



# GUARDIANSHIP ACCOUNTINGS AND REPORTS: NO LAUGHING MATTER

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We find the Defendant guilty, the lawyers tedious, and you arrogant.



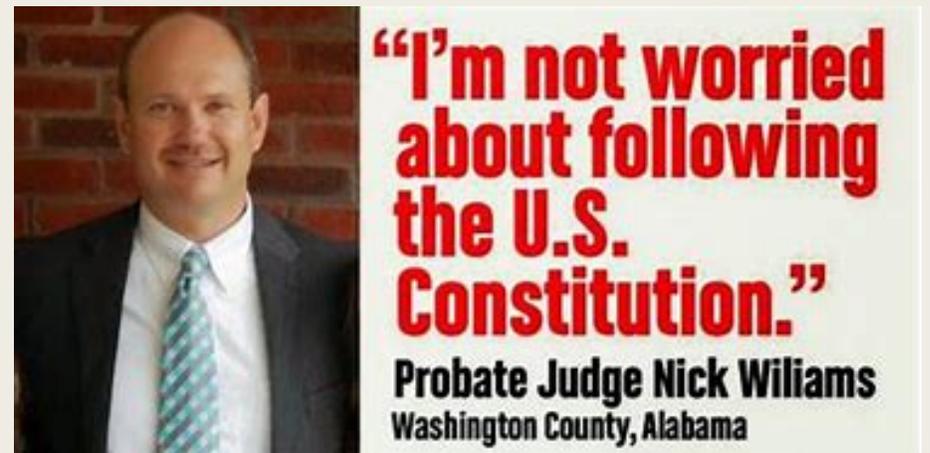
*Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.*

# Timelines

- 1. the guardian must file an oath and post a bond in order to qualify, 1105.002
  - *Failure to qualify within 21 days should result in removal, 1203.051(a)(1)*
- 2. after qualification, the clerk issues Letters, 1106.001.006
- 3. guardian of estate must file inventory within 30 days of qualification, 1154.051
  - *TIP: check the amount of the bond against stated amounts on the inventory to ensure the bond is adequate*
- 4. annual accounts & reports
  - *BOTH are due not later than the 60<sup>th</sup> day after the anniversary of the date the guardian of the estate qualifies, AND every year thereafter, 1163.001*
    - Example: if a guardian files the oath (and the court approves) on May 19, 2015, but doesn't file the bond until June 19, 2015 the guardian didn't qualify until June 19, 2015. Meaning, the 60 days of the anniversary would be June 15, 2019.
    - TIP: the annual account and report MUST be on file for 10 days before being considered by the judge. Do NOT sign an order before then.
- 5. no later than 180 days after qualification, the G must either have the estate assets invested or file an application for a court order either: 1) authorizing the G to invest and detailing an investment plan or 2) modifying or eliminating the guardians duty to invest, 1161.051

# Why do I care?

- The judge SHALL examine the well-being of the ward and the solvency of the state at least annually (which also includes making sure the bond is still sufficient),  
1201.001-.054



# Monitoring the Guardianship

- Annual Reports & Annual Accountings
  - *Reports*
    - A guardian of the person is required to file a guardian of the person report each year concerning the ward's mental and physical condition and including the detailed information requested by 1163.101
  - *Accountings*
    - A guardian of the estate is required to file an annual account stating all receipts, disbursements, cash on and, and other assets being administrated as well as the other information required by 1163.001
- **Failure to file EITHER of these reports may lead to fines and/or removal, 2263.151, 1203. 052**
- TIP: the court should check the amount of the bond against stated amounts on the accounting to ensure the bond is adequate and order a new bond, if appropriate, 1201.002



# Annual Determination

- Each court is required to make an annual review and determination of whether a guardianship should be continued, modified, or terminated, 1201.052, 1202.001-201
- In making the annual determination the court may review the court visitor report, the guardian of the person report, or any other report the court deems appropriate, 1201.053



# What am I Looking for?

- Check for consistencies and inconsistencies:

- *Annual Reports*

- Changes in medical issues
    - Is the guardian seeing the ward on a regular basis?
    - Looks to see where the ward lives – could a transfer of the case be in the best interest? Court could transfer to another county on its own motion

- *Annual Accountings*

- Changes in income
    - Should the estate be closed out?
      - *TIP: historically it was routine for a ward to ask for guardianship of both person and estate even if it wasn't necessary for both. Now the estate may be negligible and doesn't require a guardian of the estate.*



# What is the Court Visitor Program?

- Statutory probate courts are required to establish a visitor program.
- Nonstatutory probate courts MAY establish a visitor program, 1054.102
- PURPOSE
  - *as part of this program, someone, generally a volunteer, makes a visit on each incapacitated person who is the subject of the guardianship. Courts NORMALLY schedule a court visit annually.*
  - *the court visitor personally visits the incapacitated person and reports his or her findings and conclusion to the court, including any recommendations regarding modification, removal, or denial of the guardianship, 1054.104*



# How Long are Reports Filed?

- Until one of the following, 1204.001
  - *Restoration of the ward*
  - *Death of the ward*
  - *Insolvency of the estate*
  - *Minor becoming an adult*
- A final report is required to conclude the guardianship of a person, 1163.103 & 1204.108
- A final accounting the required to conclude the guardianship of an estate, 1204.101



# How Does the Court Keep Track?

## ■ Practical TIPS

- *Put the annual report/annual account forms on your website.*
- *Create guardianship date calculator that you can plug signature dates and dates of qualification and it will calculate when every thing else is due.*
- *Based on the dates created, create ticks within the case management system to alert the court that the deadline is approaching or has passed.*
  - *In JMS we call them “check cases”*
  - *If you don’t have a CMS use Outlook to create recurring events*
- *A process has started that when the guardian files an initial report, the report asks for email addresses and at least two people with their contact information that can reach the guardian. A prior issue discovered is there has been no contact information for the guardian.*
- *Keep a history log of each case going so you don’t have to re-create the history every time you get a phone call or report/account.*



*The mediator sensed that it would be a long day  
of war stories.*

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# How Does the Court Keep Track?

## ■ Tips Continued

- *Compare the annual accounts from year to year so you can find discrepancies. Don't view each year's account in a vacuum.*
- *If the court has any uneasy feelings about the report or account, an ad litem can be appointed to investigate what is going on.*
- *Send letters to guardians letting them know that their report/account is nearing the due date or past due. Most "historical" guardians don't realize these reports/accounts are required.*
  - Clerks – be careful not to cross the line into giving legal advice. The letter should be a notice and not a demand.

