Volunteer Court Visitors in Guardianship Cases

by Karolina Abuzyarova and Michaele Wells Jones

In any given year there are about 1,500 new adult guardianship and conservatorship petitions filed. Last year seven of them were denied. At any given time, there are about 12,000 active cases; that is, there has been no order ending a fiduciary’s appointment.

The demographics that populate these cases are projected to grow:

- The Rehabilitation Research and Training Center on Disability Demographics and Statistics of Cornell University reports that, in 2010, 3.7% of Utahns had a cognitive disability. See http://www.disabilitystatistics.org/ (last visited Nov. 30, 2012). With approximately 2.75 million people in the 2010 census, that is almost 102,000 people.

- Utah’s State Plan for Alzheimer’s Disease and Related Dementias estimates that the number of Utahns with Alzheimer’s disease, about 32,000 in 2010, will increase by about one-quarter by 2020, and that by 2025, the number will have increased by 56% to about 50,000. Utah’s State Plan for Alzheimer’s Disease and Related Dementias: Action Plan 2012-2017 (2011), http://www.alz.org/national/documents/utah_stateplan_2012.pdf. Utah has the highest per capita increase of Alzheimer’s disease cases in the country. Id.

- Aging alone does not foretell the need for a guardianship. Nevertheless, our older friends, relatives and colleagues are more likely to face functional and cognitive limitations and require a guardianship. The Governor’s Office of Planning and Budget estimates that the number of Utahns age 65 and older, about 250,000 in the 2010 census, will increase by about one-third by 2020, and that by 2030, the number will more than double to about 523,000. Governor’s Office of Planning and Budget, Preliminary 2012 Baseline Projections, http://governor.utah.gov/dea/projections.html (last visited Nov. 30, 2012).

Not all adults with diminished capacity will need a guardianship, but many will. A guardian for an incapacitated adult has a serious responsibility. In fact, a “guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent’s unemancipated minor child…” Utah Code Ann. § 75-5-312(2) (Michie 1993). It is an equally serious responsibility to vest someone with that power. Will the district court be ready to protect those in need?

For several years the Utah Judicial Council has been pursuing a course to improve how the district court makes guardianship appointment decisions and monitors appointments once made. The Council continues to work from the research and recommendations of the Conference of Chief Justices and the Conference of State Court Administrators and that of an ad hoc committee appointed for this purpose. See Resolution 14 of the Conference of Chief Justices and the Conference of State Court Administrators (2010), http://ccj.ncsc.dni.us/ElderResols/resol14TaskForce.html (last visited Nov. 30, 2012); Report of the Ad hoc Committee on Probate Law and Procedures (2009), http://www.utcourts.gov/committees/
One of the ad hoc committee’s many recommendations was to develop a cadre of volunteer court visitors for assignment by the court, and, working with a three-year grant from the State Justice Institute, the Judicial Council has established a pilot program in the Third and Seventh Judicial Districts called the Volunteer Court Visitor Program. The concept of a court visitor is not new; the authority of the court to assign a visitor has been part of the Utah Code since 1975. See Utah Code Ann. § 75-5-303 (history). The authority, however, has been used only sporadically due to lack of qualified people willing to serve.

Nationally, volunteer court visitor programs date back to 1990 through the efforts of AARP, again working with funding from the State Justice Institute. See Ellen M. Klem, Volunteer Guardianship Monitoring Programs: A Win-Win Solution, ABA COMMISSION ON LAW AND AGING (2007), http://apps.americanbar.org/aging/publications/docs/Volunteer_Gdship_rpt.pdf. Administration of the fledgling Utah program is modeled after these and the very successful Utah CASA volunteer program, in which volunteers serve as friend, investigator and advocate for a child in juvenile court proceedings. The volunteer court visitors, however, are not advocates. They are observers; they report their observations to the court.

Utah’s Volunteer Court Visitor Program has three objectives: preparing the file for the hearing, investigating whether to excuse the respondent from the hearing, and monitoring the guardianship after the appointment is made. The first objective is largely a ministerial function and one that clerks perform in some districts. The visitor’s role is to confirm that all statutory and procedural requirements are met, including whether it is proposed that the respondent be excused from the hearing, whether the respondent has a lawyer, whether an interpreter is needed, whether all of the necessary documents have been filed, and whether all of the interested persons have been served with a copy of the petition and notice of the hearing.

The second objective is to conduct the investigation required by statute if it is proposed that the respondent be excused from attending the hearing, yet there is not clear and convincing evidence from a physician that the respondent has fourth stage Alzheimer’s disease, extended comatosis, or an intellectual disability.
and an intelligence quotient score under 20 to 25. See Utah Code Ann. § 75-5-303(5) (Michie 1993). The visitor usually has sufficient lead time before the hearings to make inquiries, file a report and serve it on the interested persons. Most of the volunteer assignments to date have been for this purpose.

The final objective is what we hope will become the centerpiece of the program – monitoring the appointments once made. Too frequently the court loses contact with the guardian, and the court has neither the time nor the experience to reestablish contact. Usually this is the result of the guardian moving and not notifying the court. The visitor’s objective is to find the guardian by researching the records and data bases of entities that might have a record of the guardian’s and the protected person’s whereabouts more current than the court’s records. The visitor might also research social media sites or contact interested persons from the original guardianship petition.

Further, the courts do not have the time to audit the annual reports of guardians. The visitors can identify those cases in which annual reports are required but not filed, prepare letters directing the guardian to file the report, or, as needed, prepare an order to show cause why the guardian should not be held in contempt. A $5,000 penalty shows how seriously the Utah Legislature views the failure to file required reports. See id. § 75-5-312(2)(e)(v). The district court should do so as well.

The visitors can also thoroughly review the reports that are filed, looking for indications that the protected person is at risk of harm. This includes warning signs about the protected person’s health and well being:

- Is the protected person’s residence and level of supervision appropriate for the nature of the incapacity?
- Are any physical and mental health problems being addressed?
- Are there signs of neglect or abuse, including self-abuse?

It also includes warning signs about the protected person’s property:

- Is the protected person’s property being properly managed?
- Are there signs of financial exploitation?
- Are the protected person’s bills paid on time?
- Is the protected person’s income being collected and used for the protected persons benefit?

- Are financial assets safely invested?
- Are real property and personal property safe?

Ultimately it may take in-person interviews and court hearings to reach a sound conclusion about whether there are problems, but the process can start with a volunteer court visitor reviewing the court records for warning signs. Just because there is a hint of a problem does not mean that there is a problem. It will be up to the court, not the visitor, to determine whether to conduct any further investigation.

If the court decides to conduct a further investigation, it might schedule a hearing and make inquiries personally, or the court might assign a visitor to make inquiries of the guardian, the protected person, and others. In this latter circumstance the visitor will conduct supervised interviews of those involved, make personal observations, and report the results of the investigation to the court.

As the volunteers gain more experience, we anticipate that they may instruct guardians on the role and demands of a fiduciary and instruct and mentor new volunteer visitors.

Our volunteers have a variety of backgrounds. We have retired and employed lawyers, social work students, auditors, law enforcement officers, and advocates for the elderly and persons
with disabilities. The volunteers self-select the roles they want to fill, and the program coordinators respect those choices. A person experienced at auditing records might be the proverbial “fish out of water” if asked to interview someone.

We have twenty-five volunteers who have completed the training, background check, and other requirements. Most volunteers are from our urban pilot district, the Third District Court, and three are in our rural pilot district, the Seventh District Court. We hope to expand soon into the Fourth District Court.


A main pillar of the Volunteer Court Visitor Program has been collaborative community partnerships in volunteer training and recruitment, including the College of Social Work at the University of Utah, Center on Aging at the University of Utah, Department of Sociology, Social Work and Anthropology of the Utah State University, Division of Aging and Adult Services, including Area Agencies on Aging, Long-term Care Ombudsman, Adult Protective Services, and Office of Public Guardian, Utah Volunteers Centers Association, Active Re-entry Centers for Independent Living, Jewish Family Service, AARP, National Alliance on Mental Illness, Division of Services for People with Disabilities, and Utah State Bar. Volunteer programs work best when they are community based, and our program emphasizes the need for community involvement.

Information on how to volunteer as a court visitor is available on the court’s website, http://www.utcourts.gov/visitor/. From there, the training agenda, resource manuals and report forms are just a couple of clicks away.