



Guardianships

Original by Beth Rothermel

This edition tinkered with by Heidi Easley

Estates Code (EC)

- ▶ Guardianship Statutes: Sections 1001 – 1357
- ▶ West's Texas Statutes & Codes
 - ▶ <http://legalsolutions.thomsonreuters.com>
 - ▶ About \$76
 - ▶ Statutes only
- ▶ O'Connor's Texas Estates Code Plus
 - ▶ <https://oconnors.com/store/products/probate-law>
 - ▶ About \$95
 - ▶ Annotated (includes commentary)
- ▶ Johanson's
 - ▶ <http://legalsolutions.thomsonreuters.com/law-products>
 - ▶ About \$154
 - ▶ Annotated (includes commentary)

Helpful websites

- ▶ Search statutes (laws)
 - ▶ www.capitol.state.tx.us
 - ▶ Click on Statutes
- ▶ AG (Attorney General) opinions
 - ▶ www.oag.state.tx.us/opin/
- ▶ OCA (Office of Court Administration)
 - ▶ www.courts.state.tx.us/oca/
- ▶ TAC (Texas Association of Counties)
 - ▶ www.county.org
- ▶ Other county's websites
 - ▶ www.co.travis.tx.us/probate/default.asp
 - ▶ www.co.dallas.tx.us

Who hears Guardianships?

- ▶ County Court – County Judge
- ▶ Court at Law
 - ▶ Court at Law Judge is an attorney
 - ▶ Law must be passed by the Legislature to establish a Court at Law
- ▶ Statutory Probate Court – hear only probate/guard.
 - ▶ Statutory Probate Judge is an attorney
 - ▶ Law must be passed by the Legislature to establish
 - ▶ Harris, Dallas, Tarrant, El Paso, Travis, etc.

Advice?

"But the bank said that you'd be able to do that for me."

- ▶ Government Code (GC) 81.101
- ▶ Clerk is not allowed to give legal advice
 - ▶ Errors & Omissions insurance does not cover giving advice/telling how or what to file!
- ▶ Generally, the Clerk should file the documents presented; let the Court decide if the document is acceptable

Please Do Not Ask Clerks For Legal Advice

Unauthorized Practice of Law **Government Code, Sec. 81.101**

Clerks can not give advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing any instrument.

Por Favor No Pida Las Oficinas Consejo Legal

Practica Desautorizada De La Ley **Codigo Del Gobierno, Sec. 81.101**

Las oficinas no pueden dar consejo o la representacion de ningun servicio que requiere el uso de la habilidad o del conocimiento legal, tal como preparacion de ningun instrumento.

What is Guardianship?

- ▶ Person is in need of protection or help in managing their daily affairs – WARD
- ▶ Guardianship Case is filed
- ▶ Court appoints a guardian
- ▶ Verbally telling someone or giving permission in writing is not a guardianship – it must go through the court
- ▶ A true guardianship is set up by a court of law

Types of Guardianship

Full – ward is found without capacity to care for self, manage property, operate vehicle, make decisions, vote

- EC 1101.151
- “Fully or totally incapacitated or without capacity” wording should be in the Order
- report to NICS

Limited – specifies extent

- Ward lacks capacity to do some, but not all, tasks
- EC 1101.152
- depending on what the Order says, you MAY have to report to NICS

Kinds of wards –

Minor

Disabled minor becoming an adult

Incapacitated adult

Order should state capacity -

Full guardianship

That by virtue of the Ward's incapacities and legal disabilities, the following legal and civil rights and powers should be removed from the Ward:

- a. The right to vote;
- b. The right to make *inter vivos* gifts of real or personal property;
- c. The power to drive and obtain a driver's license;
- d. The power to execute a Directive to Physicians (Living Will);
- e. The power to execute a Power of Attorney;
- f. The power to enter into contracts;
- g. The power to marry; and
- h. The right to determine his residence.

Limited – ward has some rights

Ward has regained sufficient mental capacity to do some, but not all, of the tasks necessary to care for himself and to manage his property.

IT IS THEREFORE ORDERED that Tyler Murray has regained sufficient mental capacity to do some, but not all, of the tasks necessary to care for himself and, therefore, is partially restored with regard to—

- a. the power to vote;
- b. the power to consent to routine medical and dental treatment, including noninvasive procedures, and psychiatric visits;
- c. the power to make arrangements to travel within the state of Texas without court approval (i) with a family member without Jim Murray's consent and (ii) with a companion with Jim Murray's consent;
- d. the power to participate in the selection of residential placement; and
- e. the power to enroll in educational classes; and
- f. the power to consent to marriage.

*This was from a guardianship where partial rights were restored.

Length

- ▶ Permanent – lasts until ward dies or the court terminates
- ▶ Temporary – no longer than 60 days- EC 1251.151
 - ▶ guardian has limited powers EC 1251
 - ▶ an emergency (“imminent danger”) – EC 1251.001
 - ▶ can be extended by Order
 - ▶ usually (but not always) followed by becoming Permanent

Person/Estate



- ▶ Guardianship can be over –
 - ▶ The Person
 - ▶ Annual Report required
 - ▶ The Estate
 - ▶ Annual Account required
 - ▶ Both Person and Estate
 - ▶ Annual Report and Annual Account required

Records to be kept -

- ▶ Judge's Guardianship Docket – EC 1052.001
- ▶ Claim Docket – EC 1052.002
- ▶ Guardianship Fee Book – EC 1052.003
- ▶ NOTE: EC 1052.004 - the above may be kept on computer file, microfilm, digitized optical image or another similar form of data compilation

Pro Se applicants – sample court policy

JUDGE MATTHEW REUE
100 East Main Street, Suite 203
Brenham, Texas 77833
(979)277-6200 ext. 144
Email mreue@wacounty.com



Court Policy Regarding "Pro Se" Applicants (Applicants without an Attorney)

People who represent themselves in court are called "pro se" or "self-represented" litigants. You are not required to have a lawyer to file papers or to participate in a case in court. You have a right to represent yourself. However, a pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates. See *Steele v. McDonald*, 202 S. W. 3d 926 (Tex. App. – Waco, 2006), and the authorities cited in that opinion. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. The only time a pro se applicant may proceed in court is when truly representing only himself or herself.

Frequently Asked Questions

- Q: What is a pro se?
A: A pro se is an individual who has not hired a lawyer and appears in court to represent himself and no other person or entity.
- Q: Can I still serve as an executor, administrator, or guardian even though I'm not a lawyer?
A: Yes. One need not be a lawyer to serve as an executor, administrator, or guardian. However, the executor, administrator, or guardian must be represented by counsel.
- Q: But I'm the only one that needs letters testamentary. As executor, how would I be representing the interests of others?
A: As executor of a decedent's estate, you don't represent only yourself. An executor represents the interests of beneficiaries and creditors. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise. The attorney you hire represents you in your capacity as executor and assists you in representing those for whom you are responsible.
- Q: If I get the paperwork from a law library or the internet, can I fill it out and file it? Isn't that what lawyers do?
A: Lawyers don't just fill out forms. Lawyers (1) determine what method of probate or guardianship is appropriate in a particular situation, (2) create or adapt any necessary paperwork, and (3) advise the client about the ongoing responsibilities of a fiduciary. Unless you are a lawyer, you're creating legal pleadings while acting as a fiduciary would constitute the unauthorized practice of law.
- Q: As a pro se, what proceedings can I do on my own?
A: The only proceedings you can handle as a pro se are those in which you truly would be representing only yourself. For example, a pro se applicant may probate a will as a muniment of title when he or she is the sole beneficiary under the will, and there are no debts against the estate other than those secured by liens against real estate. This procedure can be a viable option in some situations, but not in others. Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer.
- Q: What procedures should I follow if I want to probate a will as a muniment of title as a pro se applicant?
A: As stated above, whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer. Court staff cannot guide you or advise what you should do in your case. If you decide to proceed with your case without an attorney, the County Law Library has reference materials that may be helpful. Note the following: (1) To probate a will as a muniment of title, each applicant must be able to swear on personal knowledge that there are no debts against the estate other than those secured by liens against real estate. Anyone falsely swearing that the estate has no creditors – including Medicaid estate recovery – is subject to a perjury charge. (2) In a pro se application to probate a will as a muniment of title, all beneficiaries under the will must be applicants, and all beneficiaries must testify at the hearing. (3) The will being offered for probate must be the signed original, or you will need to follow the additional procedural requirements for proving up a will in court. You will need to research what's required for a self-proved will at the Law Library. If you discover that the will is a copy or is not self-proved, Court staff can give you information about what the additional procedural requirements are, but you will need to create all additional documents.

- Judge can sign order for no Pro-Se probate and guardianships

Venue

- ▶ EC 1023.001
 - ▶ Should be where the ward resides
 - ▶ List of other possibilities if ward is a minor
- ▶ Clerk should take the application as we cannot make a legal determination if they filed in the right County



▶ E-filing!

1 name – 1 number

- ▶ Should only be 1 case on each ward!
- ▶ Cannot combine all children in the family into one case!
 - ▶ Must be separate cases on each child
- ▶ EC 1052.052 - “The County Clerk shall maintain a case file for each person’s filed guardianship proceedings.”
- ▶ EC 1052.001(b) – “The county clerk shall assign a docket number to each guardianship”

New case – Permanent/Full Guardianship



Civil Case Information Sheet is no longer required!

- per OCA notice issued on December 12, 2018

1) Application

- Motion to Appoint Atty Ad Litem is included, unless requested in the Application – EC 1054.007
- Order Appointing Attorney Ad Litem should be attached
- Physician's Certification/Medical Examination may also be e-filed immediately – EC 1101.103
- Motion to Appoint Guardian Ad Litem may be e-filed at any time before the Permanent Guardian is finally appointed - EC 1054.051-055

2) Before you accept the e-filed case, search existing Guardianships to see if one already exists!

- If there is a case, any filing must go into the existing case
- **Never** have 2 cases on one ward!
- 1 Name – 1 Number

New Case - continued

3) If there's no existing case, accept new filing and give it new case number

New case fees are charged

- Applicant is responsible for court costs (not the ward) – EC 1155.151
- Unless the case was filed by DADs/Friends' For Life or transferred on a court's motion, then no fees are received

NOTE: applicant is responsible for filing fee, not the ward – EC 1155.151

- can be paid out of guardianship estate or
- paid out of management trust or
- paid by the applicant unless they filed an Affidavit of Inability to Pay or
- paid out of the county treasury if no estate, management trust or party has filed Affidavit of Inability to Pay

4) Migrate documents into case management software and/or print out for the case file

New case - continued

- ▶ **5) As of June 1, 2018 – new Guardianship Registration Rules:**
 - ▶ Clerks and JBCC both provide written notice to all proposed guardians of required registration and criminal history and training requirements
 - ▶ Proposed Guardian must complete the online training at least 10 days before the hearing
 - ▶ Should not have a hearing until training notification is in file
 - ▶ Proposed Guardian will receive certificate of completion
 - ▶ JBCC will notify clerk by email when training is complete
 - ▶ JBCC will also do the criminal history background check and provide to the clerk via email
 - ▶ Clerk will get 2 emails; one has the password to access the background check & the other is the background check
 - ▶ Exceptions to the training:
 - ▶ Certified guardians already registered with JBCC, attorneys and corporate fiduciaries
 - ▶ Temporary Guardians, for no longer than 60 days
 - ▶ Court can waive training if proposed guardian has already taken the training within 1 year
 - ▶ Court can grant postponement of up to 60 days if an immediate appointment of guardian or successor guardian is necessary

JBCC training notification -

New Guardianship Case notification -

Existing Guardianship Case notification -

Dear

Thank you for using our online services.

- Your **New Guardianship Registration** with transaction number has been approved.
- Submit copies of the following items to the clerk of the court where your guardianship is registered:
 - * A copy of this email
 - * A copy of your certificate for completion of the Guardianship Training. (Attorneys, Certified Guardians, and Corporate Fiduciaries are exempt from the training requirement.)
- Guardians appointed prior to June 1, 2018 are not required to complete the training.
- This is a system-generated message; please DO NOT reply to this email. **Replies to this email will not be received by staff.** If you have any questions, please contact **Guardians Services** at: jbccguardianregistration@txcourts.gov, or call 512-463-1656.

Thank you,

Judicial Branch Certification Commission (JBCC)
Office of Court Administration (OCA)



Beth Rothermel

From: Beth Rothermel
Sent: Monday, March 18, 2019 2:43 PM
To: 'Mona Bakshi'
Subject: RE: JBCC Guardianship Registration

Qualification date – Oct. 6, 1980.
Cause number – 2010-05

From: Mona Bakshi [mailto:Mona.Bakshi@txcourts.gov]
Sent: Monday, March 18, 2019 2:39 PM
To: Beth Rothermel <bthermel@wacounty.com>
Subject: JBCC Guardianship Registration

Dear Clerk,

On behalf of the Judicial Branch Certification Commission (JBCC), we would like to inform you the following individual has submitted their registration information:

xxx xxxxxx pre-existing guardian of, xxx xxxxx

At this time, we request the **qualification date** and **cause number** for this applicant.

Best Regards,

Mona Bakshi

Licensing & Permit Specialist III
Judicial Branch Certification Commission
Office of Court Administration
Mona.Bakshi@txcourts.gov
Direct: 512-463-1625
Office: 512-463-1656



- ▶ **6)** After receiving notice of completed training, issue citation(s)...some clerks issue before completion.
 - ▶ By posting
 - ▶ By personal service on ward (ward must always be served) and any others requested
 - ▶ By publication, if requested

- ▶ **7)** Notify Judge of the new case, so Attorney Ad Litem can be appointed
 - ▶ EC 1054.001 – Court shall appoint an Attorney Ad Litem
 - ▶ Atty Ad Litem shall be provided with copies of all records – EC 1054.003
 - ▶ Atty Ad Litem appointment expires when court appoints a guardian – unless a Temporary Guardian is appointed, then the Atty Ad Litem continues

Citation/Notice

- ▶ Issue Citation upon request (rule 99a TRCP)
 - ▶ List of who gets personally served in EC 1051.103
 - ▶ Ward (12 yrs or older) must always be served!
 - ▶ Styled same as application
 - ▶ Addressed to “any Sheriff or Constable within the State of Texas”
(probate & guardianship cannot be served by a Private Process Server in TX)
- Service in the State of Texas – must be by Sheriff or Constable!
 - Personal Service – EC 1051.051
 - Posting – EC 1051.053

Return date on citations:

- ▶ Posting - 10 days
- ▶ Personal service – 10 days
- ▶ Service by publication – 10 days
- ▶ Service by mail – 20 days

Attorney - certification



- ▶ Attorney shall have 4 hours of certification, including 1 hour on alternatives to guardianship (new law in 2015) EC 1054.201
- ▶ Statute does not say it is the clerks' responsibility to keep track of which attorneys have the 4 hours certification

Guardian Ad Litem

- ▶ Court may appoint – EC 1054.052
 - ▶ Investigates whether guardianship is necessary & evaluate alternatives to guardianship
 - ▶ Receives compensation set by the court
 - ▶ Reports findings to the Court
- ▶ Expires upon appointment or denial of appointment of guardian

Court Visitor Program

- ▶ Each Statutory Probate Court shall operate a Court Visitor Program (large populated Counties)
 - ▶ EC 1054.101-105
 - ▶ Assesses conditions of wards/proposed wards
 - ▶ Evaluates the ward or proposed ward
 - ▶ Reports to court within 14 days
 - ▶ Degree of incapacity, medical prognosis, living conditions, recommendations

Court Investigator

- ▶ EC 1054.151-156
- ▶ In Courts that have Investigators –
 - ▶ Investigates the circumstances of the ward
 - ▶ Files a report of findings
 - ▶ Supervises Court Visitor Program

Probate Auditors



- ▶ Not the same as the County Auditor!
- ▶ Works out of the Judge's office
- ▶ Review files/reports, manage/track cases, send out delinquent notices & show cause letters, etc.

Court Initiated Guardianship

- ▶ Court has cause to believe a person is incapacitated; EC 1102
- ▶ interested person has come forward but doesn't want to file a guardianship
- ▶ Physician may also submit a letter or information
- ▶ Attorney Ad Litem is appointed
- ▶ Court must stipulate if Full or Limited

Hearing Day

- ▶ Judge hears testimony
 - ▶ Attorney Ad Litem
 - ▶ Guardian Ad Litem (optional)
 - ▶ Proposed Guardian
 - ▶ Other witnesses
- ▶ Judge signs Order
- ▶ If granted, Oath is given by Judge or Clerk
 - ▶ If Oath is presented in Court, the clerk should accept it
 - ▶ "bench filing"
 - ▶ Or.....oath may be submitted by e-filing later
- ▶ If granted, Bond is given (if a bond is ordered)
 - ▶ May be presented in Court; clerk should accept the bond if it meets requirements – "bench filing"
 - ▶ Can be cash or a surety bond may be submitted by e-filing later
 - ▶ When dispersing, county gets the 5% administrative fee (LGC 117.055)

Bench filings -

- ▶ If a document is presented in court, the clerk accepts it
 - ▶ Rule 74 - Rules of Civil Procedure – allows “Bench file” pleadings
 - ▶ Rule 21 - Rules of Civil Procedure – Every plea, motion or application ... unless presented during a hearing or trial – must be e-filed
 - ▶ The attorney is not required to go back to their office with a document presented in court and e-file it to the clerk – No document(s) need to be e-filed if presented in court during a hearing.

BOND

- ▶ Bond is usually required in a Guardianship
 - ▶ Judge sets
- ▶ DADs & Friends for Life-type groups do not put up a bond
- ▶ Can be cash/check (if you accept checks) – put in your Bond Account
 - ▶ Keep a list or spreadsheet of cases that you have \$ on
 - ▶ Keep a file of paperwork setting bonds
 - ▶ Best Practice - Check this list or spreadsheet at least once a year and disperse any bond money where the guardianship case is closed
 - ▶ When dispersing, county gets 5% administrative fee per LGC 117.055
- ▶ Can be a “surety” – thru an Insurance Agency
 - ▶ Clerk will get Surety Bond to put in the file
- ▶ Can be a personal bond (no money; promise to perform duties) – approved by Judge and usually because there are no funds to draw from

Sensitive Data

- ▶ Rule 21c, Texas Rules of Civ. Proc.
- ▶ Sensitive Data is –
 - ▶ SSN – except for last 3 numbers
 - ▶ Taxpayer ID # - except for last 3 numbers
 - ▶ Bank account # - except for last 3 numbers
 - ▶ Credit Card # - except for last 3 numbers
 - ▶ DL # - except for last 3 numbers
 - ▶ Passport - except for last 3 numbers
 - ▶ Other govt. issued ID - except for last 3 numbers

Sensitive Data – Rule 21c

- ▶ Unless inclusion of un-redacted sensitive data is required, an electronic or paper document may not be filed unless the sensitive data is redacted
- ▶ Sensitive Data must be redacted by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted (XXX-XX-X459)
- ▶ If Sensitive Data must be included in a document, the filing party must include on the upper left-hand side of the 1st page, the phrase “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA”
 - ▶ Clerk cannot put that document on the internet, however it can be in your case management system
- ▶ The clerk may not refuse to take a document that is in violation of these rules
- ▶ However, the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substituted document
 - ▶ Deadline should not exceed 72 hours
- ▶ **If a certified copy is requested of a document that contains sensitive data, the clerk should issue the certified copy with all information – do not redact on your own!**

Inventory



If Guardianship of Estate – Inventory is filed within 30 days

- ▶ EC 1154.051
- ▶ Not clerk's job to police if it's filed or not
 - ▶ Larger populated counties may have Probate Auditors that police this
- ▶ No Citation is issued, just present Inventory to the Judge
 - ▶ Order to Approve Inventory should be included, which the Judge will sign if approved

Claims

- ▶ Claims EC 1002.005 & 1157
 - ▶ Liability against the ward or the estate of the ward
 - ▶ Send letter to guardian or guardian's attorney
 - ▶ EC 1157.002
 - ▶ Guardian has 30 days to allow or reject
 - ▶ EC 1157.051
 - ▶ No statute requires clerk to police

Annual Reports – EC 1163.101

- ▶ On Guardianship of the **Person**
- ▶ Due 1 year & 60 days after appointment
 - ▶ No requirement for clerk to send notice that report is due
 - ▶ Individual that is making report does not have to e-file, however if attorney is handling it, they must e-file it
- ▶ Does not have to be notarized – EC 1163.1011
- ▶ \$12 fee (\$10 clerk fee, \$2 judge's fee)
- ▶ Judge can consider immediately
- ▶ Letters cannot be issued unless report is timely filed
 - ▶ (if guardianship is of the person)

Annual Account – EC 1163.001-006

- ▶ On Guardianship of the person's **Estate**
- ▶ Due 1 year & 60 days after appointment
 - ▶ No statute requires clerk to send notice that report is due
 - ▶ Individual that is making report does not have to e-file, however if an attorney is handling it, they must e-file it
- ▶ Must be notarized as it's an affidavit – EC 1163.005
- ▶ \$27 fee (\$25 clerk, \$2 Judge's sig.)
 - Must “sit” for 10 days before Judge can consider - EC 1163.051
- ▶ Letters cannot be issued unless Annual Account is timely filed
 - ▶ (if guardianship is of the estate)

Transfers Out -

- ▶ Send case papers by certified mail or e-filing
 - ▶ Send original documents and a certified copy of the index
 - ▶ Make a certified copy of the transcript to keep in your file or in case management system
- ▶ Send certified copy of the index – transcript - EC 1023.006
- ▶ Send bond money by check or issue citation to the surety, if a surety bond was presented
- ▶ Send the Transfer by certified mail (Return Receipt Requested) or e-file
 - ▶ It is not a requirement for the clerk to send a Transfer by e-file (only attorneys are required to e-file)
- ▶ Clerk of the “new” county sends a Certificate to the “old” county
 - ▶ File that Certificate in the case

Transfers In -

- ▶ You will get all original documents and a certified copy of the index – EC 1023.006(unless you accept cases from another county by e-filing)
- ▶ Bond money should be sent with the case
- ▶ New case fees apply – unless the case was transferred on the court's motion or is a DADs/Friends For Life-type case
- ▶ Set hearing within 90 days
 - ▶ EC 1023.010
 - ▶ Post Notice of Hearing or send a notice of hearing by regular mail
 - ▶ New judge has authority to modify terms/increase bond/change guardian
- ▶ Send Certificate to the “old” county – EC 1023.007

Sale of Real Or Personal Property of Ward – with Guardianship

- ▶ EC 1158
- ▶ Application is made – EC 1158.251-252
- ▶ Issue citation by posting – EC 1158.253
 - ▶ Clerk issues service to others upon request – TRCP 99a
- ▶ Order Granting Sale must be signed – EC 1158.256
- ▶ Report of Sale will be filed after sale is completed

Sale of Real Or Personal Property of Ward – without Guardianship

- ▶ EC 1351
- ▶ Application – EC 1351.002 & 1351.053
- ▶ No notice is issued unless court requests – EC 1351.003
- ▶ Court has a hearing not earlier than 5 days after the date application was filed – EC 1351.054
- ▶ Sale proceeds go into court registry – EC 1351.055

Foreclosure, Mortgages, Leases, etc.

- ▶ Foreclosure – EC 1158.0351
- ▶ Public Sale – EC 1158.401
- ▶ Sale of Easement/Right of Way – EC 1158.501
- ▶ Partition of property – EC 1158.701
- ▶ Renting estate property – EC 1159
- ▶ Mineral leases – EC 1160
- ▶ Investments/loans – EC 1161
- ▶ Charitable gifts – EC 1162
- ▶ Mortgage – EC 1352.051

Pre-Existing Guardianships

- ▶ Clerk sends notice to existing guardians of registration requirement – Appendix A-2
 - ▶ Same notice as is sent to new proposed guardians
- ▶ Pre-existing Guardians appointed prior to June 1, 2018, must register with JBCC
- ▶ Pre-existing Guardian is not required to take training or have criminal background history check
- ▶ JBCC will notify clerk by email that an pre-existing guardian has registered
- ▶ Place notice in case file
- ▶ Registration is not required for any guardianships closed or terminated prior to June 1, 2018

Assignment - Contested Guardianship

- ▶ EC 1022.003 – Court on it's own motion/motion of any party, request assignment of a statutory probate court judge to hear a contested matter....ORtransfer to a District Court
- ▶ **If transfer is to District Court –**
 - ▶ Clerk transfers the case file or part of the case file (original papers)
 - ▶ Keep a certified copy of documents transferred
 - ▶ District Clerk may issue Letters - if the case is “active” in the District Court – BUT it depends on how it's transferred (decide on a case by case basis!)
 - ▶ EC 1022.003(j) – clerk of a District Court to which a contested matter is transferred, may perform any function a county clerk may perform with respect to that type of matter
- ▶ **If Assignment to Statutory Probate Judge –**
 - ▶ Per 25.0022 Gov. Code, Judge's office sends copy of Motion and Order to –

<ul style="list-style-type: none">▶ Travis County Probate Court <u>Hermann</u> 1000 Guadalupe, Rm. 217 P O Box 1748, RM 217 Austin, TX 78767 512-854-9258	<u>The Travis County Probate Court -Judge Guy</u> <u>will assign a judge and contact you</u>
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- ▶ EC 1022.004 – if only a contested matter is transferred, once the contest is resolved, the matter may be returned to the county court for further proceedings

Successor Guardian - Resignation

- ▶ Resignation by Guardian - EC 1203.001-006
 - ▶ Current guardian must file their written Application & Verified Report of the Person and /or Final Accounting – EC 1203.001
 - ▶ If guardian is deceased, a personal representative shall supply an accounting
 - ▶ Court can immediately accept with no hearing, but if a hearing is set on resignation & final account/report, issue citation by posting - EC 1203.004
 - ▶ Court may request additional service EC 1203.102
- ▶ If necessity exists, Court may immediately appoint successor – EC 1203.002
- ▶ Application is presented for Successor Guardian
- ▶ Successor Guardian has to take the JBCC training unless waived by the Court due to immediate need
- ▶ Issue notice/citation – EC 1203.102 & 1051.102(d)

Successor Guardian - Removal

- ▶ Court acts it's own motion or on the motion of an interested person – EC 1203.051
- ▶ Court may remove with or without notice – EC 1203.051-052
 - ▶ There may be a Show Cause hearing
 - ▶ Issue citation by personal service to guardian being removed – EC 1203.052
 - ▶ Issue Order to Remove by personal service – EC 1203.0531
 - ▶ Attach Order to Remove
- ▶ If service is requested, the following should be served –
 - ▶ Guardian to be removed (always served)
 - ▶ Attorney of record
 - ▶ Bonding company (if there is a surety bond)

Temporary Guardianship



- ▶ EC 1251
 - ▶ Does not render ward permanently incapacitated
- ▶ No longer than 60 days- EC 1251.151
 - ▶ Could last up to 9 months in a contested guardianship/unable to get appropriate guardian– extended only by Order
- ▶ Limited powers
- ▶ Emergency – imminent danger
- ▶ Clerk issues citation by posting & personal service – EC 1251.005
 - ▶ Proposed ward
 - ▶ Proposed ward's appointed attorney
 - ▶ Proposed Temporary Guardian, if that person is not the applicant

Temporary Guardianship - steps

- ▶ Case is received
- ▶ Citation issued
- ▶ Attorney ad Litem is appointed
- ▶ Order, Oath & Bond are filed
- ▶ No Letters are issued....EC 1251.101
 - ▶ Certificate of Temporary Guardianship is issued - attach Order
- ▶ No Annual reports/annual accounting, but must do Final Accounting
- ▶ No JBCC training unless guardianship becomes permanent

Restoration of Ward's capacity

- ▶ EC 1202.051 – 1202.157
- ▶ Application presented by the ward or any person interested in the wards' welfare
- ▶ Citation served on –
 - ▶ Ward's guardian
 - ▶ Ward, if ward is not the applicant

Closing a Guardianship

- ▶ There may be an Application/Motion to Close the Guardianship or a Final Accounting that states it's closed (if it's Guardianship of an Estate) – EC 1204
 - ▶ Posting required - EC 1204.105 Personal service to those listed in EC 1204.105
- ▶ If the ward dies, the Court can file an Order Closing
 - ▶ If it is guardianship of the estate, a final accounting should be submitted and the Court can cite the guardian to appear
- ▶ Inactive Case – EC 1204.201(c)
 - ▶ Court may cite or remove from docket after diligent effort to find guardian
- ▶ **NOTE:** No Letters may be issued after the ward has died or the guardianship is closed; Return cash bond – retain 5% administrative fee per LGC 117.055

TEMPORARY RESTRAINING ORDER

- ▶ Issued upon request
- ▶ Rules of Civil Proc. 680-692

Private Professional Guardian

- ▶ EC 1104.301 – 1104.306
- ▶ Must annually apply
- ▶ Pay fee of \$40
- ▶ Clerk shall submit names/addresses of Private Professional Guardians that registered during the previous year by January 31
 - ▶ If have none, check “none” on the report

(The private professional guardians must also report to the JBCC with this information.)

Investing \$\$\$



- ▶ EC 1355
- ▶ Clerk invests under court order only – LGC 117.053(c)
 - ▶ Clerk is “custodian”, not trustee – LGC 117.0521
- ▶ Clerk makes annual report to the court by March 1 each year of \$ invested
 - ▶ Report on letterhead
 - ▶ File in the case after Judge reviews
- ▶ Clerk may only disperse \$ invested by Court Order
- ▶ Counties over 190,000 make report to county auditor LGC 117.058

Reports

- ▶ Abstract for Final Judgment of Incapacitated Person –
- ▶ Report to VR if ward loses right to vote – “fully incapacitated” or it states ward cannot vote
- ▶ DIC-17 –
 - ▶ Fax to State, if ward loses right to drive – “fully incapacitated” or states ward cannot drive
- ▶ Guardianship Certification Program
 - ▶ Report Private Professional Guardians that registered during the previous year – by January 31 each year
 - ▶ If none, must check “none” on the report form
- ▶ OCA
 - ▶ Each month

Confidentiality



- ▶ EC 1053.104
- ▶ On request by person protected by Protective Order under Family Code Chap. 85, court may exclude certain information (a list is in 1053.104)
 - ▶ On granting of the request:
 - ▶ Strike the information from the public records
 - ▶ Maintain a confidential record of the information for use only by the court

Letters of Guardianship

- ▶ Issued only after Order, Oath & Bond are all on file
 - ▶ Guardian is qualified when all 3 are in place!
 - ▶ If filed on different days, qualification is the day the last one is filed
- ▶ Issued only if Annual Reports/Accounts continue to be filed on time
- ▶ Attach copy of Order Appointing Guardian (best practice!)
 - ▶ Attaching Order insures that all information is available
- ▶ \$2 – LGC 118.052(3)(D)
- ▶ Good for 1 year and 120 days

Letters – 1st scenario

- ▶ Order is signed – January 14, 2019
- ▶ Oath is signed – January 14, 2019
- ▶ Bond is filed – January 15, 2019

- ▶ What date is the qualification date?
- ▶ January 15, 2019
- ▶ When is the annual report due?
- ▶ By March 15, 2020
- ▶ What is the expiration date of the Letters?
- ▶ May 15, 2020

Letters – 2nd scenario

- ▶ Order is signed – March 23, 2019
- ▶ Bond is filed – March 24, 2019
- ▶ Oath is filed – March 31, 2019

- ▶ What is the qualification date?
- ▶ March 31, 2019
- ▶ When is the annual report due?
- ▶ May 31, 2020
- ▶ What is the expiration of the Letters?
- ▶ July 31, 2020

Letters – 3rd scenario

- ▶ Order is signed - December 1, 2018
- ▶ Oath is filed – December 1, 2018
- ▶ Bond is filed – December 1, 2018

- ▶ What is the qualification date?
- ▶ December 1, 2018
- ▶ When is the annual report due?
- ▶ February 1, 2020
- ▶ What is the expiration of the Letters?
- ▶ April 1, 2020

Letters – 4th scenario

- ▶ Order is signed – April 15, 2019
 - ▶ Oath is signed – April 16, 2019
 - ▶ Bond has never been filed
-
- ▶ What is the qualification date?
 - ▶ There is none; bond has not been filed
 - ▶ When is the annual report due?
 - ▶ N/A – 1 yr & 60 days after they qualify
 - ▶ What is the expiration of the Letters?
 - ▶ N/A – 1 yr & 120 days after they qualify

Letters – 5th scenario

- ▶ Order is signed – April 3, 2019
- ▶ Oath is filed – April 6, 2019
- ▶ Bond has been e-filed by atty but not received and atty is anxious to get some Letters
- ▶ What is the qualification date?
- ▶ Date when bond is e-filed
- ▶ When is the annual report due?
- ▶ 1 yr & 60 days after the bond e-filed
- ▶ What is the expiration of the Letters?
- ▶ 1 yr & 120 days after the bond e-filed

Fees – Stay Tuned for Janette's In Depth Presentation on Fees

- ▶ Costs in a guardianship – EC 1155.151
 - ▶ 1) Paid by guardianship estate
 - ▶ 2) Paid out of management trust
 - ▶ 3) If no guardianship estate or management trust - Paid by the party to the proceeding who incurred the costs (unless the party filed an Affidavit of Inability to Pay)
 - ▶ 4) If no estate, no management trust and Affidavit of Inability to Pay has been filed - Paid out of county treasury

Resources Used

- ▶ Estates Code
- ▶ Local Government Code
- ▶ Government Code
- ▶ Rules of Civil Procedure
- ▶ Supreme Court of Texas website
 - ▶ <http://www.txcourts.gov/supreme>
- ▶ Office of Court Administration website
 - ▶ <http://www.txcourts.gov/>

PDFs of this information or sample forms:

Application for Appointment of Permanent Guardian of the Person and Estate

New Guardianship Filing Information Sheet – for applicants regarding JBCC

JBCC Registration Form for Established Guardianships and/or new

Citation for Temporary Guardianship – Personal Service – Ward

Guardian Acknowledgement of Duties

Abstract of Mental Incapacity to Elections

NICS Entry Screen

Certificate for Temporary Guardianship

Letters of Guardianship (including Limited)

Claim Letters to Guardians

Citation for Sale of Real Property

Citation for Show Cause Hearing

Notice of Removal of Guardian

Temporary Restraining Order (face only – no return included)

Methods of Serving Citations and Notices (Estates Code)

Ward's Bill of Rights

JBCC Letter to Clerks Regarding Reporting Professional
Guardians

Summary of New Reporting Requirement

Clerk's Reporting Form – JBCC Private Professional Guardians