Administrative Order 2019-2

FILED

RE ALL GUARDIANSHIP	§	IN COUNTY COURTS AT LAW
ACTIONS FILED IN	§	NUMBER ONE AND TWO
BRAZOS COUNTY, TEXAS	§	OF
	§	BRAZOS COUNTY, TEXAS

2019 OCT -2 A 10:50
KAREN McQUEEN, COUNTY CLERK
BRAZOS COUNTY, BRYAN, TEXAS

ADMINISTRATIVE ORDER

The Courts, on their own motion, enter this administrative standing order regarding all guardianship cases filed with the Brazos County Clerk. This order shall apply to every guardianship case filed on or after October 1, 2019

IT IS HEREBY ORDERED that **all** guardianship cases shall follow the rules attached hereto as exhibit A.

ORDERED this 1st day of October, 2019.

Amanda Matzke, Judge
County Court at Law #1

Jim Locke, Judge
County Court at Law #2

ADMINISTRATIVE ORDER 2019-2 EXHIBIT A

GUARDIANSHIP RULES

PART 1. GENERAL PROVISIONS

Rule 1.1 Purpose

These rules govern the filing of all documents in guardianship actions, in the Brazos County Clerk's Office. This includes not only documents filed to initiate the case but also the administration of guardianship proceedings (including but not limited to filing of inventories, annual reports of the person, expense requests/monthly allowances, annual accounts of the estate, and modification and termination of proceedings and restoration of rights.

Rule 1.2 Parties Proceeding Pro Se

Because they are attempting to represent the interests of another, an individual applying for guardianship of the person or estate of another person must be represented by a licensed attorney. Any natural person proceeding on their own behalf without an attorney shall be expected to read and follow these Local Rules, the Rules of Civil Procedure, Rules of Evidence, Texas Estates Code, Texas Rules of Appellate Procedure and Brazos County Local Rules as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases. Pro se parties shall be responsible for providing and maintaining current addresses and telephone numbers with the Brazos County Clerk. The address so provided shall be used as the address for serving all pleadings and any other notices on the pro se party. The Court may at any time exercise its discretion and determine that it is in the best interest of the ward and/or the ward's estate for a guardian to be represented by legal counsel.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

(a) "Annual Account" means an accounting filed annually by the guardian of the estate of a ward to apprise the court of the condition of the estate of the ward including beginning and ending balances for any financial accounts, deposits and withdrawals.

(b) "Annual Report" means a report filed annually by the guardian of the person to apprise the court of the physical, social and medical condition of the ward.

(c) CME means Certificate of Medical Examination.

(d) "Clerk", "County Clerk" or "Clerk of the Court" means the Brazos County Clerk.

(e) "Inventory" for guardianship cases means the initial summary of the financial condition of the estate of the ward at the inception of a guardianship or as of the date of death in a probate estate. Must be filed within 30 days of the qualification of the guardian.

(f) "JBCC" means the Judicial Branch Certification Commission.

Rule 2.2 Application to Pro Se Litigants

The term "counsel" shall apply to an attorney as well as an individual litigant in the event a party appears pro se.

PART 3. APPLICABILITY

Rule 3.1 Scope

(a) These rules apply to all guardianship cases filed in the county courts at law of Brazos County. These rules are intended to supplement the Brazos County Local Rules of Administration.

(b) These rules are standing orders of the County Courts at Law of Brazos County, now existing or as may be created hereafter. Knowing or intentional violation of these rules may be punished by contempt or other sanction authorized by law or rules of procedure as the trial judge may deem appropriate.

Part 4. Ad Litems

Rule 4.1 Qualifications

Every person appointed to act as a guardian ad litem and/or attorney ad litem in a guardianship case must have taken and completed the Guardianship Ad Litem Certification through the State Bar of Texas and have presented such certification to County Court at Law #1. County Court at Law #1 shall maintain the list of qualified ad litems for the County Courts at Law in Brazos County. Only after the certification is received will the attorney be placed on the approved list of ad litems and be eligible for appointments from the County Courts. Each attorney is responsible for keeping his or her certification current and providing an updated certificate when the course is completed.

Rule 4.2 Duties

Attorney ad litem - An attorney ad litem is expected to advocate for the wishes and preferences of the client, and is required to do each of the following prior to the date of the guardianship hearing:

1. Comply with Texas Estates Code §1054.004, §1054.054, and other applicable provisions of the Texas Estates Code.
2. Review the Ad Litem Manual on the Court's website.
3. Meet with the proposed ward in the proposed ward's place of residence and, if possible, discuss the guardianship with the proposed ward.
4. Review the Ward's Bill of Rights with the proposed ward.
5. Make reasonable efforts to consider the proposed ward's preference of guardian.
6. Determine if the proposed guardian is disqualified, unsuitable, or if there is a conflict that renders the proposed guardian unsuitable.
7. View the proposed ward's living conditions and, if possible, observe the proposed ward's interaction with the proposed guardian.

8. Review the physician's certificate and any necessary medical records. If there is missing information, contact the doctor of the proposed ward.
9. File an answer.
10. File a report for the court detailing the actions you have taken on behalf of your client expressing your client's wishes and preferences.
11. Review the Court's file to make sure all notice has been given pursuant to 1051.104 or a waived pursuant to 1051.106 and proof of such notices or waivers is contained in the Court's file.
12. Insure service is returned for the length of time required by the Estates Code section 11051.106.
13. Make sure the CME is admitted at the hearing and that it is from a Texas physician and dated within 120 days of the application.
14. Review the order granting guardianship for the following:
    a. The order makes all the necessary findings,
    b. The order states the level of incapacity (total or partial),
    c. The order specifically determines the proposed ward's capacity to make decisions on residence, vote in a public election, drive a vehicle and consent to marriage, and to purchase or have access to firearms,
    d. If the guardianship is based on total incapacity, does the order give the guardian full authority over the person and/or estate?
    e. If the guardianship is for partial incapacity, does the order state what rights are retained by the proposed ward with or without supports and services,
    f. If a guardianship of the estate is created, that the order sets a monthly allowance for education and/or maintenance of the proposed ward,
    g. The order sets the amount of bond required at a corporate surety or cash bond for the guardian of the estate in the amount of the proposed ward's personal property plus income for one year pursuant to 1105.154,
    h. The order states the name of the guardian and does not name two people to serve as guardian of the person or guardian of the estate unless they are married or have previously been appointed as managing conservators of the proposed ward. One person may be guardian of the person and another may be guardian of the estate.
    i. The order includes the Notice to Peace Officers in bold print,
    j. The ad litem is discharged.
15. Advocate for the position expressed by your client regarding the guardianship and the applicant(s) for guardianship, even if contrary to your view of the best interest of your client.

Guardian ad Litem – A guardian ad litem is expected to advocate for the best interest of the proposed ward even if contrary to the wishes of that person. An Order appointing guardian ad litem will reference specific duties and responsibilities of the guardian ad litem. In addition to those specific duties and responsibilities, the guardian ad litem is required to do each of the following prior to the date of the guardianship hearing:

1. Comply with Texas Estates Code §1054.051 *et seq.*, §1054.054, and other applicable provisions of the Texas Estates Code.

2. Meet with the proposed ward and other persons or entities relevant to the guardian ad litem's duties under the appointing order.

3. Review the Bill of Rights with the proposed ward.

4. Make reasonable efforts to ascertain the mental, physical, and psychological condition of the proposed ward and to ascertain any action that may be taken by the Court for the protection and best interests of the proposed ward.

5. Determine whether a guardianship is necessary for the proposed ward, and evaluate alternatives to guardianship supports and services available to the proposed ward that would avoid the need for guardianship.

6. If the guardian ad litem recommends that the appointment of a guardian of the person and/or estate is necessary for the proposed ward, the guardian ad litem is to identify and interview any proposed guardian to determine if the proposed guardian is disqualified, unsuitable, bad or if there is a conflict that render the proposed guardian unsuitable, or if the appointment of the proposed guardian would not be in the best interest of the ward.

7. Review relevant financial and medical records, and seek Court approval for access to records and/or the appointment of experts to evaluate the proposed ward and/or to review financial information.

8. File a report for the court detailing what you have done in the case and addressing the requirements outlined in the order appointing guardian ad litem and any other information that may be of benefit to the Court.

9. Submit an order for payment of fees separate from the order appointing guardian.

Rule 4.3 Fee application and payment

1. Attorneys (including but not limited to attorneys ad litem, guardians ad litem, and counsel retained by a guardian) and other professionals seeking payment from the estate of a person under guardianship shall obtain approval of fees and expenses prior to seeking payment from the person's estate.
2. If the case is a private pay case, the ad litem and applicant's attorney should attempt to reach an agreement regarding a reasonable compensation prior to the hearing on the application.
3. If the case is a county pay case, attorney fees will be paid at $125/hour and legal assistant fees will be paid at $60/hour.
4. A separate fee order must be submitted by the ad litem regardless of who is responsible for payment.
5. In cases where fees are paid by the guardianship estate, the court will consider the assets of the ward's estate when determining the hourly rate of court-approved compensation.

Part 5: Applicant's Attorney

Rule 5.1 Qualifications

Every person acting as an attorney in a guardianship case must have taken and completed the Guardianship Ad Litem Certification through the State Bar of Texas and have presented such certification to County Court at Law #1.

Rule 5.2 Duties

The applicant's attorney is required to do the following prior to the hearing on the application:

1. Provide notice to all necessary parties, including personal service on the proposed ward, unless the proposed ward is under the age of 12 years.
2. File an affidavit with proof of deliver of required notices.

3. Submit the following information to the Judicial Branch Certification Commission via the JBCC's website at https://jbcctexas.txcourts.gov:
    (a) The name, and all former names, of the proposed guardian;
    (b) The proposed guardian's physical address and mailing address if different, telephone number, email address, and other contact information, if any;
    (c) The proposed guardian's attorney's physical address and mailing address if different, telephone number, email address, and other contact information;
    (d) The name, sex, and date of birth of the proposed ward;
    (e) Whether the proposed guardianship is of the person, the estate, or both;
    (f) Whether the proposed guardianship is based upon incapacity or minority of the proposed ward;
    (g) The estimated value of the liquid assets of the proposed ward's estate;
    (h) The name of the court with jurisdiction over the guardianship proceeding; and
    (i) Whether the proposed guardian is a certified guardian, attorney or a corporate fiduciary.

4. Review with the applicant what would disqualify the applicant from serving as guardian, and confirm that the Applicant for guardianship is not disqualified or otherwise prohibited from serving as guardian.
5. Unless the proposed guardian is seeking an initial appointment as a temporary guardian for no longer than 60 days, subject to the restrictions specified in § 155.204(b)(2) of the Government Code, or is a certified guardian, attorney, or a corporate fiduciary, the proposed guardian must have taken the guardianship training provided by the JBCC's website more than 10 days before the court's hearing to consider the proposed guardian's appointment. Proof of completion of the training must be provided at the time the setting request for the hearing on the guardianship application is submitted.
6. All proposed guardians other than attorneys, certified guardians or corporate fiduciaries are subject to a criminal background check. The JBCC website contains instructions for completing the background check. The background check must be delivered to the clerk of the court at least 10 days before the hearing on the application for guardianship.
7. Admit the CME at the hearing and insure that it is from a Texas physician who has examined the proposed ward and is not dated earlier than 120 days before the filing of the application.
8. Review the order granting guardianship for the following:
    a. The order makes all the necessary findings,
    b. The order states the level of incapacity (total or partial),
    c. The order specifically determines the proposed ward's capacity to make decisions on residence, vote in a public election, drive a vehicle and consent to marriage,
    d. If the guardianship is based on total incapacity, does the order give the guardian full authority over the person and/or estate?
    e. If the guardianship is for partial incapacity, does the order state what rights are retained by the proposed ward with or without supports and services,
    f. If a guardianship of the estate is established, that the order sets a monthly allowance for education and/or maintenance of the proposed ward,
    g. The order sets the amount of bond required at a corporate surety or cash bond for the guardian of the estate in the amount of the proposed ward's personal property plus income for one year pursuant to 1105.154,
    h. The order states the name of the guardian and does not name two people to serve as guardian of the person or guardian of the estate unless they are married or managing conservators of the

proposed ward. One person may be guardian of the person and another may be guardian of the estate.

i. The order includes the Notice to Peace Officers in bold print,
j. The ad litem is discharged.

9. Have the applicant fill out a personal information sheet and submit it at the hearing. The personal information form can be found on the Court's website or may be obtained by calling the court in which the case is pending. The personal information sheet will be kept by the Guardianship Attorney for the County Courts at Law and will not be placed in the Court's file.
10. Carefully review the duties and responsibilities of the guardian contained in the Court's Instructions for Guardian on the Court's website with the applicant. Submit a signed copy of these instructions at the hearing.
11. Make sure the bond complies with the court's order. Bonds must be a minimum $1,000.00 corporate surety bonds unless extenuating circumstances apply. Bonds for a guardian of the estate must be the approximate value of the personal property of the estate plus 10%. A safekeeping agreement may be used to lower the amount of the bond required to be posted. The approved safekeeping agreement can be found on the Court's website or may be obtained by calling the court in which the case is pending.
12. Seek approval of a monthly allowance.
13. Make sure the guardian has filed an Oath within 20 days of the date the order granting guardianship is signed by the judge. Make sure the court approves the bond.
14. A sworn inventory is due within 30 days of the guardian's qualification.
15. Letters of guardianship of a person will not be renewed unless the court approves the annual report of the person.
16. Letters of guardianship of the estate will not be renewed unless the court approves the annual account.

Failure to timely file the guardian's oath, bond or inventory will result in the dismissal of the guardianship without notice by the court and will necessitate the filing of a new guardianship case.

5.3 Duration of Representation

The applicant's attorney shall remain the attorney of record unless:

a. A motion to substitute is filed and approved by the Court,
b. A motion to withdraw is filed and approved by the Court, or
c. A Notice of Death of Ward is filed along with a Final Annual Report and/or a Final Accounting approved by the Court. A verification of the transfer of all guardianship estate assets to the personal representative of the deceased Ward shall be included.

Part 6: Filing of Inventories, Annual Reports and Annual Accountings

6.1 Time for filing

All inventories, annual reports of the person and annual accountings shall be filed according to the requirements, form, and deadlines designated in the Texas Estates Code. No reminders are sent by the Court. Annual Reports and Annual Accounts are filed as two separate documents and each document requires it's own order.

6.2 Contents and Attachments of Inventories

Inventories shall be filed in compliance with Chapter 1154 of the Texas Estates Code. Inventories should contain all assets, real and personal, owned by the ward at the time the guardianship is created. An inventory form can be found on the Court's website or can be obtained by calling the court in which the case is pending. Each type of asset listed must be described in sufficient detail to inform the Court of the location of the asset. If the asset is real property, the legal description of the asset along with the street address (if one exists), must be included, along with the value of the real property. Financial assets must include the name of the financial institution, last four digits of the account number, and the value of the asset on date of qualification. Personal property must be listed and valued. If requested by the Court, personal property with a value in excess of $10,000.00, either individually or cumulatively, must be appraised with the appraisal submitted to the Court. The Court expects the Inventory to have a separate schedule enumerating detail regarding the asset(s) sufficient to advise the Court as to the nature and extent of the referenced asset.

6.3 Annual and Final Accountings

Annual accountings should be prepared in accordance with Chapter 1163 of the Texas Estates Code. The format of the accounting can be found on the Court's website or can be obtained by calling the court in which the case is pending. The format for listing of assets in an annual accounting shall be consistent with the detail described in Paragraph 6.2 above for inventories. A first annual accounting must begin with the assets reported in the guardian's inventory, and each subsequent accounting must begin with the final assets reported in the prior accounting. When accounting for financial account activity, the accounting must 1) specify the balance in each account at the beginning of the accounting period, 2) the total deposits in each account with a separate schedule enumerating each deposit that comprises the total sum of deposits, 3) the total expenditures in each account with a separate schedule enumerating each expenditure that comprises the total sum of expenditures, and a final balance for that account at the end of the accounting period. The expenditures in the estate should coincide with the previously submitted and approved allowance and expense approval. Any deviations from prior Court-approved expenses must be explained in detail with a request for retroactive approval of the expenditures by the Court, and are subject to denial by the Court. Supporting documentation for the accounting is not to be filed with the County Clerk. Documentation is to be delivered to the court in which the case is pending. Once the documentation has been reviewed, and the accounting approved, the supporting documentation will be returned to the guardian or the guardian's attorney. The Guardian must request adjustment of the bond consistent with the reported assets of the estate, and in the event of a final accounting, must request discharge of the guardian's bond and a refund of a cash bond to the guardian if a cash bond is filed with the county clerk

6.4 Annual Reports

The annual report must be in compliance with Texas Estates Code §1163.101 *et seq.* The format for the annual report can be found on the Court's website or can be obtained by calling the court in which the case is pending. The annual report must be completed in its entirety and must cover a 12-month reporting period that begins on the date or the anniversary date the guardian of the person qualifies to serve (unless otherwise modified by the Court) to be considered for approval by the Court. The annual report will not be considered for approval until the Court's staff, or person designated by the Court, has personally visited with the person under guardianship, or an alternative to a personal visit is approved by the Court in advance.

6.5 Notification to the Court

Regardless of whether a guardianship of the person, guardianship of the estate or both, the Court must be notified of a significant change in circumstances of the ward within 7 days of the change. Such changes include, but are not limited to change of residence, travel outside of the jurisdiction of the Court, incarceration and/or hospitalization.

Part 7: Handling the Ward's Finances

7.1 Financial Institutions

The guardian must set up guardianship account(s) with financial institutions for the Ward's money. The Ward's money and the Guardian's money should not be comingled unless the money is community property.

7.2 Investment Plan

The guardian has the duty to invest assets not immediately necessary for the support of the ward or the ward's dependents. Any investment other than in federally insured bank accounts and government bonds require an investment plan that is approved by the Court within 180 days after the guardian's qualification.

7.3 Sale of estate property

Real and/or personal property in the ward's estate must follow the rules listed in Estates Code for the type of property being sold. **Property cannot be sold or abandoned without prior approval.**

7.4 Monthly Allowance

A monthly allowance shall be established at the time of the creation of the guardianship of the estate or within 30 days the guardian's qualification. Only the items specified in the monthly allowance may be spent without prior court approval.

7.5 Other expenditures

Any amounts not listed in the monthly allowance approved by the Court or that exceed the monthly allowance approved by the Court must be approved by the Court **PRIOR** to payment.

Part 8: Evaluation, Modification or Termination of Guardianship

8.1 Evaluation of Guardianship

The Court is committed to conducting a meaningful evaluation of all guardianship proceedings to determine whether a guardian is performing all of the duties required of the guardian as required by Chapter 1201 of the Texas Estates Code. Counsel should be thoroughly familiar with the obligations imposed on the Court to annually examine the well-being of each ward, the solvency of the guardian of the wards estate, the adequacy and solvency of the guardian's bond, and the overall status of the person and proceeding before the Court. To that end, counsel and the guardian are under an ongoing obligation to advise the Court of any conditions or circumstances that become known to either counsel or guardian at any point in the proceeding that would impact on the condition of the person or estate under Court supervision.

8.2 Annual Determination to Continue, Modify, or Terminate Guardianship

The Court has assigned its guardianship attorney to assist in the annual determination of whether a guardianship should continued, modified, or terminated. All guardians and counsel are under an ongoing obligation to notify the Court of any circumstances or events that would warrant consideration of the need to continue, expand, modify, or terminate a guardianship proceeding. All guardians and counsel shall facilitate communications between a person under guardianship and the Court so that the person has the opportunity to express any concerns, dissatisfaction, or changes desired within the context of the guardianship and/or the actions of the guardian. All guardians and counsel are under an ongoing obligation to seek modification or termination of a guardianship proceeding as mandated in Chapters 1202 and 1203 of the Texas Estates Code.

8.3 Re-evaluation of the Ward

The Court may request that a new CME be conducted and submitted to the Court. The new CME may be used to continue, expand, limit, modify or terminate the guardianship.

Part 9: Dismissal for Want of Prosecution

9.1 Case Selection

The following cases are eligible for dismissal for want of prosecution under this chapter pursuant to T.R.C.P. 165a:

(a) Cases on file for more than 180 days in which no answer has been filed.
(b) Cases which have been on file for more than twelve months and are not set for trial and have had no filings or settings within 180 days.
(c) Cases in which a party or party's attorney has failed to take any action specified by the Court.
(d) Any other good cause designated by the Court.

Additionally, the Court may dismiss proceedings pursuant to Texas Estates Code §1204.131 *et seq.* of the Texas Estates Code.

9.2 Notice

Pursuant to Rule 165a, T.R.C.P., the Court shall give notice to attorneys and any other party of record in writing that certain cases will be dismissed for want of prosecution. Such matters will be dismissed on the date indicated in the notice of dismissal, or at any time thereafter, if the required action has not taken been.

Part 10: Contested Proceedings/Mediation

Absent extenuating circumstances and/or a valid objection filed by counsel and sustained by the Court, the Court will refer a contested proceeding to mediation upon notification of a contest or at the earliest possible juncture in the proceeding to minimize conflict and expense to the proposed ward and his/her estate.