



D I S T R I C T O F C O L U M B I A B A R
Estates, Trusts and Probate Law Section

D.C. BAR ESTATES, TRUSTS AND PROBATE LAW SECTION
RE PROPOSED REVISION OF THE
DISTRICT OF COLUMBIA LAWS GOVERNING GUARDIANSHIPS
OF MINOR CHILDREN AND PROPOSED STATUTE GOVERNING
SUPPLEMENTAL NEEDS TRUSTS

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SUMMARY

The Estates, Trusts and Probate Law Section¹ of the District of Columbia Bar, voted on February 10, 2009 to endorse the proposal of an ad hoc committee to completely revise Chapter 1 of Title 21 of the District of Columbia Code, governing guardianships of minor children and for law governing supplemental needs trusts in the District of Columbia.

The views expressed in this Public Statement represent only those of the Estates, Trusts and Probate Law Section and not those of the District of Columbia Bar or of its Board of Governors.

The current law governing guardianships of minor children has been in place for over one hundred years, employs antiquated language and concepts, and causes administration of guardianships of the property and estate of minors to be needlessly cumbersome and unduly expensive.

An ad hoc committee of attorneys who are active in the practice of law regarding the assets and property of minor children have drafted a complete revision of the law governing guardianships of minor children. The proposed law replaces the existing law with a comprehensive system of protective arrangements which include formal court-supervised guardianships and cost-effective alternatives to formal guardianships which still protect the property of minor children. The proposed legislation clarifies the law regarding testamentary guardians appointed by the Will of a deceased parent, allowing for official recognition of testamentary guardians, as desired by a parent, as well as clear procedures in the event that there is no testamentary guardian or a testamentary guardian would be inappropriate.

The proposed law also includes provisions governing the establishment by the court of supplemental needs trusts. As there is currently no District of Columbia law governing supplemental needs trusts, this badly-needed legislation will bring clarity and consistency to this subject.

¹ Steering Committee of the Estates, Trusts and Probate Law Section: Kimberly K. Edley, James Larry Frazier, Kate K.H. Kilberg, Morris Klein, Anne M. Meister, Paul D. Pearlstein, Catherine Mary Rafferty, Andrea J. Sloan, and Edward G. Varrone. (Anne M. Meister has recused herself from all matters relating to this Public Statement.)



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PUBLIC STATEMENT OF THE
D.C. BAR ESTATES, TRUSTS AND PROBATE LAW SECTION
ON REVISING THE LAW GOVERNING GUARDIANSHIPS OF MINOR CHILDREN
IN THE DISTRICT OF COLUMBIA

Adopted by the Steering Committee on February 10, 2009.¹

The Estates, Trusts and Probate Law Section of the District of Columbia Bar is made up of over one thousand attorneys who actively practice estate planning; administration of decedent's estates; and cases involving arrangements protecting the property and assets of minor children and disabled adults, such as trusts, guardianships and conservatorships.

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The existing law governing guardianships of the property of minor children in the District of Columbia has been in place, without substantial revision, for over one hundred years. As a result, the law is cumbersome, expensive, and inefficient, and it does not adequately provide for full protection of the rights of minors and their parents or effective asset management. Existing law requires the establishment of formal guardianships in all cases in which a minor becomes entitled to property or assets, even when other, less expensive, protective arrangements would be more suitable. Also, existing law makes it unreasonably difficult for parents to act as guardians for their own children.

Recognizing that the antiquated law governing guardianships of minor children was in need of a complete overhaul, the Steering Committee of the Section encouraged the formation of an ad hoc committee of attorneys active in the practice of law regarding the assets and property of minor children. That ad hoc committee has met over many months and has produced a proposal for a comprehensive revision of Chapter 1 of Title 21, as well as legislation governing supplemental needs trusts. The committee members were Steven Weinberg (chair), Robert A. Gazzola, Evan J. Krame, Anne M. Meister, Barbara R. Miller, and Edward G. Varrone. (Anne M. Meister resigned from the committee upon her appointment as Register of Wills of the District of Columbia.) The attorneys who participated in committee discussion from time to time include

¹ Steering Committee of the Estates, Trusts and Probate Law Section: Kimberly K. Edley, James Larry Frazier, Kate K.H. Kilberg, Morris Klein, Anne M. Meister, Paul D. Pearlstein, Catherine Mary Rafferty, Andrea J. Sloan, and Edward G. Varrone. (Anne M. Meister has recused herself from all matters relating to this Public Statement.)

C. Hope Brown, Stephanie Grogan, Suzanne V. Richards, Kimberly Martin Turner and Joel C. Weingarten. The committee also received input from representatives of the Trial Lawyers Association of Metropolitan Washington D.C., Quality Trust for Individuals with Disabilities (an advocacy organization for people with developmental disabilities and mental retardation in the District of Columbia), and Shared Horizons, Inc. (a pooled special needs trust in the D.C. Metropolitan Area), and the committee's proposed legislation was also reviewed by Sandy Bernstein, legal director of University Legal Services.

The proposed legislation makes many important improvements to existing law, including the following:

1. It allows for the use of a minor's assets and income for the benefit of the minor in a more efficient and less expensive manner;
2. It provides for cost-effective alternatives to full guardianships, though still safeguarding the minor's assets and income, when the property of the minor is of a comparatively modest amount or when the minor's property is not expected to be expended while the minor is under age 18;
3. It provides authority for alternative arrangements for managing the property of a minor beyond the age of 18;
4. It affords parents who can be expected to properly manage their child(ren)'s property the opportunity to serve as guardians by changing the bond requirements and allowing for alternative protective arrangements;
5. It provides for the investment of a minor's assets pursuant to modern asset management principles;
6. It reforms the current system of compensation by providing for reasonable compensation based on actual services rendered; and
7. It provides for the formal recognition of a testamentary guardian of the person of a minor and clarifies the law when there is neither a parent nor testamentary guardianship, or when a third party other than a testamentary guardian seeks appointment.

In addition to the comprehensive revision of the law governing guardianships of minors, the proposed legislation provides statutory authority for the court to establish supplemental needs trusts in the District of Columbia. Supplemental needs trusts serve the interests of persons with disabilities who may have recovered damages in a tort action or received an inheritance. Supplemental needs trusts are intended to preserve for persons with disabilities eligibility for government benefits, generally Medicaid, while leaving assets available for needs beyond those met by government benefits. Upon termination of a supplemental needs trust, often upon the death of the beneficiary, the District of Columbia generally has a lien against the remaining trust assets in the amount of any and all expenditures by the District's Medicaid program for the benefit of the supplemental needs trust beneficiary.

The right to create a supplemental needs trust has been codified in Federal law since 1993, as part of the Social Security Act. 42 U.S.C. §1396p(d)(4)(A), but currently there is no law governing the establishment of supplemental needs trusts by District of Columbia courts.

The proposed legislation provides clear procedures for establishing supplemental needs trusts by the court. These procedures are intended to protect the interests of beneficiaries and also afford the court the flexibility to streamline procedures when appropriate. The procedures are very similar to those for establishing minor guardianships. The proposed legislation also sets out standards for the construction and administration of supplemental needs trusts. Finally, the proposed legislation provides for compensation of trustees, attorneys, and other professionals in a manner consistent with either other court-supervised fiduciary arrangements or commercial trust administration.

The Steering Committee of the Estates, Trusts and Probate Law Section endorses the proposed legislation drafted by the ad hoc committee, and urges its adoption as drafted. Implementation of the proposed legislation will be a major step forward in affording minor children in the District of Columbia, and their parents, an effective, efficient and comprehensive system for protection of the person, property and assets of children.

The full text of the proposed legislation, and a detailed analysis of it, are attached to this public statement.

Authors and Contributors to this Statement: Edward G. Varrone