

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

March 21, 2008 - 12:00p.m.

ATTENDEES

Kent Alderman
Kerry Chlarson
Judge George Harmond
Justice Richard Howe
Marianne O'Brien
Julie Rigby
Kathy Thyfault

EXCUSED

Mary Jane Ciccarello
Judge Reese Hanson
Maureen Henry
Steve Mikita
Judge Gary Stott

GUESTS

Gloria Jensen-Sutton

STAFF

Diana Pollock
Tim Shea

I. WELCOME AND APPROVAL OF MINUTES

Judge Harmond welcomed the committee members to the meeting. There was one correction to the minutes. With that correction Kerry Chlarson made a motion to accept the minutes of the February 15, 2008 meeting. Julie Rigby seconded the motion. The motion carried unanimously.

II. EVIDENCE OF INCAPACITY

Judge Harmond introduced Gloria Jensen-Sutton to the committee. Ms. Jensen-Sutton is the Regional Ombudsman for the Department of Human Services. Ms. Jensen-Sutton expressed her points on the evidence of incapacity.

- Concern with a checklist being used.
- There needs to be a true indication that a thorough evaluation was conducted.
- Information from physicians and clinics are good references, however, one-on-one attention is more substantial.
- It is beneficial to see several collateral contacts.
- Ask for a consultation from a mental health facility that could do a good clinical mental health evaluation.

- Ask for information from physicians and home health care persons.
- Research data from all providers that the ward is accustomed to using.
- An evaluator should be able to state to the court that “nothing short of guardianship is going to work” or to offer alternatives.
- Expressed concern that the court will not have time for an evidentiary process on each case.
- Suggests using a multi-axial assessment.

The committee agreed some form of uniformity needs to be used. Some of the committee’s points are as follows:

- Some cases do not require the level of time described by Ms. Sutton.
- The court needs a mechanism to identify straight-forward cases to avoid multiple hearings.
- The checklist requires the person doing the evaluation to at least go through the items listed to determine if the person is incapacitated.
- Forms and checklists offer guidance and uniformity.
- Using an affidavit which states that a person is incapacitated has no evidentiary foundation for their conclusions.
- Although untrained, volunteers can be useful for observation and reporting.
- The person completing the evaluation should describe their qualifications.
- Who is going to pay for the evaluation?

Mr. Shea will develop a non-clinical evaluation form for the committee to consider.

III. AUTHORITY AND DUTIES OF THE GUARDIAN

Kerry Chlarson noted that subsection 5 is very confusing. Mr. Shea will redraft subsection 5 to refer to the two decision making standards. The Committee discussed the authority and duties of a guardian.

- The Health Care statute states that the agent can be removed by the court.
- Limiting the guardian’s authority suggests having a miscellaneous category so there is nothing in the statute that would hamstring the judge in describing the guardian’s authority.
- The guardian should be able to manage the ward’s simple funds such as checking and saving accounts.
- If the attorney is hired by the guardian, the attorney takes direction from the guardian.
- Representation of the ward is usually the obligation of the conservator.
- How many estate-like decisions, should the guardian be able to make when there is no conservator.
- If there is an estate of any significance, a conservator should be appointed. The

petitioner might serve both roles.

- The guardian should not be able to give gifts to himself or someone closely associated with the guardian, unless permitted by the conservator or by the court.
- Guardian cannot consent to the commitment or sterilization of the ward without an order from the court.
- Guardian cannot consent to termination of parental rights.
- The court must be able to enforce the accountability of the guardian.

Tim Shea stated that the statute describing the guardianship plan came about from researching other states. This is a first draft and Mr. Shea suggested setting this aside until he re-drafts subsection 5 for committee review at the next meeting.

III. ROLE OF THE CLERKS

Julie Rigby and Kathy Thyfault expressed concerns with the role of the clerks in guardianship and conservator cases. Some of their concerns are as follows:

- A lot of time is spent reading through each petition to make a determination of whether the case is exempt. The petition form should readily identify the exemption information.
- The AOC provide probate training realizing that each location handles the work flow differently.
- OCAP forms and language are difficult for the court patrons to understand.
- Court patrons who proceed pro se do not understand the process.
- Create instructions and forms similar to the protective orders.
- Educate the Bar about the probate process.
- Follow-up training to ensure that not only the old cases are brought into compliance, but that the new cases are kept current.
- Additional personnel in the probate department would be beneficial to bring all cases into compliance.
- Requests in probate cases should be called petitions, not motions.

The meeting adjourned at 2:35. The next committee meeting is scheduled for April 18, 2008 at 12:00 p.m.