

# Legal Lines

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## **PRESIDENT'S MESSAGE**

**By Robert S. White**

My friends and colleagues, we are facing a unique challenge to our practice of law, to our daily lives, and to the health and safety of ourselves and our families. Like something out of a dystopian science fiction novel, the coronavirus, shelter in place and social distancing have been thrust into our vocabulary. Though it is still somewhat of a shock to all of us, we must all begin to think and act in a way that keeps us safe and keeps us functioning on both personal and professional levels.

It is true that we are in information overload. By now, we are all aware of Governor Charlie Baker's declaration of a state of emergency. And recently, City Manager Ed Augustus issued an executive order for the City of Worcester. The Massachusetts Trial Courts, the Federal Courts and the Registry of Deeds, and other state and Federal agencies have all issued temporary policies. The Worcester County Bar Association's website has organized this information on its home page for your convenience.

The core of the new policies is to enforce social distancing. This is necessary to "flatten the curve" of the now famous graph charting capacity of medical services to treat those affected by the virus. So the courts have taken steps to run their dockets using telephone and video technology in lieu of physical appearances, especially for emergency matters. The policies are being changed almost daily and by the time you read this, it is hoped that all of the courts will have come up with ways to keep non-emergency matters moving too. To help you stay up to date, the Worcester County Bar Association will regularly update its website to include links to the various courts and governmental branches and agencies.

How do we keep our practices moving forward? As a partner in a small firm, I have considered with my partner how to operate as a practice and service our clients, while keeping our employees safe. We are lucky that technology has made it a routine practice to allow us to work remotely. Our office is not closed, but most of us are working from home as best we can. We are embracing the use of video conference software whenever possible and indeed the Worcester County Bar Association Executive Committee and several Committee Chairs met on two occasions this past week by video conference. I am conducting regular meetings with clients and my associates, paralegal and staff using the same methods. Others are doing the same. If you haven't set up remote access to your office server or if you haven't experimented with video conferencing, call your tech consultant to set it up now.

The Worcester County Bar Association, too, is taking steps to protect the health and welfare of its members. Our Executive Committee has made the difficult decision to postpone the Annual Public Official Recognition Breakfast, previously scheduled for April 2, 2020, to a date in the Fall of 2020. Recently, the venue for our May 1, 2020 Law Day Breakfast advised us that it would be cancelling events temporarily so that event, too, is being postponed. We have also had to cancel or postpone some of our seminars, The WCBA Bankruptcy/Business Law Section, Probate and Family Court and the Federal Court and Civil Litigation sections cancelled their seminar. We are hoping that this will be the extent of our postponements and cancellations.

Finally, the economic impact will be harsh for everyone. The Small Business Administration has Massachusetts centered low interest loans. We are also watching for other economic incentives working their way through the legislature. Keep an eye on our website for more information. Most importantly, I wish all you the best of health and safety during these troubling times.

## **WCBA OFFICE EMAIL**

**Please remember the only valid email addresses to reach your WCBA staff are as follows:**

**Sandra M. DiLuzio**, Executive Director  
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**Candice Staples** - for information or questions on events, membership, dues, etc.  
[staples@worcestercountybar.org](mailto:staples@worcestercountybar.org)

**Linda Peters** - for information or questions regarding the Lawyer Referral Service  
[peters@worcestercountybar.org](mailto:peters@worcestercountybar.org)

**If you have us listed in your address book in any other way, please delete it. Please remember you cannot reply to emails that are generated from the blast email program but can respond to the above email addresses that are usually at the bottom of the blast email. Your questions and concerns are important to us and we want to be certain that your correspondence reaches us. Thank you.**

**Worcester County Bar Association – Juvenile Court Bench-Bar Committee**  
**Case Summary: Guardianship of Tara, Appeals Court No. 18-P-1531 (Jan. 29, 2020)**

**By Kevin J. Powers, Esq.**

**Submitted on behalf of the WCBA Bench Bar Committee: Juvenile Court Division**

I. Issue

Under G.L. c. 190B, § 5-206(c), where the proposed guardian is not a party to the appeal of the denial of a guardianship petition, is an appellate court capable of granting any relief to the remaining parties?

II. Procedural History

The Department of Children and Families (DCF) filed a care and protection petition in Juvenile Court. The grandmother filed petitions for guardianship of the children in Juvenile Court. The parents stipulated to their unfitness and supported the grandmother's petitions for guardianship. After a two-day trial, the Juvenile Court found the grandmother not qualified to be appointed as guardian, and found that appointment of the grandmother would not serve the best interests of the children.

"The father and the children appealed from the denial of the guardianship petition[s], but the grandmother did not."

III. Rule of Law

Where the proposed guardian is not a party to the appeal from a denial of her petition for guardianship, an appellate court is unable to grant relief to the remaining parties.

IV. Policy

A court "cannot force a person, even a relative, to assume guardianship over children and, indeed, G.L. c. 190B, § 5-206(c), limits [a guardianship] appointment to a 'qualified person [who] seeks appointment.'"

V. Reasoning

Justice Ditekoff, writing for the Appeals Court, observed that "[w]ithout the grandmother's involvement in the case, there is nothing for the Juvenile Court to consider on remand." Nonetheless, "if the care and protection case advances to a trial on the termination of parental rights, the parties will have the opportunity to litigate whether [DCF's] permanency plan advances the best interests of the children.... In deciding whether to terminate parental rights, the judge will be required to consider 'the permanency plan proposed by [DCF] and the parent' (and, we presume, the children).... The parties will be free to argue that the best interests of the children will not be served by a permanency plan that does not include kinship custody."

At the immediate stage—an appeal from the denial of the guardianship petitions—an appellate court "cannot reverse the denial of the guardianship petition[s] and grant guardianship over the children to the grandmother, as she has accepted the finality of the denial of her request for guardianship."

VI. Holding

The Appeals Court held that it is "unable to provide any effective relief on appeal because the grandmother is not a party to the appeal," and that it therefore "lack[s] an indispensable party to the appeal."

VII. Disposition

The Appeals Court dismissed the appeal.

VIII. Commentary

This case represents a trap for the unwary. If a prospective guardian cares enough to petition for guardianship in the first instance, and if the family wishes to appeal from the denial of the guardianship petition, then the prospective guardian must appeal from the denial of his or her guardianship petition. Without the prospective guardian on-board at the appellate stage, an appellate court—be it the Appeals Court or the Supreme Judicial Court—will lack a necessary party and will be forced to dismiss the appeal. This may sometimes present a logistical hurdle, as appeals are time-consuming for counsel and therefore represent a potentially significant expense for prospective guardians who, unlike parents in care and protection matters, generally have no right to court-appointed counsel.

Counsel for prospective guardians—and, if the prospective guardians are pro se, then perhaps counsel for aligned parents or children—must nonetheless make the prospective guardians aware that an appeal by the court-appointed counsel representing parents or children will not survive, let alone succeed, unless the prospective guardians themselves appeal as well. Prospective guardians who wish to preserve their appellate rights must file a notice of appeal from the denial of their guardianship petition. It is always dangerous for a party on appeal to decline to file a brief, and the best practice for prospective guardians is therefore to file their own brief. Prospective guardians who must appeal the denial of their guardianship petition but lack funds for appellate counsel should, at the very least, consider either joining in the brief(s) of aligned parents and/or children, or filing a formal letter with the appellate court expressing their continued interest in serving as guardians and in seeing the appellate court reverse the denial of their guardianship petition.