107_1800010118000101
Utah Code 75-2a-105(b)	https://le.utah.gov/xcode/Title75/Chapter2A/75-2a-S105.html?v=C75-2a-S105_1800010118000101
Utah Code 62A-15-1002	https://le.utah.gov/xcode/Title62A/Chapter15/62A-15-S1002.html?v=C62A-15-S1002_1800010118000101
Utah Code 75-9-101 et seq.	https://le.utah.gov/xcode/Title75/Chapter9/75-9-P1.html
Common Pitfall #5 (Slides 46 – 52)	
CJA Rule 6-507	https://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/10/6-507-Rule-Draft-redlined.pdf (Redline draft in presentation materials packet)
Utah Code 75-5-303(5)(a) Utah Code 75-5-303(5)(d)(vi)	https://le.utah.gov/xcode/Title75/Chapter5/75-5-S303.html?v=C75-5-S303_2018050820180508
Common Pitfall #6 (Slides 53 – 55)	
Order Assigning a Court Visitor	(Redline draft in presentation materials packet)
CJA Rule 6-507	https://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/10/6-507-Rule-Draft-redlined.pdf (Redline draft in presentation materials packet)

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



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Utah Code 75-5-304

The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

Guardianship in the Courts: Common Pitfalls

1. Limited guardianship is preferred.

Limited guardianship is preferred, and full guardianship may only be granted if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate. ([Utah Code 75-5-304.](#))

2. The Court has continuing jurisdiction in guardianship and conservatorship cases.

The court has continuing jurisdiction to monitor guardianships/conservatorships. Once an order is entered, the appointment ends only upon the death of the protected person, or the death, incapacitation, resignation, or removal of the guardian/conservator (with approval by the court). The court has the authority to ensure the welfare of the protected person without direct action from parties. ([Utah Codes 75-5-306](#), [75-5-308](#), [75-5-312](#), [75-5-417.](#))

3. Probate Code requires judicial review of guardianship and conservatorship reports.

All guardianship and conservatorship reports shall be examined and approved by the court. Report approval indicates the judge has reviewed the report and has not requested additional information or scheduled a hearing via the Review of Guardianship or Conservatorship Reports coversheet. ([Utah Codes 75-5-312](#), [75-5-417](#), CJA Rule 6-501, [Review of Guardianship or Conservatorship Reports.](#))

4. An attorney is required to represent the respondent.

The respondent must have an attorney in guardianship petition hearings. If the respondent does not have an attorney, the court shall appoint one. An attorney can be waived if all seven criteria under 75-5-303(5)(d) are met, including: (v) no attorney from the Guardianship Signature Program is able to provide counsel to the respondent within 60 days of the date of the appointment, and (vii) a Court Visitor is appointed. ([Utah Codes 75-5-303.](#))

5. Court Visitors are required in specific instances, and otherwise requested.

The respondent shall be present at the guardianship petition hearing. Unless the medical criteria listed in 75-5-303(5)(b) applies, the court must appoint a Court Visitor and review the submitted report, before the respondent's presence can be waived. Likewise, if an attorney for the respondent cannot be found, a Court Visitor must be appointed. ([Utah Code 75-5-303.](#))

6. Court Visitors are the “eyes and ears” of the court, not a party to the case.

A Court Visitor: (a) does not advocate for any party in the case; (b) cannot file or respond to motions; (c) cannot amend submitted reports; and (d) does not take actions beyond those ordered by the court. It is the role of the court to determine the meaning and impact of the report and what happens next. ([Order Assigning a Court Visitor](#), CJA Rule 6-507.)