



**Hon. Jerry W. Simoneaux, Jr.**  
**Presiding Judge**

**Judge's Annotated Checklists ("JAC")**  
**"Before you come to court, you better know JAC!"**

**Guardianship Checklist**  
(Updated October 1, 2023)

**I. The Filing of the Application**

**A. Procedural Matters**

**Jurisdiction [1022.002]**

- (a) County Court where there is no County Court at Law exercising original probate jurisdiction or Statutory Probate Court
- (b) County Court at Law exercising original probate jurisdiction and the County Court have concurrent original jurisdiction of guardianships where there is no Statutory Probate Court. The Judge of a County Court may hear guardianship proceedings while sitting for the judge of any other county court.
- (c) Statutory Probate Court in the 10 counties that have them. [Bexar (2), Collin (1), Dallas (3), Denton (1), El Paso (2), Galveston (1), Harris (4), Hidalgo (1), Tarrant (2), Travis (1)]

**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 deceased parents 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 for Applicant [1054.201]**

- (a) An Attorney representing any person's interests in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas...
- (c) An attorney may commence representation of a person's interests and file an appearance in a guardianship before completing the course required...but must complete the course not later than the 14<sup>th</sup> day after the date of filing the appearances and before filing any substantive motion in the guardianship proceeding.
  - Search on the Texas Bar website:
    - Enter "search approved guardianship attorneys" in your favorite search engine and click on the Texas state bar link.

### **Determination of Incapacity of Certain Adults: Physician or Psychologist Examination. [1101.103] – Updated Sept. 1, 2023 SB 1624**

- (a) examined by a physician licensed in the state of Texas, *(1) if the proposed ward's alleged incapacity results from a physical or mental condition; or (2) a psychologist...if the alleged incapacity results from a mental condition.*
  - (a-1) the physician or psychologist must (1) have experience examining individuals with the physical or mental condition; or (2) have an established patient-provider relationship.*
- (a)(1) dated not earlier than the 120<sup>th</sup> day before the *application* is filed; and
- (a)(2) based on an examination performed not earlier than the 120<sup>th</sup> day before the *application* is filed.

[NB: The following version of 1101.103 was passed by the legislature in HB 3009]

### **Determination of Incapacity of Certain Adults: Health Care Provider Examination [1101.103] – Updated Sept. 1 2023, HB 3009**

[NB: This version replaces "psychologist" with "advanced practice registered nurse".]

**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 ***Health and Human Services Commission*** 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 ***HHSC*** 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.
- (b) a physician or psychologist...must preferably have experience examining individuals with an intellectual disability....A physician or psychologist is considered having experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the proposed ward.***

***Limitation on Acts by Advanced Practice Registered Nurse [1101.1011] Updated Sept. 1, 2023***

***An advanced practice registered nurse may act under this chapter only if the APRN is acting under a physician’s delegation authority and supervision in accordance with Chapter 157, Occupations Code.***

***Appoint Attorney Ad Litem for Proposed Ward [1054.001] Updated Sept. 1, 2023***

- The court shall appoint an attorney ad litem to represent the proposed ward’s interests, ***including the proposed ward’s express wishes.***

***Court Investigator [1054.151]***

- On the filing of an application, the Court Investigator *shall* investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.
  - [1054.156] A judge of a county court exercising its probate jurisdiction or a court created by statute and authorized to exercise original probate jurisdiction, other than a statutory probate court, may appoint a court investigator if the appointment is authorized by the commissioners court.

### **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.

### **Representation of Ward or Proposed Ward by Attorney [1054.006] updated Sept. 1, 2023**

- (a) A ward or proposed ward may at any time retain an attorney to represent the *ward's or proposed ward's interests, including the ward's or proposed ward's expressed wishes*, in a guardianship proceeding, *including a proceeding involving complete restoration of the ward's capacity or modification of the ward's guardianship* instead of having those interests represented by an attorney ad litem.
  - (b) *Subject to Subsection (c), if a ward or proposed ward has retained an attorney under Subsection (a), the court shall remove an attorney ad litem appointed.*
  - (c) *on the motion of a party to a guardianship proceeding or on the court's own motion, the court may hold a hearing on the ward's or proposed ward's capacity to retain an attorney.* [NB: the burden of proof is on the movant, and the standard of proof is by a preponderance that the ward or proposed ward does not understand the guardianship proceeding or the purpose for which the attorney was retained].

### **B. 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.

## II. Guardianship Pre-Hearing Checklist

### Citation Requirements [1051.101 - .103]

- Posting of Citation (by your 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) & (b)]

### Qualified Delivery Method [1002.0265] Updated Sept. 1, 2023

“Qualified delivery method” means delivery by:

- (1) hand delivery by courier, with courier’s proof of delivery receipt;**
- (2) certified or registered mail, return receipt requested; or**
- (3) a private delivery service designated as a designated delivery service by the United States Secretary of Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.**

**Notice Requirements [1051.104 - .106] Updated Sept. 1, 2023**

1051.104 (a) The person filing the application shall *send* a copy of the application and a notice containing the information required in the citation issued under 1051.102 by *a qualified delivery method* 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.
- Affidavit. (b) (1) copies of notice and the return receipts or other proof of delivery; and (2) an affidavit sworn to by the applicant or the attorney stated notice was sent as required by section (a) and the name of each person to whom notice was sent, if the person's name is not shown on the return receipt or other proof of delivery

**Affidavit Containing Contact Information of Certain Persons [1101.003] added Sept. 1, 2023**

- (a) *Applicant shall file an affidavit with the court that states the name, address, telephone number, email address, and other contact information if known for each person entitled to notice under Section 1051.104(a)*
- (b) The affidavit is privileged and confidential and may not be released or otherwise disclosed to the public.*
- (c) On qualification of the guardian, the Court shall provide a copy of the affidavit to the guardian if the guardian is not the person who filed the affidavit.*



**Physician’s Certificate of Mental Examination [1101.103] – Determination of incapacity of certain adults**

- (a)(1) Dated not earlier than the 120<sup>th</sup> day before the application is filed; *and*
- (a)(2) Based on an examination performed not earlier than the 120<sup>th</sup> 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 **Health and Human Services Commission** 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 **HHSC** 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.

**Investigation Report [1054.153]**

- Review the Court Investigator’s Investigation Report. Are less restrictive alternatives appropriate, available, and feasible? Is Guardianship necessary? Other helpful information such as family members not listed in the application...

**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 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]

## Obtaining Criminal History Record Information [1104.402 & .404]

- The Clerk shall obtain criminal history record information maintained by the Department of Public Safety or the Federal Bureau of Investigations for any person proposed to serve as a guardian, *or any person who will have contact with the proposed ward or proposed ward's estate on behalf of the proposed guardian*, other than an attorney *or a person who is a certified guardian*.
  - For estates under \$50,000 and the proposed guardian is a resident of Texas, then the JBCC shall provide name-based criminal history from the Department of Public Safety [Tex. Gov't Code § 155.205(c)]
  - For estates over \$50,000 or for guardians who are not residents of the state of Texas, then the County Clerk shall obtain fingerprint-based criminal history record from the Federal Bureau of Investigations. [Tex. Gov't Code § 255.205(b)]
- The Criminal History is privileged and confidential and for the exclusive use of the Court. *The Court may only use the information to determine whether: (1) to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Health and Human Services Commission; or (2) appoint any person proposed to serve as a guardian, including a temporary guardian, a proposed successor guardian, or any person who may have contact with the proposed ward or the proposed ward's estate on behalf of a proposed guardian, other than an attorney or a certified guardian.*

### III. 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).

**Guardian of the Person to Manage limited Funds [1151.0525] Updated Sept. 1, 2023**

- Applies to guardian of the person of a ward for whom the court has not appointed a guardian of the estate*
- On Application to an order of the Court, the guardian of the person may access, manage, and spend the ward's funds in an amount not to exceed \$20,000.00 per year for the wards benefit*
- The Court shall require the guardian to file a new bond or rider to an existing bond*
- Guardian shall include any expenditures in the Annual Report*

**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]**

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*]

#### **Annual Determinations [Chapter 1201]**

- Court must exercise reasonable diligence to determine whether a guardian is performing all duties required
- At least annually, the Judge shall examine the well-being of each ward and the solvency of the bond.
- Judge is liable on their bond to those damaged if damage or loss results to a guardianship or ward because of the gross negligence of the judge [1201.003]
- Statutory probate courts ***shall review*** any report prepared by the court investigator, guardian ad litem, or court visitor
- The court investigator or court visitor shall prepare an additional report at least every three years.*** [This is a comprehensive report. See 1201.053(a-1) – (a-3)]

## Audits

### Mark your calendars now!

- Date Order Signed
- Date of qualification (by 21<sup>st</sup> day after the date the order is signed) [1105.003]
- 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]
- Investment Plan is due (180 days after the guardian of the estate qualified) [1160.051]
- Annual Visits (Court Visitor Programs – Statutory Probate Courts) [1054.101 et seq.]
- 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 of Annual Review by Judge [1201.002] (should include review of Annual Visit, Annual Accounting, and Annual Reports).
- Date for capacity reviews [1101.151(a-1)]
- Three-year reports – three years beginning the date the original letters of guardianship are issued. [1201.053(a-1) et seq.]