"Assure your clients that, despite the fact that no one can ever fully replace them, it is better to nominate a guardian than to leave such a critical decision entirely up to the court."

Young Lawyers

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GUT-CHECK TIME: HELPING CLIENTS NOMINATE A GUARDIAN FOR MINOR CHILDREN

When it comes to designing an estate plan, perhaps the most challenging and gut-wrenching decision for parents of young children is determining who to nominate as guardian. Many people point to their indecision over who to name as guardian as the sole reason they haven't completed their estate plans. No one wants to face their own mortality or consider the fact that they might not be around to help their children learn the ways of the world. This is one of the times when the "counselor" part of our job description kicks into effect and we can help clients by guiding them through considerations and scenarios that will help determine the best guardian possible.

Making a will and nominating a guardian are vital legal steps parents of minor children need to take. Failure to nominate a guardian leaves the decision of who is best qualified to care for minor children entirely up to the court, with no input from the parents who knew and loved the children best. Without a guardian nomination, multiple family members can petition the court to serve as guardian, resulting in a contentious custody battle. Worse yet, there may be no one stepping forward to care for the children.

Who should a parent nominate as guardian? The natural first choice would be a child's second parent, if he or she is living. After this, people typically look to family members, starting with their parents or adult siblings. Nevada communities can be transient and many residents don't have family nearby. In these cases, friends may become like family and if a person wants to nominate a friend to serve as guardian, it is even more important to get this nomination in writing.

When counseling clients about guardian selection, these are some important considerations to discuss:

- Are the parents comfortable with the individual's lifestyle and values?
- Would the child have to relocate?
- Could the prospective guardian incorporate the child into his/her household?
- If there are multiple children, would the guardian be able to keep them together?
- Does the child already have a relationship and good rapport with the person?

Clients may have concerns about a potential guardian's ability – or lack thereof – to manage the child's finances. If so, you can build in checks and balances by bifurcating the role of guardian. The client can nominate one person to act as guardian of the person (to care for the well-being of the child) and a separate guardian of the estate (to manage the child's finances). If the client has significant assets, including life insurance, the client should also consider establishing a trust for the children.

What if the client doesn't want the child's other parent to raise them? Clients should be advised that under Nevada law there is a preference to appoint a natural parent as guardian, provided they are qualified and suitable (see NRS 159.061). That said, the court will consider things such as drug or alcohol abuse, criminal history and the parent's overall ability to provide for the child's basic needs. A client who feels strongly that the child's other parent is not fit to raise them should certainly nominate other people the client believes would be qualified. The client should also write a detailed letter explaining why the other parent is unfit, so the letter can be submitted to the court for consideration if necessary.

Ideally, both parents of a child should name the same person as guardian in their wills. If the parents cannot agree, they are free to each nominate their own preferred guardians but should be advised this could result in a contested court battle.

There are special considerations for guardian nominations when the child's parents are same-sex partners. Both parents should name each other as their preferred guardian for the child. In addition, the parents should write instructional letters

to the court explaining the importance of having their partner continue as guardian for the child.

Once a client decides who to nominate as guardian, it is wise to advise them to discuss the nomination with that person. If the potential guardian does not feel able or willing to serve as guardian, it is better to find that out now, while the client is still living and able to change the nomination. It is also a good practice to nominate at least one alternate guardian, although most clients of young children ultimately come up with a list of several alternates to cover many contingencies.

Some clients have very specific thoughts about how they would want the guardian to raise their child, such as where the child should live, what school he or she should attend and what religion the child should practice. While you could draft those instructions into the will alongside the guardian nomination, this really is not the appropriate place to express these wishes as they have no legal bearing. A better option is to have clients write a supplemental instruction letter that would be provided to the guardian upon the client's death to provide guidance as to how the child should be raised.

Don't let your clients procrastinate completing their estate plans just because they can't decide who to name as guardian. Guide them through the myriad of issues they must consider. Assure your clients that, despite the fact that no one can ever fully replace them, it is better to nominate a guardian than to leave such a critical decision entirely up to the court. Remind them that, as parents, they must always hope for the best and plan for the worst. ■

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