

Texas Judicial Council - Elders Committee Report – August 22, 2014

Charge: Assess the ways in which the Texas courts interact with the elderly, including guardianship, probate, elder abuse and other proceedings, and identify judicial policies or initiatives that could be enacted to protect and improve the quality of life for the elderly in Texas.

Members:

Hon. Polly Spencer, Chair
Judge, Probate Court #1, Bexar County
Hon. Glenn D. Phillips
Presiding Judge, City of Kilgore
Hon. Kelly Moore
Judge, 121st Judicial District, Terry & Yoakum
Ms. Allyson Ho
Morgan Lewis, Dallas

Meetings:

January 30, 2014 — The committee discussed its mission and members of the public testified before the committee.

August 15, 2014 — A committee workgroup meeting was held to discuss supporting legislative proposals. The committee supports the concepts in the following proposals:

Legislative Proposals:

1. **An act relating to the determination of incapacity in a guardianship proceeding and the findings and proof required prior to the appointment of a guardian of the person or estate.**
 - Defines supports and services – formal and informal resources and assistance that enable an individual to meet his or her needs for food, clothing, or shelter, to care for his or her physical or mental health, to manage his or her financial affairs or to make personal decisions regarding residence, voting, operating a motor vehicle and marriage
 - Before appointing a guardian, the court must find by clear and convincing evidence that alternatives to guardianship that would avoid the need for appointment of a guardians have been explored and determined to not be feasible and that supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been explored and determined to not be feasible
 - Includes a modification to the Certificate of Medical Examination requiring a statement about the possibility of improvement and, if improvement is possible, the addition of a time frame for re-evaluating the individual to determine if the guardianship continues to be appropriate

2. An act relating to an applicant's and guardianship ad litem's duties in guardianship proceedings and required training.

- Requires that the applicant or applicant's attorney certify that the guardianship is necessary and that alternatives to guardianship and supports and services have been investigated
- Requires that the guardian ad litem evaluate the necessity of the guardianship and evaluate alternatives to guardianship
- Requires that the applicant's attorney must be certified as having successfully completed a course of study in guardianship law
- Increases the number of hours required for certification from three to four

3. An act relating to the recognition of a supported decision-making agreement as an alternative to a guardianship for adults with disabilities.

- Recognizes a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who do not wish to delegate authority over those decision to an agent
- An adult with a disability may voluntarily authorize his or her supporter to:
 - Assist with understanding the options, responsibilities and consequences to make life decisions related to supports and services, place of residence, and place of employment
 - Assist the adult in accessing, collecting or obtaining information relevant to the decision including medical, psychological, financial, educational, or treatment records
 - Assist the adult with a disability in understanding the information
 - Assist the adult in communicating the decision to other person

4. An act relating to the recognition of guardianship alternatives for adults with disabilities.

- Before the initiation of a guardianship proceeding or the appointment of a guardian, a court must make a finding that no less restrictive alternatives exist to resolve the need for a guardianship

5. **An act relating to supports and services designed to limit power or authority of a guardian over an incapacitated person and to develop or maintain the maximum self-reliance and independence in an incapacitated person.**
 - Requires the attorney ad litem and guardian ad litem to investigate whether the guardianship is necessary or the specific powers or duties of the guardian be limited if the incapacitate person or ward received supports and services

6. **An act relating to decisions about a ward’s residence**
 - Requires the court to design a guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person including decisions regarding residence

Support of Funding Proposals:

The Elders Committee recommends that the Judicial Council support the Office of Court Administration’s legislative appropriations request exceptional item request entitled “*Enhance Judicial Services to the Elderly and Incapacitated.*” This request is to “initiate a new pilot program to place Guardianship Compliance Specialists across the state to review guardianship filings for the elderly and incapacitated to determine if guardians are following statutorily-required procedures, to review annual reports filed by the guardians, and to ensure that exploitation and/or neglect of persons under guardianship (wards) is not occurring.” The total amount of this request is \$1.1 million in the next biennium.