

WINGS ACL Elder Justice Innovation Grant: Utah WINGS Phase II Program Report

This report covers activities from October 1, 2017 through June 30, 2018.

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List the Utah WINGS Stakeholders, and indicate members of the Steering Committee:

1. Andrew Riggle, Disability Law Center, **Steering Committee**
2. Daniel Musto, Long-Term Care Ombudsman
3. David Connors, Second District Court Presiding Judge, WINGS Chair, **Steering Committee**
4. Dustin Hammers, University of Utah Center for Alzheimer's Care, Imaging and Research
5. James Brady, Fourth District Court Presiding Judge
6. James Toledo, Office of Indian Affairs
7. Joanne Bueno Sayre, Probate Department, Third District Court
8. Karolina Abuzyarova, WINGS and Court Visitor Program Coordinator, Utah State Courts
9. Kaye Lynn Wootton, Medicaid Fraud Control Unit, Office of Utah Attorney General
10. Keith Kelly, Third District Court Judge
11. Kent Alderman, Elder Law Attorney, **Steering Committee**
12. Mary Jane Ciccarello, Borchard Foundation on Law and Aging, **Steering Committee**
13. Michelle Wilkes, Court Visitor Volunteer Coordinator, Utah State Courts
14. Nan Mendenhall, Adult Protective Services, **Steering Committee**
15. Nancy Sylvester, Associate General Counsel, Utah State Courts, **Steering Committee**
16. Nels Holmgren, Division of Adult and Aging Services, **Steering Committee**
17. Robert Denton, Disability and Elder Law Attorney
18. Shannon Alvey, Office of Public Guardian, **Steering Committee**
19. Wendy Fayles, National Alliance on Mental Illness.

List any Working Groups your WINGS has created:

- Subcommittee on judicial response protocol in cases of abuse, neglect and exploitation
- Subcommittee on judicial protocol in establishing limited guardianship.

What did you accomplish, what challenges did you face and what recommendations did you make to address these challenges?

- **Qualitative:**

Utah WINGS held judicial education classes in seven of eight judicial districts on the subject of "Guardianship Basics". Presentations were very brief from fifteen minutes in some districts to one hour in others. Presentations focused on the alternatives to guardianship, judicial determination of capacity of vulnerable adults, statutory preference and tools in establishing

limited guardianship, need for continuous Court oversight including visitor investigations, review of guardians' annual reports and locating protected persons and guardians, as well as referral of cases with alleged abuse to corresponding agencies for more in-depth investigation.

The goal of increasing limited guardianship appointments is currently not measured. However, the WINGS Coordinator and District Court Administrator met with the Court Services Department in charge of rewriting the Court database and followed up on suggested changes to track the number of limited guardianship cases over time. Court clerks suggested tracking the type of limited guardianship for the purpose of required annual reporting, so that the Court knows what to look for in the report. Tracking of limited guardianship is to be implemented in 2020 or later.

More important than the classes that were conducted, were the opportunities for systematic change that came to light during conversations with judges, court administrators, clerks, public and professionals. These discoveries might not be considered accomplishments, but the process did remind us of the need to continuously work on improving the system with dedication and commitment.

On the qualitative side, daily practice in many areas remains the same with mostly cursory reviews of limitations and primarily full guardianship appointments. Utah WINGS identified a need to bridge available judicial tools and resources with the standards of practice that reflect utilization of these tools. Making education and tools available is a great opportunity to improve practice. The challenge is getting practitioners to utilize these tools in their daily practice. Another need we identified is continuous education of clerks. While in some districts judges rely heavily on clerks and trust the way things worked for decades, in other districts judges welcome education and rely more on attorneys filing petitions, who at the same time also need education. Probate clerks need to be educated on the legal standards and need to have access to this information to flag problems.

Education for members of the Bar who practice in probate matters is implemented partially through the Guardianship Signature Program, which is a partnership of the Utah State Bar and the Courts in providing pro bono or low bono representation to vulnerable adults in guardianship. Recruitment of volunteer attorneys is done through continuous legal education offered once a year.

Court leadership buy-in remains to be addressed. Court administrators are responsible for participating in developing the policy and in implementing policy surrounding probate best practice standards and bridging the gap of the most innovative tools recommended by the WINGS group. Implementation of best practices could possibly be accomplished by incorporating guardianship education in the Judicial Institute's curriculum for judges and clerks. Another possible solution is for the WINGS findings to inform policy and procedures of the Court by communicating the identified problems and gaps to the Board of District Court Judges, Judicial Council or Management Committee. Once approved and prioritized, the Court will then

need to come up with a resolution and a plan to implement guardianship reform throughout the system.

Change doesn't come on a rolling basis and requires paying close attention to its implementation. The Court Visitor Program was funded by the Utah State Legislature and ongoing funding became available on July 1, 2018. After 7 years of one-time funds and grant support, this step was important to realize the maturation of the program. However, guardianship reform does not end with establishing a volunteer-based program. There remain many systematic issues in the daily processes and procedures of the courts that still need to be addressed. Full leadership buy-in and implementation of the strategic plan created by the Court and guardianship stakeholders and adopted by Court management would show continued commitment to serving this vulnerable population.

Guardianship cases are one case type in Court filings that are increasing, according to the last several years of data provided by the Court Services Department. Utah's Long-Term Demographic and Economic Projections provided at the Utah Task Force for Alzheimer's disease meeting in June, 2018 by a representative of the Kem C. Gardner, Policy Institute at the University of Utah, predict significant increase of the older population. This is the population primarily served by the Court probate department, in addition to populations with mental health conditions, developmental disabilities, etc.

The table below shows projections of how many times the population over 65 will multiply in Utah between 2018 and 2060:

Age	Total	Female	Male
65-74	2.4	2.3	2.5
75-84	3.9	3.6	4.2
85-99	4.6	4.1	5.4
100+	12.7	9.9	19.9

While we understand that probate is one of the many areas of Court business, it does not mean reform can be effectively implemented if approached as a side project without putting real effort into addressing the gaps in daily procedures. Another concern is how to sustain a dedicated group of court volunteers. The Court Visitor Program is a great program and provides information to judges which allow them to make better and more informed decisions. Continuous support and recruitment of Court Visitors is essential. Court Visitors are well-intended and well-trained volunteers who volunteer for a good cause. The volunteer work the Court Visitors engage in can be difficult and demanding on both their time and emotions. For the foreseeable future, the Court Visitor Program will be the foundation to guardianship reform

in Utah and the Court Visitor Program must place emphasis on retention and recruitment of qualified volunteers. Moving forward, it will be essential for the Court Visitor Program to provide adequate attention to the volunteers as it is often too much to bear for a volunteer to put in so much effort and then observe the lack of Court follow up on cases.

Guardianship reform is currently a topic being addressed across the country. It will be important for the Court Visitor Program, court leadership, judges, the Bar, and the legislature to embrace best practices in a timely manner to avoid negative program results and, most importantly, negative outcomes for vulnerable persons subject to guardianship.

Hopefully, Utah courts will learn from other state's mistakes and not repeat them. For example, in October 2017, the respectable New Yorker magazine shed light on problems in the Nevada guardianship system. The article pointed out that families were not notified by the Court of the filed petitions and appointments of private guardians, as no one was flagging the issues, and vulnerable adult became "prisoners" of a guardianship system that cries for a reform.

In Utah we hear from some judges that they trust the parties and will, in most cases, grant guardianship unless somebody flags the issue. One Judicial District in Utah has a systematic problem of not serving guardianship petitions and not notifying family members of the pending guardianship of a loved one. It is easy to fall in the rut of how things worked for decades, but in order to achieve systemic improvement, a better way of doing business will need to be embraced.

In the Pennsylvania system, a convicted felon became a "reputable" private guardian and the Court granted multiple appointments without inquiring into the guardian's background. This was one of the several articles published in the local Pennsylvania press exposing flaws in the Court system.

Utah does not run background checks on guardians and we do not ask the proposed guardian at the hearing if he/she has been convicted of a crime or if they have recently filed for bankruptcy. It will require a legislative change to require background checks on potential guardians. However, we have added questions about past convictions or bankruptcies to the checklist in judicial materials prepared by WINGS experts.

Quantitative- What was produced during the project period and how have these projects been disseminated?

WINGS meetings in this period were on:

- October 25, 2017
- December 13, 2017
- February 8, 2018
- April 5, 2018
- June 7, 2018

Steering Committee met on the following dates:

- October 13, 2017
- November 20, 2017
- January 10, 2018
- February 22, 2018
- May 14, 2018

Bench presentations on “Guardianship Basics”:

1. February 14, 2018, Third District Court, Salt Lake City
2. April 4, 2018, Second District Court, Farmington
3. April 11, 2018, Seventh District Court, Price
4. April 12, 2018, Fourth District Court, Provo
5. May 10, 2018, Fifth District Court, St. George
6. June 15, 2018, Second District Court, Ogden
7. June 29, 2018, Eighth District Court, Vernal
8. August 20, 2018, Sixth District Court, Richfield (remote video presentation)

Judges trained:

The total number of District Court Judges is 75. Although not all district court judges were able to attend a bench meeting and listen to and ask questions about adult guardianship proceedings, the updated materials were made available on the Court’s internal website.

There are eight judicial districts in Utah and the Board of District Court Judges recommended reaching out to all districts and making presentations at the bench meetings. Classes were conducted in six districts out of eight judicial districts. One district declined the invitation to participate in this educational opportunity. The second district was transitioning to a new Presiding Judge and, despite several follow up efforts by the WINGS Coordinator, training was not scheduled.

Materials published:

Materials were published on the Court’s Intranet as a resource for the District Court Judges. Materials included: bench book with the new checklist and flowchart on abuse and neglect referral process; checklist with questions as a standalone document abstracted from the bench book, so that judges can use it easily in the proceedings; and a bench card that is a one-page document that was laminated and distributed to the judges in all districts of the Utah Courts.

Describe the status of your strategic planning process and its results:

- **Who participated?**

WINGS members and WINGS Steering Committee members participated in planning. Strategic goals were first established at the annual assessment meeting in February 2016 and were then organized in a chart by the WINGS Coordinator, who kept updating the chart based on the work completed. A copy of the chart was shared with administrators of the Elder Justice Innovation grant from the Commission on Law and Aging of the American Bar Association.

- **Objectives identified:**

The subcommittees formed in the winter of 2017 identified two objectives that evolved during the process of working on the grant. One objective was to establish judicial protocol in referring cases of abuse and neglect. This objective was accomplished by creating a chart regarding referrals before and after guardianship is established and whether the judge suspects abuse, neglect or exploitation.

Another objective was to establish a protocol for crafting limited guardianship that resulted in updating the bench book and bench card. This objective expands existing information and provides a checklist on alternatives to guardianship, inquiry about representation of the respondent, questions and the concept of capacity evaluation, statutory preference of limited guardianship and guardianship oversight.

- **Strategies to reach the objectives:**

Generally, probate matters are on rotation in the Third Judicial District, largest district in Utah. With 70% of the district court judges being relatively new, it is difficult to gain expertise and improve the process within the short rotation of six month. One of the strategies currently in development is to increase the rotation from six months to two years. One of the District Court Judges took a proactive position and suggested this idea to the Third District Court Bench and nobody opposed it, however there was no timeline established for implementation. Aside from face to face presentations, all materials were uploaded to the Court website in the section on resources for judges and during presentations we went over how to find this information. Updated and new materials were made available. However, it is not clear what the next step is and how to make the change from the status quo in the current process of cursory reviews of guardianship petitions in some districts.

An effort to track limited guardianship discussed on page 2 is to be implemented with the rewrite of the current Court database system (CORIS) in the next 2-4 years. This might help clerks and judges to inquire whether limited guardianship was considered by the parties.

Describe the actions you have taken to ensure broad-based public participation:

Utah State Office of Indian Affairs is a current member of the Utah WINGS. A representative of the Office of Indian Affairs put together a chart that is part of the WINGS materials on what resources and contacts different tribes in the territory of Utah have that address abuse and neglect of vulnerable adults.

Describe any indicators of increased collaboration among the WINGS stakeholders:

The Court Visitor Volunteer Program, under the umbrella of the Administrative Office of the Courts, and Adult Protective Services signed Memorandum of Understanding on sharing information about cases. On occasion, the Court Visitor Volunteer Program makes referrals to the Attorney General's Office Medicaid Fraud Control Unit and Social Security Administration's Office of Inspector General if there is a suspected abuse of the representative payee funds or Medicaid dollars.