

MINUTES

GUARDIANSHIP AND CONSERVATORSHIP COMMITTEE

Friday, October 7, 2016

Idaho Supreme Court - Boise, Idaho

Committee Members in Attendance: Hon. Chris Bieter, Committee Chair; Dawn Wickham, Administrator, Ada County Guardianship Monitoring; Amy Cunningham, Attorney, DisAbility Rights Idaho; Robert Aldridge, Esq.; Suzanne Johnson, Sixth Judicial District Trial Court Administrator; James Cook, Esq., Executive Director, Idaho Legal Aid Services; Alan Wasserman, Staff Attorney, Idaho Legal Aid Services; Deena Layne, Deputy Legal Counsel, Idaho Supreme Court; Shelli Tubbs, Fifth Judicial District Trial Court Administrator; Dona Butler, Canyon County Mental Health Court Coordinator & Veterans Court Coordinator; Hon. John Judge; Hon. Scott Hansen; Hon. Frank Kotyk; Hon. Jennifer Haemmerle; Peg Dougherty, Associate General Counsel, St. Luke's Health System; Michelle Finch, Esq.; Guadalupe Ayala, Idaho Department of Health and Welfare; and Dennis Voorhees, Esq.

Guests For All or Portions of the Meeting: Tammy Brown; Kasey Kliegl; Renae Bieri; Lupe Wissel; Kerry Hong; Michael Mehall; Sandra Barrios; Brent King; and Nanci Thaumert.

1. Introductions

Judge Bieter welcomed the committee and provided introductions.

2. Review and Approve Minutes

JUDGE JUDGE MOVED TO APPROVE THE APRIL 8, 2016 COMMITTEE MEETING MINUTES AS WRITTEN. SHELLI TUBBS SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

3. Action on items from previous meetings and other updates

A. Budget Update

Kerry provided the group with an update on the budget projections. Sharing with the group the ongoing expenditures continued to dip into cash balance on the fund, but with some salary savings there was an ability to hire a part-time Third District Coordinator and the expenditures would remain the same as in the previous fiscal year. He also shared the ISC had tentatively approved asking the legislature this year for a \$480,000 general fund request to stabilize the current fund and to expand the pilot project to the other five judicial districts. This request was unanimously approved at the last committee meeting.

B. Data Dashboard

Renae provided the new data GC dashboard that resulted from a committee discussion in the spring about needing current data on how many guardians and conservators were compliant on reporting requirements (see meeting material on page 9). This will be an ongoing part of the committee meeting and is meant to guide policy discussions. Renae requested input on additional information she can provide. There was discussion on the accuracy of the data and how the case cleanup may have affected three year trend data. It was admitted that as the cleanup effort continues this may alter some of the numbers. One suggestion for additional information was how many status conferences are held and the number of fee waivers granted. ISTARs does not currently have a way of tracking fee waivers, but Renae would investigate on whether Odyssey could track that number.

C. Forms

Michael shared with the group the role of forms in the Odyssey case management system. He is requesting assistance with reviewing and providing input on all the forms needed for guardianship and conservatorship cases. The forms that are loaded into Odyssey are forms used by the court, and generally consist of orders, notices, and other judge specific forms. It does not include documents traditionally generated by the attorney or self-represented litigant. Michael has requested subject matter expert committee's review of the forms and provide input for statewide implementation.

ACTION ITEM: Nanci will compile the forms currently loaded in Odyssey and coordinate the Forms Subcommittee to review and submit recommendations on changes. The subcommittee will also identifying gaps in forms used on a statewide basis.

D. Professional Guardian and Conservator Fees

Dawn handed out information on the impact a paid guardian could have on the estate of the person under guardianship. She has had concerns over a minority of cases where a paid guardian has had a large impact on the assets of the person paying those fees. The group shared there was a subcommittee of this committee in the past that focused on professional fees, but it was the recommendation of that group to shelve the idea for a future date. Judge Bieter recommended the Rules and Legislation Subcommittee discuss, again, the topic of professional fees and invite a professional guardian to participate.

ACTION ITEM: Nanci will include the agenda item for the next Rules and Legislation Subcommittee meeting and invite a professional guardian to participate in the discussion.

4. Judicial Access for Non-English Speaking and Hearing Impaired Participants

Sandra presented on providing language access to court participants inside and outside the courtroom (see meeting material on page 11). She provided some examples of resources available for individuals to receive services in a meaningful manner. The committee also participated in an exercise on what it feels like to be a court interpreter, how difficult it is to convey accurate information, and the level of practice and training it takes to be competent at interpreting.

5. Conservatorship Court Monitoring

Tammy shared updated conservatorship review numbers (see meeting material on page 16).

6. Legislation and Rules Subcommittee

Judge Bieter opened discussion with the recent holding in Doe I v. Doe II that found there was no statutory authority for co-guardianships in the minor guardianship statute. In response to the singular guardianships language, the Rules and Legislation Subcommittee made changes to several provisions in the minor, adult, and developmental disability statutes. Along with these changes, the Rules and Legislation Subcommittee also proposed changes to the temporary guardianship provisions to provide guidance on the findings to make when appointing a temporary guardian and to provide the authority to appoint temporary guardians in case involving an individual with a developmental disability. The group reviewed each revision, section by section.

After discussion, the committee agreed to make the following change to the recommended language in all three temporary guardianship provisions: “The notice must inform interested persons of their rights to request a hearing”; and “The court must find, and letter of guardianship must include, whether the co-guardians may act...”

Specific changes to 15-5-207 include:

- (1) deleting “for the appointment of a guardian of a minor” in section 15-5-207(2) to read “under this section”;
- (2) deleting “If the court finds it to be in the minor’s best interest” in section 15-5-207(3)
- (3) Adding “or persons” in section 15-5-207(4)

JUDGE HANSEN MOVED TO APPROVE THE CHANGES TO I.C. 15-5-207. BOB ALDRIDGE SECONDED, MOTION PASSED UNANIMOUSLY.

BOB ALDRIDGE MOVED TO APPROVE THE RECOMMENDED CHANGES TO I.C. 15-5-303. PEG DOUGHERTY SECONDED, MOTION PASSED UNANIMOUSLY.

BOB ALDRIDGE MOVED TO APPROVE THE RECOMMENDED CHANGES TO 15-5-304 WITH THE ADDED LANGUAGE ABOUT LETTERS OF GUARDIANSHIP DISCUSSED ABOVE. JUDGE KOTYK SECONDED, MOTION PASSED UNANIMOUSLY.

BOB ALDRIDGE MOVED TO APPROVE THE RECOMMENDED CHANGES TO I.C. 15-5-310. DENNIS VOORHEES SECONDED, MOTION PASSED UNANIMOUSLY.

Specific changes to I.C. 66-404 included deleting the “and/or” language in both 66-404(1) and 66-404(2)(f), and adding the language “co-guardian, or co-conservator, or both” to those sections in place of “and/or”.

BOB ALDRIDGE MOVED TO APPROVE THE RECOMMENDED CHANGES TO I.C. 66-404A AND I.C. 66-404 WITH THE CHANGES OUTLINED ABOVE. JUDGE KOTYK SECONDED, MOTION PASSED UNANIMOUSLY.

8. Eldercaring Coordination Presentation

Due to time considerations, there was a deviation from the agenda and the Eldercaring presentation was presented prior to the discussion by the Supported Decision-Making Work Group and waiving filing fees. Linda Fieldstone and Sue Bronson provided a presentation by GoToMmeeting on the Eldercaring Coordination initiative, currently piloted in the Fifth Judicial District (see handout PowerPoint presentation material). Judge Haemmerle provided the group with information on how one of her cases was in the process. This was an especially difficult case, but she had optimism that the process could be beneficial for other high conflict proceedings.

9. Waiving Filing Fees

Judge Hansen requesting information and discussion on the impact of waiving filing fees in guardianship and conservatorship cases. At this time, there is not a reliable way to track the number of cases where a fee waiver was ordered. After discussion, one theme emerged that judges generally make a determination at each yearly report and don't generally make a blanket fee waiver for the entire case. When Odyssey is more widely available, the committee can revisit the issue with statistics to identify the extent of the concern.

10. Supported Decision-Making Work Group

Amy updated the committee on the proposed legislation and court rules. The legislation proposed to move the court visitor and IDHW evaluation committee requirements out of statute and into rule. The new rules would require both those entities to provide additional information meant to assist the judges on crafting specific limited orders in appropriate cases. Amy identified the changes in I.C. 15-5-308 eliminating the requirements.

There was extensive discussion on the court rules additions. There was hesitation on the change of qualifications for court visitors. Many felt it would narrow people who could be court visitors too dramatically or that the qualifications were not specific to the type of information we requested the court visitor to gather. The rule modifications did not have to be approved at this committee meeting, so it was recommended to have the work group reconvene and discuss possible changes to the proposed rules and bring it back during the spring committee meeting. The committee recommended removing the sentence "who has a master's level degree in psychology, social work, or counseling" and include "meets the qualifications identified in Idaho Supreme Court rule."

BOB ALDRIDGE MOVED TO APPROVE THE RECOMMENDED CHANGES TO I.C. 15-5-308 WITH THE CHANGES ABOVE. PEG DOUGHERTY SECONDED THE MOTION, MOTION PASSED UNANIMOUSLY.

The changes to I.C. 66-404 had been discussed previously and voted on during the co-guardianship discussion.

ACTION ITEM: Nanci will convene the work group this winter to discuss proposed changes to ICAR 54.4 and 54.5.

ACTION ITEM: Nanci and Deena will submit all the legislative changes to the Administrative Conference and ultimately to the Supreme Court with the recommendation the changes are included in the court's legislative priorities.

11. Future Meeting Dates

Next committee meeting is scheduled for **April 7, 2017** from 9:00-4:30, location to be determined.

--Adjourn at 4:30