WASHINGTON COURTS

WINGS II Guardianship Conference

Bell Harbor International Conference Center

March 17, 2016

Standards and Best Practice Committee

STANDARDS AND BEST PRACTICE COMMITTEE

Professor Winsor Schmidt, Chair

Committee Description:

Develop and recommend that WINGS encourage and/or advocate adoption of standards, guidelines and best practices for entities involved in the delivery of decision-support, including courts, guardians, guardians ad litem, attorneys and other professionals.

Committee Members:

Gary Beagle, Jeanette Cade, Steve DeVoght, Gale Donachie, Cheryle Gaye, Ali Higgs, Ingrid Hockenberry, John Jardine, Lisa Kato, Rich King, Michaelene Manion, Elaine Morgan, Anthony Nash II, Karen Newland, Audrey Pitigliano, Dan Rubin, Fona Sugg, Jackie Vail.

Key Accomplishments (since October 1, 2015):

From the priorities identified during the August 7, 2015 WINGS Conference,

"**Clarify conflict of interest**"

- "Are there conflicts that should be clarified?"

Proposed revised Standard of Practice for professional guardians (underlined):

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

<u>406.5(1) A guardian who is also an attorney shall only represent the guardian in their fiduciary capacity as guardian with respect to the administration of the guardianship for the person under guardianship. The guardian shall account to the court for the costs of its services as guardian and as attorney for the guardian separately.</u>

<u>406.5(2) A guardian for a person under guardianship or an attorney who is also the guardian shall not initiate legal action on behalf of the person under guardianship, or respond to legal action initiated against the person under guardianship, without the express approval of the court with local jurisdiction.</u>

<u>406.5(3) A guardian who is also an attorney shall not serve as attorney for the person under guardianship.</u>

"Is it appropriate for a professional guardian to serve as a GAL (Title 11 Guardian Ad Litem)?"

Modified to: "Is it appropriate for a Guardian to serve as a Guardian ad Litem in a case where s/he is serving as guardian?"

- A Certified Professional Guardian shall not serve as a guardian and as a guardian ad litem in the same guardianship matter.

"Is it appropriate for an attorney to represent the petitioner and the professional guardian?

Proposed SOP 1

- Any professional guardian nominated as guardian in a petition to establish a guardianship filed by a third party shall only retain legal counsel in that guardianship who does not currently represent any other party in that guardianship proceeding.

"Is it appropriate for an attorney to represent the petitioner and the professional guardian?

Proposed SOP2

- A professional guardian who self-petitions to be guardian for someone must obtain a signed statement from the attorney general stating the reason the attorney general's office will not petition for guardianship; and, engage in an investigation that
- (1) identifies alternative nominees and provides information as to why alternate nominees who are available are not suitable or able to serve;
- (2) provides a written request from the party requesting the guardianship, which identifies the basis for the request and the basis for the decision by that party not to petition;
- (3) provides documentation from third parties of the facts set out in the petition (such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person);
- (4) provides documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person; and
- (5) discloses to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

Additional related questions raised:

1. Are there conflicts of interest that might exist if the attorney representing the self-petitioning guardian also represents the facility where the AIP lives?

2. May a CPG self-petition based on a referral from a nursing home or other residential facility?

- The Committee recommends that there should be mandatory appointment of an attorney for the respondent in a guardianship proceeding, with a provision for the respondent to waive appointment [like Minnesota Statutes sections 524.5-304(b), 524.5-406(b)].

Next Steps and High Level Project Milestones:

Remaining priorities identified during the August 7, 2015 WINGS Conference

Clarify conflict of interest" ("Partially address in a standard of practice for professional guardians"):

- "Is it appropriate for attorneys who represent professional guardians to also serve as GALs?"
- "Is it appropriate to appoint an attorney to represent an alleged incapacitated person from the list of GALs?"
- "Is it appropriate for an attorney who may represent alleged incapacitated persons to also serve as a professional guardian?"

Remaining priorities identified during the August 7, 2015 WINGS Conference (continued)

- Develop a standard of practice to prohibit isolation of persons in a guardianship.
- Develop standards of practice for lay guardians.

Remaining priorities identified during the August 7, 2015 WINGS Conference (continued)

- **Develop new or revised standards of practice for professional guardians.**
  1. Discuss possibly restricting the number of appointments a professional guardian may accept.
  2. Determine if, and/or when a professional guardian may petition to become the guardian for someone other than a member of his or her family.
  3. Define conflict of interest and determine if, and/or when it's appropriate for a professional guardian to serve in multiple roles = guardian, guardian ad litem, attorney, trustee, representative payee, attorney in fact.
  4. Develop guidance that helps clarify what fees a guardian should charge.

Remaining priorities identified during the August 7, 2015 WINGS Conference (continued)

- **Develop new or revised standards of practice for professional guardians.**

5. Define social hospitality, i.e. cup of coffee, and clarify if, and/or when a guardian may accept a gift from a person to whom they provide guardianship services.

6. Develop a SOP stating that guardians can limit and/or restrict contact with friends and family of a person in a guardianship only after documenting the reason for the limitation and/or restriction, notifying the individual possibly facing restriction and giving them an opportunity to respond and/or correct improper behavior.

7. Develop an SOP requiring the use of generally accepted accounting principles, standardized timesheets, supporting documents that would be accepted in every court by every judicial officer.

8. Develop an SOP specifying financial standards based on the amount of assets owned by the person in a guardianship.

WINGS
Working Interdisciplinary Networks of Guardianship Stakeholders

STANDARDS AND BEST PRACTICE COMMITTEE

Professor Winsor Schmidt, Chair

Vision Status:

Significant progress in development and recommendation that WINGS encourage and/or advocate adoption of standards, guidelines and best practices for entities involved in the delivery of decision-support, including courts, guardians, guardians ad litem, attorneys and other professionals.

Status Summary Statement:

The Standards and Best Practice Committee responsibilities are probably on track with a 12 to 24 months timeframe.

Questions?

Long-Range Planning Committee

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Working Interdisciplinary Networks of Guardianship Stakeholders

LONG RANGE PLANNING COMMITTEE

Prof. Lisa Brodoff; retired Prof. Larry Weiser Co-Chairs

Committee Description:

Develop effective approaches to long-range planning for WINGS. Members shall be advocates for and play a leadership role in long-range planning and shall promote a long-term commitment to improving the state's system of decisional-support.

Committee Members:

Christina Baldwin, Maria Burdette, Carla Calogero, Patty Croteau, Lori Flood, Stan Fukui, Tom Goldsmith, Sage Graves, Chris Henderson, Patricia Hunter, Iris Kingston, Kameron Kirkevold, David Lord, Karen Mount, Christine Rehkoph, Dan Smerken, Julie Stone, Launi Whedon

The Long Range Planning Committee divided into sub-committees based on the priorities created at the August conference.

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LONG RANGE PLANNING COMMITTEE

Prof. Lisa Brodoff; retired Prof. Larry Weiser Co-Chairs

1.Reduced Fee Legal Representation
Lisa Brodoff, Sub-Chair
Sage Graves
Kameron Kirkevold
Julie Stone

2. Conflict Resolution
Larry Weiser, Sub-Chair
Karen Mount

3. Court- Appointed Attorneys
Carla Calogero, Sub-Chair
Tina Baldwin
Patty Croteau
Chris Henderson
David Lord

4. Minimum Qualifications for GALs
Launi Whedon, Sub-Chair
Dan Smerken

5. Guardianship Resource Hotline
Karen Mount, Sub-Chair
Tom Goldsmith

5.6.7 Improve Guardian Certification/Qualifications/ Background Checks
David Lord, Sub-Chair
Lisa Brodoff
Patricia Hunter

Milestone Status - First Meeting:

1. Determine the current status of each recommendation.
    a) What is the problem that needs resolution?
    b) What is already in place to resolve this problem?
    c) What has been done elsewhere to address this problem?
    d) What options are available to address this problem?
2. Decide on best option(s) to address the recommendation.
3. Decide what steps need to be taken to achieve this option.

LONG RANGE PLANNING COMMITTEE

Prof. Lisa Brodoff; retired Prof. Larry Weiser Co-Chairs

Milestone Status - Subsequent Meetings:

1. Some committees were grasping with the first goal of the reporting plan.
2. Committee members reassigned.
3. Reporting on:
   - Priority 2. Access to Conflict Resolution
   - Priority 3. Provide a Court Appointed Attorney
   - Priority 4. Establish Minimum Qualifications for GALs
   - Priority 5. Establish a Hotline for Guardianship Questions

Priority 2. Provide Access to Conflict Resolution

- The guardianship statute, specifically, RCW 11.88.090(2) requires mandatory mediation if requested by the GAL or the Alleged Incapacitated person. 11.96A.310 (Trust Estate Dispute Resolution Act) also provides that any party to a dispute can require mediation of the conflict within the statute's jurisdiction which includes guardianship matters.

- The issue is why are guardianship disputes not mediated on a more regular basis? The sub-committee will now look into why mediation is not regularly occurring in guardianship matters, review other states' guardianship provisions and resources and recommend an expansion of resources for the parties to engage in mediation.

Priority 3. Provide a Court Appointed Attorney

The committee has been reviewing this issue and is close to submitting a preliminary report.

- The initial goal and recommendation is to appoint counsel for an AIP at all stages of the guardianship process.

Priority 3. Provide a Court Appointed Attorney

- **Option One** – Maintain existing law governing the availability of counsel to represent alleged and adjudicated incapacitated persons.

- **Option Two** – Ensure counsel is provided to represent all alleged and adjudicated incapacitated persons.

- **Option Three** – Provide additional protections to ensure that counsel is available to alleged and adjudicated incapacitated persons who would benefit from representation.

Priority 4. Establish Minimum Qualifications for GALs

The current recommendations are:

1. The minimum education requirement for a GAL should be a Bachelor's degree (any discipline).
2. Require GAL's to look for less restrictive alternatives… needs to be codified in the law as well.
3. Refer issue to Legislative Committee to implement recommendations.

Priority 5. Establish a Hotline for Guardianship Questions

- Lay persons have a very difficult time navigating all the aspects of initiating and fulfilling the guardian's reporting requirements. The committee is reviewing other states' hotlines. Ultimately, this is a relatively difficult task that will require collaboration and assistance of all the players in a guardianship matter.

Questions?

Legislative Committee

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Working Interdisciplinary Networks of Guardianship Stakeholders

LEGISLATIVE COMMITTEE

Walt Bowen, Chair

Committee Description:

Provide advice and recommendations on all matters dealing with legislation, including court rules, to WINGS. During active legislative session, the Committee will monitor bills of potential interest to WINGS and select those to be tracked. The Committee may recommend positions on bills for consideration by the full WINGS Steering Committee.

Committee Members:

Linda Benson, Elizabeth Brown, James Brown, Angela Carlson-Whitley, Claudia Donnelly, Amy Freeman, Cathy Knight, Dawna Knox, Cathy MacCaul, Cheryl Marshall, Christi Martin, Chris Neil, Peter Newbold, Marci Perkins, Will Reeves, Jerry Reilly, Peggy Sanders, Douglas Schafer, Katie Searing, Noah Seidel, Jodi Wallace

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Working Interdisciplinary Networks of Guardianship Stakeholders

LEGISLATIVE COMMITTEE

Walt Bowen, Chair

Key Accomplishments:

- Surveyed 50 states.
- Recommended not changing ”Guardian ad item”

Next Steps and High Level Project Milestones:

- Reconsidering Recommendation per Steering Committee Request

Vision Status:

Change “Guardian ad Litem”. Choose a more informative, less hostile, less formal name that is not off-putting.

Examples included:

- Court Visitor
- Court Investigator
- Special Court Appointee
- Fact Finder

Court Visitor ad litem
Special Court Representative
Special Needs Representative

Status Summary Statement:

- The project is not on track.

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LEGISLATIVE COMMITTEE

Walt Bowen, Chair

Key Accomplishments:

- Surveyed 50 states.
- Proposed changing “Alleged Incapacitated Person” to “Respondent”
- Proposed changing “Incapacitated Person” to “Protected Person”

Next Steps and High Level Project Milestones:

- Reconsidering “Protected Person”

Vision Status:

Change “IP” and “AIP” - Use respectful language.

Use a people-first language to refer to individuals who need decision support.

Examples included:

- Person in a guardianship — Person under a guardianship
- Person in need of decision support — Person with diminished decision-making ability

Status Summary Statement:

- The project is close to completion.

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LEGISLATIVE COMMITTEE

Walt Bowen, Chair

Key Accomplishments:

- Informally Surveyed Stakeholders Regarding use of Mandatory and Pattern Forms

Next Steps and High Level Project Milestones:

- Discuss Options
- Develop Proposals using Agreed on Decision-Making Protocol

Vision Status:

- Develop a statewide court rule describing the use of standardized tools/forms for accountings and other reports.

Status Summary Statement:

- The project is on track.

LEGISLATIVE COMMITTEE

Walt Bowen, Chair

Next Priorities

1. Develop a Proposal for Statewide Guardianship Monitoring
2. Develop a Proposal for Guardianship Ombudsperson
3. Develop a Proposal to Credential Guardians ad litem

Information and Training Committee

WINGS
Working Interdisciplinary Networks of Guardianship Stakeholders

Information and Training Committee

Committee Description:

Develop and recommend development of educational resources and training materials for all entities involved in determining the need for, selecting or delivering decision-support.

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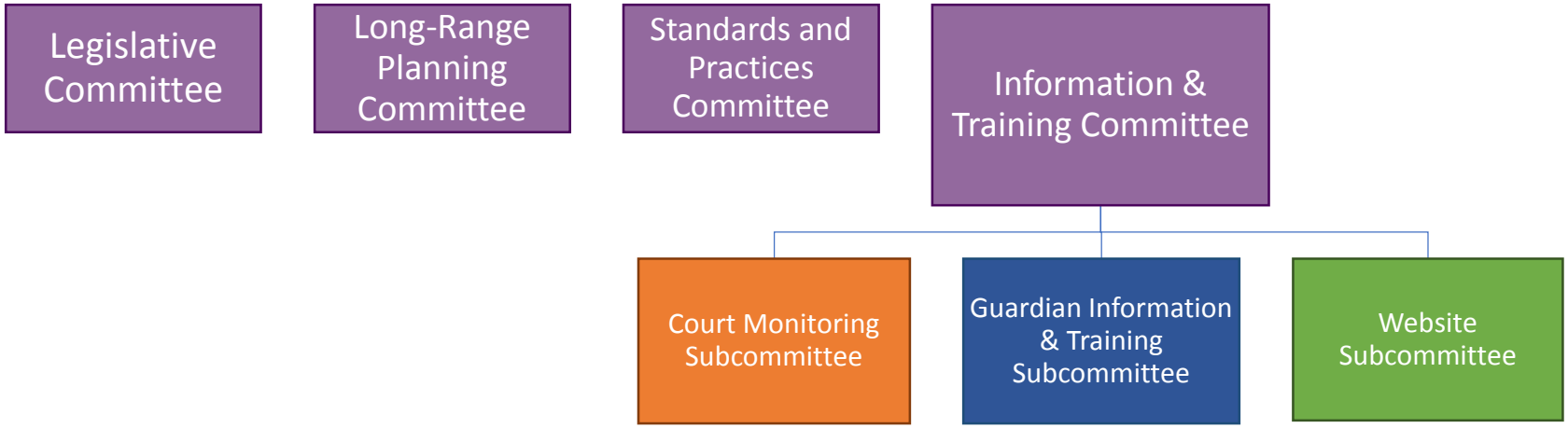
Information and Training Committee



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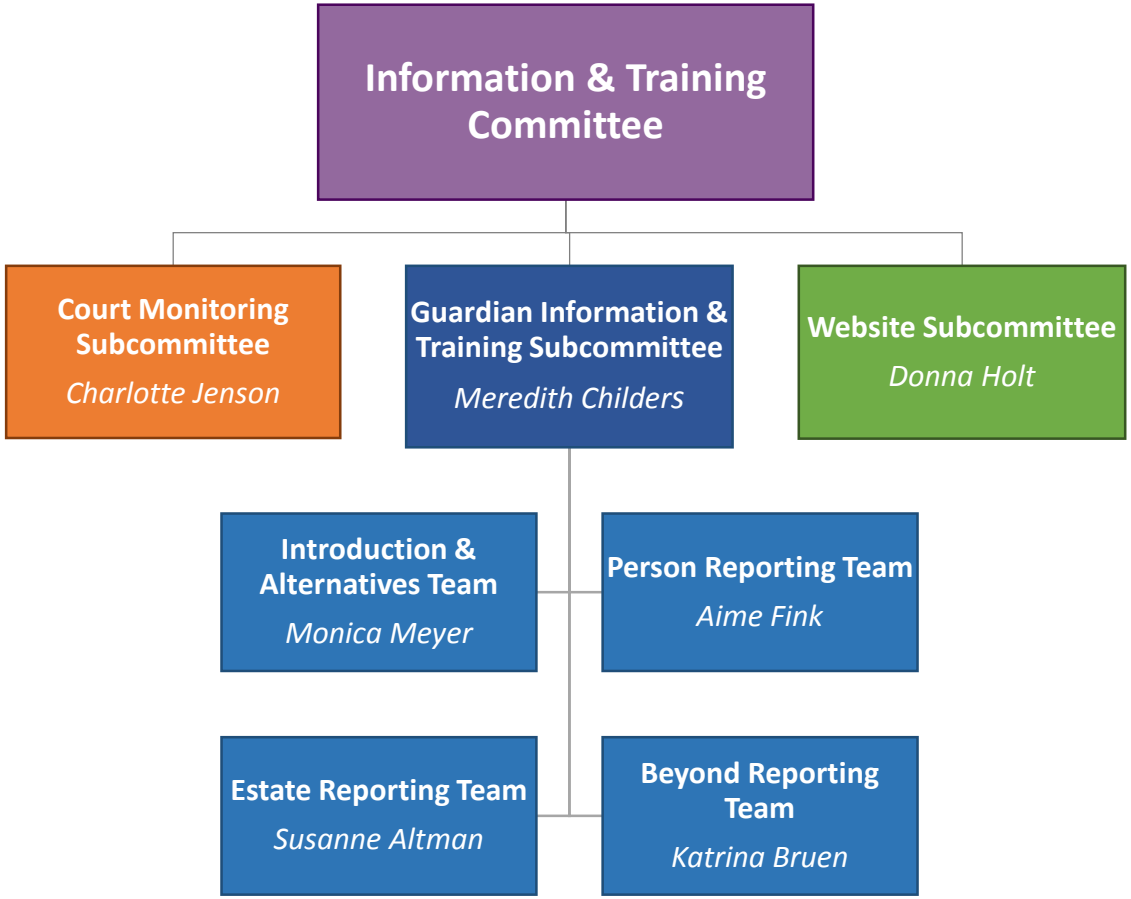
Information and Training Committee



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Information and Training Committee

Court Monitoring
Charlotte Jenson, Leader
Kristen Denton
Deborah Jameson
Ana Kemmerer
Fona Sugg

Intro & Alternatives Team
Monica Meyer, Leader
Judy Krebs
Ann LoGerfo
David Lord
Meredith Childers

Person Reporting Team
Aime Fink. Leader
Peggy Mosshart
Allen C. Eriksen
Valerie Ohlstrom
Cynthea Williams

Estate Reporting Team
Susanne Altman, Leader
Peggi Moxley
Kristina Ralls
Donna Holt
Lexie Lamborn

Beyond Reporting Team
Katrina Bruen, Leader
Nancy Hammond
Sandra Lund
K. Penney Sanders
Kristyan Calhoun
Martha Gluck

Website Content
Donna Holt, Leader
TBD

Court Monitoring Subcommittee

Charlotte Jenson

Information and Training Committee

Court Monitoring Subcommittee

- Identify data for monitoring guardianship cases
- Develop data entry recommendations
- Develop training for guardianship monitoring

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STANDARDS AND BEST PRACTICE

Committee Description:

Court Monitoring Sub-Committee. Develop and recommend that WINGS encourage and/or advocate adoption of standards, guidelines, and best practices for court monitoring of guardianships.

Committee Members:

Kristen Denton – Skagit County Guardianship Monitoring Program
Deputy Clerk, Skagit County Clerk's Office

Ana Kemmerer, Coordinator, Spokane County Guardianship Monitoring Program
Spokane County Superior Court

Deborah Jameson, Attorney at Law, Neil & Neil

Fona Sugg, Court Administrator, Chelan County Superior Court

Charlotte Jensen, Court Business Information Coordinator
Washington Administrative Office of the Courts

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STANDARDS AND BEST PRACTICE

Key Accomplishments:

- Identified and categorized strategies that can be implemented in Washington courts to facilitate guardianship monitoring.

Next Steps and High Level Project Milestones:

- Provide support as requested to courts to develop and expand guardianship monitoring, tracking, reporting, and guardian accountability.

Vision Status:

- Courts start or expand a guardianship monitoring program by adopting one or more guardianship monitoring recommendations.
- Courts' guardianship monitoring programs have available tools and strategies to proactively monitor guardianship cases

Status Summary Statement: There are active guardianship monitoring programs in some counties and we hope that our work provides tools to enhance existing programs and encourage other counties to start guardianship monitoring programs.

Questions?

Guardian Information & Training Subcommittee

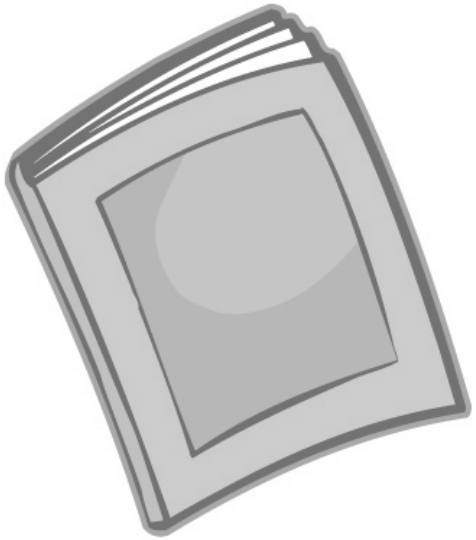
Meredith Childers

Information and Training Committee

Guardian Information and Training Subcommittee

- Develop a training that can be presented to professionals
- Develop in-person training for lay guardians
- Develop a training manual for lay guardians
- Develop opportunities for mentoring
- Develop a petitioning packet that includes entire guardianship process

Information and Training Committee



Project #1: Statewide Lay Guardian Manual

Family & Volunteer Guardian's Handbook —

— How to be an Effective Guardian

—A Handbook

EXAMPLE

"This *Handbook* was updated in 2010 by members of the Guardianship and Elder Law Section of the King County Bar Association. Carla Calogero, an attorney practicing in Seattle, was Chief Editor of the updated 2010 *Handbook.*"

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Information and Training Committee

SPOKANE COUNTY SUPERIOR COURT GUARDIAN TRAINING HANDBOOK

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B. Accounting Training – Guardians of Estate

Timeline/Flowchart & Checklist.....Section 7

Form Description & Timeline.....Section 8

Information and Training Committee

MANUAL for

GUARDIANS

Under

Title 11, Revised Code of Washington

Superior Court for Snohomish County, Washing

2007

Page 1 of 24

EXAMPLE

Washington State Lay Guardian Handbook

Table of Contents

I. Introduction and Alternatives to Guardianship

II. Guardianship of the Person Reporting

III. Guardianship of the Estate Reporting

IV. Beyond Reporting

I. Introduction and Alternatives to Guardianship

A. Greeting to the reader
B. Purpose of the handbook
C. What the reader can expect to find in the handbook
D. Do you really need this? Are you ready for this? Alternatives
E. Flow Chart

II. Guardianship of the Person Reporting

A. Overview of Lay Guardian Duties
B. Ethical Decision Making
C. Identifying Needs
D. Developing a Personal Care Plan
E. Filing of the Initial Care Plan
F. Accessing and Coordinating Services and Implementing a Personal Care Plan
G. Anticipating Future Needs
H. Change in Circumstances
I. Annual Status Report

III. Guardianship of the Estate Reporting

A. Before Accepting the Guardianship Appointment
   - Oath and Letters of Guardianship
   - Understanding the Petition and Order
   - Steps in obtaining a Bond . . . [etc.]

B. After Accepting the Guardianship Appointment
   - Change of Circumstances
   - Annual or Triennial Reports
   - Subsequent Reports

C. Future Reports

D. Ending a Guardianship

E. References

IV. Beyond Reporting

A. General FAQ
B. Guardianship of the Estate
- Common Scenarios
- Guardianship for Minor Child
- Guardianship for Adult with Disabilities
- Guardianship for Elderly Person

C. Guardianship of the Person
- Common Scenarios
- Guardianship for Minor Child
- Guardianship for Adult with Disabilities
- Guardianship for Elderly Person

D. Where Can I Find Additional Help?

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Information and Training Committee

January 2016		First team leader meeting
		First team meetings
February 2016		Teams working on Draft Table of Contents
March 2016	March 1	Deadline – Draft Table of Contents due
	March 17	WINGS Conference Presentation
April 2016		Teams analyze feedback and work on Draft Outline
May 2016	May 1	Deadline – Draft Outline Due
		Teams working on Draft 1
June 2016		Teams working on Draft 1
July 2016	July 1	Deadline – Draft 1 Due
		Send Draft 1 for Steering Committee Review
August 2016	August 1	Teams working on Draft 2
September 2016		Teams working on Draft 2
October 2016	October 1	Deadline – Draft 2 Due
		Send Draft 2 for Steering Committee Review
November 2016		Teams working on Final
December 2016		Teams working on Final
January 2017	January 15	Deadline – Final Due
		Send to Steering Committee
		Send to AOC Website Manager

AOC Website Subcommittee

Donna Holt

Website subcommittee

Improve AOC's Guardianship webpages to include the information for family and friends of persons needing decision support.

- Before a Petition for Guardianship is filed
- During the Guardianship Process
- After a Guardian is appointed

Questions?