

POLICY FOR COURT INITIATED GUARDIANSHIPS

If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a Guardian Ad Litem or court investigator to investigate the person's circumstances to determine whether: (1) the person is an incapacitated person; and (2) a guardianship is necessary. Tex. Est. Code § 1102.001

1. The court must receive a **fully completed** Information Letter from a concerned party such as Adult Protective Services, a hospital, a nursing home or a relative or friend of the Proposed Ward. This letter is a request for the court to initiate a guardianship proceeding and should not be confused with an Application for Appointment of a Guardian which must be filed by an attorney. **This should be furnished on the form prescribed by the court (included). All issues on the form must be addressed.**

2. The Court must be supplied with a letter or certificate describing the Proposed Ward's incapacity from a physician (M.D. or D.O.) licensed to practice medicine in Texas. This must be furnished on the form prescribed by the court (included). All issues on the form must be addressed. **If the basis for incapacity is Intellectual Disability, a Determination of Intellectual Disability (DID) must be furnished.**

3. Assignment to a Court - The Information Letter and Doctor's Certificate should be mailed to:

_____ Court

(Requests may be sent to the court by fax at ___/___-____, but must be followed by originals.)

Once these documents are received, the case will be assigned to _____.

4. Upon the motion of the Court Investigator or upon the court's own motion, the court will then either appoint a Guardian Ad Litem or the Court Investigator to investigate and, if necessary, file an Application for the Appointment of a Guardian of the Person or Estate, or both, of the Proposed Ward.

COMPLETION OF COURT-INITIATED GUARDIANSHIPS MAY TAKE 4 TO 6 WEEKS FROM THE DATE COURT RECEIVES THE PROPER DOCUMENTATION. ACTUAL TIME TO A HEARING REQUIRES AT LEAST 20 TO 45 DAYS

4. The duties of a Guardian Ad Litem or the Court Investigator upon such appointment are as follows:

a. personally interview the Proposed Ward as soon as possible;

b. interview the person who filed the Information Letter concerning the Proposed Ward as well as the known relatives/friends of the Proposed Ward;

c. consider whether less restrictive alternatives to guardianship are advisable;

d. consider the necessity of filing for a temporary guardianship (see 5. below);

e. as soon as possible, file an Application for Appointment of a Guardian (if necessary) and prepare an Order Appointing Attorney Ad Litem;

f. set the case for a hearing and call the Probate Clerk's Office, to ensure that Proposed Ward is properly served and that the citation has been on file for a sufficient amount of time prior to hearing;

g. locate a person to serve as Guardian or contact _____ or the Texas Health and Human Services Commission. (amend the Application, if necessary);

h. file a Report of Ad Litem with the Court at least a week prior to the hearing date (if the guardianship will *not* be established, file a Final Report by way of explanation);

i. notify family members and file your affidavit as required by Tex. Est. Code § 1051.104;

j. visit with the Attorney Ad Litem concerning the Application;

k. prepare Proof of Facts, Bond, Oath and Order and attend the hearing on the Application;

l. assist the Guardian in obtaining his or her bond and letters, discuss the guardian's statutory duties and responsibilities, and (if necessary) assist in preparation of an Affidavit of Inability to Pay Costs.

5. If the Guardian Ad Litem or Court Investigator files an Application for Appointment of a Temporary or Permanent Guardian, the Court will appoint an Attorney Ad Litem for the Proposed Ward.

6. The duties of the Attorney Ad Litem are as

follows:

a. review the Application, certificates of physical, medical and intellectual examination and all the relevant medical, psychological and intellectual testing records of the Proposed Ward;

b. personally interview the Proposed Ward;

c. discuss with the Proposed Ward the laws and facts of the case, the Proposed Ward's legal options regarding disposition of the case and the grounds on which a guardianship is sought;

d. ascertain whether the Proposed Ward wishes to oppose the proceedings (if the Proposed Ward is unable to communicate, the Attorney Ad Litem is to act in best interest of the Proposed Ward).

e. file an Answer that states whether the Proposed Ward objects to the guardianship or the Proposed Guardian, or both as soon as possible;

f. visit with the Guardian Ad Litem or the Court Investigator concerning the Application;

g. represent and advocate on behalf of Proposed Ward at the hearing, bearing in mind the requirements of the Texas Disciplinary Rules of Professional Conduct 1.02(g) which states:.

"A lawyer shall take reasonable action to secure the appointment of a Guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client."

h. file an Application for Payment of Fees and Order (form included) and report on the need for continuation of the appointment or discharge of the Attorney Ad Litem at the hearing.

Questions concerning these procedures should be addressed to the following:

Date: _____

Judge _____
_____ Court

**Re: Suggestion of Need for Guardian or Need for Investigation
of Circumstances under § 1102.001, Texas Estates Code**

Dear Judge:

I hereby request the Court to investigate the need for a guardian for or the circumstances of the following person:

Name: _____ Phone: _____
Address: _____ Birthdate: _____
_____ SSN: _____
Race: _____ Driver's License: _____

The primary reason I am requesting this investigation is (nature of incapacity):

This person is currently located in a: private residence nursing home hospital
 Other (Address or Name) _____

I am: Name (printed) _____
Address: _____
Daytime ph: _____ Pager _____
e-mail: _____

My relationship to the person for whom the investigation is requested:

- a family member (relationship) _____
- a social worker in a: hospital nursing home governmental facility
- a friend a doctor

YES NO There is danger to the physical health or safety of this person or to the property or assets of this person unless immediate action is taken. If "YES", explain:

YES NO The danger is imminent. If "YES", explain:

YES NO I have contacted the Texas Department of Family and Protective Services (800-252-5400). If "YES," the name of the caseworker is: _____

pager: _____
date contacted: _____

To my knowledge, this person:

- YES NO is a resident of _____ County, Texas
- YES NO is located in _____ County, Texas
- YES NO has a Guardian in Texas. (Parents are the natural guardians of children under 18.)
- YES NO has executed a Power of Attorney. If "YES," to whom was it given?

Name: _____ Phone: _____
 Relationship: _____ Social Security Number: _____
 Address: _____

- is a minor is an adult
- cannot provide food, clothing, or shelter for him/herself.
- cannot care for the individual's own physical health.
- cannot manage the individual's own financial affairs.

The person has the following property :(include Real Property, Cash, Bank Accounts, Certificates of Deposit, Stocks, Securities, other investments, automobiles, etc.)

Description	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
TOTAL	_____

MONTHLY INCOME: (Show sources and amounts per month)

Description	Value
Social Security (amount received per month)	_____
Veterans Benefits (amount received per month)	_____
_____	_____
_____	_____
TOTAL	_____

Family Members: All immediate family members, living or deceased, must be listed. Attach additional sheets as needed.

Name: _____ Living Deceased Age: _____
 Relationship: _____ YES NO Willing to serve as Guardian?
 Address: _____ If "YES," Social Security Number: _____
 _____ Phone: _____

Name: _____ Living Deceased Age: _____
 Relationship: _____ YES NO Willing to serve as Guardian?
 Address: _____ If "YES," Social Security Number: _____
 _____ Phone: _____

Name: _____ Living Deceased Age: _____
 Relationship: _____ YES NO Willing to serve as Guardian?
 Address: _____ If "YES," Social Security Number: _____

Physician's Certificate of Medical Examination

Revision October 2016

In the Matter of the Guardianship of _____
an Alleged Incapacitated Person

For Court Use Only
Court Assigned: _____

To the Physician

This form is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition (on page 3), and whether that person should have a guardian appointed.

1. General Information

Physician's Name _____ Phone: (____) _____
Office Address _____

YES NO I am a physician currently licensed to practice in the State of Texas.

Proposed Ward's Name _____
Date of Birth _____ Age _____ Gender M F
Proposed Ward's Current Residence: _____

I last examined the Proposed Ward on _____, 20____ at:

a Medical facility the Proposed Ward's residence Other: _____

YES NO The Proposed Ward is under my continuing treatment.

YES NO Before the examination, I informed the Proposed Ward that communications with me would not be privileged.

YES NO A mini-mental status exam was given. If "YES," please attach a copy.

2. Evaluation of the Proposed Ward's Physical Condition

Physical Diagnosis: _____

a. Severity: Mild Moderate Severe

b. Prognosis: _____

c. Treatment/Medical History: _____

3. Evaluation of the Proposed Ward's Mental Functioning

Mental Diagnosis: _____

a. Severity: Mild Moderate Severe

b. Prognosis: _____

c. Treatment/Medical History: _____

If the mental diagnosis includes dementia, answer the following:

YES NO ---- It would be in the Proposed Ward's best interest to be placed in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia.

YES NO ---- It would be in the Proposed Ward's best interest to be administered medications appropriate for the care and treatment of dementia.

YES NO ---- The Proposed Ward currently has sufficient capacity to give informed consent to the administration of dementia medications.

d. Possibility for Improvement:

YES NO ---- Is improvement in the Proposed Ward's physical condition and mental functioning possible?

If "YES," after what period should the Proposed Ward be reevaluated to determine whether a guardianship continues to be necessary? _____

4. Cognitive Deficits

a. The Proposed Ward is oriented to the following (check all that apply):

- Person Time Place Situation
- b. The Proposed Ward has a deficit in the following areas (check all areas in which Proposed Ward has a deficit):
- Short-term memory
 - Long-term memory
 - Immediate recall
 - Understanding and communicating (verbally or otherwise)
 - Recognizing familiar objects and persons
 - Solve problems
 - Reasoning logically
 - Grasping abstract aspects of his or her situation
 - Interpreting idiomatic expressions or proverbs
 - Breaking down complex tasks down into simple steps and carrying them out
- c. YES NO -- The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration.

5. Ability to Make Responsible Decisions

Is the Proposed Ward able to initiate and make responsible decisions concerning himself or herself regarding the following:

- YES NO ---- Make complex business, managerial, and financial decisions
- YES NO ---- Manage a personal bank account
- If "YES," should amount deposited in any such bank account be limited? YES NO
- YES NO ---- Safely operate a motor vehicle
- YES NO ---- Vote in a public election
- YES NO ---- Make decisions regarding marriage
- YES NO ---- Determine the Proposed Ward's own residence
- YES NO ---- Administer own medications on a daily basis
- YES NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) without supports and services
- YES NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) with supports and services
- YES NO ---- Attend to instrumental activities of daily living (e.g., shopping, cooking, traveling, cleaning)
- YES NO ---- Consent to medical and dental treatment at this point going forward
- YES NO ---- Consent to psychological and psychiatric treatment at this point going forward

6. Developmental Disability

- YES NO ---- Does the Proposed Ward have developmental disability?
- If "NO," skip to number 7 below.
- If "YES," answer the following question and look at the next page.

Is the disability a result of the following? (Check all that apply)

- YES NO ---- Intellectual Disability?
- YES NO ---- Autism?
- YES NO ---- Static Encephalopathy?
- YES NO ---- Cerebral Palsy?
- YES NO ---- Down Syndrome?
- YES NO ---- Other? Please explain _____

Answer the questions in the "Determination of Intellectual Disability" box below only if both of the following are true:

- (1) The basis of a proposed ward's alleged incapacity is intellectual disability.
- and
- (2) **You are making a "Determination of Intellectual Disability" in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind.**

If you are not making such a determination, please skip to number 7 below.

"DETERMINATION OF INTELLECTUAL DISABILITY"

Among other requirements, a Determination of Intellectual Disability must be based on an interview with the Proposed Ward and on a professional assessment that includes the following:

- 1) a measure of the Proposed Ward's intellectual functioning;
- 2) a determination of the Proposed Ward's adaptive behavior level; and
- 3) evidence of origination during the Proposed Ward's developmental period.

As a physician, you may use a previous assessment, social history, or relevant record from a school district, another physician, a psychologist, an authorized provider, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

- 1. Check the appropriate statement below. If neither statement is true, skip to number 7 below.
 - I examined the proposed ward in accordance with rules of the executive commissioner of the Health and Human Services Commission governing Intellectual Disability examinations, and my written findings and recommendations include a determination of an intellectual disability.
 - I am updating or endorsing in writing a prior determination of an intellectual disability for the proposed ward made in accordance with rules of the executive commissioner of the Health and Human Services Commission by a physician or psychologist licensed in this state or an authorized provider certified by the Health and Human Services Commission to perform the examination.
- 2. What is your assessment of the Proposed Ward's level of intellectual functioning and adaptive behavior?
 - Mild (IQ of 50-55 to approx. 70)
 - Moderate (IQ of 35-40 to 50-55)
 - Severe (IQ of 20-25 to 35-40)
 - Profound (IQ below 20-25)
- 3. Yes No ----Is there evidence that the intellectual disability originated during the Proposed Ward's developmental period?

Note to attorneys: If the above box is filled out because a determination of intellectual disability has been made in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, a Court may grant a guardianship application if (1) the examination is made not earlier than 24 months before the date of the hearing or (2) a prior determination of an intellectual disability was updated or endorsed in writing not earlier than 24 months before the hearing date. If a physician's diagnosis of intellectual disability is not made in accordance with rules of the executive commissioner — and the above box is not filled out — the court may grant a guardianship application only if the Physician's Certificate of Medical Examination is based on an examination the physician performed within 120 days of the date the application for guardianship was filed. See Texas Estates Code § 1101.104(1).

7. Definition of Incapacity

For purposes of this certificate of medical examination, the following definition of incapacity applies:

An "Incapacitated Person" is an adult who, because of a physical or mental condition, is substantially unable to:
(a) provide food, clothing, or shelter for himself or herself; (b) care for the person's own physical health; or
(c) manage the person's own financial affairs. Texas Estates Code § 1002.017.

8. Evaluation of Capacity

- YES NO ---- Based on my last examination and observations of the Proposed Ward, it is my opinion that the Proposed Ward is incapacitated according to the legal definition in section 1002.017 of the Texas Estates Code, set out in the box above.

If you indicated that the Proposed Ward is incapacitated, indicate the level of incapacity:

- Total** ----- The Proposed Ward is totally without capacity (1) to care for himself or herself and (2) to manage his or her property.
- Partial** ----- The Proposed Ward 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.

Evaluation of Capacity (continued)

If you indicated the Proposed Ward’s incapacity is partial, what specific powers or duties of the guardian should be limited if the Proposed Ward receives supports and services? _____

If you answered “NO” to all of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is partially incapacitated, please explain: _____

If you answered “YES” to any of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is totally incapacitated, please explain: _____

9. Ability to Attend Court Hearing

- YES NO ---- The Proposed Ward would be able to attend, understand, and participate in the hearing.
- YES NO ---- Because of the Proposed Ward’s incapacities, I recommend that the Proposed Ward not appear at a Court hearing.
- YES NO ---- Does any current medication taken by the Proposed Ward affect the demeanor of the Proposed Ward or his or her ability to participate fully in a court proceeding?

10. What is the least restrictive placement that you consider is appropriate for the Proposed Ward:

- Nursing home level of care --- Assisted Living Facility
- Group Home --- Memory care unit
- Own Home or with family --- Other _____

11. Additional Information of Benefit to the Court: If you have additional information concerning the Proposed Ward that you believe the Court should be aware of or other concerns about the Proposed Ward that are not included above, please explain on an additional page.

Physician’s Signature

Date

Physician’s Name Printed

License Number

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