

“Let our advanced worrying become advanced thinking and planning”- Sir Winston Churchill

## ELDER LAW TODAY

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Yesterday was the first day of summer. Where has the year gone? Our family has been pretty preoccupied since May 31<sup>st</sup> when our first grandbaby was born: Grayson William Barkley! I think I need to buy Exxon stock since the road between here and Dallas (where they live) is being kept hot by my wife's goings and comings! This brings me to the topic of this newsletter (which if you are a grandparent, you may want to pass on to your children).

Grandkids. Who should parents name as guardian of their minor kids? An article out of the Wall Street Journal quoted a lawyer saying: “This is where I have people cry in meetings most.” Trying to agree on who would be “best” to rear the child is indeed a heavy decision. But, it's a very important one, because if you don't name a guardian, a judge will make that decision! Some things to consider (and hopefully help) in making this important decision as to who should be guardian:

\*the guardian you name in your will can always be changed if circumstances change (perhaps think of who you would want to serve over the next 3 to 5 years if the need arises). Grandma and Grandpa might be fine for young kids (when they are 5 or 6), but maybe not when they are teenagers.

\*you don't have to name a blood relative – you might choose a close family friend that you believe would make the best surrogate parent

\*if parents don't agree as to the first choice, have each parent go into separate rooms and list his/her top 5 folks to be guardian and then come back together and see if they have some that are on both lists with the goal of coming up with a compromise as to the guardian

\* look at the lifestyle of the prospective guardian -- someone said, take a trip to the beach with your brother (who you are thinking about naming). His inability to laugh-off the chocolate ice cream in the back seat of his new car might take on a whole new significance if you are asking him to raise your young children.

\* consider practical details –where the prospective guardian lives should weigh heavily on your decision

(uprooting a child from his community to move to a distant location might not be desirable)

\*think about the financial aspect of raising another child – does the prospective guardian have a large enough house to take on another child to raise? What about the financial burden? Your Will could leave financial assets to the guardian to take care of additional costs associated with being guardian. Another option is to take out additional life insurance to provide a “funding source” for guardian –related expenses.

\*What should you do if the person you want to raise your child would make a great parent, but can't balance a checkbook? You could name two guardians: one to be “guardian of the person” (who would have custody of the child) and another to be “guardian of the estate” (who would manage the financial assets for the child and who would distribute money to the “guardian of the person” for paying expenses, etc.).

\* even if you can't come up with the “perfect guardian” naming someone that you believe to be suitable is better than not naming anyone at all. Consider the following real life scenario: A woman wanted to be guardian for her deceased daughter's child. The long-absent father appeared on the scene seeking custody of the child --a custody fight that was very ugly ensued. Fortunately, the daughter had designated who she wanted as guardian and explained in her Will why the father was unsuitable to rear the child. The court took that into account in appointing the grandmother as the guardian. What if the daughter had not taken the time to do what she did? It's likely that the father would have been given custody. This might not have been in the child's best interest.

\*Finally, consider that in the vast majority of cases, the person who is appointed guardian never has to serve. Most minor children will reach the age of 18 with at least one parent surviving. Remembering that may take some of the pressure off of parents who are struggling with that decision.

That's it for now. I hope you have a great summer!

