

Texas Guardianship Cases: Improving Court Processes and Monitoring Practices in Texas Courts

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Excerpts

As in many other states, case-level data about guardianship proceedings in Texas is incomplete for the purpose of state-level and statewide analysis. In recognition of this, and in order to inform discussion about what courts in Texas can do to ensure effective appointment and oversight practices in this area, the Office of Court Administration (OCA) undertook a review of guardian assignment and case management practices in use in several counties throughout the state. While not intended to be a comprehensive review of all of the important policy and practice issues faced by courts in handling these cases, it is hoped that this report helps fill a knowledge gap and that its content can be used to inform discussion, prioritize needs, and point to opportunities for additional study and action.

This report identifies the characteristics of guardians and wards in select jurisdictions and highlights features of the guardianship process relating to the use of court visitors and investigators, electronic case management systems, training issues, the public complaint process, and reporting issues. Finally, key observations and recommendations are identified.



Observations Regarding Guardians and Wards

The following characteristics were noted in the cases reviewed:

- The majority (55%) of the wards were male
- The majority (58%) of the appointments were made due to the ward's intellectual incapacity
- Half (51%) of the cases involved a ward turning 18
- The majority (74%) of wards were living at home at the time of the appointment. Other places of residence included an extended stay health care facility (21%), in a hospital (2%), in foster care (1%) or unknown (2%)
- The vast majority (85%) of the guardians were family members

Ad Litem Attorneys

An ad litem attorney was appointed in the vast majority (90%) of the cases reviewed. OCA's review of these cases revealed that the appointments were made timely.

In some of the counties included in the review, ad litem attorneys were selected from a roster of attorneys maintained by the court. In other counties, courts appointed members of the bar who merely frequented their court. In the cases reviewed, ad litem attorneys were compensated at rates ranging from \$50 to \$1,000 per case. Compensation was provided either from estate funds or the county general fund. In Montgomery County the filing fee in a guardianship case is required to include a flat fee of \$400 for compensation of the ad litem.

OCA noted that although reports were timely filed by ad litem attorneys, they were only filed approximately 50% of the time, and that those that were filed were often incomplete. The judges interviewed commented that ad litem attorneys are often not knowledgeable or prepared for their role in guardianship cases.

OCA observed the following with regard to reporting:

– Inventory and Appraisal (Due the 30th day after qualification of the guardian) – A guardian for the estate of the ward, or for the person and the estate, is required to file this report unless doing so is waived by the court. An Inventory and Appraisal report was filed in 32% (39) of the cases in which it was required.

– First Annual Report (Due 60 days after first anniversary of qualification) – All guardians are required to file this report, unless the court waives the filing. This report was filed in 28% (47) of the cases reviewed.

– First Annual Report of Well-being of the Ward (Due one year from the establishment of the guardianship) – All guardians are required to file this report, unless the court waives the filing. This report was filed in 18% (30) of the cases reviewed

– First Annual Accounting Report (Due no later than 60 days after first anniversary of qualification) – Guardians for the estate only or for the person and the estate are required to file this report unless doing so is waived by the court. This report was filed in 15% (19) cases in which it was required.

Training Issues

Observation: Judges interviewed commented on the lack of knowledge of some private professional guardians about important aspects of the guardianship process, attributing this to a lack of training. A shortage of certified guardians was also noted. Large caseloads were also identified by the judges interviewed as a possible reason for lack of compliance with reporting and other requirements.

Ad litem attorneys were appointed in the majority of cases reviewed, though different local

source lists are relied on. Different compensation schedules were observed across the jurisdictions visited. Judges interviewed noted instances of the lack of preparation on the part of these individuals in fulfilling their role. Compliance with reporting requirements by ad litem attorneys was observed by OCA to be generally low.

Recommendation: Courts should have access to well-trained and prepared private professional guardians who demonstrate knowledge of their role, scope of responsibility, and compensation protocols.

Local area bar associations should promote and encourage involvement of attorneys as ad litem and train their members on the requirements, individual court customs, and the role of an ad litem attorney in a guardianship case.

The Use of Visitors and Investigators

OCA notes that the smaller jurisdictions visited may lack the resources needed to adequately monitor a guardianship case once the guardian has been appointed.

Public Complaint Process

On several occasions OCA observed written correspondence or other documentation from concerned family members or other persons relating to the well-being of the guardian or the care of the estate. Often it did not appear that the correspondence or documentation had been provided to the court. In some instances, even though the court may have been made aware of the query, the matter did not appear to have been addressed.