



**Arizona Supreme Court
Committee on Improving Judicial Oversight
and
Processing of Probate Court Matters**

Arizona State Courts Building
1501 West Washington Street, Phoenix, Arizona 85007
Hearing Room 109

Date: August 16, 2010
Time: 10:00 a.m. – 2:00 p.m.

Draft Regular Meeting Minutes

MEMBER ATTENDANCE:	
Present:	Absent:
Judge Ann Scott Timmer, Chair	Judge Robert D. Myers
Judge Julia Connors	Jacob Schmitt
Judge Gary Donahoe	
Judge Charles Harrington	
Judge David Mackey	
Judge Rosa Mroz	
Judge William O'Neil	
Diana Clarke	
John R. Evans	
Faustina Danenfelser	
Beverly Frame	
Pamela Johnston	
Jay M. Polk	
Catherine Robbins	
Denice Shepherd	
Mark Salem	
Thomas Davis	

Appearing Telephonically:	
Judge William O'Neil	
John R. Evans	

AOC STAFF:	
Caroline Lantt-Owens	Director, Dependent Children's Services
Nancy Swetnam	Director, Certification and Licensing Division
Susan Hunt	AOC Staff

GUESTS:	
Christine Porter	James McDougall
Candess J. Hunter	Catherine Leas
Heather Buil	Michael Strauber
Elizabeth Evans	Jon Kitchel
Susan Robbins	Joseph Causey
Patti Shelton	Clair DiPardo
Debbie Weecks	Charles M. Dyer
Citris Anderson	Jeane Jaime
J.R. Rittenhouse	Jon Kitchel
Grayce Mayhew	
Arlene Feron	
Roger Coventry	

CALL TO ORDER.....Judge Ann A. Scott Timmer, Chair

WELCOME.....Judge Ann A. Scott Timmer, Chair

Judge Timmer welcomed everyone and introduced new public members Tom Davis and Mark Salem. Both Mr. Davis and Mr. Salem have served as guardians for family members. Mr. Davis is a prior DPS officer and Mr. Salem has served as a CASA volunteer.

OUTREACH EFFORTS

Judge Timmer discussed efforts since the last meeting to encourage public comment on the issues under consideration by the Committee. The website has an announcement encouraging public comment and a form that individuals may use to submit comment. Sylvia Stevens, AARP, assisted with publishing a notice in their bulletin. The presiding judge of the Superior Court in each county was asked to post a notice in the court and the Chief Justice sent letters to legislators asking them to reach out to their constituents for comments.

Nancy Swetnam explained the public comments are received into a general mailbox and are then organized by general categories (e.g. Minor to Adult Guardianship, Judicial Oversight, etc.) and will be posted to the website for review by the committee members and the public. Judge Timmer explained the names and contact information of the submitters will be redacted before posting.

PREPARATION OF INTERIM REPORT Judge Ann A. Scott Timmer, Chair

Judge Timmer stated that pursuant to the Administrative Order establishing the Committee, the Committee is to present an Interim Report to the Arizona Judicial Council at the Council’s meeting on Thursday, October 21, 2010. The Interim Report would include information on suggested statutory and rule changes, etc. The Committee will review the draft Interim Report at its next meeting on September 8, 2010.

REPORTS FROM WORKGROUPS

Workgroup #1, Minor to Adult Guardianship, Judge David Mackey, Chair

Judge Mackey presented a verbal overview of the work of Workgroup # 1, based on the Workgroup’s Report dated August 10, 2010 (refer to Report, posted on the website with these minutes). The Committee discussion included the proposed change to the definition of “incapacitated person.” There was discussion regarding the impact this new definition may have on other areas of the law, for example, A.R.S. §§ 13-1802(B). The Committee discussed the definition of “vulnerable adult” under A.R.S. §§ 46-4519 and 14-5101. It was noted that the updated Uniform Probate Code emphasizes the abilities of the person, rather than the diagnosis of the person. A person may have a diagnosis of some type of incapacity, but that does not mean they need a full guardianship or complete conservatorship. It was noted that while the Arizona Legislature adopted the “limited guardianship” concept, it did not adopt the new definition of an “incapacitated person.”

Judge Mackey highlighted that the Workgroup has considered the provision in the UPC that allows for appointment of a guardian through another type of document besides a will. The concern is how to ensure continuity of care for the incapacitated person if the parent/guardian also becomes incapacitated.

The Committee then focused on the issue of appointment of an attorney for the proposed incapacitated person. Judge Donahoe identified there is a due process right implicated when a person files a petition for appointment of a guardianship for an adult. When the person files that petition, there is no prior judicial review of that petition and it subjects the person (filing the guardianship) to be interviewed by a court investigator and submit to an involuntary mental health exam. In a situation where a person has no ability to communicate with their attorney, the attorney’s role is different; the attorney is making a best interest judgment as compared to being able to represent a client’s wishes. Judge Mackey stated some of the states use the term guardian ad litem and some have defined the role of the attorney in that situation to be closer to what we look at as guardian ad litem.

The Committee discussed the process for minor to adult guardianships, including the age at which the procedure should begin. The preliminary recommendation from the Workgroup is that this process could begin at age 17 years and 6 months. Another option is to give the court discretion to waive some of the procedural requirements, and to conduct the proceedings more informally.

Workgroup #2, Judicial Oversight of Probate Matters, Judge Charles Harrington, Chair

Judge Harrington presented the report of Workgroup Number 2 (posted on the Website with these minutes). He commented that the scope of this Workgroup is extremely broad with multiple subjects and issues and therefore, the Workgroup was broken down into three sub-workgroups: 1. Training and Education, 2. Automation, Help Desk and Forms, 3. Accountings, Reports, Audits, Visits and Volunteers. Almost every issue has been addressed, but the Workgroup has some remaining issues to further discuss. At this point, the Workgroup recommends that most of the issues under its consideration are best addressed by rule changes, not statutory amendments.

Subcommittee on Training and Education

The recommendations on training and education were discussed by the Committee. The Committee discussed the letter received from Lisa Price, past president of the Arizona Fiduciaries' Association (AFA). The AFA is currently developing a state-wide policy manual for fiduciaries; this manual contains the applicable statutes and administrative rules and addresses all aspects of fiduciary appointments and work; including guardianships, conservatorships, power of attorney and trust matters. The AFA also plans to create training modules to assist family members serving as guardians, conservators or personal representatives; these modules will be 30-60 minutes in length and address the basic responsibilities of a guardian, conservator or personal representatives. The Workgroup will be in contact with AFA on a joint effort in this regard.

The Committee discussed whether the recommendation for required training for attorneys would apply to a private attorney who is retained by a respondent? Judge Harrington stated this will be addressed within the Workgroup.

Subcommittee on Automation, Help Desk and Forms

The Committee discussed the recommendations pertaining to automation, help desk and forms, as presented in the report. Judge Harrington explained that many of the recommendations would enhance case management systems to allow automated review of certain case events that now require a manual review.

Automation for Case Monitoring

Judge Harrington explained that the recommendations from this subcommittee are similar to those of the subcommittee on automation, help desk and forms. The subcommittee strongly recommends that enhancing the automated case management systems in the courts, to allow for this automated monitoring, be a high priority for the Supreme Court and AOC.

Automation for Document Processing

The subcommittee recommends development of statewide, standard, automated forms; these would be interactive and dynamic electronic probate forms for use on the website. It is also recommended a statewide taskforce be appointed to complete the development and implementation of uniform probate pleadings. The

need for uniform probate pleadings was identified by Chief Justice Berch when the Uniform Rules of Procedure for Probate were adopted in 2008.

Probate Help Desk or Self-Service Center

The Committee discussed the recommendations pertaining to a probate help desk or self-service center and suggested that each court may, at a minimum, have a computer terminal and help desk where individuals who do not have computers or do not have computer skills could still access the needed information.

Judge Myers mentioned he has been in contact with Ramsey County in Minnesota (St. Paul); that court has some excellent resources and procedures and have provided significant information and support to the Workgroup.

Subcommittee “C”: Accountings, Reports, Audits and Volunteers

Court Resources for Implementation of Best Practices

This subcommittee has reviewed and referenced the National Probate Court Standards, statutory reporting requirements as adopted by the Arizona State Legislature, and the Arizona Rules of Probate Procedure Requirements. It is recommended certain best practices for judicial oversight of probate cases be developed; many of these best practices are set forth in the National Probate Court Standards.

The Committee discussed that currently there are no statutory requirements for any post appointment visits of a ward or protected person by a court investigator, to check on the status of the ward or to ensure the information in the annual guardian reports or the accountings mirror the physical circumstances of the ward. The subcommittee is considering a statutory or rule change to require post appointment requirement visits. Diana Clarke identified that in a guardianship case, the court appointed attorney is typically dismissed after the initial appointment of the fiduciary, with no further involvement.

Summary of the Draft of the Probate Bench Book

Judge Harrington stated the Workgroup has developed a first draft of a Probate Bench Book; this is posted on the website.

Judge Harrington identified this subcommittee is conducting surveys, both verbal and written to obtain information from the courts across the state as to how each court conducts its functions, the makeup of each court, etc.

Judge Harrington identified their Workgroup has not yet had the opportunity to address the issue of volunteers and visitors, but will be examining that issue in the future. Judge Mroz stated that due to limited resources, the court investigators are not able to make additional visits to the protected person after the initial investigation. The Court has discussed the concept of developing a volunteer program similar to the CASA Program to conduct post appointment visits. Judge Mroz identified the possibility of a partnership with ASU’s School of Social Work to provide students who could conduct these visits. It was identified California charges an initial fee to cover the costs of a pre-appointment visit and a visit six months after the appointment and then an annual fee. The initial fee is \$1200.00; the ongoing fee is \$600.00 per year.

Other options discussed included a court investigators fee, annual accounting fee and annual guardianship report fee; these fees could help support an annual or biannual visit.

There was discussion regarding the utilization of technology to monitor case events and “red flags.” A “red flags” list was developed by the AOC a number of years ago, this list is on the website. An automated system can identify, for example, the red flag that the annual accounting has not been filed. The Committee also discussed the issue of a statewide audit department to perform audits on specified cases, for example, those over a certain dollar amount.

Judge Timmer raised the issue of attorneys who appear in probate court also serving as probate protem judges and if this presents a conflict? Judge Harrington stated there are ethical decisions on this issue. Diana Clarke explained that in Maricopa County there is an administrative order limiting the number of hours a practitioner who regularly practices in a particular department can service as a protem. Judge Harrington indicated his Workgroup would examine this issue further and report back to the full Committee at a later date.

The Committee then discussed the issue of issues of court appointed counsel and guardians ad litem and whether Judge Timmer should establish a fourth workgroup to address the role of these individuals. It was also suggested that Judge Timmer appoint some attorneys who serve as court appointed counsel to the workgroup to assist with the examination of this issue. Mr. Jon Kitchell and Mr. Michael Strauber both addressed the Committee and indicated they would be willing to serve in this capacity.

LUNCH BREAK 12:20 – 12:40

Meeting recalled to order at 12:42.

Workgroup 3, Fee Guidelines/Fee Awards & Fee Dispute Resolution, Judge Rosa Mroz, Chair

Judge Mroz provided a verbal update, referencing the written report of Workgroup 3 (posted on the website with these minutes.) Judge Mroz explained her Workgroup has addressed a number of topics; their recommendations at this point are preliminary. In examining fees, the approach has been to develop recommendations that would improve the current procedure for evaluating and approving fee applications. For example, the Workgroup is currently considering draft fee guidelines the judicial officer would use when reviewing fee applications. Jay Polk has drafted a fee shifting statute; this will be reviewed by the Workgroup at the meeting that immediately follows the full Committee’s meeting.

Judge Timmer questioned if the draft guidelines would address the type of work being done by the professional? If an attorney performs services that could be performed by a fiduciary, does the attorney charge an attorney fee or a fiduciary fee? Judge Timmer suggested the guidelines need to provide direction to the judicial officers to consider when reviewing a fee application. Denice Shepherd identified that many of her cases are very difficult, and when she is using her legal skills as a fiduciary, she bills as an attorney, even though it may appear to be a more traditional fiduciary task she has performed. Ms. Shepherd also identified she explains on her billing forms why she is billing at the attorney rate. Jay Polk identified that when he is serving as a fiduciary he has the court approve his rates in advance, whether it be fiduciary rate or attorney rate.

Judge Timmer asked the Workgroup to further discuss the issue of fee caps and providing regular accountings to the ward re the fees being charged to the estate. On providing information to the ward, there was discussion by the Committee members as to whether there should be some standard to determine who would benefit from this information, whether the regular updates would be provided upon request by the ward, etc. The Workgroup will also review the issue of changing hourly fees partway through an accounting period.

COURT APPOINTED COUNSEL GUIDELINES..... Judge Ann A. Scott Timmer, Chair

Judge Timmer asked Diana Clark to address this issue. Ms. Clark explained that Workgroup 3 has identified the need to develop statewide guidelines for court appointed counsel and guardian ad litem regarding their role and duties. Judge Donahoe suggested reviewing the Family Court rules, as these rules contain details regarding the duties of attorneys serving in different roles. For example, the Family Court rules include the role of the “best interest attorney.” There was general agreement among the members of the full Committee that this issue should be further explored.

Nancy Swetnam confirmed that the AJC meeting is scheduled for October 21st at 9:00 a.m. in Room 119AB. The agenda will be available in advance of the meeting and it will be posted on the Probate Court Committee website. Members of the public are welcome to attend.

CALL TO THE PUBLIC

Judge Timmer reviewed the forms submitted by individuals during the meeting, indicating a desire to speak to the Committee and asked each person to come forward and address the Committee.

Jean Jaime. Ms. Jaime provided comments regarding her experience in assisting Edward Ravenscroft.

Jon Kitchel. Mr. Kitchel currently serves as a court appointed attorney. Mr. Kitchel volunteered to serve on a workgroup, to provide input from his perspective and experience.

Helene Fenton is an attorney practicing in the probate court. Ms. Fenton was not able to stay for the entire meeting, including the Call to the Public.

Christine Porter. Ms. Porter’s submitted form indicated she was speaking on behalf of Citizens Judicial Reform. Ms. Porter was not able to stay for the entire meeting, including the Call to the Public.

Candess Hunter. Ms. Hunter is an attorney; she provided the Committee with a list of written recommendations; these will also be posted to the website for review.

Edward Abbott Ravenscroft. Mr. Ravenscroft’s form indicated he was speaking on behalf of himself. He was not able to stay for the entire meeting, including the Call to the Public.

Michael Strauber. Mr. Strauber currently serves as a court appointed attorney and has volunteered to serve on a workgroup, to provide input from his perspective and experience.

NEXT MEETING:

Wednesday, September 8th, 10:00 a.m. Room 109

Motion for Adjournment: Judge Harrington - Motion to adjourn
Judge Mackey - Second
Passed

Meeting adjourned @ 2:12 p.m.

