

Duties and Jurisdiction of the Supreme Court of Texas

Texas Constitution

ARTICLE 5. JUDICIAL DEPARTMENT

Sec. 1. JUDICIAL POWER; COURTS IN WHICH VESTED. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

Sec. 3. JURISDICTION OF SUPREME COURT. (a) The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be co-extensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

(b) The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

Sec. 31. COURT ADMINISTRATION AND AUTHORITY; ACTION ON MOTION FOR REHEARING. (a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.

Government Code

Sec. 21.004. STATE OF JUDICIARY MESSAGE. (a) At a convenient time at the commencement of each regular session of the legislature, the chief justice of the supreme court shall deliver a written or oral state of the judiciary message evaluating the accessibility of the courts to the citizens of the state and the future directions and needs of the courts of the state.

(b) It is the intent of the legislature that the state of the judiciary message promote better understanding between the legislative and judicial branches of government and promote more efficient administration of justice in Texas.

Sec. 22.003. PROCEDURE OF THE COURT. (a) The supreme court from time to time shall promulgate suitable rules, forms, and regulations for carrying into effect the provisions of this chapter relating to the jurisdiction and practice of the supreme court.

(b) The supreme court may make and enforce all necessary rules of practice and procedure, not inconsistent with the law,

for the government of the supreme court and all other courts of the state to expedite the dispatch of business in those courts.

Sec. 22.004. RULES OF CIVIL PROCEDURE. (a) The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

Sec. 22.013. JUDICIAL INSTRUCTION RELATED TO GUARDIANSHIP ISSUES. (a) The supreme court shall provide a course of instruction that relates to issues that arise in guardianship cases for judges involved in those cases.

(b) The supreme court shall adopt the rules necessary to accomplish the purposes of this section.

(c) The instruction must include information about:

- (1) statutory and case law relating to guardianships;
- (2) the aging process and the nature of disabilities;
- (3) the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;
- (4) the principles of equal access and accommodation;
- (5) the use of community resources for the disabled; and
- (6) avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.

(d) The instruction may include information about:

- (1) substantive areas of law concerning the needs of elderly persons and persons with disabilities;
- (2) barriers to physical access and methods to overcome those barriers;
- (3) communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;

(4) duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;

(5) standard definitions and procedures for determining incapacity;

(6) standards for surrogate decision making;

(7) the doctrine of the least-restrictive alternative;

(8) the dispute resolution process, especially its application to elderly persons and persons with disabilities; and

(9) successful programs and funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.

Sec. 72.011. OFFICE OF COURT ADMINISTRATION. (a) The office of court administration is an agency of the state and operates under the direction and supervision of the supreme court and the chief justice of the supreme court.

(b) The office shall exercise the powers and perform the duties or functions imposed on the office by this chapter or the supreme court.

Sec. 74.001. MEETINGS. (a) The chief justice shall call and preside over an annual meeting of the presiding judges of the administrative judicial regions on a date and at a time and place in the state designated by the chief justice.

(b) The chief justice may call and convene additional meetings of the regional presiding judges or local administrative judges that he considers necessary for the promotion of the orderly and efficient administration of justice.

(c) At the meetings, the judges shall:

(1) study the statistics reflecting the condition of the dockets of the courts of the state to determine the need for the assignment of judges under Subchapter C;

(2) compare the regional and local rules of court to achieve the uniformity of rules that is practicable and consistent with local conditions;

(3) consider uniformity in the administration of this chapter in the various administrative regions; and

(4) promote more effective administration of justice through the use of this chapter.

(d) The expenses of the judges attending these meetings shall be paid as provided by Sections 74.043 and 74.061.

Sec. 74.006. SUPREME COURT DUTIES. The chief justice shall ensure that the supreme court executes and implements the court's administrative duties and responsibilities under this chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.007. COMMITTEES. The chief justice, subject to the approval of the supreme court, shall name and appoint members to committees necessary or desirable for the efficient administration of justice or to carry out the provisions of this chapter.

Sec. 74.021. SUPERVISORY AND ADMINISTRATIVE CONTROL. The supreme court has supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice.

Sec. 74.024. RULES. (a) The supreme court may adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice.

Sec. 81.011. GENERAL POWERS. (a) The state bar is a public corporation and an administrative agency of the judicial department of government.

(b) This chapter is in aid of the judicial department's powers under the constitution to regulate the practice of law, and not to the exclusion of those powers.

(c) The Supreme Court of Texas, on behalf of the judicial department, shall exercise administrative control over the state bar under this chapter.

Sec. 155.002. RULES. The supreme court may adopt rules consistent with this chapter, including rules governing the certification of individuals providing guardianship services.

Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) The supreme court, after consulting with the office and the commission, shall by rule establish a mandatory registration program for guardianships under which all guardianships in this state shall be required to register with the commission.

(b) In establishing rules under this section, the supreme court shall ensure courts with jurisdiction over a guardianship immediately notify the commission of the removal of a guardian.

Sec. 1002.002. ATTORNEY AD LITEM. "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, an unborn person, or another person described by Section 1054.007 in a guardianship proceeding.

Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests.

Sec. 1054.004. DUTIES. (a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

- (1) the law and facts of the case;

(2) the proposed ward's legal options regarding disposition of the case;

(3) the grounds on which guardianship is sought; and

(4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.

(b) Before the hearing, the attorney ad litem shall review:

(1) the application for guardianship;

(2) certificates of current physical, medical, and intellectual examinations; and

(3) all of the proposed ward's relevant medical, psychological, and intellectual testing records.

(c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem's opinion regarding:

(1) whether a guardianship is necessary for the proposed ward; and

(2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services.

Sec. 1054.054. DUTIES. (a) A guardian ad litem is an officer of the court.

(b) A guardian ad litem shall protect the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests.

(c) The guardian ad litem shall:

(1) investigate whether a guardianship is necessary for the proposed ward; and

(2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.

(d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court

Sec. 81.114. ATTORNEY INSTRUCTION RELATED TO GUARDIANSHIP ISSUES. (a) The state bar shall provide a course of instruction for attorneys who represent parties in guardianship cases or who serve as court-appointed guardians.

(b) The state bar shall adopt the rules necessary to accomplish the purposes of this section.

(c) The instruction must include information about:

- (1) statutory and case law relating to guardianships;
- (2) the aging process and the nature of disabilities;
- (3) the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;
- (4) the principles of equal access and accommodation;
- (5) the use of community resources for the disabled; and
- (6) avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.

(d) The instruction may include information about:

- (1) substantive areas of law concerning the needs of elderly persons and persons with disabilities;
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- (3) communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;
- (4) duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;
- (5) standard definitions and procedures for determining incapacity;
- (6) standards for surrogate decision making;
- (7) the doctrine of the least-restrictive alternative;
- (8) the dispute resolution process, especially its application to elderly persons and persons with disabilities; and
- (9) successful programs and funding efforts for

addressing the court-related needs of elderly persons and persons with disabilities.

Sec. 81.071. DISCIPLINARY JURISDICTION. Each attorney admitted to practice in this state and each attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary and disability jurisdiction of the supreme court and the Commission for Lawyer Discipline, a committee of the state bar.

Estates Code

1054.201 - Certification Required

(a) An attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) The State Bar of Texas shall require four hours of credit for certification under this subchapter, including one hour on alternatives to guardianship and supports and services available to proposed wards.

1054.202 - Certificate Expiration

(a) Except as provided by Subsection (b), a certificate issued under this subchapter expires on the second anniversary of the date the certificate is issued.

(b) A new certificate obtained by a person to whom a certificate under this subchapter was previously issued expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued.

1054.202 - Appointment on Expiration of Certificate

An attorney whose certificate issued under this subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem.

Disciplinary Rules of Professional Conduct

1.03 Communication

a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment to Rule 1.03 - Client Under a Disability

5. In addition to communicating with any legal representative, a lawyer should seek to maintain reasonable communication with a client under a disability, insofar as possible. When a lawyer reasonably believes a client suffers a mental disability or is not legally competent, it may not be possible to maintain the usual attorney-client relationship. Nevertheless, the client may have the ability to understand, deliberate upon, and reach conclusions about some matters affecting the client's own well being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children's opinions regarding their own custody are given some weight. The fact that a client suffers a disability does not diminish the desirability of treating the client with attention and respect. See also Rule 1.02(e) and Rule 1.05, Comment 17.

TEXAS RULES OF DISCIPLINARY PROCEDURE

Preamble

The Supreme Court of Texas has the constitutional and statutory responsibility within the State for the lawyer discipline and disability system, and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability in a manner that does not discriminate by race, creed, color, sex, or national origin.