

MINUTES
Ad Hoc Committee on Probate Law and Procedure
Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114-0241
August 17, 2007 - 12:00 p.m.

ATTENDEES

Kent Alderman
Mary Jane Ciccarello
Richard Howe
Judge Sheila McCleve, Presiding
Steve Mikita
Julie Rigby
Kathy Thyfault

EXCUSED

Kerry Chlarson
Reese Hansen
Judge George Harmond
Maureen Henry
Judge Gary Stott

STAFF

Marianne O'Brien
Diana Pollock
Tim Shea

I. WELCOME AND APPROVAL OF MINUTES

Judge McCleve welcome the committee members to the meeting. Steve Mikita noted one correction to the minutes. After the correction the minutes were approved.

Tim Shea welcomed and introduced Marianne O'Brien as a new employee to the AOC's legal department. Ms. O'Brien will assist Mr. Shea as staff to the committee. The committee welcomed Ms. O'Brien.

II. REPRESENTATION OF PERSON IN NEED OF PROTECTION

Based on the discussions at the last meeting, Tim Shea drafted an outline and statutes and rules for the representation of a person in need of protection. Mr. Shea stated that the program appears more closely related to the practice of law than to the administration of the courts and so placed the program under the Supreme Court and the Utah State Bar. The outline is as follows:

Money

- General fund appropriation for attorney fees if the person is indigent.
- General fund appropriation for extraordinary expenses if the person is qualified indigent.
- Lawyer represents person pro bono or a sliding scale based on ability to pay.

Roster

- Maintained by the Bar and Supreme Court
- Minimum education requirements, including MCLE
- Observation, Mentoring
- Minimum pro bono hours
- Waiver provision
- Biannual renewal at time of MCLE submission
- Complaints and sanctions handled through the regular OPC process
- Benefit to being on the list:
 - Presumed qualified. Clients with incomes might select a lawyer from this list.
 - Payment from state appropriation if the person is indigent or qualified indigent.
 - Immunity from malpractice action, however, still subject to bar discipline.

Tim Shea asked whether the language should state that the lawyer be more of a guardian ad litem or advocate. Should the lawyer serve both functions? Some of the committee's comments:

- It is crucial for the ward to have a lawyer.
- Leave role of the ward's attorney as an advocate.
- The lawyer should zealously advocate for the ward.
- Even a zealous advocate does not need to litigate every point.
- Differentiate the visitor from the attorney.

Appointments:

- If the ward does not have a lawyer of his or her personal choice, the judge would appoint someone from the roster.
- Need to develop a fair rotation method.
- The putative ward can select an attorney of his or her choice.
- Petitioner does not have the option to select from off the list.

Payments:

- Indigent - State appropriation would pay for the lawyer.
- With Funds - Estate would pay.
- Qualified indigent - Lawyer appointed from list would appear pro bono, includes "no cost" and "low cost."
- Determination of indigency - Need to develop a form for judge to review.

Tim Shea asked whether there should be a schedule of fees that attorneys may charge. Some of the committee's comments:

- The fee should be based on the ability to pay.
- If a maximum fee is established there may be lawyers who would charge that much even though they might otherwise have charged less.

- If a case needs ongoing attention should that fee be limited?
- If the fee is approved by the court, this will allow flexibility.
- Establish criteria to determine the fee to be charged.

Mr. Shea would incorporate today's discussion into the draft for the next meeting.

III. DEFINITION OF INCAPACITY

Steve Mikita summarized the committee's agreement to develop a functional definition of incapacity. Mary Jane Ciccarello asked that a smaller group meet to discuss the Wisconsin proposal before addressing this issue. Steve Mikita would like input from the judges who were not present at the meeting today. This item will be placed at the top of the agenda next time. The discussion was tabled until the next committee meeting.

IV. ADJOURN

The committee adjourned at 2:00 p.m. The next meeting is scheduled for September 21, 2007.