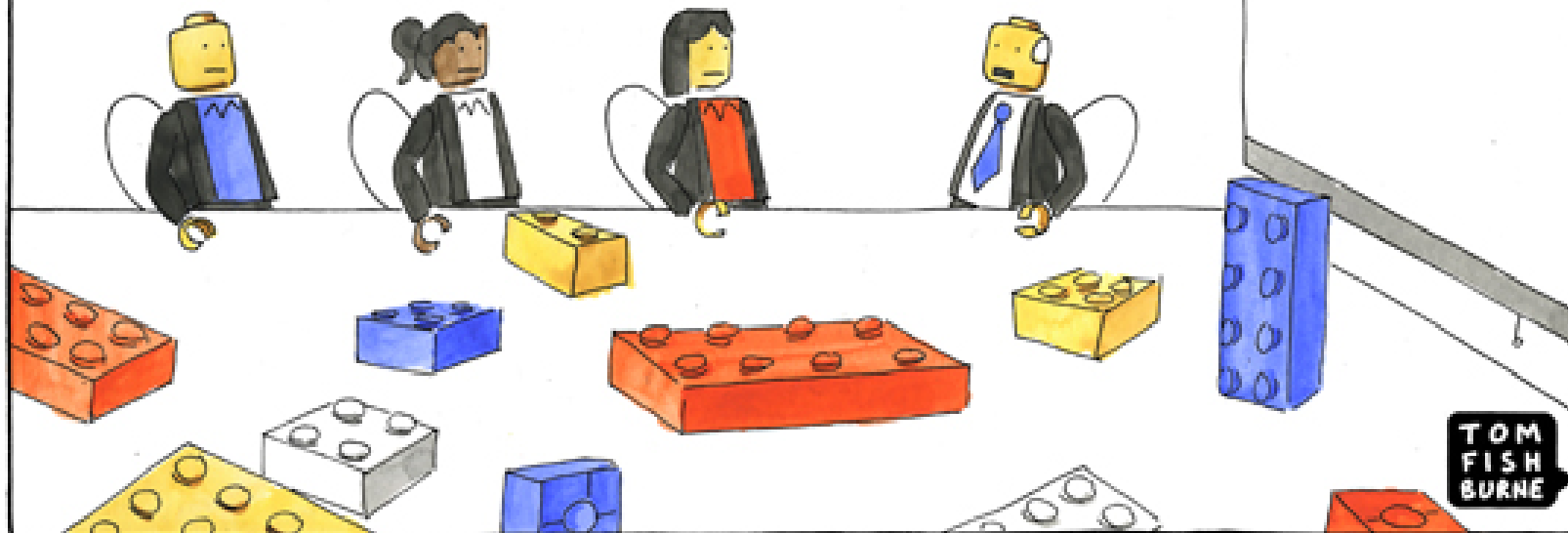




Guardianship

BEFORE WE BUILD ANYTHING,
LET'S POWERPOINT THE
IDEA TO DEATH



TOM
FISH
BURNE

Estates Code (EC)

- Chapters 1001 – 2001 is Guardianship
- West's Texas Statutes & Codes
 - <http://legalsolutions.thomsonreuters.com/law-products>
 - 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.travisx.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?

- Government Code (GC) 81.101
- Clerk is not allowed to give legal advice
 - Errors & Omissions does not cover
- 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 at a hearing

Terms

- Ward – individual in need of protection and the law regards as incapable of managing his/her own affairs
- Guardian – appointed legally to care and manage person or estate or both
- Guardianship - court-created control and management
- Attorney Ad Litem – attorney appointed by Judge to represent the interests and advocate on behalf of the proposed ward – EC 1002.002
- Guardian Ad Litem – may be appointed by Judge to represent the interests of an incapacitated person in a guardianship proceeding – EC 1002.013 (optional)

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” should be in the Order

Limited – specifies extent

- Ward lacks capacity to do some, but not all, tasks
- EC 1101.152

Court may initiate....

Court Initiated – court has cause to believe a person is incapacitated;

- interested person has come forward but doesn't want to file a guardianship case
- EC 1102
- Investigation is ordered and a report made to the court
- Court must stipulate if Full or Limited Guardianship

Order should state capacity -

An Incapacitated Person; that Proposed is incapacitated because of a mental condition; that Proposed Ward is totally without capacity, as provided by the Texas Estates Code, to care for himself, to manage his property, to operate a motor vehicle, to vote in a public election, and and to establish legal domicile for herself.

■ Full guardianship

ORDERED that _____, because of a mental condition, is substantially unable to care for his own physical health or to manage his own financial affairs and is hereby declared to be a partially incapacitated person who lacks the ability to do some, but not all, of the tasks necessary to care for himself or to manage his property.

It is ORDERED that the Ward shall have *all other rights and powers not expressly granted to Guardian, including:*

1. The right to vote;
2. The right to operate a motor vehicle in a responsible manner;
3. The right to own, possess and control a motor vehicle;
4. The right to make employment decisions;
5. The right to select his place of residence;
6. The right to enter into a ceremonial, informal or common law marriage subject to court approval, which shall not be reasonably withheld provided the Court has approved a pre-marital agreement and is otherwise satisfied that the Ward's financial affairs are in order.
7. *The right to hire an attorney with the approval of the court. R*

■ Limited – ward has some rights

Length

- **Permanent – lasts until ward dies or the court terminates**
- **Temporary – guardian has limited powers EC 1251.010 (b)**
 - **- an emergency (“imminent danger”) – EC 1251.010(a)**
 - term of Temporary Guardian is no longer than 60 days**
 - EC 1251.151**
 - 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

- NOTE: Two appointments for guardianship can be made – one for the person and one for the estate.
 - EC 1104.001

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



CARTOONSTOCK.com
Search ID: dcm983

Pro Se applicants — sample court policy — Appendix A

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 *Stovle 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

Attorney Ad Litem

- EC 1054.001 – .007
- Each Guardianship case should have an AAL appointed.
- AAL serves until guardian is appointed or a successor guardian is appointed or the guardianship is denied. EC 1054.002
- Shall be provided with copies of records in the case (EC1054.003)
- Interview the ward and discuss the facts of the case with the ward, to the extent possible. EC 1054.004
- Entitled to compensation set by the court. EC 1054.007(b)

Guardian Ad Litem

- EC 1054.051 – .056
- 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 (larger 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
 - Investigates complaints
 - Files a report of findings
 - Supervises Court Visitor Program
- New legislation in 2017 – SB 1016 – judge of non-statutory probate court can appoint court investigators.



Probate Auditors

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

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(a)(1) - “The name of each person with respect to whoma proceeding is commenced...”
- EC 1052.001(b) – “The county clerk shall assign a docket number to each guardianship”

NEW – Guardian training & background checks

- SB 1096 – passed in 2017 – Appendix A-1
 - EC 1104.003; Gov. Code 155; EC 1253.0515
- Goes into effect June 1, 2018
- Judicial Branch Certification Commission (JBCC)
- Individuals who apply for guard. must take online training course & register
 - <https://jbcctexas.txcourts.gov>
 - Does not apply to attorneys, certified guardians or fiduciaries – only individuals
 - JBCC and the Clerk of the Court must notify the applicant/proposed guardian and their attorney of the requirement
 - OCA will send an email to the filer, notifying the filer of the training requirement
 - Clerks will be asked to also send the filer a form (OCA to provide) notifying the filer of the training requirement
 - Training must be completed sooner than 10 days prior to the hearing
 - Training video takes about 1 hour
- JBCC will conduct the background checks – for person & estate – not clerk
- Clerks should wait to set the hearing until the certificate of training and background check arrives
- Clerk must notify JBCC when guardianship is granted, terminated, transferred, or a successor guardian is appointed.

NEW – Exceptions to Training

- Temporary guardians are exempt from the training unless the guardianship is extended beyond the 60 days.
- Can the training be waived?
 - Only if the proposed guardian has taken the training in the past year, or
 - If the training is not available in the proposed guardian's language
 - The Court cannot completely waive the training

New case filed – Permanent Guardianship

1) Civil Case Information Sheet

2) Application

- a) Motion to Appoint Attorney Ad Litem is included, unless it's requested in the Application – EC 1054.007
- b) Order Appointing Attorney Ad Litem should be attached
Physician's certification/Medical Examination may also be e-filed immediately – EC 1101.103
- c) Motion and Order to Appoint Guardian Ad Litem (optional) may be e-filed at any time before the Permanent Guardian is finally appointed
 - EC 1054.051-.055 (Guardian Ad Lit. is not always appointed, only when judge sees the necessity)

3) 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!

New Case - continued

4) If there's no existing case, accept and give new case number

New case fees are charged

– unless the case was filed by DADs/Friends' For Life or transferred on a court's motion

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

- paid out of guardianship estate or

- paid out of management trust or

- paid by the party to the proceeding who incurred the costs 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

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

New case - continued

- 6) Issue citations – EC 1051
 - By posting
 - By personal service on ward and any others requested
 - The ward must always be served
 - Rule 99A, Rules of Civil Procedure – issue service upon request
 - By publication, if requested

- 7) Notify Judge of the new case, so he can appoint Attorney Ad Litem and maybe Guardian Ad Litem (depending on the circumstances)
 - 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 to serve

- 8) “Obtain” a Criminal Background History search – EC 1104.402 – until June 1, 2018 – after that JBCC will do the background searches

Citation/Notice

- Issue Citation upon request (rule 99a TRCP)
 - List of who gets personally served in EC 1051.103
 - Ward 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

Appendix B - C - D

- 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

Hearing Day

- Judge hears testimony
 - Attorney Ad Litem
 - Guardian Ad Litem (if one was appointed)
 - Proposed Guardian
 - Any other witnesses

- Judge signs Order

- If guardianship is 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 guardianship is 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

Bench Filings - Documents presented during court

- 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
 - Best Practice - keep a list or spreadsheet of cases that you have \$ on
 - Best Practice - Keep a file of paperwork setting the bonds
 - Best Practice - Check this list or spreadsheet at least once a year and disperse any bond money where the guardianship case is closed
 - Can be a “surety” – through an Insurance Agency
 - Clerk will get Surety Bond to put in the file
 - Can be a personal bond (no money) – 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 unredacted 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
 - Should be an Order to Approve Inventory submitted, 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
 - **Sample Claim letter – Appendix E**

Annual Reports – EC 1163.101

- On Guardianship of the Person
- Due 1 year & 60 days after qualification
 - No requirement for 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
- 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 of the person)

Annual Account – EC 1163.001-006

- On Guardianship of the person's **Estate**
- Due 1 year & 60 days after qualification of the guardian
 - No statute requires 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
- 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 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 – **Appendix G**
- 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
 - **Appendix F**

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
- Let court know so a hearing can be set within 90 days
 - EC 1023.010
 - New judge has authority to modify terms/increase bond/change guardian
- Send Certificate to the “old” county – EC 1023.007 – **Appendix F**

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
 - **Appendix H - I**
 - 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 the 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 1158.351
- 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

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 –
 - Travis County Probate Court
1000 Guadalupe, Rm. 217
P O Box 1748, RM 217
Austin, TX 78767
512-854-9258
 - The Travis County Probate Court -Judge Guy Hermann
will assign a judge and contact you

- 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 Resignation 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
- Issue notice/citation – EC 1203.102 & 1051.102 - **Appendix J**

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 (Show Cause) 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)
- Appendix J-K** (removal & show cause)

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 – odd circumstance – extended by Order
- Limited powers
- Emergency – imminent danger
- Clerk issues citation by posting & personal service – EC 1251.005 –
APPENDIX L - M
 - 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
- Background check obtained(until June 1, 2018, after that no check on temp.)
- Attorney ad Litem is appointed
- Hearing is held
- Order, Oath & Bond are filed
- No Letters are issued....EC 1251.101
 - Certificate of Temporary Guardianship is issued - **Appendix N** – attach Order
- No Annual reports/annual accounting but must do Final Accounting

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 - **Appendix O**
 - Personal service to those listed in EC 1204.105

- If the ward dies, the Court should 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 gdn.
- **NOTE:** No Letters may be issued after the ward has died or the guardianship is closed; Return cash bond



TEMPORARY RESTRAINING ORDER

- Issued upon request
- Rules of Civil Proc. 680-692
- **Appendix P**

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 (EC 1104.306)
 - If have none, check “none” on the report
 - Sample procedures – **Appendix S-T**

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 also make reports to co. auditor LGC 117.058

Reports

- Abstract for Final Judgment of Incapacitated Person – **Appendix U**
 - Report to VR if ward loses right to vote – “fully incapacitated” or it states ward cannot vote

- DL-117 – **Appendix R**
 - Fax or email to State, if ward loses right to drive – “fully incapacitated” or the Order states the 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
 - **Appendix S-T**

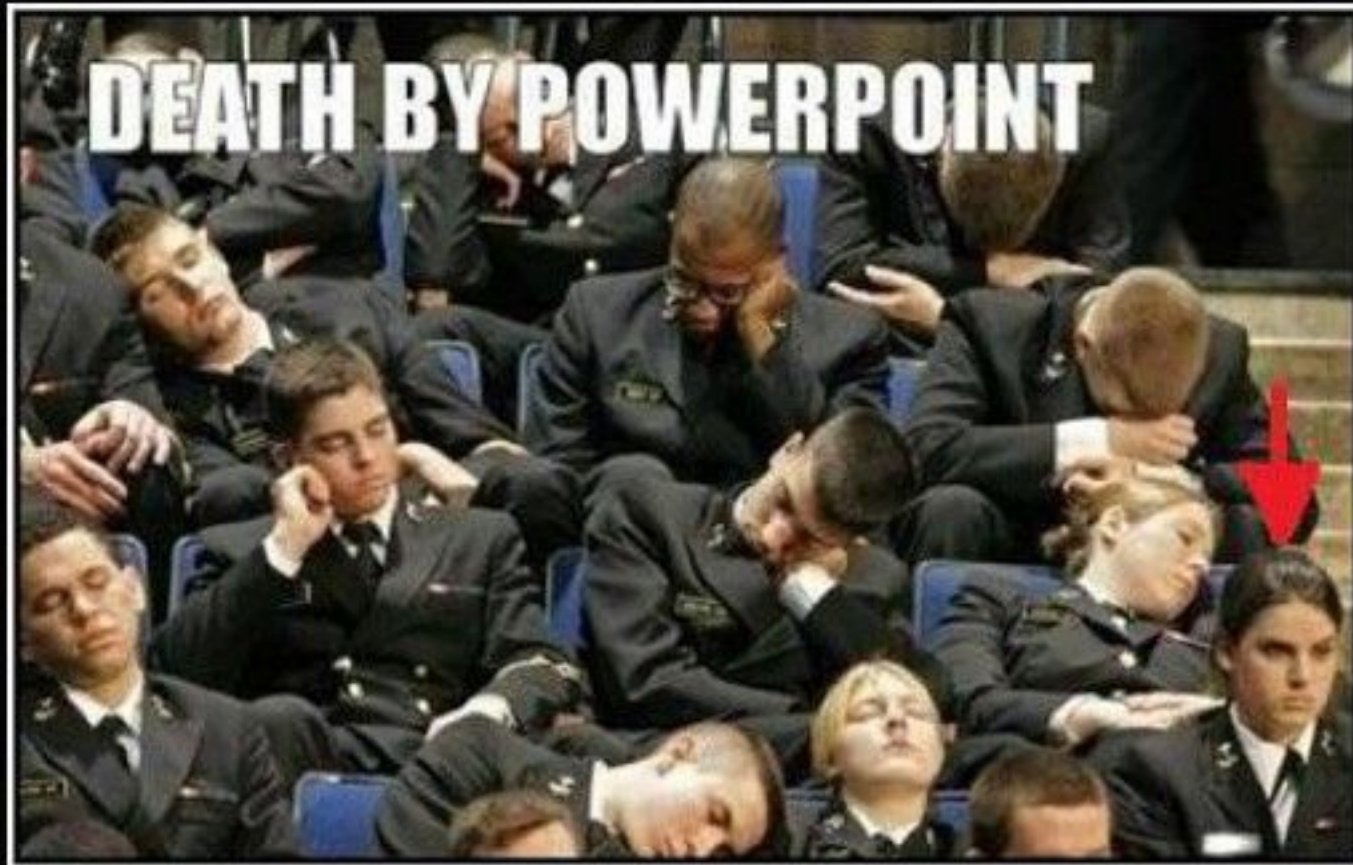
- OCA
 - Each month

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

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/>



99%
COMPLETE

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
- \$2 – LGC 118.052(3)(D)
- Good for 1 year and 120 days
- Sample – **Appendix Q**

Letters – 1st scenario

- Order is signed – January 14, 2017
- Oath is signed – January 14, 2017
- Bond is filed – January 15, 2017

- What date is the qualification date?
- January 15, 2017
- When is the annual report due?
- By March 15, 2018
- What is the expiration date of the Letters?
- May 15, 2018

Letters – 2nd scenario

- Order is signed – March 23, 2017
- Bond is filed – March 24, 2017
- Oath is filed – March 31, 2017

- What is the qualification date?
- March 31, 2017
- When is the annual report due?
- May 31, 2018
- What is the expiration of the Letters?
- July 31, 2018

Letters – 3rd scenario

- Order is signed - December 1, 2016
- Oath is filed – December 1, 2016
- Bond is filed – December 1, 2016

- What is the qualification date?
- December 1, 2016
- When is the annual report due?
- February 1, 2018
- What is the expiration of the Letters?
- April 1, 2018

Letters – 4th scenario

- Order is signed - November 8, 2016
- Oath is signed - November 8, 2016
- Bond has never been filed

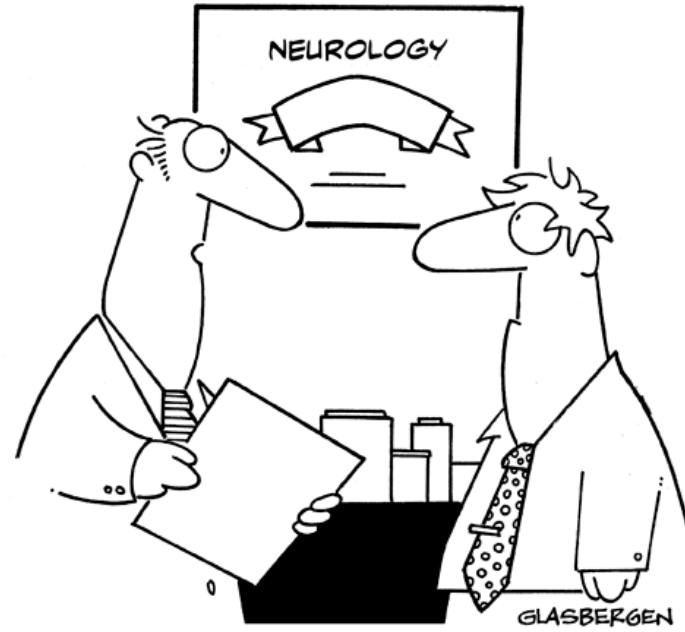
- What is the qualification date?
- There is none; bond has not been filed
- When is the annual report due?
- N/A – 1 yr & 60 days after they qualify
- What is the expiration of the Letters?
- N/A – 1 yr & 120 days after they qualify

Letters – 5th scenario

- Order is signed – April 3, 2017
- Oath is filed – April 6, 2017
- 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

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“I have the results of your brain scan. We found evidence of extensive PowerPoint damage.”



Tim Peckham