

## **Working Interdisciplinary Network of Guardianship Stakeholders**

### **August 15, 2019 Summary Minutes**

**Attendees:** Nels Holmgren, Robert Denton, Kaye Lynn Wotton, Cora Gant, Michelle Wilkes, Judge Keith Kelly, Dustin Hammers, Shane Bahr, Joanne Bueno Sayre, Xia Erickson, Andrew Riggle, James Brady, Wendy Fayles,, Nan Mendenhall, David Connors, TantaLisa Clayton, James Toledo, Todd Weiler, Norma- Valavala Ballard

**Not in Attendance:** Kent Alderman, Daniel Musto,

Dustin Hammers made a motion to approve the minutes. Kaye Lynn Wootton seconded the motion and it passed unanimously. Judge Brady indicated there are often conflicts with his schedule and has discussed with members of the committee the best solution to his stewardship of the Executive Committee. He has proposed that Judge Kelly will transition to the role of chair of the Executive Committee. Judge Brady stated he is not stepping away from WINGS and will still participate as a member as his schedule allows.

### **FUTURE STRATEGIES AND TRAINING TO ADVANCE GREATER ELDER SAFETY (STAGES) CONFERENCE**

Judge Brady invited Ms. Michelle Wilkes to discuss WINGS' participation in the STAGES conference. Ms. Wilkes stated the following were focal points at the conference:

#### **a. Record Sharing with other Agencies**

Ms. Wilkes discussed while AG is prosecuting a case in one area of the courts, the AG is unaware if a guardianship is established – even after prosecution of the guardian, the guardianship remains in place in probate. Ms. Wootton stated the issues she encounters. What does AG do when there are allegations against the guardian? Are they still the guardian? Or if the perp is not the guardian, shouldn't the guardian be informed to protect the incapacitated person? AG cannot search for the PP on Xchange so how will AG know if there is a guardian in place? The process is quite fragmented and problematic as it doesn't provide as much protection to the vulnerable person as it should.

Discussion ensued on what type of mechanism could be extended in the event of protected records. Ms. Wilkes posited that in the event of a judge ordering a court visitor access to a case she will extend rights in Xchange to the court visitors. Ms. Nan Mendenhall stated APS adjusted their record sharing statutes to include the attorney general office. Judge Kelly suggested if Code of Judicial Administration would need to be addressed. Discussion ensued on possible solutions for the mechanism which would not require a new rule or if it is an IT issue and permitting a higher level of access? Mr. Shane Bahr indicated this has been reviewed at the AOC and there is continued research about how to extend accesses and what is classified as private vs. public. No one in the courts, regardless of access, can search for the protected person in Xchange. He stated the Executive Committee should review the matter thoroughly and ask for counsel analysis. Judge Kelly stated the rules allow decrees in private cases such as divorce cases to be public; discussion centered on the same rules in guardianship cases. Guardianship Orders and letters are public, so why can 3<sup>rd</sup> parties not view the guardianship by searching for the PP? Judge Kelly stated give the orders are public, it should be an IT fix, and not require a new rule, similar to the divorce decrees. Third parties should be able to see it and be able to rely on it (bank, caregivers, etc). Mr. Bahr agreed to look further into this matter. Additionally, the Executive Committee will add it to the agenda to look at it in length.

### **b. Court Visitor Reports**

Court Visitor Reports are not flagged in CORIS and the judges are not being made aware of the filing. If the CV Report includes APS findings of PP being abused and the judge is not being made aware of the CV filing, it is just sitting there in the court's docket, while court's have continual jurisdiction over the guardianship case. The Probate Working Group is reviewing this issue and is developing a mechanism that the CV will file a Notice to Submit, and it will be treated as a Request to Submit. One of the continued discussions which continue to be held is when it's appropriate to step in on behalf of the protected party. Judge Brady reviewed his personal experiences and attorneys with their frustrations from the court when a court visitor report goes unused. Despite court visitor findings – abuse of the protected person or not -, the judge does not move the case forward. Ms. Gant stated it's an issue when pro se parties lack understanding of what to do.

### **c. Clinical Medical Report**

Regarding clinical reports Ms. Wilkes stated there is not a requirement to have a clinical evaluation prior to removing a person's rights under guardianship. The language states the judge may ask for these records but it isn't a statutory requirement. The judge in attendance wanted to have this information as standard practice with every guardianship/conservatorship case. Prior to removing a person's rights, should we not be looking at the PP's limitations and capabilities and cognitive functions? Mr. Dustin Hammers will review the clinical report form to provide his perspective.

### **d. Cross-training with APS on Auditing Records**

Ms. Wilkes reviewed the composition of the court visitors who are not trained in accounting and auditing procedures. Ms. Mendenhall reviewed Financial Exploitation Training through a grant that was approved via a grant. They are willing to provide this training to all court visitors. In addition to the training, APS is providing training for law enforcement and prosecutors and would like to extend that same training to judges. She will forward the information to Mr. Bahr to disseminate to the bench. It was suggested to forward the flier to the Utah Prosecution Council. Nan will look to see if the conference can be recorded.

## **GUARDIANSHIP SIGNATURE PROGRAM UPDATE**

Mr. Bahr reviewed the recent requests for an attorney as a part of the Guardianship Signature Program. In the past quarter approximately half of all requests have been able to be fulfilled. He stated approximately sixty cases have had requests for assignment. Mr. Bahr asked the Committee for ideas on how to supplement assignments, especially in rural areas. He stated research has begun to determine if we could recruit inactive attorneys. Additionally, the bar will cover the inactive attorneys malpractice insurance.

Mr. Denton stated the Bar was originally involved. Reaching out to regional bar associations to find out if they have young attorneys programs was suggested. Joanne Sayre, Mr. Denton, Mr. Riggle, and Judge Brady mentioned to look at new attorneys, or the bar's Emerging Leaders. Mr. Denton stated the Signature Program was originally marketed as pro bono but there may be an opportunity to receive some small compensation in certain areas. Mr. Riggle stated Ms. Nancy Sylvester had discussed creating a type of graduated fee scale or "flat fee for service" for certain case types and there may be a system in family law. The issue would be funding such a service. Shane will follow up on a few things on the GSP.

## **CLERICAL EDUCATION – SUBCOMMITTEE**

Mr. Denton stated the Subcommittee has scheduled their first meeting. He asked the Committee to suggest research topics regarding clerical education goals. The Subcommittee will be researching statewide practices and if individual districts want to make additional changes that will be a local addendum. Mr. Denton will make a full report at the next meeting.

### **GUARDIANSHIP DATA**

Judge Brady stated there has been an effort to ensure guardianship data is produced on a quarterly basis. Ms. Wilkes will ensure the distribution list is updated. If the data does not appear right, Shane encourages for input to make sure Court Services in matching up with district data.

### **COLLABORATION WITH TRIBES UPDATE – JAMES TOLEDO**

James Toledo provided a handout detailing the tribal locations in relationship to judicial districts. He stated he's met with Navajo Nation, Ute Mountain Ute, Uinta and Paiute tribes. When asked how WINGS and the Courts can provide a positive impact in guardianship cases, the tribes have primarily asked for education and clarification on how to handle those case types. Judge Brady suggested matching the service providers to the availability and then distribute the information within the Committee to help make contacts in their areas of expertise. He suggested that if it remains to be process specific training that could come from location specific court clerks. Mr. Toledo stated resources are not specific to the tribal area. Mr. Toledo stated there is issue for many tribal participants with internet access and limited mobile access to the Utah Courts website for resources. It was suggested that more mobile friendly resources would be helpful. Mr. Denton stated in the original creation of WINGS there had been a proposal to create a flow chart of contact and resources available and an organization chart. Shane agreed to look for this information. If not available, Mr. Denton would like to reconsider that initiative.

### **NEW / OLD BUSINESS – ALL**

**Commission on Aging** - Ms. Clayton stated there is media work being done with the Commission on Aging regarding financial exploitation – those should be available in the coming months. Ms. Clayton stated there was a survey circulated which resulted in creating more training for both the attorneys and the public. She will present further at the December meeting.

**Utah State Grant** - Mr. Riggle stated the Disability Law Center is a partner with the Utah Parent Center and the Center for Persons with Disabilities at Utah State University. Utah State is the lead applicant for the grant through the Administration on Community Living and they intend to help states develop an infrastructure to implement supported decision making for those with disabilities or those who are aging. He stated he received a request to the WINGS group to provide a letter of support in cooperation with the grant paperwork. Judge Brady will draft the letter of support and circulate to the WINGS committee for offline voting. Senator Weiler made the motion, a second was made and the motion passed unanimously.

**Restitution** - Ms. Wootton stated there is an issue when a protected person passes away in the middle of proceedings, and there is an issue of where the restitution is or should be forwarded. She asked for suggestions on how to research the matter. Judge Brady stated maybe a statute change could be made to remove heirs from receipt of property if they had anything to do with the demise of the protected party.