

# JUDGE GUY HERMAN

TRAVIS COUNTY PROBATE COURT NO. 1

1000 Guadalupe Street-P.O. Box 1748

Travis County Courthouse, Room 217

Austin, Texas 78767

Phone: (512) 854-9258

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<http://www.co.travis.tx.us/probate>



**TO:** All Attorneys Practicing Before the Travis County Probate Court No.1

**RE:** Operating Procedures for the Court's New Uncontested Guardianship Docket

**DATE:** August 9, 2011

**NEW:** *Important note: With its new uncontested guardianship docket, the Court is meticulously checking the content of guardianship applications against the content requirements listed in Texas Probate Code § 682. Please look at all of your templates and sample applications and make sure they include everything required by statute. (See the checklist on page 4.) If you do not update your templates and samples, you may discover that an application form we've accepted in the past may need to be amended because it does not include everything the statute requires.*

## **THE UNCONTESTED GUARDIANSHIP DOCKET**

Based on the success of the Tuesday and Thursday morning uncontested probate dockets, the Court has established a weekly uncontested guardianship docket on Thursday mornings following the uncontested probate docket. The Court will set and hear up to six cases every Thursday morning from 10:00 a.m. until 12:00 p.m., with cases divided into two groups:

- **Attorneys and clients for the first group of up to three cases must arrive no later than 10:00 a.m. to watch the guardianship video and complete the guardianship paperwork.** Immediately thereafter, the Court will call those cases. Attorneys may contact the Court for a slightly later arrival time if a client will have already seen the video at the attorney's office.
- **Attorneys and clients for the second group of up to three cases must arrive no later than 11:00 a.m. to watch the guardianship video and complete the guardianship paperwork.** Immediately thereafter, the Court will call those cases. Attorneys may contact the Court for a slightly later arrival time if a client will have already seen the video at the attorney's office.

In creating this docket, the Court seeks to increase the Court's efficiency, helping ensure that guardianships are created timely to protect the wards' best interests. See the following pages for information about which cases to set on the uncontested guardianship docket and procedures for the docket.

## CASES TO SET ON THE UNCONTESTED GUARDIANSHIP DOCKET

Cases should be set on the uncontested guardianship docket when **the applicant's attorney and the attorney ad litem agree**:

1. The case does not have any contested issues regarding the incapacity of the proposed ward.
2. The case does not have any contested issues regarding the scope of the guardianship.
3. There are no objections to the admissibility of the physician's certificate that will be offered by the applicant.
4. **NEW:** The physician's certificate clearly supports the scope of the guardianship being sought.
5. **NEW:** There is nothing in the file that suggests less restrictive alternatives might be available. *(If less restrictive alternatives might be available, the Court will not be able to investigate within the timeframe required by uncontested guardianship docket procedures.)*
6. The case does not have any contested issues regarding the suitability of the applicant(s) to serve as guardian(s).
7. The case can be prosecuted in no more than 15 to 20 minutes.

When determining if a case is appropriate for the uncontested guardianship docket, counsel should consider the following:

- the nature and extent of the proposed ward's general intellectual and physical functioning;
- the extent of the proposed ward's incapacity;
- the ability of the proposed ward to make responsible and informed decisions and to manage his or her personal and financial affairs prudently;
- the impact of the proposed ward's incapacity on his or her ability to carry out daily living activities;
- the type and scope of guardianship necessary to promote and protect the proposed ward's best interests;
- the ability of the proposed ward to participate meaningfully in the guardianship proceeding; and
- the desire of the proposed ward to appear at the hearing.

## PROCEDURES FOR THE UNCONTESTED GUARDIANSHIP DOCKET

1. **Deadline to request a hearing.** Once counsel agree that a case should be set on the uncontested guardianship docket (see above), the applicant's attorney must contact Court Coordinator Tanya Scanlon at 512-854-9258 to set the hearing. The attorney must call ***no later than 12:00 p.m. on Monday the week before the requested hearing.*** For example, a hearing on the Thursday, April 28 uncontested guardianship docket must be set by noon on Monday, April 18.
2. **Court review of filed Application.** The Court's guardianship staff will review the written application to determine whether it includes everything required by Texas Probate Code § 682. ***Before you file an application, please look at the checklist on page 4 and make sure the application includes everything required by the statute.*** The Court will check applications meticulously and will require amended applications if any statutorily required

information is missing. Depending on the amendment, the application may need to be re-posted and re-served. If the application is missing any required information, Court staff will contact the applicant's attorney at least a week before the hearing (barring emergencies).

3. **Court Investigator's initial review.** The Court's guardianship staff will review the file to determine whether less restrictive alternatives are available. The Court Investigator will submit a written report to the Court regarding the review of the guardianship application. After the Court has reviewed the written report and has approved or modified the report, Court staff will fax copies to the applicant's attorney and the attorney ad litem. ***The report will be sent to the attorneys as soon as possible before the scheduled hearing (at least a week before the hearing whenever possible).***
4. **Hearing checklist.** Along with the written report, Court staff will send the applicant's attorney and the attorney ad litem a written checklist identifying the documents that have been filed as well as those that still must be filed before the Court may act upon the application (medical certificate, service, notice, waivers, answer, etc.). A draft of the written checklist is provided for your review.
5. **Deadline for filing missing documents.** As a general rule, all missing documents identified in the checklist must be received by the Court ***by 10:00 a.m. on the Monday before the scheduled Thursday hearing.*** If the Court faxes the report and hearing checklist to the attorneys within a week of the hearing, the fax may indicate a slightly later deadline. Documents may be hand-delivered to the Court or emailed to [michael.gianotti@co.travis.tx.us](mailto:michael.gianotti@co.travis.tx.us). If you file the originals of any missing documents, you must also deliver a file-stamped copy of the document directly to the Court. ***Indicate the date and time of the hearing in the subject line of any emails or on a Post-It note or cover sheet attached to any hand-delivered documents.***
6. **Required electronic, editable version of proposed Order.** As soon as possible – and no later than ***10:00 a.m. on the Monday before the Thursday hearing*** – applicant's attorney must email an electronic, editable version of the proposed Order to [michael.gianotti@co.travis.tx.us](mailto:michael.gianotti@co.travis.tx.us). Word preferred, but WordPerfect is acceptable. The Court will often prepare the final guardianship order, but having a draft electronic version saves significant time.
7. **Court Investigator's final review.** The Court's guardianship staff will review the file ***by the end of business on Monday the week of the hearing*** to ensure that the Court has received all documentation necessary for the hearing to proceed that week. ***If the file is not complete, the Court may pull the case from the docket and notify counsel.***

### **INVITATION FOR COMMENTS FROM PRACTITIONERS**

The Court welcomes comments and suggestions from those members of the bar who practice before this Court. Please direct comments and suggestions to

Court Investigator Tom Ruffner at 512-854-4978 or [tom.ruffner@co.travis.tx.us](mailto:tom.ruffner@co.travis.tx.us)

or

Court Administrator Christy Nisbett at 512-854-9559 or [christy.nisbett@co.travis.tx.us](mailto:christy.nisbett@co.travis.tx.us).

**NEW:** Application checklist for Cause No. C-1-PB-\_\_\_\_ - \_\_\_\_\_, Guardianship of \_\_\_\_\_

- Application is sworn to by the applicant (with an effective jurat)

**In all cases, application states:**

- Proposed ward's full name, sex, date of birth, and address. (§ 682(1))
- Name and address of any person or institution having the care and custody of the proposed ward. (§ 682(7))
- Name, relationship to proposed ward, and address of the person the applicant desires to have appointed as guardian. (§ 682(2))
- If applicable, that person to be appointed as guardian is a private professional guardian certified as required by the Government Code, who has complied with the requirements of Section 697 of this code. (§ 682(14))
- Interest of the applicant in the appointment. (§ 682(5))
- Whether seeking guardianship of the person or estate, or both. (§ 682(3))
- Facts requiring that a guardian be appointed. (§ 682(5))
- Nature and degree of the alleged incapacity. (§ 682(4))
- Specific areas of protection and assistance requested. (§ 682(4))
- Limitation or termination of rights requested to be included in the court's order of appointment, including a termination of (A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and (B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code. (§ 682(4))
- Nature and description of any guardianship of any kind existing for the proposed ward in any other state. (§ 682(6)) *If none, please indicate.*
- Approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled. (§ 682(8))
- Name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney. (§ 682(9)) *If none, please indicate.*
- Facts showing that the court has venue over the proceeding. (§ 682(13))

**If proposed ward is an adult, application states:**

- If known by applicant, (1) the name of the proposed ward's spouse, if any, and (2a) the spouse's address or (2b) that the spouse is deceased. (§ 682(12)(A)) *If any information is not known, please indicate.*
- If known by applicant, (1) the name of each of the proposed ward's parents and (2a) each parent's address or (2b) that the parent is deceased. (§ 682(12)(B)) *If any information is not known, please indicate.*
- If known by applicant, (1) the name of each of the proposed ward's siblings, if any, and (2a) each sibling's address or (2b) that the sibling is deceased. (§ 682(12)(C)) *If any information is not known, please indicate.*
- If known by applicant, (1) the name **and age** of each of the proposed ward's children, if any, and (2a) each child's address or (2b) that the child is deceased. (§ 682(12)(D)) *If any information not known, please indicate.*
- If the proposed ward's spouse and each of the proposed ward's parents, siblings, and children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's next of kin who are adults. (§ 682(12)(E))

**If proposed ward is a minor, application states:**

- Whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding. (§ 682(11))
- If known by applicant, (1) the name of each parent of the proposed ward and (2a) each parent's address or (2b) that the parent is deceased. (§ 682(10)(A)) *If any information is not known, please indicate.*
- If known by applicant, (1) the name **and age** of each sibling, if any, of the proposed ward and (2a) each sibling's address or (2b) that the sibling is deceased. (§ 682(10)(B)) *If proposed ward has no siblings or if any information is not known, please indicate.*
- If each of the proposed ward's parents and siblings are deceased, the names and addresses of the proposed ward's next of kin who are adults. (§ 682(10)(C))

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To: \_\_\_\_\_, Applicant’s Attorney, Fax # \_\_\_\_\_

\_\_\_\_\_, Attorney ad Litem, Fax # \_\_\_\_\_

Date: \_\_\_\_\_ Total pages: \_\_\_\_\_ (checklist and report)

From: MICHAEL GIANOTTI, GUARDIANSHIP COORDINATOR Phone: 512-854-4359

**HEARING CHECKLIST FOR UNCONTESTED GUARDIANSHIP DOCKET**

CAUSE NO. C-1-PB-____ - _____	
PROPOSED WARD’S NAME _____	
HEARING DATE _____	HEARING TIME _____
DATE REVIEWED _____	
Case Type	
Guardianship / 867 Trust – Adult	Guardianship / 867 Trust – Minor
<input type="checkbox"/> Guardianship Adult Person only <input type="checkbox"/> Guardianship Adult Estate only <input type="checkbox"/> Guardianship Adult Person & Estate <input type="checkbox"/> Guardianship Adult Temporary <input type="checkbox"/> 867 or QIT Trust Adult <input type="checkbox"/> 881 Appointment of Non-Resident Guardian – Adult <input type="checkbox"/> 883 Incapacitated Spouse; Community Property	<input type="checkbox"/> Guardianship Minor Person only <input type="checkbox"/> Guardianship Minor Estate only <input type="checkbox"/> Guardianship Minor Person & Estate <input type="checkbox"/> Guardianship Minor Temporary <input type="checkbox"/> 867 Trust Minor <input type="checkbox"/> 881 Appointment of Non-Resident Guardian – Minor
Circle if applicable:    DADS            Family Eldercare	

The Court has reviewed the file for the above-referenced cause. This fax includes a hearing checklist and the Court Investigator’s report. The checklist identifies the documents that have been filed as well as those that still must be filed before the Court may act on the application. If we have noted that certain documents are missing, please provide them to us ***no later than 10:00 a.m. next Monday (the week of the scheduled hearing)***. Documents may be hand-delivered to the Court or emailed to [michael.gianotti@co.travis.tx.us](mailto:michael.gianotti@co.travis.tx.us). If you file the originals of any missing documents, you must also deliver a file-stamped copy of the document directly to the Court. ***Indicate the date and time of the hearing in the subject line of any emails or on a Post-It note or cover sheet attached to any hand-delivered documents.***

★ ***If we do not receive all missing documents (if any) by the deadline, the Court may pull the case from the docket and notify counsel that the case will need to be rescheduled.***

**Hearing Checklist continued, Cause No. C-1-PB-\_\_\_\_\_ - \_\_\_\_\_**

	YES	NO	NOTES
APPLICATION COMPLETE ..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
(See separate checklist)			

PERSONAL SERVICE ON WARD..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
(Ward <b>MUST</b> be personally served by constable – service by certified mail or by any other method is not acceptable – Texas Probate Code § 633)			

<u>§ 633(c)</u>	YES	NO	N/A	NOTES
mother..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
father..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
conservator..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
spouse..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
non-applicant guardian..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

<u>§ 633(d)</u>	YES	NO	N/A	NOTES
adult children..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
adult sibling..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
facility administrator..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
agent / attorney-in-fact..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION (PCME)	YES	NO	N/A	NOTES
(Use the 12/06/2010 revision of the form, available on the court's website.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

**OR**

DETERMINATION OF MENTAL RETARDATION REPORT (DMR)	YES	NO	N/A	NOTES
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

	YES	NO	N/A	NOTES
AD LITEM ANSWER..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
AD LITEM REPORT..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
PAUPER'S AFFIDAVIT..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
AD LITEM DEPOSIT ON FILE (\$375/\$450)... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
COURT INTERPRETER NEEDED..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
RESIDENT AGENT..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
OATH..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Email / phone call to attorney about bond..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

ELECTRONIC, EDITABLE VERSION OF PROPOSED ORDER	YES	NO	N/A	NOTES
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
For guardianships of the estate only, § 776 allowance provision in Order..... <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____