

Guardianship 101: Things County Judges Should Know

Presented By:
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South Texas County Judges & Commissioners
Association Conference
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Housekeeping Matters

- Thank you for the kind invitation
- This should not substitute legal advice
- Caveat
 - Adult guardianships
 - No interstate jurisdictional issues
 - No mental health remedies





Review of Hollywood Guardianships

Britney Spears





Review of Hollywood Guardianships

Nichelle Nichols



Review of Hollywood Guardianships

Wendy Williams



Who May Apply?

- Any person interested in welfare of Ward



The Application

- Must state:
 1. Nature and degree of alleged *incapacity*
 2. Whether alternatives were considered and whether they are feasible



The Application

- Value of the Estate
- Supports and services
- Term of the guardianship
- Names and contact information for next of kin

Texas Estates Code 1101.001



Citation Personally Served on Ward

PRIVATE PROCESS

Case Number:



586882

VS.

IN THE DISTRICT COURT
438th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

(Note: Attached Document May Contain Additional Litigants.)

CITATION

"THE STATE OF TEXAS"

Directed To:

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION REQUESTS FOR DISCLOSURE AND ATTACHED DISCOVERY, a default judgment may be taken against you." Said ORIGINAL PETITION REQUESTS FOR DISCLOSURE AND ATTACHED DISCOVERY was filed on the 27th day of October, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 2ND DAY OF DECEMBER A.D., 2020.

Mary Angie Garcia



Appointment of Attorney ad Litem

- AAL represents the proposed Ward



Texas Estates Code 1054.001

Healthcare Certificate of Mental/Medical Exam



- Who may examine the proposed Ward?
 - Medical Doctor (licensed in Texas)
 - Psychiatrist
 - Psychologist (just added in 2023)
 - Advanced Practice Registered Nurse (MD must sign off)
 - **NOT Physician's Assistant**

Texas Estates Code 1101.103

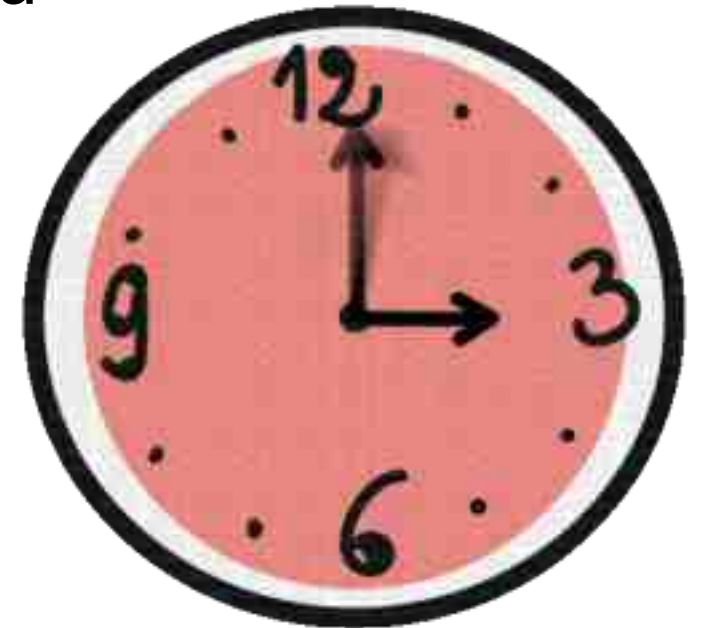
Types of Guardianships

- Guardian of the Estate
 - Manages the financial affairs
- Guardian of the Person
 - Manages the medical and care decisions



Duration of Guardianships

- **Temporary Guardian** (Emergency Proceeding)
 - “Substantial evidence of incapacity”
 - Probable cause that person and or estate would become impaired if guardian not appointed
 - Appointment within 10 days of filing
 - Expires in 60 days
- **Permanent Guardian**
 - Person is not able to manage finances or care
 - 4-6 months to establish
 - Remains in effect until Court order terminates or death



Priority of Serving as Guardian

- Spouse
- Parent
- Next of Kin

Texas Estates Code 1104.101-103



Qualification

1. Register with JBCC (TGC 155.151)
2. Online Guardianship Course (TGC 155.204)
3. Criminal Background check
 1. No felonies (TGC 155.205)
 2. No crimes of moral turpitude
 1. Theft
 2. Fraud
 3. Theft by Check
 4. Forgery
 5. Identity Theft
 6. Perjury and...



Qualification

- 4. Personal Representative Form
- 5. Court Instructions Form
- 6. Oath
- 7. Bond



The Hearing

- Must prove:
 - BLOW
 - No alternatives
 - Supports and Services not feasible to avoid need of guardianship
 - Person to be appointed is “suitable”
 - Incapacity (partial or total)



Letters of Guardianship

- Guardian must take Oath and Bond
- Tips on Bond
 - Safekeeping Agreements
 - Move Funds to Guardianship Friendly Bank
 - Keep the PODs when accounts are moved
 - Must bond for all income and liquid assets (not refunds)



I Care A Lot



Reporting Requirements

1. Inventory – Guardian must file a list of property within 30 days of qualification

- (may require an appraisal)
- include VIN for vehicles
- include claims
- maybe use “Affidavit in Lieu of Inventory”

Texas Estates Code 1104.202 et seq





Reporting Requirements

2. Publication – The Guardian must notice all creditors by publication of the appointment of a Guardian

Texas Estates Code 1153.001(a)(1)

Reporting Requirements

3. Monthly Allowance –

The Guardian must request permission from the Court on what funds are spent each month



Texas Estates Code 1156.001

Reporting Requirements



4. Investment Plan

- The guardian must seek permission from the Court to invest funds of the estate
- Current investments can be maintained for 1 year
- Do it at your own peril

Reporting Requirements

5. Application for Sale of Personal Property & Real Property

- a. Application
- b. Order
- c. Report
- d. Decree

***Texas Estates Code
1158.051, 101, 251***



Reporting Requirements

6. Expense Application – The Guardian must seek permission to expend funds on unexpected expenses

*Reasonable

**Necessary



Texas Estates Code 1155.101-103

Reporting Requirements

Expense

Application –

Is it reasonable to buy champagne with the Ward's money and use it to create an organic cleaning solution?



Reporting Requirements

Expense Application

Is it necessary that the Ward's house floors should be replaced with marble instead of tile?



Reporting Requirements: Expense Application
















It is necessary to fly first class to come visit the Ward?



Reporting Requirements

7. Annual Report

- Ward's Address
- Guardian's Address
- Supports and Services
- Emergency Detention
- Bond Payment
- Ward's Bill of Rights

BILL OF RIGHTS				
Not Specifically Limited by the Court, as a Protected Person You Have the Right To:				
Have the contact information for the probate court.	Development, self-reliance and independence.	Be treated with respect, recognition, dignity and individuality.	Live where you choose.	Have supported services.
				
Have an allowance.	See a doctor.	Have control of your life.	Submit complaints without fear.	Communicate in your native language.
				
Participate in social settings.	Participate in religious activities.	Participate in recreational activities.	Employment.	Rehabilitation.
				

Texas Estates Code 1163.101

Reporting Requirements

8. Annual
Accountings

- Keep all
receipts

- Keep all
check stubs

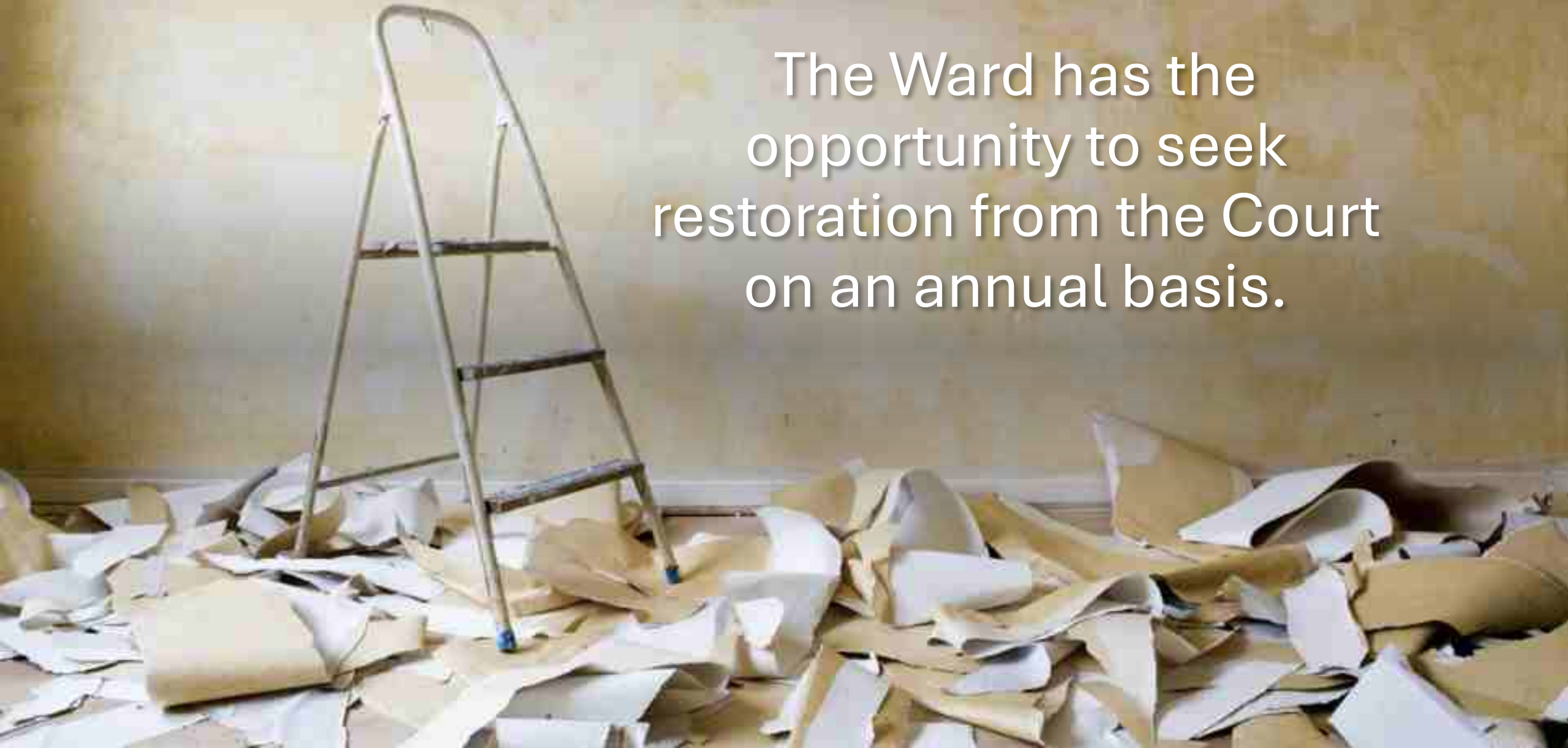
- Maintain a
check
register

- No cash
withdrawals

Modification/Restoration

Texas Estates Code 1202.001

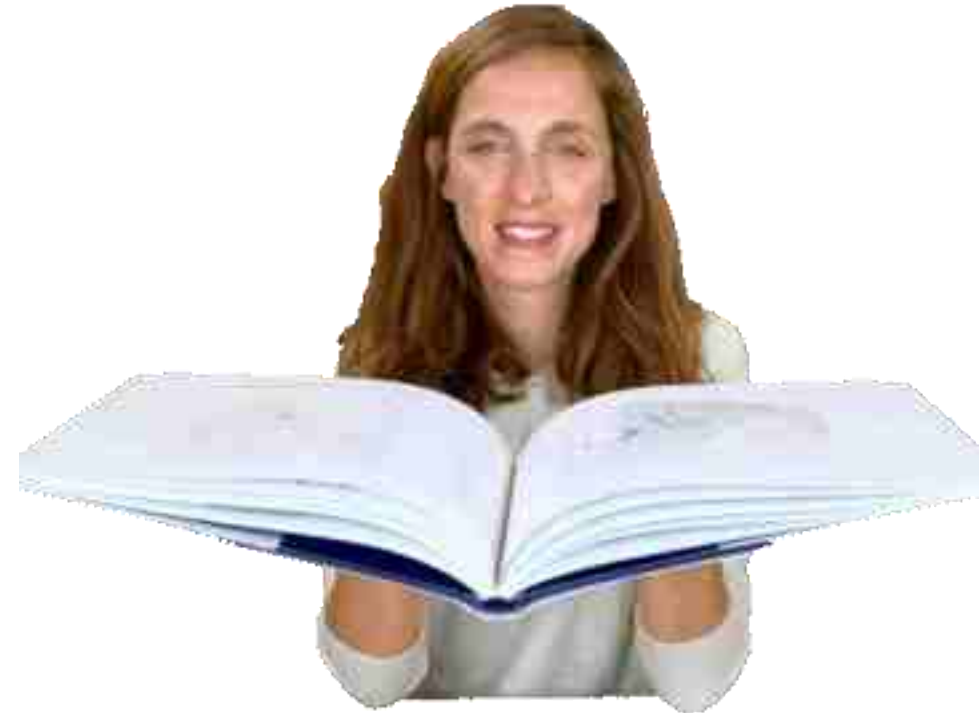
The Ward has the
opportunity to seek
restoration from the Court
on an annual basis.



Closing a Guardianship

1. File a Final Accounting
2. File a Final Report
3. Waiver of Notice from Ward/Executor
4. Discharge Guardian bond

Texas Estates Code 1204.001

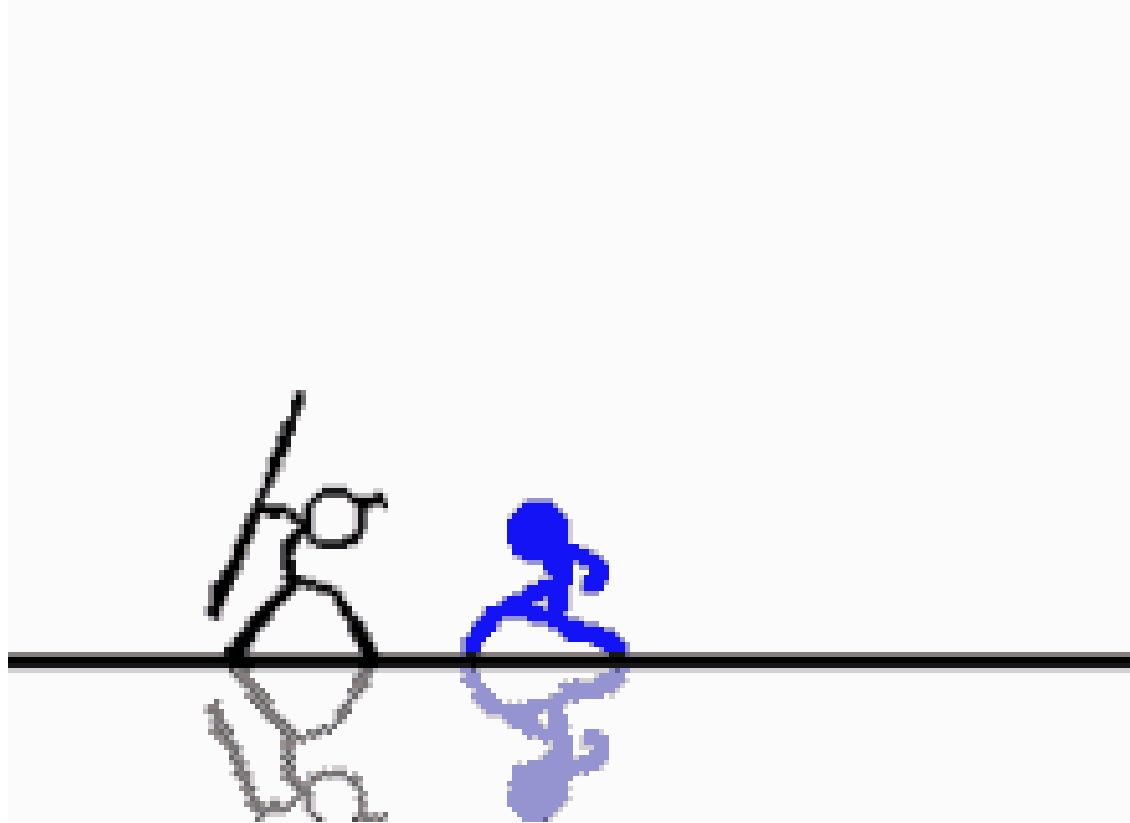


Court Visitor

- In some counties, the Court will send a visitor to visit the Ward on an annual basis.



Roles of the Guardian



- **Advocate**
- **Monitor**
- **Decision Maker**

Alternatives to Guardianship of the Estate

Texas Estates Code 1002.0015

1. Statutory Durable Power of Attorney
2. Revocable or Management Trust
3. Community Administration
4. Court Created Management Trusts
5. Court Registry
6. Sale of Property without a Guardianship
7. Access and Management of Ward's Funds as Guardian of the Person



Alternatives to Guardianship of the Person

1. Medical Power of Attorney
2. Surrogate Decision Maker
3. OOH DNR

Texas Estates Code 1002.0015



The End

