

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, October 15, 2020 - 12:00 to 2:00 p.m.

Attended			Not Present
Judge Keith Kelly	Rob Ence	Alan Ormsby	Judge David Connors
Judge James Brady	Xia Erickson	Nancy Sylvester	Jeff Daybell
Kent Alderman	Wendy Fayles	Shonna Thomas	Rob Denton
Shane Bahr	Nels Holmgren	James Toledo	Daniel Musto
Brant Christiansen	Bridget Koza (guest)	Norma Valavala-Ballard	Nan Mendenhall
TantaLisa Clayton	Michelle Miranda	Michelle Wilkes	Andrew Riggle
		Kaye Lynn Wootton	Todd Weiler

Agenda			
	Topic	Presenter	Materials
12:00	Meeting begins		
	Welcome, minutes, housekeeping	Judge Kelly	August 2020 meeting minutes
12:05	GAL for adults	Bridget Koza	Supreme Court opinion - In re G.J.P
12:30	Guardianship forms revision	Nancy Sylvester	Adult Guardianship Forms (zip file)
1:00	Project Updates:		
	• Guardianship test / manual	Brant Christiansen Kent Alderman	
	• Guardianship for school purposes	Norma Valavala-Ballard Judge Kelly	
	• Annual reminder notice & annual report review	Shonna Thomas	
	• Privacy language in CVP orders	Michelle Wilkes Nancy Sylvester	
1:45	Membership:		
	• Executive Committee members	Judge Kelly	
2:00	Meeting adjourned		

Next meeting:	Executive Committee – November, TBD
	Full WINGS – December 17, 2020 (via WebEx)

1. Housekeeping

- Meeting commenced at 12:06pm
- A motion was made to approve the minutes from the previous meeting (August 20, 2020). The motion was seconded and approved.
- Meeting adjourned at 1:37pm.

2. GAL for Adults

Bridget Koza (Administrative Office of the Courts) staffs the Juvenile Rules Committee. Concern was raised in that committee about a case/opinion (In re GJP) involving the appointment of a Guardian ad Litem for an incompetent parent and termination of parental rights proceedings. The opinion talks about the juvenile court's inherent authority to appoint GALs, but indicates in a footnote that no procedure or process (in statute or rules) exists for this. The Utah Supreme Court recommended a joint effort between the Juvenile Rules committee and the Civil Rules committee to address the issue. Nancy Sylvester staffs the Civil Rules committee and recommended WINGS provide input and discussion on this issue as well.

Questions Asked –

Is the assumption that competency has already been determined, or is there an expectation of the court to make that determination?

The juvenile court would need to make a determination on the parent's competency. This refers not to their competency to make medical or other decisions, but rather their competency to assist legal counsel in their defense.

Is it a common practice for a judge to determine an adult is not competent to represent their best legal interest in a court case, thereby initiating the need to appoint a GAL for the adult? Is there a statute that allows for this?

This does not appear to be a common issue. The Supreme Court rules of professional practice reference practices if a lawyer reasonably believes the client has diminished capacity. Rule 17b of the Rules of Civil Procedure also addresses this, but there is no process listed.

Discussion –

- Members of the Rules committee met a few weeks ago. In their discussion, they thought a legislative fix might be needed, as funding to pay GALs could be a consideration, especially since getting pro bono attorneys has been a challenge.
- This may be an issue for the Legislative committee in the Administrative Office of the Courts.
- This may be an area to discuss with the Indigent Defense, as a possible source of funding. It may not be part of their authority yet, but a suggested legislative fix could make it their authority.
- The Utah State Bar, Elder Law Section, and Estate Planning have a Legislative subcommittee. They may be able to look at this issue as well.
- WINGS could vote to recommend that the legislative liaison take up this issue with the legislature. This would formally bring the issue from WINGS to the court's Legislative committee.
- The Board of District Court Judges and the Board of Juvenile Court Judges may be other options – to bring to their attention that a legislative fix may be needed.

Decisions made –

- A Motion was made to bring this issue to the court’s Legislative committee with a recommendation to address it with the legislature. The motion was seconded and approved.
- Bridget Koza will bring this issue and the WINGS recommendation to the Board of Juvenile Court Judges and the Utah Supreme Court.
- Bridget will email Michael Drechsel, the Liaison of the Legislative Committee, copying Nancy, Shane Bahr, and Shonna Thomas. (Shonna will share with WINGS the exchange.)
- Kent Alderman and Brant Christiansen will reach out to WINGS member Senator Weiler to inform him of this meeting item.
- This item will be added to the December WINGS meeting for a report back.

3. Guardianship Forms Revision

The Forms committee is working on updating forms, with a focus on plain language.

Nancy requested feedback from WINGS members. If WINGS members want to provide input, the due date is tomorrow.

4. WINGS Projects Updates**Guardianship test / manual:**

The manual used by proposed guardians is awaiting additional feedback from WINGS members. It is unclear what the next steps are for moving this project forward to completion.

Discussion –

- Andrew Riggle and Kaye Lynn Wootton provided comments previously. These comments were included in the draft sent in August to WINGS.
- The Elder Law Section of the Bar has not reviewed these changes.
- The next step may be to bring this to the Board of District Court Judges, as it is not technically a form for approval by the Forms committee.

Decisions made –

- Shonna will send the most recent draft with WINGS comments to Kent and Brant.
- Brant will send the manual draft to the Elder Law section / appropriate subcommittee for input. Return comments to Shonna for distribution.
- This item will be added to the November WINGS Executive Committee meeting for a report back and a determination if it is ready to present to the Board or if it needs additional consideration at the December WINGS meeting.
- Once comments have been incorporated and approved, the next step is to present the material to the Board of District Court Judges. They meet next on November 20th and December 18th.

Guardianship for school purposes:

Regarding the issue of school districts requiring full guardianships in order to participate in extracurricular activities. This is not a school district policy, but rather the policy of the Utah High School Activities Association (UHSAA). The questions in OCAP ask whether the guardianship is for limited purposes only, but OCAP does not specify if they are going to be participating in sports. Patrons using OCAP may be under the

false impression that they can use a Power of Attorney or a For School Purposes Only guardianship for these sports activities. This creates more work for court personnel and causes patron frustration.

Discussion –

- State law recommends that we limit guardianships to only what is necessary. The UHSAA may be suggesting something contrary to state law.
- There is a problem between what the athletic association is recommending and what the law allows, as well as a problem of consistency because some school districts adhere strongly to the association requirements and while others do not.
- The guardianship type “For School Purposes Only” is a different system requiring different follow up (e.g., no reports are required).
- One option may be to update the language in OCAP, to add instruction that if seeking guardianship for sports activities, to check with the school district to determine if this option fulfills their requirements.
- Suggested language to the OCAP options may be best addressed through the Board of District Court Judges first (in a draft/memo form), before forwarding to the Forms committee.
- It may be important to consider/investigate if there is a separate statute for minors that allows for limited guardianship (Utah Code 75-5-209 does not indicate such), and whether simply listing out the powers of the guardianship in the Order would take precedent over 75-5-209.
- The statutory definition of residual parental rights can be found in Utah Code 78A-6-105.
- It does not make sense to recommend a change in the OCAP form language until WINGS looks into the issue of whether limited guardianship for school purposes is allowed under statute or case law.

Decisions made –

- Kent and Brant will research this issue further and report to the committee on their findings, before WINGS moves forward with a language recommendation.
- This item will be added to the WINGS agenda for the December meeting.

Annual reminder notice / report review:

The review of annual reports, per statute, will be discussed at the November Clerks of Court meeting, with the intent of gathering more information about how each district handles this requirement, and to seek Clerks’ input on improving the process and compliance to the statute. If time permits, a proposal for introducing an annual reminder notice system will also be shared.

Decisions made –

- Shonna will arrange to have these items listed on the Clerks of Court meeting agenda, inviting Judge Kelly and Nancy Sylvester to attend as well.
- This item will be added to the Executive Committee meeting in November and the WINGS agenda for the December meeting.

Privacy language in CVP orders:

Privacy language was added to the CVP orders. The Board of District Court Judges approved the additions. These changes have been forwarded to the Forms committee for approval and should be reviewed by that committee next week.

5. Membership

The WINGS Bylaws are not clear on the succession process for Executive Committee (EC) members. The EC discussed this in September and suggested that EC appointment should be based on institutional representation. Therefore, the expectation for succession would be replacement by someone within the same institution and would not require a vote/approval by the full WINGS committee.

Action Items

<ul style="list-style-type: none"> – Bring this issue and the WINGS recommendation to the Board of Juvenile Court Judges and the Utah Supreme Court. – Email Michael Drechsel, the Liaison of the Legislative Committee, copying Nancy, Shane Bahr, and Shonna Thomas. – Share with WINGS the exchange / updates. 	<p>Bridget Koza Shonna Thomas</p>
<ul style="list-style-type: none"> – Send the guardianship manual draft to Kent and Brant. – Share the draft with the Elder Law section / appropriate subcommittee for comment. Return comments to Shonna for distribution. 	<p>Shonna Thomas Brant Christiansen</p>
<ul style="list-style-type: none"> – Research the issue of guardianship for school purposes only / limited guardianship of a minor further and report back to the committee. 	<p>Kent Alderman Brant Christiansen</p>
<ul style="list-style-type: none"> – Request time on the November Clerks of Court meeting agenda to address annual report review and reminder notices. – Invite Judge Kelly and Nancy Sylvester to attend. 	<p>Shonna Thomas</p>

Deferred / Continuing Items

<ul style="list-style-type: none"> – Guardianship test – Annual Report reminder notice – Annual report review – statutory requirement – Executive Committee membership / WINGS bylaws 	<p>Executive Committee</p>
<ul style="list-style-type: none"> – GAL for Adults – Limited / School-purposes only guardianship statute – Annual report review and reminder notice – Clerks of Court update 	<p>Full Committee</p>

Next Meeting(s): December 17, 2020