

MINUTES
Probate Committee
February 16, 2024
Meeting via Teams

1. **Attendees:** The following members participated in the meeting: Geoffrey Bradley, Robert Freese, Timothy Hollems, Phillip Houk, Michael Kramer, Trent Meltzer, Kristine Osterday, Sean Persin, Bob Witham, and Russell Bailey, Chair. Nick Parker, IOCS Adult Guardianship Office was a guest. The meeting was staffed by Mindy Pickett, Indiana Office of Court Services.
2. **Approval of Minutes:** The committee approved the October 20, 2023, meeting minutes.
3. **2024 Legislative Session:** The committee discussed the following current pending bills this session: SB 16, SB 18, HB 1209, and HB 1216. HB 1216 will be effective on passage and will require the committee to update the emergency detention application. If the bill passes, any amendments to the application will be reviewed and approved via email since the next meeting is not until May.
4. **Benchbook updates:** The committee reviewed and approved Benchbook revisions drafted by Judge Persin including adding a section on special conditions (IC 12-26-14-3, *Civil Commitment of G.H. v. Richard L. Roudebush Veterans Affairs Med. Ctr.*, 216 N.E.3d 485, 290 (Ind. Ct. App. 2023) and adding B.A. v. State, 219 N.E.3d 134 (Ind. App. 2023).
5. **Appointment of Counsel in Adoption Proceedings:** Currently the benchbook does not address this. The committee agreed to add a section to the Benchbook on appointment of counsel in adoption cases, including adding In re Adoption of K.W., 21 N.E.3d 96 (Ind. App. 2014). Committee members stressed the importance of making the guidance clear that it applies to indigent parents only. Mindy Pickett will draft the revisions based on the committee's discussion and it will be voted on at the next meeting. Judge Osterday would like to discuss how appointment of counsel is handled, i.e. payment, locating attorneys willing to serve, etc. at a future meeting.
6. **Other business:**
 - a. Recent case law was reviewed including: J.F. v. St. Vincent Hosp. and Health Care Ctr., Inc., In re Adoption of P.J.W., and Perry v. Poindexter. A petition to transfer has been filed in the *P.J.W.* case. The committee indicated that this case should be included once the case is finalized. Mindy will keep track of the case status.
 - b. Judge Bailey and Judge Bradley informed the committee that the Adult Guardianship Committee has made a request to oversee minor guardianships based on previous conversations and statements made by both committees. The Probate Committee is supportive of the request.
 - c. Mindy Pickett reported on the status of the Benchbook re-format process and requested at the next meeting the committee discuss whether Chapters 3 and 7 of the Benchbook should stay as is.

2024 Meeting Dates: May 17, August 16, and November 15

- All meetings will be held virtually via Teams beginning at 1:30 p.m. (eastern).

MINUTES
Probate Committee
May 17, 2024
Meeting via Microsoft Teams

1. **Attendees:** The following members participated in the meeting: Geoffrey Bradley, Timothy Hollems, Michael Kramer, Jason McVicker, Trent Meltzer, Kristine Osterday, Sean Persin, and Russell Bailey, Chair. The meeting was staffed by Mindy Pickett, Indiana Office of Court Services.
2. **Approval of Minutes:** The committee approved the February 16, 2024, meeting minutes.
3. **2024 Legislative Session:** The committee reviewed and approved revisions to the Application for Emergency Detention based on legislative changes and suggestions received as follows:
 - Clarified that the probable cause determination can be based on an examination OR other information received;
 - Removed the applicant attestation;
 - Agreed to keep the order and application as one document;
 - Denied adding detention time and will keep admission time as that is what is referenced in the statute.

The updated application will be posted to the website and distributed in the weekly message prior to July 1st. Judge Persin volunteered to draft some venue best practices that the committee will review at the next meeting. The committee reviewed 2024 legislative changes and Judge Kramer, Judge Persin and Judge Bradley volunteered to draft updates to the benchbook to be reviewed at the next meeting.

4. **Appointment of Counsel in Adoption Proceedings:** Judge Bradley and Mindy worked on updating the benchbook to include some information on appointment of counsel. The committee reviewed and approved the suggested revisions and added them to both the consent and final hearing sections on adoptions. Committee members discussed the practice of using their public defender contracts to appoint counsel in adoption proceedings, a shortage of attorneys was expressed as a concern.
5. **Probate Benchbook re-format:** Mindy provided an update on reformatting the benchbook and reported it is complete, including removing the chapter on guardianships. The committee voted to move Chapter 2 on Monitoring and Chapter 3 on Rules and Fees into Chapter 1 on Estates. Judge Meltzer volunteered to update the monitoring section to reflect Odyssey monitoring tools. The legislative updates and chapter updates will get added and the committee will vote on posting the re-formatted benchbook for publication at the August meeting. Judge Persin suggested that we provide some information on probate commissioners in the benchbook.
6. **Other business:**
 - a. Recent case law was reviewed including: In re Tr. of H. Louise Bosworth, In re Tr. of Neal L. Bosworth, Hummer v. Donathan, Matter of Est. of Ropp, and Matter of Adoption of Baby Girl. Judge Bradley volunteered to add *Matter of Adoption of Baby Girl* to the benchbook.

- b. Mindy reported that the Indiana Supreme Court granted transfer on In re Adoption of P.J.W., 223 N.E.3d 291 (Ind. App. 2023). The case is set for oral argument on June 27th and Mindy will continue to monitor the case for the committee.
- c. The committee discussed the practice of having a local rule that requires an attorney in an estate case. Some committee members have considered adopting a local rule in their county. Several members expressed that a rule requiring an attorney would be a good idea because of the fiduciary responsibilities in estate cases. Judge Meltzer reported that he has previously researched the issue and based on his research he would deny an estate proceeding pro se. Judge Meltzer will locate his research and share it via email.
- d. Judge Persin indicated that he is seeing an increase in filings in guardianship cases for Medicaid planning. He is not aware of any Indiana case law on the issue and would like to discuss this at a future meeting.
- e. The committee thanked Judge Bailey and Magistrate Houk for their service to this committee, as their terms end July 1st.

2024 Meeting Dates: August 16, and November 15

- All meetings will be held virtually via Teams beginning at 1:30 p.m. (eastern).

MINUTES

Probate Committee

August 16, 2024

Meeting via Microsoft Teams

1. **Attendees:** Geoffrey Bradley, David Certo, Michael Kramer, Jason McVicker, and Trent Meltzer, Chair. The meeting was staffed by Mindy Pickett, Indiana Office of Court Services.
2. **Welcome:** The committee welcomed the new chair, Trent Meltzer, and new committee member, David Certo.
3. **Approval of Minutes:** The committee approved the May 17, 2024, meeting minutes.
4. **Benchbook Updates:** The committee reviewed and approved for publication the following revisions to the Probate Benchbook: HEA 1216, HEA 1369, and SEA 18 from the 2024 legislative session, updates to former Chapter 2 on Monitoring Estates (now in Chapter 1), a case law summary on Matter of Adoption of Baby Girl, 231 N.E.3d 844 (Ind. App. 2024) and a practice note on emergency detention venue best practices.
5. **Other business:**
 - a. Recent case law was reviewed including: A.P. v. Community Health Network, Inc., No. 24A-MH-218 (Ind. App. June 26, 2024), A.B. v. St. Vincent Hospital, No. 23A-MH-3052 (Ind. App. July 19, 2024), Matter of Est. of Ward, No. 23A-EU-1623 (Ind. App. May 28, 2024) (Petition for rehearing filed), Salmon v. Tafelski, 235 N.E.3d 867 (Ind. App. 2024), and In re Adoption of M.J.H., No. 23A-AD-2769 (Ind. App. June 10, 2024). Judge Meltzer volunteered to draft a summary of *Salmon* for review at the next committee meeting.
 - b. Staff provided a brief update on the oral argument at the Indiana Supreme Court granted on In re Adoption of P.J.W., 223 N.E.3d 291 (Ind. App. 2023) that was held on June 27, 2024. The case will continue to be tracked and an update will be provided once a decision has been made.
 - c. The committee continued the discussion from the last meeting on courts requiring attorneys in estate cases.
 - d. Staff reported that concerns have been raised that courts are not providing counsel for review hearings in regular commitment cases. The committee agreed that there is a continuing right to counsel in these cases and added a practice note to the Benchbook to remind judicial officers of the importance of right to counsel in these cases.
 - e. The committee was informed that there is going to be a joint Guardianship and Probate break out session at the annual conference in September.
 - f. Judge Certo informed the committee of the mental health case appeal pilot project starting in Marion County on September 1st.

2024 Meeting Dates: November 15

- All meetings will be held virtually via Teams beginning at 1:30 p.m. (eastern).