

RECOMMENDATION 3

A state supported and funded system of mandatory guardian education, and registry should be created for all attorney, professional, and non-family member guardians appointed by the courts.

RECOMMENDATION 4

A state supported and funded adult guardianship registry should be created to collect data and issue reports on all adult guardianship cases and guardians appointed by the courts.

RECOMMENDATION 5

The Indiana Probate Code Study Commission should undertake a comprehensive review and revision of the probate code regarding guardianship under IC 29 and IC 12.

RECOMMENDATION 6

A state supported and funded information and referral resource center should be created to provide public education on advanced directives planning and the options available to individuals and families for substitute decision-making.

Judge Susan Orr Henderson is working on the implementation of a Guardianship Registry (Recommendation 4 above) and discusses that project in further detail in the companion article.

In the next few months, members of the Task Force will be giving presentations and distributing copies of the report to various professional groups, organizations and agencies. Members of Indiana's bench and bar should review the Task Force report for an in-depth analysis of many of the issues relating to incapacitated adults in Indiana and a full discussion of the recommendations.

A copy of the entire 113-page Task Force report may be obtained by contacting Michelle Goodman at the Indiana Judicial Center, at michelle.goodman@courts.in.gov.

BY HON. SUSAN ORR HENDERSON | FOUNTAIN CIRCUIT COURT
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HOW A GUARDIANSHIP REGISTRY BENEFITS THE CITIZENS OF INDIANA

An online registry tracking adult guardianships would enhance the protection of vulnerable adults, provide courts and law enforcement with vital and timely information, and allow for greater monitoring of guardianships across the state. The Probate Committee of the Judicial Conference of Indiana, in conjunction with the Indiana Adult Guardianship Task Force (IAGS), has been charged with ways to meet the increased needs of our aging/incapacitated adult citizens.

THE NEED TO IMPROVE TRACKING OF THESE CASES IS BECOMING A PRIORITY ON A NATIONAL BASIS.

One method to address this issue is the creation of an information sharing system that will allow courts, law enforcement, government agencies, hospitals, mental health facilities and other service providers with a readily available source of information relating to guardianships.

The Probate Committee has sought and received permission from Board of the Judicial Conference of Indiana to form a task force to explore the creation of a Guardianship Registry. The registry is envisioned to contain certain information that would be considered public information available to paid subscribers as well as non-public information for the eyes of the courts only.

With the anticipated increase in potential guardianship filings a centralized statewide guardianship registry would address a multitude of needs. One of the primary purposes of such a registry would be to assist the courts in the oversight of guardianship administration. The Guardianship Registry could provide trial courts with a way to track guardianship cases, not only within their own county, but throughout the State. Should there be a dispute

as to where certain proceedings are pending, whether certain proceedings are pending at all; who is legally authorized to answer on behalf of an incapacitated adult/child; are required inventories and accountings being filed; has the ward died; and, is there an estate pending... these are but a few examples of a number of questions that can be answered with such a registry.

The need to improve tracking of these cases is becoming a priority on a national basis. The numbers of guardianships will continue to increase due to the increasing numbers of aging baby boomers and a method of ensuring oversight of these cases

Continued on next page

Continued from previous page

is imperative. The lack of a statewide system makes it impossible for accurate data to be collected. All guardianships are currently given a GU case number. That identifier notes only the type of proceeding that is filed, not the type of guardianship being sought. There is no ability to collect accurate information that distinguishes case events, except as provided by a request to individual court clerks to provide that information. The ability of a county clerk to research every file to distinguish what type of guardianship has been opened is unduly

The ability to discern between adult and juvenile guardianships is also a priority. The ability for a system to track a juvenile case to the child's 18th birthday would be just one feature to assist courts with its caseloads. In addition, courts have the option of guardianship as a permanency plan in CHINS cases. Newly enacted laws impose requirements on courts regarding notice to the Department of Child Services when dealing with abused/neglected children and guardianships. This will be extremely important when those guardianships close as DCS may wish to resume jurisdiction.

have access to the registry to determine the necessary legal information pertaining to the alleged abducted/missing ward. It could assist state police, local sheriff's departments and city police in responding to calls of someone who may be lost, nonresponsive, or at the scene of a crime to be able to determine if the individual is under a guardianship and who needs to be contacted. To have 24/7 access to guardianship information that is considered public information would greatly increase law enforcement's ability to assist families or service providers when confronted with conflicting information or highly contentious individuals.

THE ABILITY OF A COUNTY CLERK TO RESEARCH EVERY FILE TO DISTINGUISH WHAT TYPE OF GUARDIANSHIP HAS BEEN OPENED IS UNDULY BURDENSOME AND IS UNLIKELY TO GARNER ACCURATE INFORMATION.

burdensome and is unlikely to garner accurate information. The annual Indiana Judicial Service Report is a resource, but is limited to case filings and dispositions, not the number of adult guardianships, minor guardianships, guardianships of the person, guardianships of the estate or both, guardianships opened for minor settlement of claims, etc.

The fact that a case has been "disposed" of for statistical counting purposes does not mean it has been closed for administrative oversight. The registry as a case management tool would be vital to assist courts in ensuring inventories and accountings are properly filed; automatic notices go to the guardian as well as to guardian's counsel when mandatory filings are not received; reports to the court notifying it that a required filing has or has not been received; an alert to the court having jurisdiction over a guardianship estate that the ward has died and someone has opened an estate. These are just a few examples of how the registry could be adapted to assist courts.

Indiana adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in 2011. Indiana is now recognizing guardianships established in other states and ensures a process to transfer jurisdiction and oversight of those guardianships. Hospitals, mental health facilities, nursing homes and other service providers will be able to do an easy check to determine if a patient is under a guardianship and who is the court appointed legal representative. This may become more important and relevant in light of the adoption of the UAGPPJA as well as for those counties that adjoin Illinois, Michigan, Ohio and Kentucky that handle large volumes of individuals who may reside in those states but are brought across state lines into Indiana for treatment.

Indiana has also adopted a Silver Alert system, similar to an Amber Alert, for when an incapacitated adult has been abducted or missing. Should a Silver Alert be issued, law enforcement would

Government agencies such as the Bureau of Motor Vehicles can track and monitor if someone applying for a driver's license is under a guardianship. The Clerk can check if someone is applying for a marriage license is under a guardianship. Information regarding guardianship status of individuals applying for a firearms permit would be readily available. Banks or other lending institutions could check to see the status of someone if suspicious activities are appearing on accounts. These may seem unlikely benefits of the registry but would certainly be options for those choosing to subscribe to this service.

The probate courts in this state need additional resources to meet our obligations in overseeing guardianship cases. The lack of available, willing or suitable family members to serve as guardian has created an opening for so-called "professional guardians" to be appointed. These professionals may be operating in numerous counties and are accepting appointments in the hundreds of cases and in some instances have failed miserably. The horror stories relating to those failures hurt the judiciary as a whole. The registry would allow courts access to cases throughout the state to make sure that the professional guardian is not taking on too many cases as well as to confirm that those guardians

are complying with mandatory filings and reports. Failures to visit the ward, to communicate with family and/or service providers, to ensure that the ward expenses are paid, to see that the ward is getting to his/her doctor visits, and to properly administer medicines, are examples of court-experiences as a result of these appointments. The registry would assist courts when considering this type of appointment and would also reinforce and support quality guardianship services in our State.

To measure support for such a project, the Probate Committee has met with: the Probate Section of the Indiana State Bar Association; the Rules of Practice and Procedure Committee of the Indiana Supreme Court; a representative of the Indiana Clerks Association; and representatives of the varied interests serving as a member of IAGS. It has been widely received with much enthusiasm. Additional support and input will be necessary from other stakeholders serving the target population. A great deal of work is needed to ensure that the proposed registry conforms to current law and meets the needs of the courts, the bar and interested stakeholders. The current task force will be collaborating with representatives of Courts, Clerks, Probate attorneys, State Court Administration, Judicial Conference of Indiana, law enforcement, service providers, prosecutors, legislators, Adult Protective Services, government agencies, banks, AARP/Alzheimer's Assoc., ARC of Indiana, Profit and Not for Profit/Volunteer Guardianship businesses/programs, and other organizations designed to address the needs of the target population.

The funding for such a project is of course a factor. The task force, in conjunction with the Judicial Technology and Automation Committee (JTAC), is pursuing grant opportunities in an effort to develop the INcite application necessary for the registry to become a reality.

Lawyers Raise the Bar

Continued from page 14

After that first clinic, attorneys John Woodard and Mark Robinson worked with the Indiana State Bar Association (ISBA) to form an "emergency hotline" for citizens who had follow-up questions or who were not able to meet with an attorney at the Henryville clinic. The ISBA, as well as Chuck Dunlap of the Indiana Bar Foundation, made significant contributions by their presence and valuable advice.

In the second week after the tornado, local attorneys Bottorff, Harmon, Darlene Briscoe worked with me to mobilize teams of lawyers to volunteer time in the evening to meet with citizens in the Borden and Marysville area. CLSHC, with the assistance of Indiana Legal Services, Inc., prepared and distributed several new disaster related booklets designed specifically for tornado victims, including FEMA information and guidelines, contact information for the Attorney General's Office and the local Commissioner's Office, information about donation centers, Red Cross information, and contacts for other relevant state and federal agencies who might provide assistance.

Non-lawyers worked with CLSHC in this tornado relief effort providing accounting and financial assistance, organizing and distributing disaster booklets and information, fielding telephone inquiries, and making referrals to the volunteer lawyers and professionals involved in the assistance efforts. In all thirty-five lawyers answered the call to meet needs of fellow citizens in distress in Clark County. This remarkable dedication and concern for others was a heartwarming example of public service.

On May 10, 2012, the Clark County Commissioners publicly recognized and awarded Certificates of Appreciation to the volunteers who rose to the occasion by donating booklets, knowledge and time at the clinics and in other ways to aid the tornado recovery efforts, including thirty five members of the bar, as follows:

Magistrate Judge Kenneth Abbott, Robert G. Bottorff, II, Darlene Briscoe, W. Brian Burnette, Robert M. Colone, Marianne Conrad, Rachelle L. Cummins, Eric T. Eberwine, Mary Fondrissi, Matthew W. Forsythe, Graham T. Green, J. Spencer Harmon, Sandra L. Heeke, C. Allan Hoffer, Kristi James, Margie Jenkins, Jeffrey Stonebraker, Thomas R. Thomas, Sr, Margaret F. Timmel, Scott L. Tyler, J. Scott Waters, IV, Amy Wheatley, Derrick Wilson, John W. Woodard, Jr., Nicholas Karaffa, Jason A. Lopp, Mary McCuskey, Judge Daniel E. Moore, Jill Oca, CPA, Brenda Ooley, Gregory M. Reger, Lisa Garcia Reger, J. Mark Robinson, Sherry Routh, Richard Rush, Rodney Scott, Marc S. Sedwick, John L. Smith, William E. Smith, III, and Nick Stein.

Henryville, Marysville and Borden are slowly rebuilding and it will be a long journey toward total recovery. Businesses and individuals (even the band Lady Antebellum recently provided a free prom night for Henryville high school students) demonstrated generosity on a grand scale.

Even though skeptics will undoubtedly continue to make negative comments about lawyers, I offer a strong counter-point on the strength of this group of thirty-five members of the profession who raised the bar by unselfishly answering the call to duty in a time of crisis.