HARRIS COUNTY PROBATE COURTS
Guardianship of The Person and Estate Handbook

Protecting and preserving what we cherish

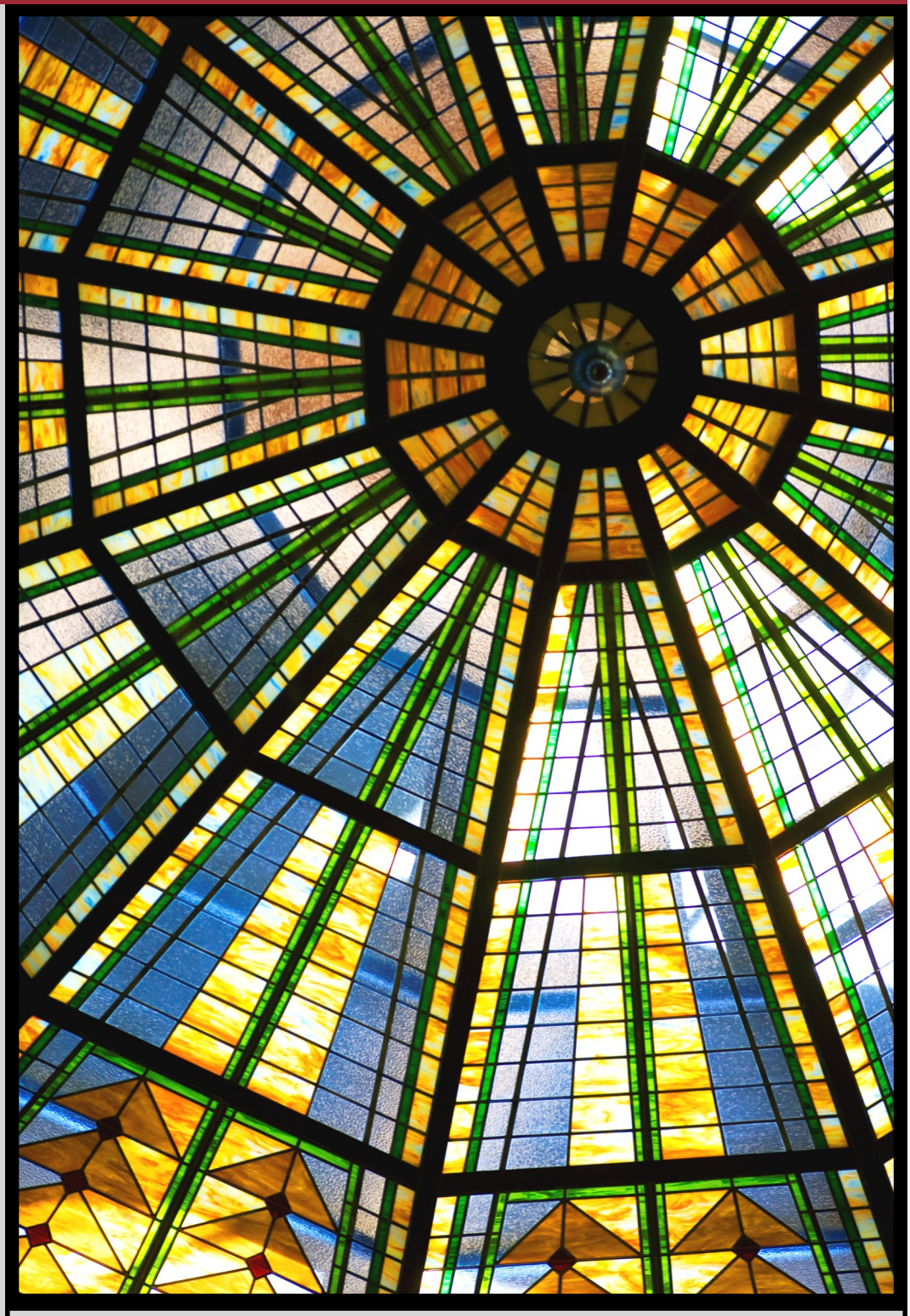
Probate Judges:

Probate Court No. 1
Honorable Loyd Wright

Probate Court No. 2
Honorable Mike Wood

Probate Court No. 3
Honorable Rory Olsen

Probate Court No. 4
Honorable Christine Butts



The art glass skylight featured above is located in the dome of the current Harris County Courthouse which was originally built in 1910, underwent major renovation, and was officially completed in 2011. This skylight was designed to complement the architectural structure of the building, and the original design for the skylight was never located.

A Note from the Judges

Judge Loyd Wright
Probate Court No. 1

Judge Mike Wood
Probate Court No. 2

Judge Rory Olsen
Probate Court No. 3

Judge Christine Butts
Probate Court No. 4

Thank you for accepting your appointment as Guardian. Please take the time to familiarize yourself with this handbook, which serves to outline your duties and responsibilities. The Texas Probate Code allows for the appointment of a Guardian of the Person, Guardian of the Estate, or Guardian of both the Person and the Estate. A Guardian should understand that their actions on behalf of the Ward are governed by Texas law and overseen by the probate court. As a Guardian, you have a fiduciary duty to act on behalf of and in the best interests of the Ward in all decisions relating to the Ward. As a result, Texas law requires that guardians obtain legal representation to help facilitate and guide them through this ongoing process.

The purpose of this handbook is to serve as a reference guide, highlighting specific issues and requirements necessary to be effective in the role of guardian. We hope this information enhances your ability to serve in this capacity in a thoughtful and competent manner. Should you have additional questions or concerns, your attorney and our staff are available to provide assistance.

Protecting and Preserving What We Cherish . . .

Historical photographs featuring Harris County courthouses have been included in this handbook to emphasize our theme of "protecting and preserving what we cherish." Below each photograph is a brief explanation listing facts, background information, and points of interest obtained through Joel Draut, the photo archivist for the Julia Ideson Library. In addition, the recent photography of the renovated courthouse was obtained through Anthony Butts, a local photographer and graphic artist. We would like to express our gratitude to Joel Draut and Anthony Butts for their help in procuring these photographs.

Only four of the five courthouses presented in this handbook are pictured due to controversy regarding the appearance of the first courthouse. All of the courthouses mentioned resided on a block of land known as "courthouse square," located in downtown Houston on Fannin between Congress and Preston. This parcel of land was donated by two brothers, Augustus and John Allen, who were real estate promoters from New York. The deed memorializing the donation states that should anything other than a courthouse be erected on the property, the title to the land would then revert back to Allen family heirs. The brothers determined the area surrounding Buffalo Bayou could be an ideal location to establish a settlement and purchased 6,642 acres on the southern bank of the bayou.

The first of five courthouses to grace this donated plot took the form of a two-story log structure built in 1838. The building was enlarged in 1841, eventually deteriorated, and was sold at auction in 1844. The second courthouse, completed in 1851, consisted of a two-story brick building with four centrally located entrances on each side and a cupola. This courthouse lasted only nine years due to its limited space. New accommodations became necessary, and plans for a third courthouse were undertaken. Construction of Harris County's third courthouse was complete in 1860, and its intended use was postponed due to the commencement of the Civil War. During the war, the two-story Greek Revival building was used as a hospital, artillery storage facility, and a cartridge factory, all of which were located on separate floors.

A fourth courthouse was necessary by 1883 due to rapid deterioration of the antebellum courthouse, which was demolished in 1869. The fourth courthouse was a four-story Victorian Gothic style building, also demolished due to deterioration and replaced with a fifth courthouse built in 1910. The 1910 courthouse, which stands today, was built in a Classical Revival Style using indigenous materials. The historical authenticity and integrity of the building were compromised during a renovation that took place in the 1950's. The courthouse has recently been renovated to its original splendor and is now home to our Appellate Courts.

The renovation of the fifth courthouse inspires us to reflect upon the history of Harris County and take pride in that history, thereby reinforcing the theme of the Guardianship Handbook—protecting and preserving what we cherish.

Guardianship of the Estate

Required Filings with the Court

Texas law permits the appointment of a Guardian for the Ward's person (physical well-being) and the Ward's estate (financial well-being). If your appointment is as Guardian of the Ward's estate, the following filing requirements apply to you:

Bond and Oath

The bond must be filed within twenty days (20) of appointment. An appointee cannot qualify as Guardian and Letters of Guardianship cannot be issued without the court's approval of the bond. The date the bond is approved and the Oath is signed is called the "qualification date."

Inventory, Appraisement, and List of Claims

An Inventory, Appraisement, and List of Claims must be filed by your attorney on your behalf within thirty (30) days of your taking the Oath and the court's approval of bond. The Inventory must list, describe, and declare the value of the Ward's property as of the day the Guardian qualified.

Allowances and Expenditures, Notice of Appointment

Within thirty (30) days of your qualification as Guardian, your attorney must file on your behalf an application requesting monthly or annual allowances to be expended from guardianship funds for the use and benefit of the Ward. Most expenses must be approved by the court, including attorney fees paid from the Ward's estate and cash allowances given to the Ward. Expenses not requiring court approval include: premium for the Guardian's bond, court and filing costs, and the Ward's taxes. In addition, your attorney should publish a Notice of Appointment, printed in the county where letters are issued.

Investment Plan

An investment plan must be filed within one-hundred and eighty (180) days of your qualification as Guardian, unless waived by the court. The court will typically make such determination after the filing of the sworn Inventory, Appraisement, and List of Claims. As Guardian, you are expected to be prudent and exercise good judgment when investing and managing a Ward's estate. Several factors should be taken into consideration when making an investment decision involving the estate of a Ward, including but not limited to: (1) costs of supporting the Ward; (2) the Ward's age, education, current income, ability to earn additional income, net worth and liabilities; (3) the nature of the Ward's estate; and (4) any other resources reasonably available to the Ward.

According to the Texas Probate Code, only safe investment options should be considered. Some examples include government bonds and interest bearing time deposits that are insured by the Federal Deposit Insurance Corporation (FDIC). The court will determine whether a guardian has prudently managed an estate by reviewing the investments collectively as opposed to individually.

Annual Account

The Annual Account is filed each year within sixty (60) days after the anniversary of the Guardian's date of qualification.

The Annual Account must be prepared by your attorney on your behalf. This form is accompanied by an affidavit which attests to the accuracy of the information provided and is signed by you. You should keep and organize all receipts of disbursements made on behalf of the Ward out of the estate.

In addition, all bank and financial statements during the accounting period should be given to your attorney for the preparation of the Annual Account. A bank officer must sign a verification of funds prepared by your attorney, or an original letter verifying funds at the end of the accounting period. After the Annual Account is approved by the court, you may order updated Letters of Guardianship for the estate. Failure to file an Annual Account could ultimately result in removal.

Final Account

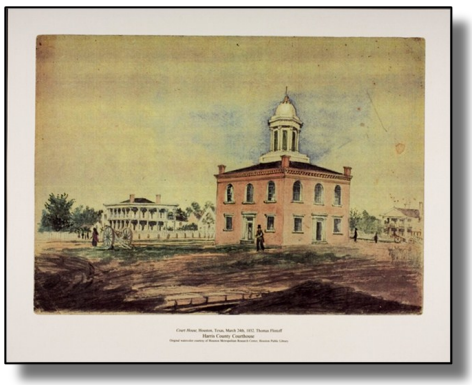
Consult your attorney if guardianship of the estate should be closed. Guardianship of the estate must be closed when the Ward dies, is restored, or the Ward reaches the age of eighteen (18) (assuming the Ward is not found to be incapacitated by the court). A Final Account must be prepared by your attorney. Once the Final Account is approved, the Application to Close and Discharge the Guardian of his or her Bond and the Receipt must be prepared by your attorney and filed with the County Clerk's office.

Sales and Abandonment of Property

Any sale or abandonment of property, including personal property and real estate, must be approved by the court. If real estate or tangible property does not serve the Ward and represents a liability or an ongoing expense to the Ward's estate, it should be sold. Retention of such property will require court approval.

Filing Fee and Forms

All forms require a filing fee. You may obtain fee information from the Harris County Clerk's office at 713-755-6425, or on their website: http://www.cclerk.hctx.net under the heading "Fee Schedule." You may also download certain forms from this website, such as the Annual Report. Other required forms must be prepared by your attorney.



Painting of Harris County's second courthouse. This courthouse was built in 1851 and lasted nine years.

Guardianship of the Estate

Powers and Duties as Guardian of the Estate

As Guardian of the Estate, you have been appointed by the court to handle the Ward's estate, which includes everything the Ward owns or has a right to receive, including but not limited to: personal property, real property, money, bank accounts, furniture, cars, clothes, and legal claims resulting from personal injury or other wrongdoing. Under Texas law, the Guardian of the Estate with full authority has the rights, restrictions, and duties set out below:

Take Possession of Estate Assets

The Guardian must take possession of all of the Ward's property, manage all property, collect all debts, rentals, or claims that favor the Ward, enforce all obligations that favor the Ward, and bring and defend suits by or against the Ward.

Harris County's third courthouse was still under construction and left incomplete when Texas joined the Confederacy. During the war, iron chains from the surrounding fence were melted down for cannonballs.

Exercise Good Judgment, Good Faith, and Diligence

As Guardian, you are a fiduciary and you must take care of the Ward's estate even more carefully than you would your own. You must be conservative, thrifty, and cautious when handling the assets of the Ward. You should always act in good faith and be mindful of the interests of others who may have a stake in or claim to the assets under your management.

Avoid Co-Mingling of Assets

Segregate the Ward's property from your own. You cannot treat the Ward's property as your own. You must keep your bank accounts separate from those of your Ward and never co-mingle said accounts. Place all guardianship funds in separate, insured accounts in the name of the guardianship estate, i.e.: Mike Smith, Guardian of the Estate of Sally Smith, an Incapacitated Person.

Obtain Court Approval for Expenditures

If you have a court ordered allowance, you do not need further court approval before spending funds for purposes that were approved by court order. Never spend any guardianship funds beyond your allowance unless you first obtain, through your attorney, a written order of the court authorizing such expenditures. If you spend an allowance for purposes not approved by the court, you may be subject to removal and held personally liable for any deficiencies. If you are not certain about allowances or expenditures, please consult your attorney.

Insurance and Cash Deposits

Insurance must be obtained and maintained to cover all property of the Ward whenever the estate has the ability to pay the premiums. All cash deposits must be within the limits of FDIC/NCUA coverage, or no more than $200,000.00 per depository.

Non-Cash Assets

With respect to non-cash assets, such as real or personal effects, you have a duty to protect, preserve, and insure all non-cash assets of the estate. Your attorney, on your behalf, must obtain a written order of the court before you attempt to sell, transfer, lease for more than a year, abandon, or otherwise dispose of any non-cash assets of the estate. All personal property of the Ward in the State of Texas should remain in Texas unless prior court approval is obtained.

Parents as Guardian of a Minor Child's Estate

Parents are obligated to support minor children with their own funds; and they may not use assets of the guardianship estate without court order. If you, as a parent and guardian, satisfy the court by clear and convincing evidence that you are unable to support your child or children without unreasonable hardship, you may be allowed to expend funds of the estate for the use and benefit of the minor child. Such expenditures require prior court approval.

This four-story Victorian Gothic building was Harris County's fourth courthouse, built in 1884. The Houston Bar Association branded this courthouse a firetrap. It was eventually torn down and replaced by the current courthouse which still occupies the square.

Guardianship of the Person

Powers and Duties as Guardian of the Person

Scope of Authority

If your appointment is as Guardian of the Ward's person, you are obligated to care for the Ward's physical, emotional, and educational needs. Under Texas law, a Guardian of the Person with full authority has the rights and duties set out below:

- The right to have physical possession of the Ward and to establish the Ward's legal domicile;
- The duty to provide care, supervision, and protection for the Ward;
- The duty to provide the Ward with food, clothing, medical care, and shelter; and
- The power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the Ward.

Letters of Guardianship

Upon qualification, you will need to go to the Harris County Clerk's office, Probate Department, on the 8th floor of the Civil Courts Building to request "Letters of Guardianship." Letters of Guardianship are good for one year and four months after the date of issuance and demonstrate your authority to act as guardian. The residential placement facility, school, day program, and the Ward's doctors should have a copy of the Letters of Guardianship for their records. Letters of Guardianship may be renewed and reissued each year after the Annual Report is approved. However, be sure to carefully read the order appointing you as Guardian, as some of the rights of the Ward may have been retained by the Ward. Rights commonly retained by the Ward include: the right to vote, the right to participate in residential placement decisions, and the right to manage $50 or less. Please allow and encourage the Ward to exercise the rights that were reserved to the Ward.

Annual Reports

Texas law requires you, as Guardian of the Person, to file a sworn or affirmed report each year that covers a twelve (12) month reporting period, with the reporting period beginning on your qualification date. Copies are not acceptable. This form must be completed with original signatures and notary seals. You may download the Annual Report form on the Harris County Clerk's website: www.cclerk.hctx.net/probate/downloadable_forms.aspx, or call the County Clerk's office or probate court and we will gladly send you the form.

The Guardian must contact the court if the Guardian or the Ward moves to a new address. Failure to file the Annual Report will result in a Show Cause Order being issued, requiring you to appear in court and explain why you shouldn't be removed as Guardian. Please note that, even though this is a very simple form to complete, it is the most common filing that is overlooked or forgotten by Guardians. When completing the Annual Report you must answer all questions, including questions related to the Ward's physical welfare, well-being, progress in education, and income.

You will also state how many times you have visited the Ward during the reporting period. You may file or mail the Annual Report with the required filing fee. Be aware that the filing fees must be paid using money orders or cashier checks only. Personal checks are not accepted by the County Clerk's office.

In the event that the Guardian of the Person is unable to pay the required filing fee, the court may consider waiving this fee. However, if the Annual Report is not filed on time and a show cause has been issued, filing fees will not be waived.

Visits by Court Investigator or Court Visitor

Every year the court investigator or court appointed visitor is required by law to visit the Ward. He or she will call the Guardian, the personal care home, or day program and schedule a visit with the Ward. This is an informal visit and will take about five (5) minutes. The investigator or court visitor will prepare a sworn report for the court regarding the Ward's condition.

The 1910 courthouse as it appeared, circa 1910. A recent restoration of this courthouse took place over a couple of years, and was completed in 2011. This project was made possible through major funding provided by the Texas Historic Courthouse Preservation Program of the Texas Historical Commission.

Mailing Address:
Harris County Clerk's Office
Probate Department
P.O. Box 1525
Houston, Texas 77251-1525

Physical Address:
Harris County Civil Courthouse
201 Caroline, 8th Floor/Probate Dept.
Houston, Texas 77002

Information regarding filing fees may be obtained by calling the Harris County Clerk's office at 713-755-6425, or by clicking on the Harris County Clerk's main website under "Fee Schedule."

Guardianship of the Person

Taking Care of Your Loved One

10 Questions to Ask About All Medications:

- What is the name of the medication and what is it supposed to do?
- When and how is it taken? With water? Food? Empty stomach?
- How long should it be taken? Are there refills?
- Does this medication contain anything that could cause an allergic reaction?
- Will this medication interact with any other medications that are currently being taken?
- Will this medication affect day-to-day activities?
- Will there be any side effects? What should be done if there are adverse side effects?
- Is a generic version of this product available?
- What is the best way to store medication?

Tips for Interviewing Personal Care/Assisted Living Facilities:

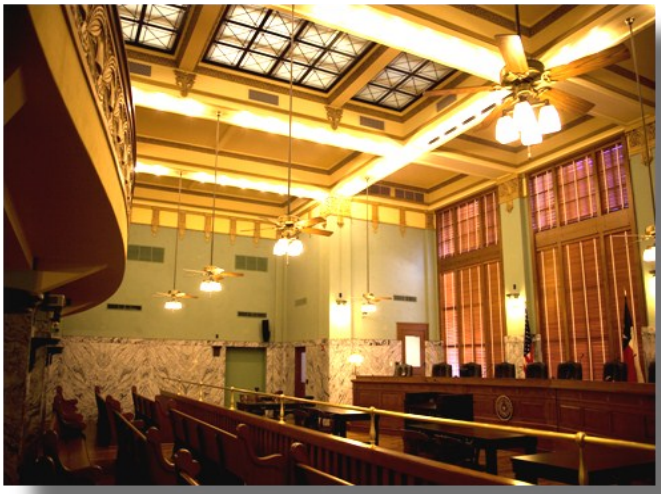
- Ask specific questions regarding location.
- Ask about the cost. Do they have a daily or monthly rate? If private pay, can Medicare or Medicaid be applied?
- What services are included? (e.g.: number of meals per day, snacks, laundry, housekeeping, social activities, transportation)
- What is the capacity of residents for this facility?
- How long has the facility been in business?
- Do they provide references?
- Who furnishes the room?
- Are short-term stays okay (respite care and cost)?
- Who provides respite for the service providers?
- Is the facility licensed by the State?

Indicators of Poor Care in Assisted Living Facilities

- Unanswered call bells
- Incorrect use of restraints (both physical and chemical)
- Excessive use of restraints
- Overly sedated residents
- Not taken to the bathroom regularly or frequently
- Frequent urinary tract infections
- Urine and other body odors
- Unsatisfactory mouth care (odors)
- Men unshaven
- Hair not combed
- Fingernails/Toenails long and dirty
- Not having residents out of bed and dressed
- Eyeglasses and teeth locked away
- Skin breakdown on buttocks, in skin folds, and creases
- Not offering water to residents (dehydration)
- Dry mouth, eyes sunken, very dry skin, speech problems
- Unexplained confusion or drowsiness
- No assistance with feeding, leading to poor nutrition
- Reddened areas that do not disappear
- Poor staff training
- Inadequate supervision of staff
- Threats, rough handling, scolding

"Love begins by taking care of the closest ones, the ones at home."
Mother Teresa

The north courtroom of the 1910 Courthouse in 1920.



The north courtroom of the 1910 Courthouse today.

Guardianship of the Person

Taking Care of Your Loved One

Making Medical Decisions

It is the Guardian's responsibility to make decisions based on the Ward's needs. Medical decisions can be very hard to make. The well-being and comfort of your Ward, and perhaps your Ward's life, depend on making the right choice. Doctors often use vague language when explaining the risks and benefits associated with the treatment options. It is the responsibility of the doctor to inform you in a clear and understandable manner so you can make an informed decision. Below are some questions you might consider asking a doctor caring for the Ward:

- What is the proper name of the procedure and what does it mean?
- What is the expected outcome of the procedure?
- What are the other possible outcomes of the procedure?
- Why is it being done now instead of later?
- Who will perform the procedure? Does the procedure require a specialist and does the person performing the procedure have that expertise?
- Have there been consultations with other doctors? If so, who?
- How much does the Ward's disability interfere with performing the procedure? Has the doctor planned for this?
- What care is required after the procedure?
- How long is recovery? Will there be discomfort?
- How will any medications affect the Ward's activities, appetite?

Liability and Removal

- **Liability:** A Guardian of the Person is not liable to a third person solely because the person has been appointed as Guardian of the Person. A Guardian of the Person can be liable for breach of his or her fiduciary duties during the time he or she was Guardian even after the guardianship is terminated.
- **Removal:** The court may remove a Guardian of the Person who does any of the following:
  1. Neglects to qualify by filing a bond and Oath within twenty (20) days of the Guardian's appointment;
  2. Absents himself from the state for a period of three months at one time without permission of the court, or removes the Ward from the state;
  3. Cannot be served with notices or other processes because the Guardian's whereabouts are unknown, or because the Guardian is eluding service;
  4. Has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle or remove from the state, all or part of the property committed to the Guardian's care;
  5. Has cruelly treated the Ward, or has neglected to educate or maintain the Ward as liberally as the means of the Ward and condition of the ward's estate permit;
  6. Fails to return any account or report that is required by law to be made;
  7. Fails to obey any proper order of the court with respect to the performance of the Guardian's duties;
  8. Is proved to have been guilty of gross misconduct or mismanagement in performance of duties;
  9. Becomes incapacitated, sentenced to the penitentiary, or otherwise becomes incapable of performing the duties of a Guardian;
  10. Interferes with the Ward's progress or participation in programs in the community.

Including the Ward In Decision Making

A Guardian should consider the Ward's thoughts and feelings when making decisions for the Ward. When discussing the situation with the Ward, a Guardian should:

1. Talk with the Ward;
2. Listen carefully to what the Ward is saying and trying to communicate;
3. Remember that an incapacitated Ward is an adult and should be given the respect that an adult deserves; and
4. Avoid talking about the Ward with others as though the Ward is not present.

It is the duty and responsibility of the Guardian to make a final decision that is appropriate and in the best interests of the Ward, even if the Ward disagrees with the decision.

Special thanks to Gloria Bryant and other staff members from the Harris County Probate Courts for your hard work and research which made this publication possible.

Important Contact Numbers and Information

Harris County
Probate Courts
201 Caroline Street
6th and 7th Floors
Houston, Texas

Probate Court No. 1
Honorable Loyd Wright
Office: 713-368-6700
Fax: 713-368-7300

Probate Court No. 2
Honorable Mike Wood
Office: 713-368-6710
Fax: 713-368-7150

Probate Court No. 3
Honorable Rory Olsen
Office: 713-368-6730
Fax: 713-368-7166

Probate Court No. 4
Honorable Christine Butts
Office: 713-368-6767
Fax: 713-368-7171

NOTES

Visit us on the web: http://www.co.harris.tx.us/probate/

IMPORTANT INFORMATION & DATES TO REMEMBER

CAUSE NO. AND ESTATE NAME: _____

INVENTORY DUE DATE: _____

ANNUAL REPORT DUE DATE: _____

ANNUAL ACCOUNTING DUE DATE: _____

ATTORNEY CONTACT INFO. : _____

DOCTOR'S INFORMATION:_____