

Duties of the Attorney Ad Litem in Guardianship

- 1) review the Application, certificates of physical, medical and intellectual examination and all the relevant medical, psychological and intellectual testing records of the Proposed Ward;
- 2) personally interview the Proposed Ward;
- 3) 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;
- 4) 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).
- 5) file an Answer that states whether the Proposed Ward objects to the guardianship or the Proposed Guardian, or both as soon as possible;
- 6) visit with the Guardian Ad Litem or the Court Investigator concerning the Application;
- 7) 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."
- 8) 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.

REQUIREMENTS OF APPLICANT IN GUARDIANSHIP

- 1) Application with Contents pursuant to 1101.001
- 2) Certified Medical Examination
 - a) Must be conducted w/1 120 days of filing of application.
 - i) Exception for mental retardation (24 months)
 - ii) DMR must be completed for MR ward. Sec. 1101.104
- 3) Notice
 - a) Posting required. Sec. 1051.102
 - b) Personal service to the following. Sec. 1051.103
 - i) proposed ward.
 - ii) Proposed guardian, if not applicant. (may waive)
 - iii) Spouse. (may waive)
 - iv) Parent. (may waive)
 - v) Court appointed conservator. (may waive)
 - c) Service by mail or CMRR. Sec. 1051.104.
 - i) Adult children.
 - ii) Adult siblings.
 - iii) Nursing home admin. or operator of residential facility.
 - iv) Holder of POA.
 - v) Anyone designated as guardian under Sec. 1104.202 or 1104.152.
 - vi) Any other "next of kin" 1101.001(b)(11) or (13).
 - vii) Affidavit of notice on file (10 day rule). Sec. 1051.104.
- 4) Persons disqualified to serve as guardian. Sec. 1104.351-1104.358
 - a) Minors
 - b) Notoriously bad people
 - c) Incapacitated persons
 - d) Parties to lawsuits affecting proposed wards welfare
 - e) Persons indebted to the proposed ward
 - f) Persons with an adverse claim to the proposed ward
 - g) People who lack experience, education or judgment
 - h) One found to be unsuitable to the court
 - i) One expressly disqualified under sec. 1104.202
 - j) A nonresident who has not designated as resident agent