

Office of Public Guardianship
Legal Services for Guardianship Petitioners Subcommittee Meeting
AOC SeaTac Office, SeaTac Office Center
Thursday, June 11, 2009 9:30 a.m. – 1:00 p.m.

Members Present:

Jim Bamberger
Shirley Bondon
Margaret Kennedy
Carol Maher
Louise Ryan
Laird Pisto
Joy Ann von Wahlde
Kellee Spangenberg (teleconference)
Professor Larry Weiser (teleconference)
Kim Rood (recorder)

Members Absent:

Jim Adams
Jeff Crollard (participation not confirmed)
Laurie Davenport
Vicky Foster
David Lord
John Midgley

Meeting called to Order by Shirley Bondon at 9:40 a.m.

I. Introductions. Subcommittee members all introduced themselves.

II. Overview of problem.

This committee was convened to develop a proposal for the legislature addressing the provision of legal services to potential petitioners for guardianships. The committee discussed the guardianship process, the need for legal services and the potential conflicts and concerns related to current practice.

III. Issues any solution should address.

Any solution proposed should address (1) the need to consider alternatives to guardianships; (2) the need for a preliminary determination of the need for guardianship prior to filing a petition; (3) the potential financial burden on the petitioner; (4) the complicated nature of the guardianship process; (5) the need to balance the desire to protect versus the right to self determination; and (6) potential conflicts of interest of petitioners.

IV. Reactions/questions/discussion.

The need to provide legal services for petitioners is a symptom of a complicated system which is not consistent statewide. While, some counties have no difficulty finding attorneys to represent petitioners at no cost and attorneys regularly assess the need for a guardianship before filing a petition, this does not occur statewide.

Determining the need for guardianship is a complicated process and some courts do not follow the safeguards needed to ensure that alternatives to guardianship are addressed, that the need for guardianship is properly assessed.

Specific concerns related to guardians ad litem, include failure to utilize a rotational appointment process; inadequate or nonexistent grievance procedures; no recourse for those who wish to complain; GALs conflicts of interest; poorly trained or negligent GALs; and inadequate compensation.

The Elder Law Section of the WSBA has expressed concerns about the guardianship process. It has studied parts of the process and will release its study and recommendations in the near future.

V. Solutions to consider.

Courthouse facilitators provide a valuable service to self represented individuals in family law cases. Consider expanding the services of courthouse facilitators to guardianships.

Some Area Agencies on Aging (AAA) provide legal representation for the elderly. Consider partnering with AAA or the Department of Social and Health Services (DSHS) Aging and Disability program to provide pro bono legal services.

Petitions can proceed pro se. A solution may be to provide materials, model forms, pleadings etc. for petitioners to represent themselves. Providing materials and making the petitioning process simpler has the potential to increase the number of petitions filed as well as the number of unfounded request for guardianship, thus this should be approached cautiously.

A state wide Pro Bono Center might fill the need for legal services and help prospective lay guardians. WSBA will be sending a survey to all Bar members in which they will be asked to identify areas of interest in pro bono work. This could be used to start a pro bono program for guardianships similar to the Foreclosure Program.

Programs listed below are potential models for Washington State.

- Brooklyn Heights Mental Guardianship Project
- Campbell University Senior Law Clinic
- Utah Legal Services Wiki Project
- Wisconsin Guardianship Support Center

VI. Assignments.

If the study performed by the Elder Law Section of the WSBA does not address the issue discussed the OPG should request a study of the guardianship process by the Washington State Center for Court Research (WSCCR). A subcommittee of this committee will develop a problem statement and a request for WSCCR for review by the full committee.

VII. Schedule next meeting/phone conference.

The next meeting date will be set after development of a problem statement and study request.

Meeting adjourned at 12:15 p.m.