

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

May 16, 2008 - 12:00p.m.

ATTENDEES

Kerry Chlarson
Mary Jane Ciccarello
Judge George Harmond
Marianne O'Brien
Julie Rigby
Kathy Thyfault

EXCUSED

Kent Alderman
Judge Reese Hanson
Maureen Henry
Justice Richard Howe
Steve Mikita
Judge Gary Stott

STAFF

Diana Pollock
Tim Shea

I. WELCOME AND APPROVAL OF MINUTES

Judge Harmond welcomed the committee members to the meeting. Kathy Thyfault made a motion to accept the minutes of the April 18, 2008 meeting. The motion was seconded. The motion carried unanimously.

II. PROBATE COURT

Tim Shea stated that because of the relatively small caseload, any recommendation to create a probate court will probably not be successful. Mr. Shea stated that it may be possible to recruit a few judges to be assigned contested probate matters. Mr. Shea recommended waiting to see what the new environment is like after the other programs are in place. Committee discussion was as follows:

- Specialized divisions within the district court would be more favorable.
- Special education is critical.
- Look to the Bar for course curriculum and presenters.
- Would probate judges that travel the circuit be required to hear contested guardianship matters?
- The possibility for commissioners to hear probate cases in the larger districts.
- Local courts should decide how to assign cases.

III. CONFLICTING LAWS AND PROCEDURES BETWEEN JUVENILE COURT AND DISTRICT COURT.

- Juvenile court judges appoint guardians for minors as part of child welfare proceedings and sometimes delinquency. But the orders expire when the minor turns 18.
- Currently there is a rule that requires the parties to notify the court of other litigation involving the parties.
- Access to CARE would be helpful to probate clerks.
- Clerks can request access to CARE from their TCE.

IV. EMERGENCY APPOINTMENTS

The committee discussed the adequacy of the law regulating emergency appointments.

- Is the 30 day appointment sufficient?
- Should something be added to allow for a substitute appointment?
- Current code does not provide for a standby appointment.
- Add a provision for a guardian to be removed.
- Identify circumstances warranting a standby guardian.
- Temporary guardian statute is cumbersome. The emergency guardian provision under the Uniform Act is better.
- The court must set a hearing within 5 days after issuing an emergency appointment order.
- Emergency guardianship should be treated similar to a temporary restraining order or a preliminary injunction.
- Should the temporary/emergency guardian have financial and conservator duties?

Tim Shea will prepare a draft to include:

- A hearing required within 5 days after the emergency appointment.
- The appointment itself can go for as long as 60 days and then is terminated.
- The emergency appointment would be made only in connection with the petition for regular appointment.
- Develop substitute guardian provision.
- Develop a standby provision.

V. REGULATION OF PROFESSIONAL GUARDIANS; MODEL CODE OF CONDUCT.

The committee discussed the adequacy of laws regulating professional guardians and the application to the Model Code of Ethics and Model Standard of Practice.

- Currently: Certified or designated by a nationally recognized accrediting organization. Or anyone approved by the court as one with specialized training

and experience. Anyone licensed or registered with DOPL as a health care provider qualifies as a professional guardian.

- Should DOPL regulate the profession of guardian independent of the other professions?
- Professional guardians should probably have a background check.
- Regulating professions is not a court issue, but it affects the court.
- Recommendation that DOPL regulate professional guardians.
- A strong public policy argument can be made.

Mary Jane Ciccarello will research other state statutes to see if background checks are done on professional guardians and examples taken on this profession.

The meeting adjourned at 2:00 p.m.