

Agenda

Ad Hoc Committee on Probate Law and Procedure

May 21, 2007
12:00 to 2:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Approval of minutes.	Judge Sheila McCleve
Review and prioritize topics.	Committee Members
Making things happen.	Tim Shea
Monitoring and enforcing reporting requirements of guardians and conservators.	Tim Shea
Other business.	Judge Sheila McCleve

Committee Web Page: <http://www.utcourts.gov/committees/adhocprobate/>

Meeting Schedule

June 15, 2007
July 20, 2007
August 17, 2007
September 21, 2007
October 19, 2007
November 16, 2007
December 21, 2007
January 18, 2008
February 15, 2008
March 21, 2008
April 18, 2008
May 16, 2008
June 20, 2008
July 18, 2008
August 15, 2008
September 19, 2008

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114-0241

April 20, 2007 - 12:30 p.m.

MEMBERS PRESENT

Kent Alderman
Kerry Chlarson
Mary Jane Ciccarello
Reese Hansen
Judge George Harmond
Maureen Henry
Richard Howe
Judge Sheila McCleve, Presiding
Steve Mikita
Julie Rigby
Judge Gary Stott
Kathy Thyfault

GUEST

Chief Justice Christine Durham

STAFF

Diana Pollock
Tim Shea

I. WELCOME AND REMARKS - CHIEF JUSTICE CHRISTINE DURHAM

Chief Justice Christine Durham welcomed the members to the committee and expressed her appreciation for the members' willingness to serve on this new committee. Chief Justice Durham explained that probate law and procedures are in need of review to better serve the needs of the people and to educate judges, clerks, lawyers and the public. The Judicial Council asks that the committee members explore the various aspects of probate law and procedure and set their own agenda.

II. WELCOME AND REMARKS - JUDGE SHEILA MCCLEVE

Judge Sheila McCleve reported that Judge Gary Stott was initially asked to chair the committee, however, he is unable to do so. Judge McCleve agreed to chair the committee and understands that the scope of the committee is to address problems with the probate system. This committee's task is to define the scope inquiry and then propose the necessary changes to the Judicial Council.

III. INTRODUCTIONS

The committee members introduced themselves and offered some background regarding

the positions they hold. Tim Shea introduced himself and Ms. Pollock as staff to this committee. Mr. Shea stated that at the next committee meeting he would discuss the mechanisms available to the committee to complete its tasks. The mechanisms, such as amendments to the rules and statutes, education, and budget will make committee's recommendations effective.

IV. MEETING SCHEDULE

Judge McCleve addressed the meeting schedule, stating that the best format is to meet once a month from noon until 2:00 p.m. After discussion, the committee agreed to meet on the third Friday of each month. Due to a conflict with the District Judges Conference on the third Friday of May, the next committee meeting is scheduled for May 21, 2007.

V. IDENTIFICATION OF ISSUES

Judge McCleve opened the meeting for discussion regarding the direction that committee might take. Tim Shea noted that the Judicial Council did not provide any charge and is looking to this group to identify what the issues are. Below are the committee's ideas.

- Consider need for full-time probate judge or commissioner. Other states have adopted this and the states that have adopted full-time probate judges are much more successful.
- Develop forms for public use. Coordinate development with others working on forms. Produce more user-friendly forms.
- Thoroughly review guardianship and conservatorship statutes.
- Develop programs for judicial education, lawyer education and public education. Perhaps something on the OCAP.
- Improve appointment of counsel for ward. Under-representation for people with disabilities.
- Impress upon judges, lawyers and public that guardian's authority should be limited to specific, identified purposes unless the grounds for a plenary appointment are proved.
- Better specify role and authority of the court clerk.
- Improve procedural uniformity among the courts.
- Develop the role of mediation. The Third District Court is the only district that asks guardians to attend mediation.
- Research emergency/temporary appointments. There is a misunderstanding about emergency guardianship statutes.
- Research Model Code for Guardians. This is being researched by the National College for Probate Judges. They anticipate having the Code available toward the end of the year.

- Certification by National Guardianship Association.
- Research multi-state appointments. If multiple states are involved, how is the application of the laws are handled?
- Research voluntary commitments of the ward by a guardian to mental health. Adult and juvenile laws are not uniform.
- Develop avenues for investigating abuse and neglect by a guardian.
- Proceedings to protect the ward from the guardian.
- Better specify guardian's authority and limits on authority.
- Require guardianship plans to be filed with the court.
- Improve annual reporting. They need to be monitored.
- Investigate minimum standards of medical evidence for appointment of guardian.
- Identify other organizations that may be working on the issues that may be able to provide us with information and support.
- Identify where the law is sufficient, but we need to improve implementation.
- Discuss role of Legislative Research and General Counsel.
- Investigate public's needs in estate administration.
- Develop information, instructions and forms.
- Research conflicts between district court and juvenile court for appointment of a guardian for a young adult.
- Research conservatorship issues.

The next committee meeting is scheduled for May 21, 2007 at 12:00 p.m. There being no further business, the committee adjourned at 1:55 p.m.

Areas for Development

Improve Uniform Procedures

Consider the need for a full-time probate judge or commissioner.

Better specify the role and authority of the court clerk.

Impress upon judges, lawyers and public that guardian's authority should be limited to specific, identified purposes, unless the grounds for a plenary appointment are proved.

Require guardianship plans to be filed with the court.

Improve annual reporting.

Investigate minimum standards of medical evidence for appointment of a guardian.

Improve Public Service

Investigate public's needs in guardianships and conservatorships and in estate administration.

Develop information, instructions and forms for public use.

Develop methods for protecting the ward from the guardian.

Improve Law and Policy

Thoroughly review guardianship and conservatorship statutes.

Uniform Probate Code (2005)

Improve appointment of counsel for ward.

Develop the role of mediation.

Research emergency/temporary appointments.

Research Model Code for Guardians.

National College of Probate Judges

Certification by National Guardianship Association

Research multi-state appointments.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Research voluntary commitments. Adult and juvenile laws are not uniform.

Research conflicts between district court and juvenile court for appointment of a guardian for a young adult.

Better specify guardian's authority and limits on authority.

Identify where the law is sufficient, but we need to improve administration of the law.

Research conservatorship issues.

Improve Education

Develop programs for judicial education, lawyer education and public education.

Committee Operations

Discuss the involvement of Legislative Research and General Counsel.

Identify other organizations working on these issues that may be able to provide us with information and support.

Coordinate with other organizations.

Making Things Happen

Amend Statutes

1. Judicial Council Bills. Drafts due second week of August.
2. Effective date: Early May or July 1 of the following year.
3. Work with affected groups to prepare drafts.
4. If approved as a Council bill, Legislative Liaison Committee and AOC staff will shepherd the bill through the Legislation.

Amend Rules

1. Effective dates: April 1 and November 1 of each year.
2. Work with affected groups to prepare drafts.
3. Draft is published for comment for 45 days.
4. Comments considered. Further changes in response.
5. Submit draft for approval.
6. Rules of Evidence and Procedure
 - a. Advisory Committee
 - b. Supreme Court
7. Rules of Administration
 - a. Policy and Planning Committee
 - b. Judicial Council

Education

1. Annual judicial conference in Fall
 - a. All judges
2. Court level conferences in Spring
 - a. Judges of that court level
3. Annual court employees' conference in Fall
4. Statewide and local classes
5. Bar conferences
 - a. March, July, November
 - b. Local classes

Policy

1. Judicial Council
2. Boards of Judges
3. Trial Court Executives
4. Clerks of Court
5. Probation Officers
6. Other Committees

Budget

1. Requests for building blocks due mid-July