Uncontested Guardianship Docket Procedures

Travis County Probate Court No. 1

The Court's weekly uncontested guardianship docket is scheduled beginning at 11:00 a.m. on Thursday mornings following the uncontested probate docket. **The setting request form on the last page indicates which cases should be set on the uncontested guardianship docket. Please use this form.** If there is any question about whether a case should be set on the uncontested guardianship docket, set it on the regular docket instead. Relatively few guardianship cases are appropriate for the uncontested docket.

To set a case on this docket, you must fill out a **Setting Request Form, Uncontested Guardianship Docket**, and email it to probateone.guardianshipattorney@traviscountytx.gov. *Although we ask you to indicate possible dates and times on the form, no hearing is set until the Court contacts you with a confirmed date and time.*

- You are responsible for making sure that the proposed guardian has done all of the following before submitting the Setting Request Form:

    1. Submitted registration information online with the Judicial Branch Certification Commission (JBCC) at https://jbcctexas.txcourts.gov.

    2. *Completed the required guardianship training through the JBCC, received the guardian training certificate of completion, and filed the certificate with the Court.

    3. *Submitted the requisite criminal background check to the JBCC.

    **Not required if the proposed guardian is an attorney, certified guardian, or corporate fiduciary*

    In addition to reviewing the physician's certificate, guardianship staff will need to confirm that the above has been completed before the hearing can be set.

- You are responsible for making sure that the proposed guardian has done all of the following before the hearing**:**

    1. Read the applicable Court-Ordered Instructions and initialed each of the boxes in the margins to indicate the proposed guardian understands the italicized points made in the text to the right of each box.

    2. Signed the Court-Ordered Instructions before a notary (which must be done after the proposed guardian has completed the guardianship training).

    3. Completed the Personal Representative General Information form.

    4. For guardianships of the person, filled out the Initial Report on the Condition and Well-Being of the Ward.

The Court prefers that you email all of the guardian documents at least a week before the hearing and that you turn in all of the guardian documents no later than the day before the hearing. Email and this paperwork to the Guardianship Legal Assistant at probate.guardianinfo@traviscountytx.gov.

- **The Court strongly prefers that all of the above tasks are completed before the proposed guardian comes to the courthouse.** If some tasks cannot be done until the proposed guardian comes to the courthouse, you must meet the proposed guardian early enough to ensure that everything is completed before the time of the scheduled hearing.
- For guardianships of the estate, you will sign the Court-Ordered Instructions certifying that you have discussed with your client the responsibilities of a guardian of the estate; the signed instructions must be given to the Court before the hearing. The Court expects that you will discuss the responsibilities of a guardian of the person with a client who will be appointed as guardian of the person – **including the bond requirement**. If your client is being appointed guardian of the person only, you will not sign the instructions.
- **You – not the Court staff – need to work with a proposed guardian to complete the paperwork** unless the Court Investigator is filing the application for guardianship.

PROCEDURES FOR THE UNCONTESTED GUARDIANSHIP DOCKETPROBATE COURT NO. 1

A. Before requesting a hearing:

1. **Confirm the proposed guardian has submitted registration information to the Judicial Branch Certification Commission.** All guardianships in the State of Texas must be registered with the Judicial Branch Certification Commission. The first step in that process is to submit registration information, which will then be entered into the Guardianship Database upon qualification of the guardian. Upon the filing of the application, the Judicial Branch Certification Commission will send an email to the applicant's attorney that will provide the website address at which the registration information can be submitted.
2. **Confirm the proposed guardian completed the guardianship training and submitted the criminal background check (if the proposed guardian is not an attorney, certified guardian, or corporate fiduciary).** All guardianship training and criminal background checks are done through the Judicial Branch Certification Commission (rather than the clerk's office and the Court). The proposed guardian - if not an attorney, certified guardian, or corporate fiduciary - will need to complete both before a hearing can be scheduled and at least 10 days before a hearing will be held. Just like in #1, upon the filing of the application, the Judicial Branch Certification Commission will send an email to the applicant's attorney and provide the website address at which both can be completed.
3. **Physician's certificate of medical examination (PCME).** All applications must use the **September 2023** version of the PCME, or subsequent versions. Because of changes in the 2023 legislative session, older forms no longer meet the statutory requirements and are no longer valid.
4. **Check applications carefully.** The Court meticulously checks the content of guardianship applications against the content requirements listed in Texas Estates Code § 1101.001. Please look at all of your templates and sample applications and make sure they include *everything* required by statute. (See the checklist on page 5.) 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.
5. **Evaluate whether the case should be set on the uncontested guardianship docket.** After working with this docket the last few years, we realize that we need to restrict the cases that are heard on this docket, and we need all counsel and attorneys ad litem to help by carefully considering the criteria listed on the last page; the criterion regarding waivers instead of service is new. If there is **any** question about whether a case should be set on the uncontested guardianship docket, set it on the regular docket instead. Relatively few guardianship cases are appropriate for the uncontested docket, unlike for probate where most cases are heard on the Court's uncontested probate docket.

B. Requesting a hearing:

1. To set a case on this docket, **fill out a Setting Request Form, Uncontested Guardianship Docket**, and email it to probateone.guardianshipattorney@traviscountytx.gov. We prefer that you send in the setting request form at least two weeks before your preferred hearing date. The **deadline** for submitting a setting request form is on Friday, 13 days before the requested hearing.

   For example, if you want to have a hearing on Thursday, June 28, we prefer that you submit the setting request form no later than Thursday, June 14 and **require** that you submit the form no later than noon on Friday, June 15.
2. **Court review of setting request form.** The Court's guardianship staff will review the setting request form and the physician's certificate (PCME), and confirm that the registration information has been submitted, the certificate of completion of the guardianship training has been filed (if applicable), and that the proposed guardian's criminal background check has

been done (if applicable), before setting the case on the uncontested guardianship docket. As part of this review, staff will see if the PCME is timely and internally consistent (and uses the correct form).

For example, it is a problem if a doctor indicates without explanation that a proposed ward is "totally incapacitated" but also marks that the proposed ward is able to consent to medical treatment. Note that no substantive review is done at this time.

3. **The Court will contact you with information about a hearing within several days after you submit a setting request form. No hearing is set until the Court calls with a confirmed date and time,** although we ask you to indicate possible dates and times on the setting request form.

C. Before the hearing day:

1. The Court strongly prefers that **everything listed in the box on page 1** has been completed and both emailed to the Court at least a week before the hearing and delivered to the Court at least a day before the scheduled hearing. Even if the preferred deadline is not met, everything listed in the box **must** be turned in before the hearing can begin.
2. **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. After the Court has reviewed the written report and has approved or modified the report, Court staff will email 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.*
3. **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 blank checklist is provided for your review.
4. **Mark these key deadlines:**
   - **No later than 10:00 a.m. on Monday the week of the scheduled Thursday hearing, you must electronically file all missing documents identified on page two of the hearing checklist.** In addition, also by that deadline, email copies of those filed documents to probateone.guardianshipattorney@traviscountytx.gov. In the subject line of the email, indicate the date and time of the hearing as well as the proposed ward's name. Rule 21 of the Texas Rules of Civil Procedure requires these documents to be electronically filed; do not deliver the originals to the Court.
   - **The Court strongly prefers that you submit via email copies of the following documents for the proposed guardian to the Court, not the Clerk, at least a week before the hearing so Court staff may review them (and the originals at least a day before the hearing):**
     (a) Oath to be signed by the new guardian after the hearing (with a specific title),
     (b) completed Court-Ordered Instructions,
     (c) completed Personal Representative General Information Form (never filed), and
     (d) for guardianships of the person, Initial Report on the Condition and Well-Being of the Ward.
     All of these documents must be turned in before the scheduled hearing time. TRCP 21 does not apply because these documents are not actually "filed" before the hearing.
5. **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 all documentation necessary for the hearing to proceed that week has been filed. ***If the file is not complete, the Court may pull the case from the docket and notify counsel.***

D. Hearing-day procedures:

The Court may set and hear up to three uncontested guardianship cases every Thursday morning, beginning at 11:00 a.m. **Attorneys and clients need to be ready for the hearing at the scheduled time – which includes allowing enough time to check in with the Court and turn in any of the proposed guardian's paperwork that was not previously submitted. Remember that the Court prefers to get that paperwork at least a day before the hearing.**

Before the hearing

Check in with the Guardianship Legal Assistant. **When you check in, you must turn in all of the following if you have not done so in advance:**

- The completed Court-Ordered Instructions.
- The completed Personal Representative General Information form (which will not be filed).
- For guardianships of the person, the completed Initial Report on the Condition and Well-Being of the Ward.
- An unsigned Oath for the proposed guardian (with a specific title, depending on the appointment)

After the hearing

Have the newly appointed guardian meet with the Guardianship Legal Assistant, who will do the following:

- If needed, visit with guardians of the person regarding any questions about the Initial Report on the Condition and Well-Being of the Ward.
- Give the guardian a copy of the Court-Ordered Instructions, with the specific date the bond is due added to the instructions.
- Go with the guardian to the clerk's office where the guardian
    - (1) will take and file the oath and
    - (2) will file the Initial Report on the Condition and Well-Being of the Ward.

Application checklist for Cause No. C-1-PB-___-_____, Guardianship of _____

☐Application is sworn to by the applicant (with an effective jurat) (§1101.001(b)) and includes the last 3 digits of the applicant's driver's license number, if the applicant has one, and the last 3 digits of their social security number, if they have one (Civil Practice and Remedies Code §30.014(a))

☐Attorney's email address is included on the application (TRCP Rule 21(f)(2))

In all cases, application states:

☐Proposed ward's full name, sex, date of birth, and address. (§1101.001(b)(1))

☐Name (including any former names), relationship to proposed ward, and address of person the applicant seeks to have appointed guardian. (§1101.001(b)(2))

☐Whether seeking guardianship of the person or estate, or both. (§1101.001(b)(3))

☐Whether alternatives to guardianship and available supports and services were considered and are feasible and would avoid the need for guardianship. (§1101.001(b)(3-a) - §1101.001(b)(3-b))

☐Nature and degree of the alleged incapacity. (§1101.001(b)(4))

☐Specific areas of protection and assistance requested. (§1101.001(b)(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; (B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and (C) the right of the proposed ward to make personal decisions regarding residence. (§1101.001(b)(4))

☐Facts requiring that a guardian be appointed. (§1101.001(b)(5))

☐Interest of the applicant in the appointment. (§1101.001(b)(6))

☐Nature and description of any guardianship of any kind existing for the proposed ward in any other state. (§1101.001(b)(7)) *If none, please indicate.*

☐Name and address of any person or institution having the care and custody of the proposed ward. (§1101.001(b)(8))

☐Approximate value and description of the proposed ward's property, including liquid assets (any compensation, pension, insurance, or allowance to which the proposed ward may be entitled) and non-liquid assets. (§1101.001(b)(9))

☐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. (§1101.001(b)(10)) *If none, please indicate.*

☐Facts showing that the court has venue over the proceeding. (§1101.001(b)(14))

☐If applicable, that the person to be appointed as guardian is a private professional guardian certified as required by the Government Code, and has complied with the requirements of Section 1104.301 of this code. (§1101.001(b)(15))

(If a person named in the application is protected by a protective order issued under Chap. 85, Family Code, see Estates Code §1101.002.)

If proposed ward is an adult, application states:

☐ name of the proposed ward's spouse, if any, and the spouse's address or that the spouse is deceased, if known by applicant. (§1101.001(b)(13)(A)) *If proposed ward is not married or if any information is not known, indicate.*

☐ name of each of the proposed ward's parents and each parent's address or that the parent is deceased, if known by applicant. (§1101.001(b)(13)(B)) *If any information is not known, please indicate.*

☐ name of each of proposed ward's siblings, if any, and each sibling's address or that the sibling is deceased, if known by applicant. (§1101.001(b)(13)(C)) *If proposed ward has none or if any information is not known, indicate.*

☐ name **and age** of each of the proposed ward's children, if any, and each child's address or that the child is deceased, if known by applicant. (§1101.001(b)(13)(D)) *If proposed ward has no child or if any information is not known, indicate.*

☐If there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults. (§1101.001(b)(13)(E))

If proposed ward is a minor, application states:

☐ name of each parent of the proposed ward and each parent's address or that the parent is deceased, if known by applicant. (§1101.001(b)(11)(A)) *If any information is not known, please indicate.*

☐ name **and age** of each sibling, if any, of the proposed ward and each sibling's address or that the sibling is deceased, if known by applicant. (§1101.001(b)(11)(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 adult siblings are deceased, the names and addresses of the proposed ward's other adult living relatives who are related to the proposed ward within the third degree by consanguinity. (§1101.001(b)(11)(C))

☐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. (§1101.001(b)(12))

TRAVIS COUNTY PROBATE COURT NO. 1
200 W. 8th Street, Second Floor
P.O. Box 1748, Austin, Texas 78767
Phone – (512) 854-4978 (Court Investigator's Office)
Fax – (512) 854-4418
https://www.traviscountytx.gov/probate/guardianship

HEARING CHECKLIST FOR UNCONTESTED GUARDIANSHIP DOCKET

CAUSE NO. C-1-PB-_____-_____

PROPOSED WARD'S NAME _____

HEARING DATE _____ HEARING TIME _____

DATE REVIEWED _____

The Court has reviewed the file for the above-referenced cause. This email includes a hearing checklist and the Court Investigator's report. On the next page, 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 on the next page that certain documents are missing, electronically file all missing documents no later than 10:00 a.m. next Monday (the week of the scheduled hearing).*** Also email copies of those documents to probateone.guardianshipattorney@traviscountytx.gov, by that deadline. In the subject line of the email, indicate the date and time of the hearing as well as the proposed ward's name.

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

Please also remember the Court strongly prefers that you email the following proposed-guardian documents to the Guardianship Paralegal at probate.guardianinfo@traviscountytx.gov **at least a week before the hearing** so she may review them and then submit them to her at least a day before the hearing. Deliver originals to the Court. **Originals of the documents must be turned in before the scheduled hearing time.** TRCP 21 does not apply because these documents are not actually "filed" before the hearing.

(1) **Oath** to be signed by the new guardian after the hearing (with a specific title),
(2) completed **Court-Ordered Instructions** (one for each guardian if co-guardians),
(3) completed **Personal Representative General Information Form** (never filed), and
(4) for guardianships of the person, **Initial Report** on the Condition and Well-Being of the Ward.

Hearing Checklist continued, Cause No. C-1-PB-_____-_____

Pursuant to TRCP 21, attorneys must electronically file everything they are **filing**, which includes **everything** on the checklist below that is applicable in this case. The Court's guidelines require that all needed documents be filed before the deadline indicated on the previous page. (No more delivering the documents to the Court or bringing in an executed document and getting it file-stamped right before the hearing.)

	YES	NO	NOTES
APPLICATION COMPLETE (See checklist)….	☐	☐	_____
PERSONAL SERVICE ON WARD ..... (Ward **MUST** be personally served by constable – service by certified mail or by any other method is not acceptable – Texas Estates Code § 1051.103)	☐	☐	_____

§ 1051.103 (waivers for uncontested docket)	YES	NO	N/A	NOTES
mother	☐	☐	☐	_____
father	☐	☐	☐	_____
conservator	☐	☐	☐	_____
spouse.....	☐	☐	☐	_____
non-applicant guardian.....	☐	☐	☐	_____

§ 1051.104 (notice)	YES	NO	N/A	NOTES
adult children.....	☐	☐	☐	_____
adult sibling	☐	☐	☐	_____
facility administrator	☐	☐	☐	_____
agent / attorney-in-fact	☐	☐	☐	_____

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION (PCME) (Applications must use the **September 2023** revision of the form or subsequent revisions.) or DETERMINATION OF INTELLECTUAL DISABILITY REPORT (DID)

	YES	NO	N/A	NOTES
	☐	☐	☐	_____

	YES	NO	N/A	NOTES
AD LITEM ANSWER	☐	☐	☐	_____
AD LITEM REPORT	☐	☐	☐	_____
RESIDENT AGENT FORM.....	☐	☐	☐	_____
REGISTRATION INFO SUBMITTED……	☐	☐	☐	_____
CRIMINAL BACKGROUND CHECK	☐	☐	☐	_____
GUARDIANSHIP TRAINING CERTIFICATE OF COMPLETION	☐	☐	☐	_____

TRAVIS COUNTY PROBATE COURT NO. 1
200 W. 8th Street, Second Floor P.O. Box 1748, Austin, Texas 78767
Phone – (512) 854-9258 (main number) (512) 854-4978 (Court Investigator's Office)

Uncontested Guardianship Docket Setting Request Form

To set a hearing, fill out and email to probateone.guardianshipattorney@traviscountytx.gov**.** *After reviewing the case, staff will contact you to confirm a setting on the court's docket.*

Date: _____ Preferred Hearing Dates: _____

Cause No. C-1-PB- _____ Guardianship of: _____

Guardianship Sought: ☐ Person Only ☐ Estate Only ☐ Person & Estate

Ad Litem's name: _____

Applicant's Attorney: My signature below indicates my certification to the Court and its staff that I am verifying all of the checked items as indicated below after conferring with the attorney ad litem.

❑ The proposed guardian has submitted the registration information to the Judicial Branch Certification Board.

❑ The proposed guardian has submitted a criminal background check.

❑ The proposed guardian has completed the training, and I have filed the guardianship training certificate of completion. I have conferred with the attorney ad litem, and we agree that this case should be set on the uncontested guardianship docket because of the following. **Please verify each statement** *(otherwise set the case on the regular docket).*

- ❑ The case does not have any contested issues regarding the incapacity of the proposed ward.
- ❑ The case does not have any contested issues regarding the scope of the guardianship.
- ❑ The physician's certificate (1) *has already been filed* and (2) *clearly supports the scope* of the guardianship being sought. In addition, (3) the attorney ad litem will not object to the admissibility of the physician's certificate.
- ❑ 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.)*
- ❑ The case does not have any contested issues regarding the suitability of the applicant(s) to serve as guardian(s).
- ❑ Except for the proposed ward, a waiver has been filed for everyone required to be served under § 1051.103.
- ❑ The case can be heard in no more than 15 to 20 minutes.
- ❑ I have considered the following in determining that this case is appropriate for the uncontested guardianship docket:
  - *the nature and extent of the proposed ward's general intellectual and physical functioning, and the extent of the incapacity;*
  - *the ability of the proposed ward to make responsible and informed decisions and to manage 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; and*
  - *the ability of the proposed ward to participate meaningfully in the guardianship proceeding, and the proposed ward's desire to appear.*
- ❑ Before the requested hearing date, we will have (1) personal service on the ward and (2) waivers from or notice to all parties as required by Texas Estates Code §§ 1051.103 and 1051.104. *(If anyone other than the proposed ward will require personal service under § 1051.103 rather than signing a waiver, the case must be heard on the regular docket.)*
- ❑ I read the Court's uncontested guardianship-docket procedures effective 9/1/2023, and I understand that the proposed guardian must complete all required paperwork before the scheduled hearing time. I also understand that the Court prefers I submit the proposed guardian's paperwork to the Court at least a day before the hearing.
- ❑ I have verified that the Attorney ad Litem can attend the hearing on the preferred hearing date(s).

Check one: ☐ The proposed ward will attend the hearing **OR** ☐ The proposed ward will not attend the hearing.

Check one: ☐ I do not need an interpreter **OR** ☐ I will arrange for a licensed court interpreter at the hearing.

_____ _____
Applicant's Attorney (Printed Name) & Texas State Bar No. Applicant's Attorney (Signature)