

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

October 17, 2008 - 12:00p.m.

ATTENDEES

Kent Alderman
Mary Jane Ciccarello
Judge George Harmond
Maureen Henry
Justice Richard Howe
Marianne O'Brien
Kathy Thyfault

EXCUSED

Kerry Chlarson
Judge Reese Hanson
Julie Rigby
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. There was a motion to accept the minutes of the September 19, 2008 meeting. The motion was seconded. The motion passed unanimously.

II. DRAFT REPORT

Mr. Shea asked for input on points that have been discussed but not yet included in the report and topics that should be included but have not yet discussed. The committee's discussion focused on:

- Emphasize the lawyer's role to represent the respondent, not serve as guardian ad litem.
- The committee has focused on guardianships so work on the Probate Code may not be done.
- Court hearings should be accessible and held in less formal environments.
- The law should give the respondent the absolute right to attend the hearing and require a specific waiver to not appear.

Mediation

- Mediation is working well in some guardianship/conservatorship proceedings.

- Encourage the mediator community to develop skills in this area.
- Mediation should be better integrated with the regular court process.
- Mediation results should be reported to the court.

Representation for the respondent

Mr. Shea said that the state is experiencing significant budget cuts, but he does not think that will affect the recommendation for a volunteer coordinator. This position would be funded with special funds, not from the general fund. However, the committee's recommendation to pay lawyers who represent indigent respondents would be a general fund appropriation, and it will not be funded. Mr. Shea asked for committee input about whether it is responsible to make that recommendation knowing there is no money. The committee's suggestions:

- Courts should work with the Bar to explore alternative funding sources.
- Authorize the program without funding, and pursue an appropriation when the economy is better.
- The judge should be able to evaluate the qualifications of the respondent's lawyer.

Maureen Henry will send Tim Shea proposed language.

Probate Court or Probate Judge

- Recommend that the courts consider appointing a Probate Commissioner.

Alternatives for Healthcare Decision-Making

- Put the Advance Healthcare Directive first in the report.
- Can have a separately drafted power of attorney.

Maureen Henry will send Tim Shea proposed language.

Restrictions on Guardian's authority.

- If the respondent previously had capacity, the guardian could use the substitute judgment standard to make a decision that the respondent would have made.
- Require judicial approval in end-of-life situations.
- Compare the report with legislation for consistency.

Representation for the petitioner

- If the case is brought in good faith, the respondent's estate should pay for the petitioner's attorney. Although rejected by the Legislature a few years ago, it is sound policy.
- If an appointment will benefit the respondent, family members should not be burdened with the cost.
- Petitioner's lawyer is paid by the estate in a conservatorship.

There being no further business, the committee adjourned at 1:50 p.m. The next committee meeting is scheduled for November 14, 2008.