



**ELLIS COUNTY COURT AT LAW NO. 1
JUDGE JIM CHAPMAN**

Ellis County Courthouse
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Judge's Annotated Guardianship Checklist
(See also the Guardianship Guide on the Court's website)

I. Procedural Matters

Jurisdiction [TEC §1022.002]

- (a) County Court at Law exercises original probate/guardianship jurisdiction.

Venue [§1023.001]

- (a) For an adult proposed ward:
- in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.
- (b) for a minor proposed ward:
- (1) in the county in which both parents reside;
 - (2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator resides, or in the county in which the joint managing conservator with the greater period of physical possession of and access to the minor resides;
 - (3) if only one parent is living and the parent has custody of the minor, in the county where that parent resides;
 - (4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or
 - (5) if both parents of a minor have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county

in which both deceased parents resided at the time of their simultaneous deaths if the resided in the same county.

- (c) a proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

Guardianship Certification – Attorney representing any person's interest [§1054.201]

- (a) An Attorney representing any person's interest and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas.
 - Search on the Texas Bar website:
 - o Enter "search approved guardianship attorneys" in your favorite search engine and click on the Texas state bar link.

Physician's Certificate of Mental Examination [§1101.103] – Determination of incapacity of certain adults

- (a)(1) Dated not earlier than the 120th day before the **application** is filed; **and**
- (a)(2) Based on an examination performed not earlier than the 120th day before the **application** is filed.
- (a) examined by a physician licensed in the state of Texas.

Physician's Certificate of Mental Examination [§1101.104] – Determination of Intellectual Disability

- Complies with (a)(1) or (a)(2) above or shows that not earlier than 24 months before the **hearing** date:
 - (A) The proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services (DADS) to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of intellectual disability; or
 - (B) A physician or psychologist licensed in this state or certified by DADS to perform examinations described by paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the department.

Appoint Attorney Ad Litem for Proposed Ward "PW" [§1054.001]

- The court **shall** appoint an attorney ad litem to represent the proposed ward's interests.

Appoint Interpreter (if necessary) [§1054.005]

- The court shall appoint a language or sign interpreter at the time an attorney ad litem is appointed under Section 1054.001 if necessary to ensure effective communication between the proposed ward and the attorney ad litem.

Guardian Ad Litem (if necessary) [§1054.051]

- May appoint a Guardian Ad Litem to represent the interests of an incapacitated person.

II. Application Contents [§1101.001]

- (b) The Application must be **sworn to** by the applicant and state:
 - (1) the proposed ward's name, sex, date of birth, and address;
 - (2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;
 - (3) whether a guardianship of the person or estate or both is sought;
 - (3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;
 - (3-b) whether any alternatives to guardianship and supports and services available to the proposed ward are feasible and would avoid the need for guardianship;
 - (4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:
 - (A) the right to vote;
 - (B) the right to drive;
 - (5) facts requiring the appointment of a guardian;
 - (6) the interest of the applicant in the appointment of the guardian;
 - (7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;
 - (8) the name and address of any person or institution having the care and custody of the proposed ward;
 - (9) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;
 - (10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of POA;
 - (11) for a minor PW, the following information if known by the applicant:
 - (A) the names of the PW's parents and their address or that the parent is deceased;

- (B) The name and age of each of the PW's siblings and either their address or that they are deceased; and
- (C) If each parent and sibling is deceased, the names and addresses of the PW's other living relatives within the third degree of consanguinity and who are adults
- (12) for a minor PW, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:
 - (A) the court involved;
 - (B) the nature of the proceeding; and
 - (C) any final disposition of the proceeding;
- (13) for an adult PW, the following information if known by the applicant:
 - (A) PW's Spouse's name, if any, and either spouse's address or that the spouse is deceased;
 - (B) name of each of PW's parents and either their address or that the parent is deceased;
 - (C) names and ages of each of PW's siblings, if any, and either each sibling's address or that the sibling is deceased;
 - (D) names and ages of each of PW's children, if any, and each child's address or that the child is deceased;
 - (E) if there is no living spouse, parent, adult sibling, or adult child of the PW, the names and addresses of the PW's other adult living relatives related by the third degree of consanguinity.
- (14) facts showing venue (see above in Procedural Matters).
- (15) if the person seeking to be appointed is a private professional guardian, that the person is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

Confidentiality of Certain Addresses [§1101.002]

A guardianship application may omit the address of a person named in the application if:

- (1) the application states that the person is or was protected by a protective order issued under Chapter 85, Family Code;
- (2) a copy of the protective order is attached to the application as an exhibit;
- (3) The application states the county in which the person resides;
- (4) The application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and
- (5) The application is accompanied by a request for an order under Section §1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.

Guardianship Pre-Hearing Checklist

Citation Requirements [§1051.101 - .103]

- Posting of Citation (by County Clerk) [§1051.102(c)]
- Service of Citation† [§1051.103(a)]:
- Citation must be served by a Sheriff or other officer
 - (1) Proposed Ward who is 12 years of age or older;
 - (2) Proposed Ward's parents* if whereabouts are known or reasonably ascertained;
 - (3) Any Court-Appointed Conservator or person having control of the care and welfare of the proposed ward;
 - (4) Proposed Ward's Spouse*; and
 - (5) The person named in the application to be appointed guardian, if that person is not the applicant.
- †It is not necessary to issue citation on a person who has waived the issuance of personal service of citation. [§1051.101(b)]
- *A citation to a relative under (2) or (4) must contain the statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section §1151.056. [§1051.103(c)]
- Proof of service of citation or notice in each case must be filed before a hearing. [§1051.153(a)]

Notice Requirements [§1051.104 - .106]

§1051.104 (a) The person filing the application shall mail a copy of the **application and a notice containing the information required in the citation** issued under §1051.102 by **registered mail, return receipt requested**, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained.

- (1) each adult child of the proposed ward;
- (2) each adult sibling of the proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
- (4) the operator of a residential facility in which the proposed ward resides;
- (5) the person whom the applicant knows to hold a power of attorney signed by the proposed ward;

- (6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;
- (7) a person designated to serve as guardian of the proposed ward in a probated will of the last surviving parent of the proposed ward;
- (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
- (9) each adult named in the application as an "other living relative" of the proposed ward within the third degree of consanguinity, as required by Section §1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

§1051.104 (b) **requires the applicant or the applicant's attorney file an affidavit of notice** containing the specific information necessary to confirm that appropriate notice was given.

Physician's Certificate of Mental Examination [§1101.103] – Determination of incapacity of certain adults

- (a)(1) Dated not earlier than the 120th day before the **application** is filed; **and**
- (a)(2) Based on an examination performed not earlier than the 120th day before the **application** is filed.

Physician's Certificate of Mental Examination [§1101.104] – Determination of Intellectual Disability

- Complies with (a)(1) or (a)(2) above or shows that not earlier than 24 months before the **hearing** date:
 - (A) The proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services (DADS) to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of intellectual disability; or
 - (B) A physician or psychologist licensed in this state or certified by DADS to perform examinations described by paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the department.

JBCC Compliance

- Guardians must be **certified** with the following exceptions: [§1104.251]
 - Family members and friends of incapacitated person [§1104.253]

- Volunteers with HHSC or a guardianship program (as opposed to employees) [§1104.251 & §1104.254]
- Attorneys and corporate fiduciaries [Tex. Gov't Code §111.001(9)]
- All proposed guardians (except for attorneys) need to submit to **criminal background checks**. [§1104.403]
 - Submitted to the clerk not later than the 10th day before the date of the hearing and obtained from the DPS or the FBI not earlier than 30 days before the hearing
 - For estates of ward \$50,000 or less, the JBCC will initiate and conduct a name and date of birth criminal history search based on the information provided in the guardianship registration information. The JBCC will send the results to the probate clerk. [Tex. Gov't Code §155.205]
- All guardians must receive **training** unless waived by the court in accordance with Tex. Gov't Code §155.203 [§1104.003]
- All guardianships must be **registered** [Tex. Gov't Code §155.151]
- The JBCC certificate should be filed with the Court prior to the hearing to establish the guardianship.

In short, you will need to submit the following documents at or before the prove up hearing:

- Affidavit of Notice and the supporting documents
- JBCC Certificate
- Physician's Certificate of Examination
- Guardian's Contact Information Sheet (found on Court's website)
- Signed Duties of Guardian of Person and/or Estate Instructions (found on the Court's website)
- Guardian's Oath
- Order Appointing Guardian as set forth below in the checklist
- Initial Annual Report if a guardianship of the person is to be created

Order for Appointment of Guardian Checklist

Findings and Proof Required [§1101.001]

(a) Before appointing guardian, a court must:

(1) find by **Clear and Convincing Evidence** that:

- (A) the PW is an incapacitated person;
- (B) it is the the PW's best interest to have the court appoint a person as the PW's guardian;

- (C) the PW's rights or property will be protected by the appointment of a guardian;
- (D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(2) find by a **Preponderance of the Evidence** that:

- (A) the court has venue;
- (B) the person to be appointed is eligible to act as guardian and is entitled to appointment, or, if not eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;
- (C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and
- (D) the proposed ward:
 - (i) is totally without capacity as provided by the title to care for himself or herself and to manage his or her property; or
 - (ii) lacks capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each and every element required by this title.

General Contents of Order Appointing Guardian [§1101.153]

(a) A court order appointing a guardian must specify:

- (1) the name of the person appointed;
- (2) the name of the ward;
- (3) whether the guardian is of the person or the estate of the ward, or both;
- (4) the amount of any bond required;
- (5) if it is the guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisal to the court; and
- (6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law

(a-1) if the PCME states the ward may improve in less than a year (see §1101.103(b)(3-a), then the order must include the date by which the guardian

must submit to the court an updated letter or certificate containing the requirements in Section §1101.103(b).

- (b) An order appointing a guardian may not conflict with the powers and duties of any other guardian.
- (c) An order appointing a guardian or successor guardian may specify as authorized by Section §1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

Order Appointing Guardian with Full Authority [§1101.151]

- (a) If it is found that the PW is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the PW's person or estate, or both, with full authority of the incapacitated person except as provided by law.
- (b) An order appointing a guardian under this section must contain **findings of fact** and specify:
 - (1) the information required by §1101.153(a); [see above]
 - (2) that the guardian has full authority over the incapacitated person;
 - (3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;
 - (4) whether the person is totally incapacitated because of a mental condition;
 - (5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and
 - (6) if it is a guardianship of the person of the ward or of both the person and estate, the rights of the guardian specified in Section §1151.051(c)(1).
- (c) An order appointing a guardian that includes the rights in §1151.051(c)(1) must also include the statutory notice prominently displayed in boldfaced type, in capital letters, or underlined (see code).

Order Appointing Guardian with Limited Authority [§1101.152]

- (a) If it is found that the PW lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited power and permit the PW to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the PW's ability.
- (b) An order appointing guardian under this section must contain **findings of fact** and specify:

- (1) the information required by Section §1101.153(a); [see above]
 - (2) the specific powers, limitations, or duties of the guardian with respect to the person’s care or the management of the person’s property by the guardian;
 - (2-a) the specific rights and powers retained by the person;
 - (A) with the necessity for supports and services; and
 - (B) without the necessity for supports and services;
 - (3) if necessary, the amount of funds from the corpus of the person’s estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and
 - (4) whether the person is incapacitated because of a mental condition and, if so, whether the person:
 - (A) retains the right to make personal decisions regarding residence or vote in a public election; or
 - (B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521 of the Transportation Code
- (c) An order appointing a guardian that includes the rights in §1151.051(c)(1) must also include the statutory notice prominently displayed in boldfaced type, in capital letters, or underlined (see code).

Bonds [§1105.101 - .112]

Bonds are required of all guardians, whether of the person or of the estate or both, with the following exceptions: [§1105.101]

- (b)(1) a corporate fiduciary;
 - (b)(2) a guardianship program operated by a county
 - (c)(1) the person named to be appointed guardian in a will made by a surviving parent that is probated in this state, or in a written declaration made by a surviving parent, and the will or declaration directed that the guardian serve without bond, **and**
 - The court finds that the guardian is qualified
- (d) The court may not waive the requirement of a bond for the guardian of the estate of a ward regardless of the provisions in (c)(1).

Determining the Value of the Bond [§1105.153-.154]

Bonds for guardians of the person only are typically set as a \$100 cash bond. Bonds for guardians of the estate or person and estate are set as follows:

Step 1. Evidentiary hearing on amount [§1105.153]

- (1) cash on hand;
- (2) cash needed for administrative purposes;

- (3) revenue estimated to be received in succeeding 12 months from dividends, rentals, use of property, installment or periodic payments;
- (4) value of certificates of stock, bonds, notes, or other securities;
- (5) face value of life insurance *payable to ward's estate*;
- (6) estimated value of personal property; and
- (7) debts *owed to* the ward.

Step 2. Set bond equal to the sum of: [§1105.154(a)]

- (1) estimated value of all personal property owned by the ward; and
- (2) any additional amount to cover revenue anticipated in the next 12 months from
 - (A) interest and dividends;
 - (B) collectible claims;
 - (C) the aggregate amount of any installments or periodic payments, excluding income from social security payments; and
 - (D) rentals for the use of property.

Step 3. Reduce the amount of the original bond under subsection (a) in proportion to the amount of cash or the value of other securities or other assets:
[§1105.154(b)]

- (1) authorized or required to be deposited by court order; or
- (2) voluntarily deposited by the guardian or the sureties on the guardian's bond as provided by sections §§1105.156 and 1105.157(a). [*safekeeping*]
The Court has required forms for Safekeeping Agreements and Orders on its website.

Ad Litem Fee

Be sure to include language for payment of the Ad Litem.

Audits / Future Actions

Mark your calendars now!

- Date of qualification
- Date Inventory is due (30 days after guardian of estate qualifies)
[§1154.051]
- Date Monthly Allowance is due (30 days after guardian of estate qualifies)
[§1156.001]

- Date Investment Plan is due if estate assets are not invested in accordance with [§1161.05] (180 days after the guardian of the estate qualifies)
- Date Annual Accounting is due (60 days after anniversary date the guardian qualified) [§1163.001]
- Date Annual Report is due (60 days after anniversary date the guardian qualified) [§1163.102(c)]
- Date for capacity reviews [§1101.151(a-1)]