

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

September 19, 2008 - 12:00p.m.

ATTENDEES

Kent Alderman

Kerry Chlarson

Mary Jane Ciccarello

Judge George Harmond

Maureen Henry

Justice Richard Howe

Marianne O'Brien

Julie Rigby

Kathy Thyfault

EXCUSED

Judge Reese Hanson

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. Mary Jane Ciccarello made a motion to approve the minutes of the August 15, 2008 meeting. Kathy Thyfault seconded the motion. The motion carried unanimously.

II. FORMS

Tim Shea stated that since proposed legislation and rules are not in place, the forms were difficult to draft. He stated that the three forms provided to the committee are: a petition to appoint a guardian and/or conservator, a petition to appoint a temporary guardian and/or conservator, and the draft guardianship plan.

Petitioner to appoint a guardian or conservator

- A single form be used for the appointment of both fiduciary offices.
- Legal services uses separate forms.
- Confusion would occur if one form is used instead of a separate form for the guardianship and for the conservatorship.
- Pro se persons will file both forms if separate forms are used.
- The approach of having a guardianship form, conservatorship form and one form

that is combined.

- Pro se litigants frequently request to be both a guardian and a conservator.
- Make more visual cues on the form.

After more discussion the committee agreed that it would be best to use three separate forms, one for the appointment of a guardian, one for appointment of a conservator, and a third form to appoint as both. This will provide internal consistency.

Guardian's Authority

Tim Shea stated that the committee concluded that the order itself should specify the guardian's authority consists of. There are at least three statutes that govern the conservator's authority. Mr. Shea asked the committee how it wanted to portray the authority of the conservator.

- A simple statement that a conservator has been appointed over the protected person's property.
- It would be beneficial if the guardian is directed to request what authority is needed.
- A clear statement that the conservator does not have ownership rights to the protected person's property,
- The need for the code to reflect areas where special authority is needed.
- Have the order recorded at the Recorder's Office.
- Have general categories of authority so the guardian/conservator knows what to expect regarding the protected person's personal property.
- Using a form for only pro se litigants.

Guardianship Plan

Tim Shea stated the committee wanted to focus on limited guardianships. Mr. Shea asked the committee for direction of incorporating other options to the guardianship plan. The committee discussion:

- Should there be a form that orders that the alternative solutions be put into place.
- The guardian should have only the authority necessary to address the protected person's functional limitations.
- There should not be a conservatorship and a trust at the same time.
- No active power of attorney and a conservatorship at the same time.
- There is an alternative to a conservatorship which is a power of attorney, however, there is nothing in the law that requires a third-party to recognize the power of attorney.
- Identify in the petition why the alternatives are inadequate to serve the person's needs.
- Statute does not allow for the recovery of attorney fees.
- Incorporate specific language into the guardianship statute allowing a petitioner to

recover attorneys fees if the petition was brought in good faith and for the benefit of the protected person.

- Will not make deadline for this legislative session. Looking toward the 2010 for any possible legislation.

Petition to Appoint a Temporary Guardian/Conservator

Committee Discussion:

- Typically there is an emergency situation with a need to get into court immediately to protect the protected person or their assets.
- Once the emergency petition is filed there is a followup of a permanent petition.
- The petitions would not be filed simultaneously.
- Requires special court orders that reflect special needs.
- Appointment can last for 30 days, however, the hearing is held within 5 days.

Guardianship Plan

Tim Shea stated that this form was built around the statute that this committee previously drafted as well as some of the forms of other states. The guardianship plan is a long form and Mr. Shea asked if the committee feels that anything can safely be left off the form. Committee discussion:

- An order is required for examinations and services to be carried out.
- Using checkmarks to describe the rights retained by the protected person.
- List the rights that are being retained.
- Makes the guardian more accountable.

The meeting adjourned at 2:00 p.m. The next meeting is scheduled for October 17, 2008.