



# GUARDIANSHIPS

If you would like a traditional legal paper on Guardianships, stop reading now. Go to the resource section where I have listed papers I have found helpful.

This paper is meant to be a practical, common sense paper on Guardianships. It will give you an overview of how one attorney evaluates Guardianships; a step by step process for initiating Guardianships; and, some tips about things that I have discovered.

Before you file a Guardianship or take a Guardianship client, I suggest that you consult the Texas Probate Code. Though I have tried to be accurate about the law, there are many editorial comments, thus you must use your judgment when evaluating a case or preparing documents.

## **A.**     **RESOURCES**

1.     Forms
  - a.     The best forms for a routine Guardianship are available from the Texas State Bar's Guardianship manual.

## **B.**     **OVERVIEW**

1.     EVALUATION OF THE CASE AND ALTERNATIVES TO GUARDIANSHIP
2.     THINGS TO DO BEFORE FILING AT THE COURTHOUSE
3.     THINGS TO DO AFTER FILING AT THE COURTHOUSE
4.     AN UNCONTESTED HEARING
5.     QUALIFYING THE GUARDIAN
6.     ADMINISTRATION AND ANNUAL REPORTING

## **C. EVALUATION OF THE CASE AND ALTERNATIVES TO GUARDIANSHIP**

### **1. Meet with the client**

The first step is to evaluate who is your client: the guardian or the proposed Ward. If you believe there is incapacity it is the proposed Guardian. It will be the proposed Guardian and other family members who provide the information for your application. Remember the Ward will have court appointed counsel and if you are questioning capacity, then do not contract with the soon to be alleged incapacitated person. If there is a guardianship on file and an ad litem appointed, then capacity has been called into question and it is likely that your contract with the proposed Ward would be questioned and your fees would be at stake.

**TIP:** *I generally do not meet with the proposed Ward until the Attorney Ad Litem has been appointed and I have the permission of the Attorney Ad Litem, or the Attorney Ad Litem is present at the interview. Often, I will go with the Attorney Ad Litem on their initial visit. The ethical line is rather slim. Although the proposed Ward is not represented in the initial phase of Guardianship, the proposed Ward will be represented once the Court investigator has done her investigation and before the Guardianship can be pursued. Additionally, the proposed Ward is probably not competent to decide if they should talk with you.*

The proposed Guardian or other family members will provide you with background information. They generally come to us because there is a crisis or event. Something has happened to an older person: the proposed Guardian visited Mom or Grandma and discovered that her former life is in shambles; a child or family member with special needs is not being properly cared for; or, a child or family member with special needs is turning eighteen. Often times families underestimate the severity of incapacity as they are in denial or have been watching the change gradually or they do not understand that incapacity is more than memory loss.

The first step is to evaluate if a Guardianship is truly needed. Ask yourself if there are any alternatives of a less restrictive nature. Explore these with your potential client. The Texas Probate Code (The Code), Section 602 requires that we seek the least restrictive alternative. This may mean making an evaluation regarding a proposed Ward's ability to execute health care directives, financial powers of attorney and trusts. It may mean using surrogate decision-making, Consent to Medical Treatment, 313.002 et seq., Health and Safety Code (1996), which enables a spouse, family member or clergy to make health care decisions.

Searching for alternatives may mean reviewing living arrangements like a retirement community or group home. Many of these solutions will depend on the proposed Ward's relationships with the family, neighbors and friends. Or, in the case of people with special needs, solutions may depend on the cooperation of group home providers, etc. If the proposed Ward cooperates, the Guardianship may be avoidable.

Sometimes a simple call, a family meeting or the intervention of a minister or a trusted advisor, can eliminate the need for a Guardianship.

Many of the pre-Guardianship solutions can be tried without our intervention and can save the client thousands of dollars. Additionally, under section 867 of the Texas Probate Code, a management trust at any time during a proceeding.

Review with your proposed client what types of decisions are needed. Are they financial or are they personal and health care decisions. Where is the proposed Ward living and is the proposed Ward cooperative with efforts to assist him or her.

When discussing the need for a guardianship review with the client if the proposed Ward has executed any of these documents.

If the proposed Ward has executed these documents, explore if they can be used rather than a guardianship. Sometimes a telephone call or letter from an attorney will give the nudge that is needed to the physician or financial institution that refuses to recognize the documents.

Health care decisions are often made on an informal basis. They can be made by family members in conjunction with the older person and the treating physician, if health care directives are not in place. There is a statutory procedure in place to formalize the medical decisions reached through this process.

When an older person is in a nursing home or hospital, surrogate decision making applies. This is the statutory method of making health care decisions without a guardianship. This act does not apply when the person is living in the community in their own home.

Financial decisions can be made through the use of a power of attorney or a trust. Generally a trust can protect someone's property, by allowing a third party to manage the estate. However, if the estate is not large enough for a corporate fiduciary there may not be a third party that is able to manage the assets or should manage the assets without supervision of the court and the protection of a bond.

## **2. Jurisdiction**

The jurisdiction for Guardianship matters, including suits against or on behalf of the Ward, is a complex matter. You will need to read TPC, Sections 605 through 609, carefully.

Practically speaking, suffice it to say that in Bexar County, Guardianships need to be filed in the Probate Court. If you are considering filing an ancillary suit in connection with a guardianship review the jurisdictional code sections carefully. This has been a very volatile area of the law.

If your Guardianship involves a divorce, adoption, personal injury case, business litigation or any other type of litigation you will need to review The Code (both general Probate and Guardianship), Section 607, and the current case law on The Code, Sections 5A, 5B, and 607.

Sections 5A and 607 are jurisdictional statutes. Sections 5B and 608 grant statutory probate judges the authority to transfer proceedings into their courts when the listed conditions are met. The almost identical language of Sections 5B and 608 require all of the following for authority to transfer a proceeding:

- \* The probate court must be a statutory probate court; and,
- \* There must be a Guardianship Estate pending; and,
- \* A separate cause of action must be pending in a district court, county court or statutory court; and,
- \* This other cause of action must be appertaining to or incident to the Guardianship Estate pending in the statutory probate court.

If you have a proceeding in a statutory probate court and separate proceeding in another court, these statutes may allow consolidation. The catch phrase in both Section 5B and Section 608 that determined your ability to consolidate is “appertaining to or incident to and estate.” To define this phrase, look to the respective counterparts in Section 5A or Section 607.

Before concluding where you are going to file or if you are going to attempt a consolidation of causes of action, check the new case LAW as well as be familiar with standing precedent, including *Palmer v. Coble Wall Trust Co.* and *Seay v. Hall*. This currently is a very volatile area.

Also, note that although Sections 607 and 608 have language very similar to Sections 5A and 5B, the legislature did not make the same amendment to Section 607 as they did to 5A.

### **3. Venue**

The Code, Section 610, allows jurisdiction in either "the county in which the proposed Ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located."

**TIP:** *Guardianships usually flow more smoothly in the county Probate Courts. The judges are more familiar with the law and procedure. Additionally, there is a full-time Investigator on staff in Probate Courts like Bexar County's.*

#### 4. Standing

There are three areas that must be explored to determine if a potential client is eligible to be a guardian. The first is standing.

Any person has standing to commence a Guardianship action or proceeding under The Code, Section 642 (a) unless they have an interest that is adverse to the proposed Ward. If the interest is adverse, the person may not file an application, or contest the creation of a Guardianship or the appointment of a person as a Guardian. A person with an adverse interest could be a creditor, or a person who owes the proposed Ward money, or who is a party in a lawsuit in which the Ward is also a party, etc.

If a person or entity cannot bring a Guardianship action they may not contest the guardianship either. To determine who has standing, check Section 642 carefully. It should be read in conjunction with Sections 642, 677 and 681. Section 677 sets out who the court can appoint as Guardian. It gives consideration to both the circumstances and the best interests of the ward. This section also specifies who has priority for appointment if more than one person seeks the appointment and is deemed eligible.

This makes it difficult in a situation where the ward is in a nursing home and the bill is not being paid. Some options are to convince a third party to bring the guardianship; or bring the issue before the court; or call Adult Protection Services - the creditors are not as likely to receive a sympathetic ear but where someone's safety is jeopardized these options can work.

Another factor which may cause a conflict is if the proposed Guardian is or may be a party to a law suit to which the proposed Ward is also a party. For example, if the guardianship is caused by an accident the spouse may also have a cause of action. This would make the proposed Guardian a party to the same suit. A conflict could and does arise when settlement proceeds are allocated. TPC 681 (4) that a guardian ad litem may be appointed by the court to represent the Ward's interest in the suit. This eliminates the conflict between the parties.

The issue of an adverse interest may mean a claim which the estate may have against a proposed guardian. Such a claim may be something like a loan. If the loan is paid back prior to qualifying the "adverse" interest is eliminated, see, Carney B. Aicklen, 587 SW2 507 (1979).

*Tip. Most families make some sort of loan or gifts through the years. This can be a problem area. Be sure to ask your potential client about this area before you file the guardianship.*

The issue of standing must be addressed before the Court can proceed with any substantive issues. Thus, a motion in limine can be brought to challenge an applicant on standing before addressing a substantive issue.

## 5. Pre-Need Declaration of Guardianship

The second area to review when evaluating a guardianship and a client's eligibility is TPC 677 and the Pre-need Designation of Guardianship is TPC 678.

TPC, section 677 sets out a statutory priority for guardians. The first priority is to the spouse. If there is no spouse or the spouse is ineligible to serve, it is the next of kin; if there is no eligible next of kin the court shall appoint the eligible person who is best qualified to serve as guardian.

In *Adcok v. Sherling*, 923 SW2d 1 (1996) the trial court had disqualified the son as being indebted because of funds which the son stated he held in trust and appointed the ward's niece as guardian because she was the nearest eligible kin. The Appeals court found that holding the funds in trust did not constitute an adverse interest and since there was no adverse interest, the son should be appointed guardian. The appellate court reformed the judgment and appointed the son. The court was clear in its opinion that the statute must be read as a whole. When read as a whole, the court must follow the priority set forth.

If a person has completed a Pre-Need Declaration of Guardianship, The Code, Section 679 (d) states that the person named in the Pre-Need Declaration of Guardianship shall be appointed unless "the Court finds that the person designated in the declaration to serve as Guardian is disqualified or would not serve the best interests of the Ward."

The Pre-Need Declaration of Guardianship allows those who prefer non-family members or a non-statutory priority as set forth in TPC, Section 677, to be appointed before certain statutory priorities. Before filing it is important to check and see if a proposed Ward has signed a preneed declaration of Guardianship. This is often difficult to do as there is no place to file these. The probate clerks do not accept them. They can be filed in the deed records but this is not the common practice.

If the Pre-Need Declaration of Guardianship names your client, you should file it with your application for Guardianship. It can be filed with the Court at any time after the application for appointment has been filed and before the Guardian is appointed. Section 679(d).

The third and final item to review with your client is the statutory disqualifications. TPC, Section 681, specifically names people who are disqualified to serve as Guardians. Before accepting a client, review this section with the client. Also, ask if the proposed applicant has ever been convicted of a crime. Though not all crimes disqualify them from being Guardian, it is best not to have surprises arise as the case develops. In addition, if the proposed applicant expects to file for Guardianship of the proposed ward's estate, ask enough questions to know if the proposed applicant has the capacity to] manage the estate. Courts have generally held that his capacity to manage does not include legal, business or investment expertise but does include enough education and experience to manage the estate properly. *Sue Balckburn v. Gant*, 561 S.W.2d 269 (Tex. Civ. App. --Houston [1st Dist.] 1978). Also, a more recent case also out of

Houston approved a daughter as her mother's Guardian and pointed to factors like previous care the daughter provided to her mother and her mother's affairs, testimony from others supporting the daughter's quality of care provision and a nursing home's testimony that the daughter always paid bills. These factors were enough for the court in *Hill v. Jones*, 773 SW 2d 55 (Tex. App.--Houston [14th Dist.]1989) to find that the daughter had capacity to manage her mother's estate.

If the proposed ward is a minor, Section 680 also applies. Although the Guardianship Code provides a definition of an "interested person" in Section 601 (14), there is a dearth of case law to help interpret this phrase within Guardianship proceedings. *Allison v. Federal Deposit Insurance Corp.*, 861 SW 2d 7 (Tex. App.--El Paso 1993) the court denies a judgment creditor standing as an interested person to challenge an independent administratrix's continued service. A creditor would have a claim against a ward's estate and for this reason would not have standing.

## **6. Commitment vs. Temporary Guardianship vs. Limited Guardianship vs. Guardianship**

### ***a. Commitment***

People with mental illness do not necessarily need a Guardianship, just as the cause of a Ward's need for a Guardianship may not be mental illness. Someone with mental illness may still have the capacity to sign directives and estate planning documents. Once treated, someone with mental illness may be perfectly able to handle all of their personal and business affairs.

**TIP:** *Many mental illnesses can be treated and only short-term protection is needed. In these cases, a commitment may eliminate the need for a Guardianship. It will not protect someone's estate or finances. For this, you must use a Temporary Guardianship.*

### ***b. Temporary Guardianship***

A temporary Guardianship may be brought when there is "imminent danger to the person or property". (the TPC, Section 875, et. seq). The temporary Guardianship must be of a limited nature. It does not mean that the person is incapacitated, and it is only for a limited time period and limited purpose.

A temporary Guardianship is the best method to bring immediate action or halt unwanted action by or against the Ward. It should not be taken lightly. However, it is a very effective tool to halt the action, allow time to evaluate the need, and protect the proposed Ward's person and property.

A temporary Guardianship is the Guardianship equivalent to a temporary restraining order. It goes beyond a restraining order in that it allows the Guardian to take positive action like have a medical evaluation, pay the proposed Ward's bills, move the Ward to a protected environment, etc.

**TIP:** *The Temporary Guardianship Order needs to be carefully crafted to include all of the tools that you believe the Guardian may need between the time the temporary Guardianship goes into place and the time of the full hearing or trial. It is important to try to include the protection measures and guidelines for action while not including any more than you expect to need in the long run.*

**TIP:** *Additionally, the temporary Guardian's bond can be limited by giving the temporary Guardian limited access to funds in specific accounts.*

**c. Limited Guardianship**

The limited Guardianship grants the Guardian only limited powers as specified in the Court order. Often the limited Guardianship will be the least restrictive method.

**TIP:** *The limited Guardianship is a method of allowing the Ward to have dignity by retaining many of their rights while still protecting the person and their assets. The limits may be as simple as requiring the Guardian to consult with the Ward before making a decision, to more detailed limits allowing the Ward to have decision-making authority over a portion of his or her estate.*

**TIP:** *Use the check list in the doctor's report as a potential list of rights and powers the proposed Ward may retain.*

**d. Guardianship**

The full Guardianship gives the Guardian power over all of the Ward's personal care and financial decisions. It supersedes health care directives and powers of attorney, both financial and health. It does not void a trust.

**TIP:** *When the Guardian is a family member who has been dependent on the Ward for major decision-making, the family member often has a hard time accepting the role of Guardian, the decision maker. Though they know that the Ward is incapacitated, they have a hard time accepting the incapacity emotionally. This can cause the Guardian to be indecisive and avoid difficult issues.*

The Guardianship will give a family member or friend the power to make the necessary decisions to protect an incapacitated person. It will not change the family structure or the relationships of family members. Thus though you may be enabling someone to step in and care for an incapacitated person, physically and financially, you will not be curing long-time family problems.



When discussing a Guardianship with a potential client, always review the family structure, the person's mental capacity and all less restrictive alternatives. Guardianships are like brain surgery. They should not be taken lightly.

**D. THINGS TO DO BEFORE FILING AND WHEN FILING AT THE COURTHOUSE**

**1. Application**

Section 682 of The Code outlines the requirements of a Guardianship Application. As mentioned above, the general forms can be obtained from the State Bar of Texas, Guardianship Manual.

**TIP:** *I generally plead for a complete Guardianship of the person and estate even when only planning to proceed for a limited Guardianship or Guardian of the Person. By doing this, should you need to proceed quickly in the future, the service and citation will have taken place. There is no harm at this point to over pleading even though you will proceed with only the Guardianship of the Person or a limited Guardianship.*

**TIP:** *The form I use for interviewing potential Guardianship clients is based on information outlined in Section 682. By doing this, I am not as likely to forget a detail. I also include the information needed for citation.*

The Application must be signed and verified by the Applicant.

**2. Service**

Before filing a Guardianship, it is necessary to determine who must be served with notice and citation of the Guardianship. Carefully review The Code, Section 632 through Section 636. Section 633 tells you who requires service and in what format such service must be effectuated. Be sure to cross reference the precepts set out in Section 633 with the detailed service and citation rules established in Section 632. Do not rely solely on your understanding of the Texas Rules of Civil Procedure as Probate rules differ.

Notice in particular that the proposed ward is the only individual who may never waive notice or personal service of citation under Section 633. In some instances, the attorney ad litem may not waive service either under Section 634. Others to whom you must provide notice or service of citation unless waived are broken down into two distinct groups. See section 633 (c) and 633 (d) for an itemized list of these individuals, but note that the burden in 633 (d) is greater on the person applying for appointment as Guardian. In this subsection, the applicant himself must effectuate service unless he pro-actively requests the court clerk to do so for him.

**TIP:** *It is much more cost effective for your client if you generate the certified notices and provide the certified letters and green cards at the hearing as part of your proof.*

While both 633 (c) and 633 (d) are mandatory in their language, only 633 (d) also has qualifying language which recognizes that notice may not be possible in all individuals listed. TPC Section 633 (f) indicates that failure to comply with 633 (d) (2-4) does not invalidate a Guardianship.

For Guardianships filed on or after September 1, 1997, Section 633 has been amended to add a notice requirement in two additional situation: (1) to individuals named in pre-declaration forms as Guardians; and (2) to individuals designated as the Guardian of a minor in a surviving parent's last will or other written declaration.

**TIP:** *Though you may ask your potential client about pre-need designation of guardian there is no filing requirement or general depository for Pre need declarations. Notice of these people may not be possible because you may not know if the pre-need designation exists. See the general discussion in the next section.*

There is almost a complete lack of case law interpreting service and notice issues in the context of Guardianship; however, if your client finds himself with both a Guardianship and another suit in a district or other court, you might read *Robertson v. Picket*, 900 SW 2d 112 (Tex. App.--Houston [14th Dist.] 1995). *Robertson*, while brief, illuminates questions of service that arise between related cases governed by different statutory law.

**TIP:** *One way of eliminating the notice requirements and keeping costs low is to request that parties who must be notified sign a waiver.*

### **3. Doctor's Report**

It is generally assumed that you will file a doctor's report with your application for Guardianship. As part of the initial interview you will need to find out who the proposed Ward's doctor is and if the doctor will cooperate. Again, the Court has a standard form which can be used by doctors. The old one paragraph letter stating a person is incapacitated is no longer adequate, TPC, Section 687.

**TIP:** *I have turned the Court form into an affidavit. In an uncontested Guardianship you may be able to have this admitted without the doctor being present to testify.*

The doctor's letter must be based on an examination not more than 120 days prior to the filing of the Application and not dated more than 120 days from the filing of the Application. The letter must be written by a medical doctor licensed in Texas. Though it makes sense to use a psychologist, the psychologist's report can only come in through a medical doctor. Additionally, though psychological records are usually more insightful than a medical examination, you cannot

obtain a psychological examination without it being part of a medical examination or by agreement of the ad litem. Read Section 687 (a) (1-6) of the Probate Code for the required contents of the doctor's report. Section 687 (c) sets out special procedures for a doctor's report if the proposed ward is believed to be mentally retarded. This section defers to standards of the Texas Department of Mental Health and Mental Retardation ("TXDMHMR") even to the point of requiring that the examining physician or psychologist be certified by TXDMHMR.

**TIP:** *When you receive your doctor's report double check that the examination is within the statutory time period.*

#### **4. Filing**

Once you have all of the pieces: an application, a verification, and a doctor's report, you are ready to file at the Courthouse.

**TIP.** *When you file your application take the original, your copy, your client's copy, a copy for the clerk for service on the Ward (two if you are filing a temporary Guardianship), and a copy for the Court Investigator. Drop off the copy for the Court Investigator. This will speed up the process.*

### **E. THINGS TO DO AFTER FILING AT THE COURTHOUSE**

#### **1. Service**

TPC, Sections 632-635 outlines service. The proposed Ward must be personally served. Note those who are listed for personal citation in TPC, Section 633(c) and those who must have mailed notice in The Code, Section 633(d).

It generally takes the probate clerks about a day to prepare service.

**TIP:** *Use a private process server. This is cheaper and quicker. However, if you have an in forma pauperis client, the sheriff will do service for free. You will need to check to make sure that service happens.*

**TIP:** *Double check that your certified letters of service are out and your green cards returned early.*

#### **2. The Court Investigator**

The Court Investigator will start her investigation once the Application is filed. The clerks will automatically send the Application to the Investigator.

**TIP.** *If for some reason you are not filing everything at the same time, be sure to take the subsequent pieces to the Court Investigator. The clerks do not automatically send them.*

Once the Investigator has completed her investigation, the Court will appoint an Attorney Ad Litem. Generally, you will receive a form letter letting you know who has been appointed. You must then send the Ad Litem the necessary information.

**TIP.** *In uncontested cases, particularly those in which I am trying to contain cost, I send the ad litem a copy of all of the pleadings, call directly and make arrangements for my client to take the proposed Ward to the Ad Litem's office.*

This process, unless you walk your documents through the Court, usually takes about three to four weeks. During this time, the statutory time period for a Guardianship service to be on file is running. TPC, Section 633(f). Once the Application has been served and the service has been on file for ten days, the doctor's report is ready, the investigator's report completed, the Ad Litem appointed and ready, you may then have a hearing.

#### **F. AT AN UNCONTESTED HEARING**

An uncontested Guardianship hearing will generally take about 30 minutes.

It is necessary for the Ward to be present unless the Court makes a finding to the contrary. If you wish the Court to make this finding it will be done at the beginning of the hearing by having the Ad Litem or the proposed Guardian testify as to why the proposed Ward is not present, and if the proposed Ward were present, would he or she be able to participate in a meaningful manner. The Court may also take notice of the pleadings like the doctor's report.

You are now ready to start the hearing. I am attaching an outline of questions which I use to create a record. I try to review these with the Applicant beforehand. (Please let me see your improvements and let me know of any errors!)

The Court will then take notice of the pleadings and make the appropriate findings.

**TIP:** *At the hearing have the proposed Guardian complete the bond application, the Court information sheet, the Court instruction sheet and sign the oath. DO NOT FILE THEM. Hold all of these documents until you have the bond. File them at the same time so that you can have letters issued immediately.*

## **G. QUALIFYING THE GUARDIAN**

The Guardian has 10 days to qualify. To qualify by statute you must file an oath and bond. Generally, the bond for a Guardian of the person is \$2,000.00. The bond for a Guardian of the estate is a minimum of \$11,000.00. The bond for the estate will be the annual income of the Ward plus the value of the non real estate assets. This amount can be reduced by safekeeping agreements.

The Bexar County Courts will not allow personal recognizance bonds though there are some remaining older Guardianships which do have these. TPC as amended this year added section 702A that provides guidance on what types of bonds are available to Guardians of the person when no Guardianship of the estate is established.

Additionally, the Bexar County Courts require that the Guardian file an information sheet, a Court instruction sheet and a statement regarding the Ward's driver's license.

All of these must be filed in addition to the oath and bond before the Probate Clerks will issue letters of Guardianship.

## **H. ADMINISTRATION AND ANNUAL REPORTING**

### **1. Guardians of the Person**

Once the Guardian has qualified, the Guardian of the person does not need to file anything further until the anniversary date of the Guardianship. On the anniversary date of the Guardianship, the Guardian of the person must file a statement on the Condition and well-being of the Ward.

The Court in Bexar County has developed standard form. This form can be completed and filed with the Court by the client. Generally, clients are able to handle this themselves if you provide them with the form.

### **2. Guardians of the Estate**

The Guardian of the estate must file an annual accounting within sixty days of the anniversary of their appointment (not qualifying). TPC, Sections 741 through 742 outlines all of the requirements for the accounting.

The Bexar County Judges usually instruct Guardians of the Estate that they need to assume that they cannot spend any money until they have Court permission.

Once the Guardianship of the estate is in place, to minimize expenses and questions, I usually ask that the Guardian develop a monthly budget. I then make application for a monthly

allowance. When I request the monthly allowance, I request for all expenses, not just those which exceed the income.

My reason is threefold. First, it sets limits for the Guardian and gives them guidelines for spending. Second, it minimizes the times I need to go to the Courthouse for permission to make expenditures. Third, if the Ward later needs to qualify for Medicaid, the monthly allowance is a Court order for expenditures which must be observed until the person has qualified for Medicaid.

The administration of a Guardianship of the estate is costly. Most clients find it tedious. It is hard for family members to understand why they now must follow the Court's rules rather than family traditions and practices. I have not found a good solution to overcome this problem.

## **CONCLUSION**

Guardianships are radical legal actions and should only be pursued when there are no other avenues open for assisting an incapacitated person. Most of the law for the administration of Guardianship is contained in the Probate Code. The challenge in practicing in the area of Guardianship law is in the solving very personal problems and trying to create customized personal solutions for people who have not planned ahead.