

## Plan Ahead: Designate a Preneed Guardian

### Pyle & Dellinger, PL

We have always encouraged clients, at the time they execute estate planning documents, to sign additional papers to handle the possibility of future mental incapacity. This is one of the standard benefits of revocable living trusts, although we do not consider it a vital purpose for entering into such a trust. Everybody should grant a durable power of attorney to his or her spouse, if any, and at least one alternate, usually the same person designated as a personal representative in the will.

Some attorneys suggest that a preneed guardianship designation form also be executed along with the estate planning documents. Some even incorporate the language into the power of attorney form. Previously, we did not suggest such a designation, because it seemed contradictory. If you sign a trust or a power of attorney, which should avoid guardianship, it made no sense at the time to say who your guardian might be. However, because of a few difficult cases seen recently, we have changed our position on guardian designations.

For instance, we are aware of cases where an unfavored son or daughter, or a more distant relative, who appeared to be seeking control rather than actually-

reacting in the best interest of the client, filed guardianship pleadings against the client. This resulted in significant expense to the client and the actual danger that a person who was not the client's choice to handle his or her financial matters, could be appointed the guardian.

Having named a different person in a power of attorney did not automatically eliminate the possibility that the unfavored person could petition the court

to be named guardian. In one such case, we had anticipated the potential problem and had the client sign a preneed guardianship form naming someone other than the petitioner as guardian. We were able to demonstrate to the petitioner's attorney that even if the court determined our client was mentally incapacitated, the petitioner could not be appointed guardian.

As a result of this specific case, we are now suggesting consideration of this document in cases where there is a real possibility that an unfavored person might try this maneuver at some time. The signing of such a form is usually not necessary for a married couple. If you believe you may need the protection afforded by this form, call our office and ask for pertinent information regarding the preneed guardian designation.