



ELDERS COMMITTEE REPORT & RECOMMENDATIONS

October 2016



Texas Judicial Council

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING
(512) 463-1625 • FAX (512) 463-1648
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:

HON. NATHAN L. HECHT
Chief Justice, Supreme Court

VICE CHAIR:

HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

EXECUTIVE DIRECTOR:

DAVID SLAYTON

In June 2013, the Texas Judicial Council established the Elders Committee to “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.” The members of the committee are:

Honorable Polly Spencer, Chair

Ms. Allyson Ho

Honorable Kelly Moore

Honorable Glenn D. Phillips

Senator Judith Zaffirini

This is the second report and recommendations of the Texas Judicial Council Elders Committee. Most of the committee's recommendations made in the fall of 2014 were enacted by the 84th Legislature.¹ Following on the success of last session, the Elders Committee recommends that the Council support the following proposals:

1. Expand the OCA Guardianship Compliance Pilot Project statewide

Last session, the Judicial Council recommended the establishment of a guardianship compliance pilot project at OCA funded to support 6 FTEs. The purpose of the pilot project was to test a program to provide assistance to probate courts across the state without sufficient resources to monitor guardianship requirements in individual cases. The 84th Legislature provided partial funding for the request, and 3 FTEs were hired for the pilot project. The project began in November 2015. As of September 30, 2016, the project has reviewed almost 7,000 guardianship cases in 8 counties. The pilot has revealed deficiencies that were expected in the courts without sufficient resources to monitor the cases.

Therefore, the Elders Committee recommends that the guardianship compliance pilot project be expanded so that it can provide coverage to all of the counties without statutory probate courts (244 counties). The committee recommends that the Council urge the legislature to fund OCA's Legislative Appropriations Request Exceptional Item #2 for 36 FTEs at approximately \$3 million per year.

The Elders Committee also recommends that the Council request that the legislature require OCA to perform this function as part of its mission to provide resources to the trial courts and require participation by counties selected by OCA.

2. Require submission of annual reports and annual accountings through the state guardianship reporting portal

Part of the funding provided to OCA by the 84th Legislature was for the development of an automated, electronic tool to process the filing of required reports and other documents in guardianship cases. This system will provide an automated method to notify courts when required reports are delinquent. It will also provide an automated method to review annual accounting reports for potential fraudulent activities. OCA expects that this online tool will be piloted in several counties prior to the end of the year.

Most counties do not have electronic tools that allow them to automate the processes that will be available under the new OCA-developed tool. The lack of an automated tool for monitoring guardianship reporting limits the courts' ability to properly oversee guardianship. Based upon the benefits of the guardianship reporting tool, the

¹ See the full 84th Legislature recommendations by the Elders Committee at <http://www.txcourts.gov/media/699881/Elders-Legislative-Recommendations-Report-FINAL.pdf>.

Committee recommends that the Council request that the Supreme Court (by rule) mandate that all guardians electronically file the required reports through the state-developed guardianship reporting portal. The Committee recommends that the rule provide an exception for guardians who are unable to electronically file the required report and that statutory probate courts be given the option to opt-out of the required reporting tool. The Committee further recommends that OCA provide information to the courts when there is non-compliance indicated by the guardianship reporting tool.

3. Mandate that all guardians not currently required to be certified to register with the Judicial Branch Certification Commission (JBCC)

Under current law, private professional guardians and HHSC (formerly DADS) guardians are required to be certified by the Judicial Branch Certification Commission.² The approximately 460 certified guardians are appointed in less than 5,000 of the approximately 54,000 active guardianships in the state. The remaining guardianships are handled by individuals who are not required to be certified, namely family members, friends, and attorneys. This limits the ability to properly oversee guardianships in the state.

Guardians who are not required to be certified may receive no training in the guardian's responsibilities. In addition, there has been limited compliance with statutory requirements³ to perform background checks on all non-attorney prospective guardians.

This being said, to require family members, friends, and attorneys to become certified would likely have an adverse impact on the number of individuals willing to serve as guardians. Therefore, the Committee recommends that the Council request that the legislature require non-professional guardians to register with the Judicial Branch Certification Commission (JBCC). The registration would be a streamlined process that would not adversely impact the prospective guardians. Part of the registration process would include an online training component to educate potential guardians about their responsibilities as guardians. In addition, the JBCC would be able to perform the required background check and provide information to the court as to the results of the background check. Due to the cost of performing a fingerprint background check (typically paid by the registrant), the Committee recommends that the JBCC perform the fingerprint background check only in cases where the value of the liquid assets in the estate is equal to or greater than \$50,000. In other cases where the value of the estate is less than \$50,000, the Committee recommends that JBCC perform a name search background check. The Committee recommends that the cost of the registration and background checks be considered a legitimate expense of the estate and that the registrant be authorized by law to recover the cost from the estate. The Committee

² Government Code Sec. 155.102

³ Estates Code Sec. 1104.402

recommends that the law clearly indicate that the detailed results of the background be made confidential, subject to release only to the court considering the appointment of the guardian. The Committee recommends that the enforcement of guardianship duties remain with local courts, with JBCC notifying the court when an apparent violation is reported or found by JBCC.

4. Expand JBCC authority to regulate guardianship programs

The Judicial Branch Certification Commission is currently authorized by statute to certify and regulate private professional guardians and HHSC (formerly DADS) guardians. JBCC is also required by statute to adopt minimum standards for guardianship programs.⁴ In addition, the statute requires guardianship programs to annually disclose to JBCC information regarding the persons with a guardian assigned to the program.⁵ However, JBCC is without authority to enforce the requirements for guardianship programs. Therefore, the Elders Committee recommends that the Council request that the Legislature authorize JBCC to register and regulate guardianship programs similar to the way that JBCC regulates court reporting and shorthand reporting firms.⁶

5. Make registry available for query by certain individuals, including law enforcement

Interested stakeholders have raised the issue that persons with a guardian may come into contact with law enforcement, but law enforcement is unaware that the individual is under guardianship. Even if the law enforcement officer becomes aware that the person is under guardianship, the office is unable to determine who the guardian is or how to contact that individual. This may have detrimental impacts for both the person with a guardian and the officer. OCA was directed by HB 3424 (84th Legislature) to study this issue and make recommendations on the establishment of a registry. OCA is finalizing the study but expects to recommend that a registry be created. Therefore, the Elders Committee recommends that the Council request that the Legislature authorize OCA to create a guardianship registry, using the information gathered from Recommendation 3 and 4 above, and to provide access to this information by law enforcement and other limited individuals, as appropriate. The Committee recommends that the information from the registry provide protection to the privacy of guardians and individuals under guardianship to the greatest extent possible to accomplish the purposes of the registry.

⁴ Government Code Sec. 155.101

⁵ Government Code Sec. 155.105

⁶ Government Code Sec. 154.106

6. Recommend that OCA create online resources and tools for individuals, including educational webinars; templates; directory of supports and services; frequently asked questions; education resources for judges and court staff; education resources for family and friend guardians

Individuals who are appointed guardian or are interested in becoming a guardian are most often charged with doing so without sufficient resources and tools to perform their responsibilities effectively. Examples of resources include: educational webinars, templates and forms, a directory of supports and services that are available, and frequently asked questions. In addition, there is no online resource for educational resources for judges and court staff. Therefore, the Elders Committee recommends that the Council request that OCA work with interested stakeholders to develop a microsite that contains the information discussed above and publicize the availability of the resource widely.

7. Establish a statewide public guardianship office

The Judicial Council recommended in 2014 that the legislature establish a statewide public guardianship office. This recommendation was not implemented. A public guardianship office serves as the guardian of last resort when no other appropriate guardian can be located. Texas currently does not have a guardian of last resort, and judges are oftentimes faced with the difficult task of locating an appropriate guardian for an individual. Therefore, the Elders Committee recommends that the Council reurge its proposal that the legislature establish a statewide public guardianship office.

8. Establish regional specialized guardianship courts

A judge who specializes in a particular casetype has the ability to focus its efforts on and devote added attention to the particular casetype. The judge can spend the time necessary to ensure that best practices are followed and tailor his or her knowledge base to the particular casetype. Texas has established specialized probate courts in only 10 counties. The remaining 244 counties have probate court judges who are required to devote attention to numerous judicial functions and non-judicial functions.

One of the most successful innovations in specialized courts has been the development of the child protection courts (CPC). These 24 courts serving 130 counties focus on the needs of children in the child protection system. The CPCs have been shown to have better outcomes than courts that handle the cases as part of a regular docket.

The Elders Committee believes that similar specialized courts would greatly improve the guardianship system in Texas.⁷ Therefore, the Elders Committee recommends that the Council request that the Legislature establish:

- (1) a pilot system of regionalized specialized guardianship courts with associate judges and appropriate court staff appointed by the regional presiding judges; and
- (2) Establish multi-county statutory probate courts under Subchapter E, Title 2 of the Government Code.

⁷ Combined with Recommendation 1 above, these specialized courts could more effectively oversee the guardianship cases filed and established the counties covered by the court.