

MINUTES

GUARDIANSHIP AND CONSERVATORSHIP COMMITTEE

Friday April 11, 2014

Idaho Supreme Court - Boise, Idaho

Committee Members in Attendance: Hon. Chris Bieter, Committee Chair; Hon. John Judge; Hon. Michael Dennard; Hon. Scott Hansen; Dawn Wickham, Coordinator, Ada County Guardianship Monitoring; Amy Cunningham, Attorney, DisAbility Rights Idaho; Robert Aldridge, Esq.; Dona Butler, Canyon County Mental Health Court Coordinator & Veterans Court Coordinator; Dennis Voorhees, Esq.; Darcy Nesor, Idaho Department of Health and Welfare; Suzanne Johnson, Sixth Judicial District Trial Court Administrator; Jim Kauffman, Esq.; James Cook, Esq., Executive Director, Idaho Legal Aid Services; Alan Wasserman, Esq., Staff Attorney, Idaho Legal Aid Services; Sam Haws, Administrator, Idaho Commission on Aging; Stephanie Bender-Kitz, Director, Friends in Action; and Deena Layne, Deputy Legal Counsel, Idaho Supreme Court.

Guests For All or Portion of the Meeting: Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court; Kerry Hong, Director of Community Justice and Family Services; Tammy Brown, Financial Manager; Carol Brennan, Volunteer, Ada County Guardianship Monitoring; Renae Bieri, Research and Evaluation Specialist, and Nanci Thiemert, Guardianship and Conservatorship Statewide Manager.

1. Introductions

Committee Chair made introductions and discussed the updated amended committee membership order signed by the Supreme Court on March 31, 2014. He also discussed the new requirements for term limits included on the order.

2. Minutes

A. Minutes from the October 4, 2013 Meeting

JUDGE JUDGE MOVED TO APPROVE THE MINUTES FROM THE OCTOBER 4, 2013 MEETING AS WRITTEN. BOB ALDRIDGE SECONDED. MOTION PASSED UNANIMOUSLY.

B. Minutes from the January 14, 2014 Meeting

BOB ALDRIDGE MOVED TO APPROVE THE MINUTES FROM THE JANUARY 14, 2014 MEETING AS WRITTEN. JIM KAUFFMAN SECONDED. MOTION PASSED UNANIMOUSLY.

3. Action on items from previous meetings and other updates

A. Implementation of background check process

Darcy Nesor presented the documents created by the criminal history unit of the Idaho Department of Health and Welfare (IDHW) outlining the process a guardian or conservator must complete to obtain a background check. One document was created for the proposed guardian or conservator and the other was created for the attorney or person who would receive the results and provide them to the court.

There was general discussion on the location of the documents, how long the process is taking and receiving results. Overall most agreed the process seemed to be working and proposed guardians/conservators were obtaining the background check as required. There was also discussion on why conservators for incapacitated adults were exempted from the process. No one in the group was certain of the reasons behind the exemption.

B. Ex parte rule and complaint process

Nanci Thaemert presented on the complaint process. It was implemented on February 1, 2014 with final forms, procedures and a clerks training on how to process the complaints. She requested suggestions on how to better get the word out to the public. Some suggestions included (1) media outreach through the Supreme Court's publicity process; (2) story in the Idaho State Bar's Advocate publication; (3) request the counties to place the form on the county websites; (4) adding complaint process to reporting rules and procedures; (5) legal aid website; (6) statewide scam jams; (7) IDHW's 211 website; (8) Self Advocacy Centers.

ACTION ITEM: Nanci will resend the complaint form to stakeholders and research the ideas above to educate the public on the process.

There was discussion on experiences with the process and a comment that because of the nature of the relationship between a ward and a guardian/conservator the ward may have illegitimate complaints that will waste court resources. There was consideration of a judge's responsibility to carefully review the complaint and some discussion on cost shifting for trivial complaints.

C. Legislation, rules and budget update

There was brief discussion on the ISC approved cover sheet for all guardianship and conservatorship cases that went into effect January 1, 2014 and collecting important contact information. Most of the comments by stakeholders and the public were aimed at collecting personal information on involuntary mental health commitment cases and the implementation of the GC cover sheet was going well.

All of the legislative changes recommended by the GC committee in October 2013 and January 2014 for guardian/conservator reporting and court visitors have been signed by the Governor. The additions to Idaho Court Administrative Rule were approved by the Supreme Court. All changes go into effect July 1, 2014.

Bob Aldridge shared with the group the statutory changes sponsored by Trust and Estate Professionals of Idaho (TEPI). One bill clarified terminations of minor guardianships and one bill focused on priority of testamentary appointment, both have been signed by the governor.

D. Vision meeting follow-up

Judge Bieter provided the committee with an update on a phone conference attended by members who were unable to participate in the January vision meeting. An addendum to the approved committee meeting minutes outlines the conversion.

E. Ongoing updates and projects of interest

Nanci Thaemert provided an update on the online GC training, the GAL pilot project and the firearms restrictions grant project. 3,705 individuals have completed the online GC course with an average of 119 individuals a month. This number has been steady since October of 2011.

The GAL pilot project has resulted in 13 appointments across three project sites. A total of 32.5 hours have been spent since July 1, 2013. Alan Wasserman has been appointed on several cases and he reports it is a worthwhile project and going well.

The Firearms Restrictions grant project has wrapped-up. 48,848 cases have been reviewed, this number represents both guardianship/conservatorship cases and involuntary mental health commitment cases. During the time period of the project, 260 GC cases have been reopened.

Kerry Hong was unable to attend the committee meeting in the morning, but after continuing with the agenda and a break for lunch, Kerry was able to briefly present on the implementation of Odyssey and data sharing efforts with IDHW. The Administrative Office of the Courts (AOC) and IDHW vital statistics have been in discussion to share death records with the court to determine if a ward, guardian, and/or conservator have died. This is in the initial stages and may require some rule changes to relieve the court from fees state agencies are exempt from paying.

4. Legislation and Rules Subcommittee

Judge Bieter provided the group with an overview of the upcoming topics of discussion for the legislation and rules subcommittee including changes to the minor's compromise statute, attorney and professional fees, and expiration dates on guardianship and conservatorship letters. Bob Aldridge recommended we keep in mind as we make statutory and rule changes we use the correct nomenclature and make changes when appropriate. There was also caution that we include all the stakeholders in the discussion if we propose major changes to the minor's compromise statute.

ACTION ITEM: Nanci will convene the legislation and rules subcommittee this summer with the agenda items listed above.

5. Standardized Forms Subcommittee

A. Minor Guardianship Annual Status Report: Nanci Thaemert presented the standardized forms subcommittee's recommendations for an annual status report in minor guardianship cases. After discussion on the purpose of the report there were two suggestions for updates: (1) include the question "Is the child a beneficiary of a trust?" in the child's finances section and; (2) include a change of address box to mark in the last section where the guardian provides contact information.

JUDGE JUDGE MOVED TO APPROVE THE MINOR GUARDIANSHIP ANNUAL STATUS REPORT WITH THE TWO CHANGES OUTLINED ABOVE. JIM KAUFFMAN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

B. Conservatorship Inventory: Nanci presented the expanded subcommittee's recommendation for a conservatorship inventory form. The subcommittee recommended deleting the accounting aspect of the form and making it just an inventory. This change should make it simpler and easier to understand. The form has also been dramatically reformatted and complies with the new reporting requirements. After committee discussion the following recommendations were made: (1) include "or collections" under section II, number 7; (2) include "liens" after the word "judgments" under section III, number 4; (3) rewrite question 7 under section III to read "Explain any relationship between the conservator and any creditor listed in any section above; (4) rewrite question 8 under section III to read "Explain any relationship between the person under conservatorship and any creditor listed in any section above; (5) include a checkbox under section V to mark if the conservator's address has changed.

DENNIS VOORHEES MOVED TO APPROVE THE CONSERVATORSHIP INVENTORY FORM WITH THE CHANGES OUTLINED ABOVE. JUDGE JUDGE SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

C. Conservatorship Accounting—Small Estates: Nanci presented the expanded subcommittee's recommendation for a conservatorship accounting form for small estates. The formatting on the accounting form mirrors the inventory form with updates to comply with new reporting rules. The major issue to address in the small estates form is what user can complete the form. The group felt it was important to have as many people as possible complete the form, yet maintain the additional reporting requirements in the complex cases where more thorough accounting oversight is necessary.

It was the general consensus to double the amount of the estate owned by the person under conservatorship from \$25,000 to \$50,000. There was extensive discussion on whether the intent of the original form was to limit what the person under conservatorship can own to only very small amounts of personal property and cash, or whether it was acceptable that individuals who own larger items like cars and homes without a mortgage could complete the form.

Tammy Brown, who is responsible for the court reviews of the reports, felt it was important that if a person under conservatorship owns anything but small amounts of personal property and cash the conservator should fill out a more complete accounting to provide the reviewers

additional information. There was some brief discussion on having a third, intermediate form but most felt if we simplified the accounting form for large estates, a third form would not be needed.

After a break for lunch, the committee resumed the discussion on how to word the statement(s) that would instruct conservators who could use the small estate form. To keep on schedule a recommendation was made to allow Tammy Brown and Nanci Thaemert draft the instructions for application of the form and submit it to Judge Bieter for final approval.

JUDGE HANSEN MADE A MOTION TO APPROVE THE CONSERVATORSHIP ACCOUNTING SMALL ESTATE FORM WITH THE INSTRUCTIONS TO BE DRAFTED BY TAMMY AND NANCI AT A LATER DATE. JUDGE JUDGE SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

ACTION ITEM: Nanci and Tammy will draft the application instructions for the small estate accounting form and provide to Judge Bieter for final approval.

D. Conservatorship Accounting-Large Estate: The expanded forms subcommittee was unable to complete an accounting form for large estates in time for the committee meeting. It was shared with the group the difficulty of balancing the accounting and the large amount of conservator's who are currently submitting accountings that do not balance. The committee needs an updated accounting form by July 1 to coincide with the new reporting requirements. Judge Bieter has recommended, once the subcommittee has a form to submit it to the committee, for an email vote.

ACTION ITEM: Nanci will provide the subcommittee with a revised version of the large estate accounting form for comment and suggestions and after recommendation email to the entire committee for comment and approval.

ACTION ITEM: After all forms have been approved Nanci will include updated forms in training material and begin implementation statewide to coincide with the legislative and rule changes on July 1, 2014.

6. Conservatorship Court Monitoring

Tammy Brown discussed the updated conservatorship statistics and the current averages for processing the financial reviews. She shared with the group it was taking an average of 8.7 days for the financial office to review the financial reports and 14.8 days on average for the individual counties to send the reports to the ISC.

Tammy also provided the committee with a draft of a new memo the reviewers return to the counties indicating the outcome of the review. The new draft form would include an additional option for the clerks to contact the conservator directly to submit supplemental information rather than present the matter to the court for action. There was discussion on having the conservator contact the reviewer directly with questions to save court time. One concern was the lack of a 'paper trail' and wanting to ensure the judge had an accurate record of the review. One

suggestion was having email correspondence which would provide written documentation. Other comments included training judicial staff to provide a copy of the memo to the appointed Guardian ad Litem (GAL).

ACTION ITEM: Tammy will consult with the finance department and others on how to proceed with both the updated review memo, the possibilities of providing an email address for conservator's to contact the reviewers directly and training the clerks on providing a copy of the review memo to the appointed GAL.

7. Guardianship Court Monitoring

Nanci Thaemert presented the committee with the pilot project implementation timeline. The hire date had changed for the guardianship monitoring coordinator in the second pilot project site. It has been moved up to coincide with hiring the first position on July 1, 2014. Nanci made the recommendation for the two pilot project locations to be the Third and Fifth Judicial District.

The Fifth District was recommended because of it is the location for the Odyssey implementation, it has a good record of complying with conservatorship monitoring, has knowledgeable judges and clerks, and represents a diverse caseload. The Third District was chosen for many of the same reasons as Fifth District except it will not be the location for the initial Odyssey implementation but does have a large volume county.

Nanci presented the differentiated case management (DCM) tool developed by a small working group consisting of committee members and Renae Bieri, planning and research specialist for the ISC. The DCM tool is a mechanism to assign points to a specific case based on different social factors. That overall point score then will guide the judge in making a decision on what level of monitoring a particular case may need. It helps manage limited resources and provides additional information to the judge making a decision. The DCM tool has been designed for both new cases and open cases and will be implemented in the pilot project locations.

There was some general discussion on how the court will use the information collected, what person in the system will collect and complete the tool and a caution that the system be designed so that a judge does not need to micromanage a particular case but rather has broad authority to monitor. Overall the DCM tool is in the beginning stages and more information will be provided at the Fall committee meeting.

ROBERT ALDRIDGE MADE A MOTION TO APPROVE THE ADDITIONAL FUNDING PROVIDED BY THE LEGISLATURE THIS SESSION IS USED FOR THE TWO PILOT PROJECT LOCATIONS IN THE FIFTH AND THIRD JUDICIAL DISTRICTS. DENNIS VOORHEES SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

8. Wrap up

Judge Bieter asked the group for any other topics of discussion. Patti Tobias wanted to commend the Ada County Guardianship Monitoring Program. She was given the opportunity to go on a home visit with a volunteer. She found the experience very beneficial.

Judge Bieter shared a conversation with an attorney at a recent continuing legal education class he attended. The attorney was very passionate about how an attorney is appointed to represent an incapacitated individual and whether past experience was considered when the appointment was made.

Bob Aldridge provided the committee with an update on some of the projects TEPI was working on included combining the Developmental Disabilities code and the probate code into one section. TEPI is also working on procedures for appointing a temporary guardian/conservator and updating the forms book the probate section sells to attorneys.

Bob had questions about how much form development the court had plans to provide for the public which would impact the work of TEPI on the forms book. Currently, no one is aware of any plans for the AOC or the Court Assistance Office (CAO) to expand/create forms in probate but that could change moving forward as Uniform Business Practices and the CAO office prepares for future developments in technology. Historically, the CAO office has not provided forms for probate proceedings, and it must be kept in mind that the TEPI forms book is for an audience of attorneys and the court forms would be created for public use, which are very different audiences.

Alan Wasserman wants the committee to consider the ethical considerations of the roles of Guardian ad litem and attorney. This is an area of concern in several other areas of the law including child protection and family law.

Dennis Voorhees would like some guidance on limited guardianships since that is likely a policy direction for the committee and consideration of drafting court and attorney guides for rights a person under conservatorship or guardianship may retain.

ACTION ITEM: Judge Bieter will consider the topics above as agendas are drafted for both subcommittee meetings and future full committee meetings.

9. Future Meeting Dates

Next committee meeting is scheduled for **November 3, 2014** in the Lincoln Room at the Idaho Supreme Court from 9:00-4:00.

--Adjourn at 4:00