

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, April 15, 2021 - 12:00 to 2:00 p.m.

Attended			Not Present	
Judge Keith Kelly	Leslie Francis	Nancy Sylvester	Judge James Brady	Wendy Fayles
Deborah Brown	Nels Holmgren	Shonna Thomas	Judge David Connors	Daniel Musto
Brant Christiansen	Nan Mendenhall	Katie Thomson	Kent Alderman	Andrew Riggle
TantaLisa Clayton	Michelle Miranda	James Toledo	Shane Bahr	Todd Weiler
Rob Denton	Alan Ormsby	Michelle Wilkes	Rob Ence	
Xia Erickson	Danaka Robles	Kaye Lynn Wootton		

Agenda

	Topic	Presenter	Materials
12:00	Meeting begins		
	Welcome, Minutes, Housekeeping	Judge Kelly	<i>February 2021 Minutes (draft)</i>
12:10	Group Discussion Items:	Group discussion	
	<ul style="list-style-type: none"> Guardianship hearings (during and post-COVID) 		
	<ul style="list-style-type: none"> WINGS bylaws & committee status 		<i>Utah Wings Bylaws</i>
	<ul style="list-style-type: none"> WINGS meeting post-COVID 		
1:20	WINGS Projects Updates:		
	<ul style="list-style-type: none"> Guardianship for school purposes 	Brant Christiansen Nancy Sylvester Shonna Thomas	<i>OCAP Screenshots – Guardianship of a Minor</i>
	<ul style="list-style-type: none"> CJA Rule 6-501 	Nancy Sylvester	
	<ul style="list-style-type: none"> Report review coversheet 	Nancy Sylvester Shonna Thomas	
	<ul style="list-style-type: none"> Guardianship forms revision 	Shonna Thomas	
	<ul style="list-style-type: none"> Manuals 	Shonna Thomas	<i>Case Management for Adult Guardianship and Conservatorship</i> <i>Basic Guidelines: Court-Appointed Guardians & Conservators</i>
1:45	Other Business		
2:00	Meeting adjourned		

Next meeting: June 17, 2021 (via WebEx)

1. Housekeeping

- Meeting began at 12:02pm.
- A motion was made to approve the minutes from the previous meeting (February 18, 2021). The motion was seconded and approved.
- Two new attendees were introduced to the group – Leslie Francis and Deborah Brown.
- Meeting adjourned at 2:00pm.

2. Group Discussion Items

Guardianship hearings (during and post-COVID)

In talks about post-pandemic life, and what that might look like, there has been discussion about whether the courts will continue to do remote hearings. There are some instances where it is helpful to have remote meetings as an option. However, when it comes to issues that involve someone's liberty and potential abuses, the courts need to proceed carefully, especially with cases related to domestic violence and guardianship.

There is a court subcommittee working plans on how to approach this subject, in order to give judges the tools they need to weigh out when it is appropriate for somebody to appear in person versus remotely. This is an opportunity for WINGS to provide input on this topic moving forward.

Discussion –

General

- The challenge with guardianship is that when you have a respondent who is dependent upon the petitioner, how do the courts ensure the respondent is able to speak freely?
- The majority of cases may not involve abuse or neglect, but for those that do, the consequences can be significant.
- It appears there are two fundamental concepts under consideration: (1) the ease of representing respondents in guardianship cases, and (2) making sure the respondent is aware and understands what is going on and has a say in the proceedings.

Virtual vs. In-person

- There are problems with remote hearings, but there are also advantages. For some people, physical presence in the court can be dangerous or disturbing, but virtual presence is less so. It is important to find a way to keep the good, while still protecting the vulnerable individuals.
- As someone who represents individuals in these cases, it can be confusing for them. Especially in larger districts, where there are multiple cases being heard, it can be difficult for the individuals involved (and even some of the attorneys), to understand when to be called on, when to hit the right button to make sure you are heard, etc. The gold standard should be that the respondent needs to appear in court with their attorney, and when it is not possible, there is a Plan B.
- From an attorney perspective, the most important part seems to be less about the actual hearing itself, but more about the initial meeting with the client (respondent). It can be difficult to meet with the client in a way that ensures they are able to speak independently. If there were a way to facilitate that aspect remotely, that might be even more important.
- From the perspective of the Court Visitor Program, as recently as three years ago, there was an issue with some attorneys believing that if a Court Visitor was requested, the respondent need

not attend the hearing, regardless of the respondent's preference. Steps have been taken to correct this problem and it is important that the courts do not revert to how things were done three years ago. It is worth mentioning, in some cases, the respondent has expressed an interest in attending the guardianship hearing, and while virtual options were available, the individual was not able or given the option to attend.

- For Office of Public Guardian (OPG), having the option of WebEx has been a game changer in the number of people they can serve. OPG serves a high volume of cases in general, and the individuals they serve are often in a critical situation, without resources. They have one attorney through the Legal Aid Society who represents all of them, and one assistant attorney general who represents the agency part time. To have the flexibility of this online platform has been hugely helpful. However, measures to protect respondents are critical as we move forward.
- From the Medicaid Fraud Control Unit perspective, while they are not involved in guardianship hearings, several times they have had family members of the vulnerable adult comment that the virtual platform was confusing and that it does not seem as professional. These individuals have experienced connectivity issues, and they felt that those issues were given more importance than being heard about their vulnerable adult parent being abused or neglected or exploited. It may be a case where we think it works well, but others unfamiliar with court proceedings may have a different perspective.
- From the 3rd District probate perspective, there are some advantages to virtual hearings. For instance, the virtual platform has allowed the court to see/hear from respondents who might otherwise not have the opportunity, due to their various situations or conditions. In these cases, the facility where the respondent resides can connect to the courts remotely. However, while it is great to not have to force some of the individuals to participate in person, there is a corresponding loss of the personal touch in the process. Virtual may be more beneficial for the incapacitated guardianships, but for everyone else, it is a lot easier to have them in person.
- OPG has had a similar experience, where a segment of the population they serve want to be heard in front of a judge in a court, while another subset of the population has little understanding of the process, bringing them into court is a disruption for them, they do not want to go, or they are medically fragile. In these cases, remote attendance allows them to participate in a more accommodating manner.
- From the professional guardian perspective, it is important that these individuals know, before entering the courtroom or before the hearing, what to expect in the court proceeding and afterward if guardianship is appointed.
- There is another related issue - the overly crowded probate calendars, particularly in 3rd district, which can often feel like a cattle call. Regardless of the remote environment, it is still a rushed process. Cases are separated every ½ hour, they do tend to go through them very quickly, and there is concern that the individuals involved do not feel like they are getting the personal attention that they would if they were physically present.
- A hybrid option makes sense, but not only because it is easier. Perhaps it should be that in-person presence at the hearing is the standard/mandated, with virtual participation an option under specific requirements. For instance, mandating in-person if the respondent and the proposed guardian live together.

Statute and Rule 43

- There is a new rule of civil procedure just approved (Rule 43), that covers remote testimony safeguards. This rule goes into effect on May 1, 2021. This rule states that no hearing may proceed unless the court ensures all remote testimony safeguards are provided by the court to the parties. It gives details of what is required to ensure those safeguards are provided.

- The amendment of Civil Rule 43 is a natural springboard to say we are allowing these kinds of remote hearings, we are amending the rule to facilitate them in general civil cases, therefore, what does that suggest needs to be done as we seek to put together probate rules?
- There is an overlay of the statutory requirements of the respondent's presence at the hearing. It may be worth looking at the bench books and bench cards, as restrictions lift, to ensure that the court continues to comply with this statutory requirement.
- Probate largely lives in statute. There is an opportunity for the Probate Rules subcommittee to take what has been done for Civil Rule 43 and apply it more specifically to hearings in probate proceedings, particularly dealing with guardianship respondents.
- Although not as common, the subcommittee may also want to consider the situation where a judge can waive the requirement of an attorney representing the respondent, because the involvement of an attorney can minimize some of the pressures that could arise when the respondent is not in open court.

Full and Limited Guardianships

- It is worth thinking about the difference between full and limited guardianship. There are times when a full guardianship is requested, but perhaps not needed. It might be worth considering drafting different rules for the imposition of full guardianships, with specifications of the evidence needed for both limited and full guardianship, clearly laid out.
- What if there was a procedural rule stating that any plenary guardianship petition had to go to an evidentiary hearing, and for a limited guardianship petition with a large number of different areas of substitute decision-making, the judge would have the discretion to send those to an evidentiary hearing as well? Similarly, perhaps something along the lines of if the judge does not have reliable evidence to grant a plenary guardianship, then it must go to an evidentiary hearing? That would cue the attorneys to make sure they have plenty of supporting evidence. If something like that were in place, a lot of attorneys or petitioners might not automatically put plenary guardianship as the default.
- Conversely, a well-tailored limited guardianship could cover everyone's needs, and in those circumstances, you wouldn't necessarily require an evidentiary hearing, and there would be no additional costs. Can the guardianship order be revised to more clearly delineate the extent and scope of the limited guardianship powers (as opposed to a plenary guardianship)?
- On the one hand, you have parent groups, parents of children with disabilities who seek to make it easier to obtain a guardianship when the child turns 18, which can sometime bump up against the interest of ensuring that the guardianship is limited. This may be something that belongs in the probate rules, and it is certainly a judicial education issue, keeping up on the materials provided to judges to make sure they are requiring proper medical evidence before they put in full guardianship restrictions.

Medical Evidence

- How does the court know whether someone is competent? Is it appropriate to ask for a neuropsychological evaluation to test cognition and competency to provide that information to the court?
- While there is a time and place for this type of evaluation, in some cases, this would be difficult as guardianship proceedings are taking place on an emergency basis.
- There is also a question of what the standard of that evidence should be, as it is currently unclear. The statute just says it needs to be clear and convincing evidence, rather than specifying a standard. In contested cases especially, the medical evidence can be critical in deciding what is appropriate, but in some cases, that medical evidence is a simple statement coming from the

family doctor or even a social worker, rather than a full neuropsychological evaluation completed by a neuropsychologist.

- Evaluations may not be covered by insurance, so it is important to consider the potential cost there as well. If it is something like a neuropsychological evaluation, this would be considered a specialty service and might not be covered by insurance. However, they could go to the primary provider, which is more likely to be covered under insurance. The primary care provider could do their own assessment, something more formal, but simple, like a MOCA (Montreal Cognitive Assessment).
- This is likely going to need a statutory fix down the road. A variation has been tried in the past, stating that medical documentation is required, or at least an evaluation, but thus far it has not been accepted/approved.
- There is an interesting evidentiary issue under Rule 807 whether you can allow reliable hearsay in court proceedings, and sometimes the court will have discretion to allow the reliable hearsay in the form of the medical record. However, a conclusory letter is not reliable.
- There is a way to bring in the statute and what it requires in the rule, and then bring in the reference to the rule regarding reliable hearsay. That would at least flag it and may go a long way to helping judges deal with these probate cases.

Decisions made –

- Andrew Riggle previously reached out to some attorneys for their thoughts on this topic. Shonna Thomas will send their responses to committee members.
- Rob Denton and Kent Alderman wrote an article several years ago about how to get private insurance to pay for evaluations that are necessary in guardianship cases. If a copy can be found, Shonna will distribute to the WINGS committee for informational purposes.
- This item will be brought to the Probate Rules subcommittee for further discussion.
- This item will remain on the agenda for the Executive Committee meeting in May and WINGS meeting in June.

WINGS bylaws and committee status

There are two main considerations. First, the bylaws need to be revised to include a more formal process for inviting and voting on new members and new terms. Second, WINGS needs to decide whether it is appropriate or desired to pursue becoming a formal Judicial Council committee.

Discussion –

- The current setup of WINGS offers a fair amount of flexibility in how the group operates.
- Becoming a Judicial Council committee may be useful for court members (e.g., judges, probate staff), as members of the committee would then be appointed by the Judicial Council, with a clear path of succession within the courts.
- A change in committee status would likely only affect court staff appointments, not community stakeholders. WINGS reports annually to the Judicial Council, so there is some degree of supervision already in place.
- This might allow WINGS to reach out to the more rural areas and increase participation from those districts.
- Does WINGS come under the open meeting laws, and would becoming a Judicial Council committee change that?
- GRAMP and the Court Visitor Program would likely benefit from the change, as it could increase awareness of guardianship programs in the courts across the state.

- If part of the objective is to decide succession plans, membership, and terms, it would make sense to decide first if we are going the traditional Council committee route and tackle the bylaws once that has been determined.

Decisions made –

- Judge Kelly will follow up with colleagues on the Judicial Council to get their input.
- Judge Kelly, Shane Bahr, and Shonna will meet before the next meeting to discuss this topic further.
- This item will remain on the agenda for the Executive Committee meeting in May and WINGS meeting in June.

WINGS meetings post-COVID

While it is not yet planned to meet in-person again as a committee for at least several more months, how does WINGS want to move forward with committee meetings once it is safe to do so?

Discussion –

- Pre-COVID, WINGS meetings took place over lunch, provided by the courts. Due to budget considerations, it is unlikely that lunch will be provided during the WINGS meetings, as it was in the past. Would this make it more difficult for stakeholders to meet in person in the future, during lunchtime?
- Knowing many of the people already on the committee, these virtual meetings during COVID have worked well and have been informative. However, new members over the past year may not have this same advantage.
- Some of the greatest value from this committee has come from networking with stakeholders both before and after the meeting, which does not happen in a virtual format.
- Periodic, in-person meetings would be advantageous. Another option is to have all meetings revert to the in-person format, with the option of remote for anyone who is unable to attend in person.
- For some stakeholders, attending in person may become more difficult, due to scheduling and time constraints, so maintaining a remote/virtual option for those whose schedules may not allow in-person participation would be helpful.
- WebEx meetings do save some time, as stakeholders do not have to travel to and from the courthouse.

Decisions made –

- As the courts move into the least restrictive phase, WINGS members will be informed if/when meetings will take place at Matheson Courthouse.
- Future meetings will include both in-person and virtual options.

3. WINGS Projects Updates

Guardianship for school purposes

As this committee has determined, the statute is clear and does not allow a limited guardianship for a minor, nor is there any such thing as a school purposes only guardianship for minors. A parent can choose to have a guardianship for the child to facilitate attending a different school, but this would be a full guardianship.

Therefore, the next steps involve some reeducation for the judiciary and at the district levels, and updates to the court's websites, Rule 6-501 that mentions these types of guardianships, the OCAP system that offers this as a choice, and the Basic Guidelines manual for new guardians.

Discussion –

- The OCAP screenshots show this incorrect information and how confusing it might be for a parent/pro se petitioner when trying to fill out the form.
- It might be helpful to include a statement on that page in OCAP indicating there is no such thing as a limited guardianship of a minor.
- While some changes to the manual and rule might take time, OCAP should get updated quickly.
- A brief meeting with Court Services is all that is needed to make the OCAP changes.

Decisions made –

- Nancy Sylvester will reach out to Clayson Quigley (Court Services) to make changes to OCAP.
- Shonna will review the Basic Guidelines manual for references to limited guardianship of a minor and make corrections/send for review to committee members as needed.
- Judge Kelly, Brant Christiansen, Nancy, and Shonna will address Rule 6-501 with the Probate Rules subcommittee, to remove references to limited guardianship for minors.
- This item will be added to the Executive Committee meeting in May for further discussion on updates to the court websites, Rule 6-501, and judiciary education.

CJA Rule 6-501

The Probate Rules subcommittee was unable to get to Rule 6-501 during the last meeting. However, it will remain on their agenda for the upcoming meeting. The goal is to bring Rule 6-501 out of the Code of Judicial Administration and into the probate rules. Revising Rule 6-501 will include updating/removing language related to limited guardianships of minors and adding references to the report review coversheet.

Decisions made –

- Judge Kelly, Nancy, Brant, and Shonna will address Rule 6-501 at the next Probate Rules subcommittee meeting.
- This item will remain on the agenda for the Executive Committee meeting in May and WINGS meeting in June.

Report Review Coversheet

The Forms committee is in the process of reviewing the coversheet. Nancy and Shonna are scheduled to meet with them at the end of April to answer questions and discuss any changes to the coversheet they feel are necessary.

Procedure for the coversheet would be included in the probate rules. It would be similar to submitting something like a proposed order, where it gives the judge a roadmap for what to do next with the annual reports.

The coversheet and Rule 6-501 do not necessarily have to go hand in hand, but having a rule requiring its use would give it greater force and effect.

Decisions made –

- Nancy and Shonna will meet with the Forms committee to discuss additional revisions to the coversheet and procedures for its use.
- This item will remain on the agenda for the Executive Committee meeting in May and WINGS meeting in June.

Guardianship Forms Revision

GRAMP is reviewing and revising all guardianship forms. This includes the reports guardians/conservators must complete – Inventory, Status Report, and Financial Accounting Report, as well as instructions. These forms will be sent to the Self Help Center next week. If anyone still wants to provide feedback, there is still time.

Manuals

The Basic Guidelines manual and Clerical manual are in final draft form. They will be finalized once WINGS has resolved questions related to school guardianships for minors and CJA Rule 6-501.

One additional consideration for WINGS stakeholders relates to the Resources section of the Basic Guidelines manual (for proposed guardians). Some resources are listed, but WINGS members may want to review this section to determine if important resources are missing.

Decisions made –

- Shonna will send an email with the Resources section of the Basic Guidelines manual, requesting WINGS stakeholder input.
- Shonna will reach out to Andrew Riggle to see if there is limited criteria related to protected persons subject to abuse or neglect that may be helpful to include in the manual.
- Deborah Brown will provide to Shonna the link to the Standards of Practice Manual from the National Guardianship Association (NGA) to incorporate into the manual.

4. Other Business

One of the main benefits of this committee is making sure that if you/your agency have concerns or issues with the handling of guardianship matters, that the committee is able to flag and address those issues.

If any committee member has an issue to discuss or you would like to see on the agenda for the next meeting, reach out to Shonna.

5. Action Items

– Send attorney responses regarding virtual hearings post-COVID to WINGS committee.	Shonna Thomas
– If possible, find the article about private insurance and send to Shonna	Rob Denton Nancy Sylvester
– Follow up with colleagues on the Judicial Council to get their input on becoming a Judicial Council committee.	Judge Kelly
– Set up a meeting with Judge Kelly and Shane Bahr to discuss becoming a Judicial Council committee.	Shonna Thomas
– Reach out to Clayson Quigley (Court Services) to make changes to OCAP.	Nancy Sylvester
– Address Rule 6-501 and virtual hearings post-COVID with the Probate Rules subcommittee.	Judge Kelly Nancy Sylvester Brant Christiansen Shonna Thomas

<ul style="list-style-type: none"> – Meet with the Forms committee to discuss additional revisions to the report review coversheet and procedures for its use. 	<p>Nancy Sylvester Shonna Thomas</p>
<ul style="list-style-type: none"> – Review the Basic Guidelines manual for references to limited guardianship of a minor. – Send the Resources section of the Basic Guidelines manual, requesting WINGS stakeholder input. – Reach out to Andrew Riggle to see if there is limited criteria related to protected persons subject to abuse or neglect that may be helpful to include in the manual. – Add to the Basic Guidelines manual the link from Deborah Brown to the Standards of Practice Manual. 	<p>Shonna Thomas</p>

<p>Deferred / Continuing Items</p>
<ul style="list-style-type: none"> – Virtual hearings post-COVID – Judicial Council committee & bylaws – Rule 6-501 – Limited guardianship of minors – Manuals – Clerical & Guardianship – Report Review coversheet

<p>Next Meeting(s):</p>	<p>June 17, 2021 August 19, 2021 October 21, 2021 December 16, 2021 January 20, 2022 March 17, 2022</p>
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