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CURRENT PRACTICE

Broom Law Firm, PLLC, Tyler, Texas
Owner/Managing Partner

2008 to Present

As a sole proprietor of an independent practice that maintains General Civil Litigation and Criminal Defense in Texas State Courts including Probate, Guardianship, Family Law, Criminal Defense, Juvenile Justice, and representation of corporations and small businesses in a wide variety of matters.

Counsel to local publication houses, writers in contract negotiations, and all other aspects of publishing.

Consultant to small business in development, business entity formation, employment issues, work-force motivation, politics, development of policies and procedures, and general business advice.

PRIOR PROFESSIONAL EXPERIENCE

South Texas College of Law, Houston, Texas
Adjunct Professor – Direct Representation Clinics

2007 to 2009

- Practical Applications for Probate, Guardianship, and Estate Planning Practice.

South Texas College of Law, Houston, Texas
Managing Attorney – Direct Representation Clinic

2005 to 2009

- Secured a grant from the Rockwell Foundation to expand clinical offerings that increased student enrollment from 12 to 60 students per semester;
- Instructed law students on researching cases, client interviews, mediation, and trial preparation in cases involving family law, probate, guardianship, and social security disability.
- Supervised third-year law students in court hearings in family law, probate, and guardianship of incapacitated adults.

EDUCATION EXPERIENCE

J.D., South Texas College of Law 2000

PhD., Clinical Psychology, University of Houston Clear Lake 1997

B.S., Psychology, University of Houston 1993

PUBLICATIONS, PRESENTATIONS AND CONTINUING LEGAL EDUCATION

"Practical and Ethical Considerations in Guardianships", Wood County Bar Association, Quitman, Texas 2019.

"Alternatives to Guardianship", Smith County Adult Protective Advisory Council Mini Conference, Tyler, Texas 2017.

"Small Business Startup Seminar", Tyler Public Library, Tyler, Texas 2017.

"Elderly Exploitation", Smith County APS Advisory Council, Tyler, Texas 2016.

"The Medical Capacity Assessment", Wood County Bar Association, Quitman, Texas 2015.

"The Funny Thing About a Last Will", by Donna Broom, Published by Amazon, 2014.

"Guardianship: The Sale of Real Property and How Interest is Affected", Advanced Guardianship Law Course, Houston, Texas 2009.

"Polygamy in Texas – the FLDS Fiasco", Houston Rotary Club, Houston, Texas 2008.

"Estate Planning Concepts for the Elderly", Bethel Baptist Church, Houston, Texas 2008.

"Knowing your Rights as a Parent", Houston Independent School District, Houston, Texas 2008.

"Returning to the Outside", Texas Department of Corrections Outreach, Houston, Texas 2007.

"Estate Planning Overview", Mineola Lions Club, Mineola, Texas 2005.

"Surviving the Mountains of Nicaragua", First Presbyterian Church, Galveston, Texas 2004.

"International Custody Issues, A Lawyer's Perspective", International Family Law Conference, Havana Cuba, 2003.

ETHICAL AND PRACTICAL CONSIDERATIONS IN GUARDIANSHIP

DONNA BROOM

October 17, 2019

CCEPC Monthly Meeting

1. Introduction

Guardianship affects a person's rights. It is important to know the implications of guardianship and explore other alternatives and choices before taking steps to have one established.

2. Once upon a time

- **Story 1** – Husband and wife have moved to the country near one daughter. The daughter takes them to their doctor appointments, helps pay bills and is on site in case of an emergency. They can dress and feed themselves. Another daughter has filed for guardianship over both parents and wants to put them in a nursing home.
- **Story 2** - Husband files for divorce. During the pendency of the divorce, wife falls breaks hip and subsequently has stroke that leaves her unable to swallow food, nonverbal and in a nursing home. The doctors do not believe she will improve and needs 24-hour nursing care. Temporary orders in effect give wife exclusive access to the family ranch. Wife's side

neglected to inform husband of the stroke and ranch has been ran by unsupervised ranch hands for two months. Wife has medical power of attorney naming her hairdresser agent. Son is seeking to be named guardian of the person and estate.

- **Story 3** – 22-year-old has a guardian in place naming his dad as guardian. Ward has mental retardation. He gets mad because dad takes away his video game and he assaults dad. Police called and takes ward to jail on charges of assault. The ward has become combative and family has been trying to find a long-term placement facility. APS won't get involved with assistance because pending criminal charges. Andrews Center tries to assist with long term placement but facilities refuse admittance with pending charges. Guardianship already established.

3. Pros and Cons to Guardianship

PROS

Guardianship protects vulnerable people from those who would abuse, neglect or exploit them. Guardians support their wards by helping them handle their personal or business affairs and sometimes both.

Guardians advocate for their wards, either make decisions for them or help

them make decisions. Guardianship is a legal process, requiring the services of an attorney, which is designed to provide maximum protection to a person.

- There is a lot of court oversight.
- When a guardianship is established, the protected person becomes a ward of the court.
- Reports or accountings to the court are required annually or sometimes more frequently.
- New letters of guardianship are required annually.
- A doctor's letter (capacity assessment) is required.
- Ward is less likely to be exposed to abuse or neglect.

Terminating or modifying a guardianship is a legal process requiring the services of an attorney involving a court hearing and requiring enough evidence to show that the changes are best for the welfare of the ward.

CONS

Guardianship is the most restrictive action taken to protect a vulnerable person. Wards can lose many or most of their basic rights, depending on the type of guardianship established.

- Family members may no longer be involved in decision-making if they are not appointed guardian. They may no longer have unlimited access to the ward.

- Establishing a guardianship requires the services of an attorney and can be time consuming and expensive.
- Court oversight does not eliminate abuse and neglect.
- Not all guardianship applications include a doctor's letter with the application but yet the guardianship process is begun costing proposed ward's money.
- Assessments of limited guardianships are not routinely carried out and full guardianships are routine because it is easier.
- A guardian cannot admit someone for mental health treatment.

4. Alternatives to Guardianship –

A. *Psychiatric Advanced Directives*

Psychiatric Advanced Directive - CIVIL PRACTICE & REMEDIES CODE, CHAPTER 137. DECLARATION FOR MENTAL HEALTH TREATMENT – valid for three years. Prepare for the depressive/psychotic episode that is common with mental illnesses where a person has not already been deemed incompetent.

This declaration outlines preferences or instructions regarding mental health treatment. If the declaration for mental health treatment is in effect and the principal is incapacitated on the third anniversary of the date of its execution, the

declaration remains in effect until the principal is no longer incapacitated.

On being presented with a declaration for mental health treatment, a physician or other health care provider shall make the declaration a part of the principal's medical record. When acting in accordance with a declaration for mental health treatment, a physician or other health care provider shall comply with the declaration to the fullest extent possible.

B. Power of Attorney/Durable Power of Attorney – Several changes that went into effect September 1, 2017. No longer can financial institutions reject POAs. There are now eleven specific grounds on which a financial institution may reject a power of attorney.

An agent has a an affirmative duty to preserve the principal's estate plan, to the extent he or she has actual knowledge of the plan, as long as doing so is in the principal's best interest based upon all relevant factors, including (a) the principal's property, (b) the principal's foreseeable obligations and maintenance needs, (c) tax minimization, and (d) eligibility for benefits. TEC §751.122. An agent who has been granted any of the "hot powers" should be especially aware of this duty. However, this duty also applies to any agent who is acting under the durable power of attorney.

Under the prior statute, only the principal or an appointed guardian had the standing to initiate a proceeding to determine whether the agent is acting improperly. The statute now permits actions to construe a power of attorney or review the agent's conduct.

A new statutory medical power of attorney form went into effect on January 1, 2018. The primary difference between the current and new form is that the disclosure statement that precedes the medical power of attorney is now included as part of the power of attorney. Additionally, the disclosure statement makes it clear that an appointment of a spouse is revoked if the marriage is dissolved, annulled, or declared void unless the power of attorney states otherwise.

C. Supported Decision Making Agreements. In 2015, the Texas Legislature passed laws to establish a supported decision-making agreement as an informal alternative to guardianship.

- Through this agreement, people with disabilities can make their own decisions and remain in charge of their lives.
- The supporter does not make decisions for the person but provides support and assistance by making sure the wishes of the person with disabilities are known and carried out.

D. Other Alternatives

- Finding someone who will help pay bills and manage the person's money. Money management programs are available in parts of Texas.
- Establishing joint checking accounts. USE CAUTION with this alternative. PRACTICE TIP – Watch POD accounts and make sure client understands that upon death this account is outside of probate. If it is set up with one child and leaves off the other children, make sure client understands the other children have no access to this account.
- Designating a representative payee to receive the person's government benefits.
- Finding and accessing available community services, such as home-delivered meals, transportation services and special services for people with disabilities.

Meals on Wheels (903) 593-7385

East Texas Aging and Disability Resource Center Community Healthcore Phone: 1-855-937-2372

East Texas Area Agency on Aging · 800-442-8845 or 903-984-8641

Andrews Center · 800-374-6058

- Helping the person establish 24-hour shared attendant care and emergency response services if available in the area.

E. Law Enforcement/Temporary Commitment

Mental Health Deputy programs help improve the crisis response system by diverting people in need of behavioral health crisis services from hospitals and jails to community-based alternatives that provide effective behavioral health treatment at less cost. Mental Health Deputies are officers specially trained in crisis intervention through Texas Commission on Law Enforcement who work collaboratively with the community and the crisis-response teams of Local Mental Health Authorities and Local Behavioral Health Authorities.

Emergency Detention is found in the Texas Mental Code.

Texas Mental Code - Sec. 573.001.

APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a)

A peace officer, without a warrant, may take a person into custody if the officer:

- (1) has reason to believe and does believe that: (A) the person is a person with mental illness; and (B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
- (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be

demonstrated by: (1) the person's behavior; or (2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension: (1) from a representation of a credible person; or (2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under subsection (a) shall immediately: (1) transport the apprehended person to: (A) the nearest appropriate inpatient mental health facility; or (B) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or (2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms: (1) of the reason for the detention; and (2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

(h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF DETENTION. Outlines the Notification form for detention that an officer completes upon detention. Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS. As soon as practical but no later than first working day.

F. Community Based Program Implemented

The Justice and Mental Health Collaboration Program (JMHCP) supports innovative cross-system collaboration for individuals with mental illnesses or co-occurring mental health and substance abuse disorders who come into contact with the justice system.

Bureau of Justice Administration (BJA) is seeking applications that demonstrate a collaborative project between criminal justice and mental health partners from eligible applicants to plan, implement, or expand a justice and mental health collaboration program. This program is authorized by the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (MIOTCRA) (Pub. L. 108-414) and the Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008 (Pub. L. 110-416).

5. When Alternatives Fail – Guardianship is the Answer

After all alternatives have been exhausted, guardianship may be the only answer. But even if a guardianship is established, a guardian will still need access to some of the alternatives mentioned in this paper because the mental illness will not miraculously go away with a guardianship. For example, a guardian will still need to go through the processes of obtaining a court ordered commitment, emergency detention or mental health treatment if the ward becomes a danger to himself or others.

Guardianship law has changed dramatically over the last few years. The biggest significant changes happened in 2015.

A. Before Appointing a Guardian, the probate court must find by clear and

convincing evidence that alternatives to guardianship and supports and services have been considered and determined not to be feasible.

B. If the court grants a limited guardianship, the court must specifically state whether the proposed ward lacks the capacity with or without supports and services to make personal decisions regarding residence. Tex. Est. Code § 1101.101(a)(D) & (E); (c).

C. In addition, an order for full guardian must specify that the ward does not have the capacity to make personal decisions regarding residence. Tex. Est. Code § 1101.151(b)(5).

D. A guardian has the right to decide where the ward resides but may only place a ward in a more restrictive placement if the guardian provides notice to the court, the ward and any person who has requested notice and the court orders the placement after a hearing if the ward or another person objects to the proposed placement in a timely manner. Tex. Est Code § 1151.051(e). The court looks at the least restrictive placement plans and should strive to maintain the ward in his or her own home if at all possible.

E. A guardianship shall be closed when the court finds that the ward has sufficient capacity with supports and services to care for himself or herself and to manage his or her property. Tex. Est. Code § 1202.001(b)(2). If alternatives work

then there is not a need for a guardianship and a guardianship should be closed.

F. For the first time, a ward or any interested person may petition the court for the full or partial restoration of rights, including the right to decide their residence if he or she has sufficient capacity with or without supports and services. Tex. Est. Code § 1202.051(3).

G. For the first time, there is now a **BILL OF RIGHTS FOR PERSONS UNDER GUARDIANSHIP**. Tex. Est. Code § 1151.35, including the right of a ward to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by guardian, conflicts of interest between the guardian and service providers, or a violation of any of the Bill of Rights; to vote unless restricted by the court, and to petition the court and retain counsel of his/her choice who is certified, to represent ward's interest in the termination or modification of guardianship, the appointment of a different guardian or other appropriate relief under the Bill of Rights, including transition to a supported decision-making agreement.

H. Certification of Attorneys - An attorney for an applicant in a guardianship proceeding must now be certified, meaning he or she must complete the four-hour ad litem certification course, with one hour devoted to alternatives to guardianship and supports and

services. PRACTICAL TIP - it is always a good practice to check the qualification of opposing counsel in any contested guardianship proceeding. Certification may be checked at:

<https://www.texasbar.com/am/customsource/wrapper/members/onlinetools/ApprovedGuardianshipAttorneys.asp>

Include a statement in an application to appoint a permanent or temporary guardian that the applicant's counsel is properly certified

I. Intervention by Interested Person – (1055.003) - An interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties. The motion must state the grounds for intervening in the proceeding and must be accompanied by a pleading that sets out the purpose for which the intervention is sought. TEC § 1055.003 applies to all interested persons. That term is defined broadly. TEC § 1055.003 would require all “non-parties” to comply with intervention requirements.

Intervention petitions are a good idea to make sure family members maintain access to the ward if a guardianship is established.

J. Notice Requirements - TEC § 1051.104 who are required to receive a copy of the application for guardianship and notice are probably not “parties” in the strict sense, at least not until they appear in the

guardianship proceeding. These classes of persons should follow intervention requirements and Ad Litem and applicant attorneys should pay close attention to the intervention requirements or risk waiver.

K. Application - Include all of the required statutory elements in the application, particularly the new requirements.

Basic, extensive information must be provided, including: • biographical and identifying information of the ward and proposed guardian; • facts of the ward's incapacity and, need for guardianship, and extent of powers of the guardian requested; • circumstances of the ward's estate if a guardianship of the estate; • whether the ward has any powers of attorney; • the name and address of the person or institution who has care of the ward.

In addition to the basic information, the new statutory provisions found in TEC § 1101.001(3-a) and (3-b) require statements about alternatives to guardianship, specifically: • whether alternatives to guardianship and available supports and services to avoid guardianship were considered; and • whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship.

Additionally, good practice dictates a couple of other items to include in the

application. As referenced above, the attorney signing the application should probably include a statement that he or she is certified as a guardian ad litem in compliance with TEC §1054.201. Next, to facilitate the efficient administration of a guardianship estate, an applicant should consider including a request for a monthly allowance in the application.

L. Notice Requirements - TEC § 1051.104 imposes somewhat involved notice requirements on a guardianship applicant. These notice requirements present a pitfall for less than vigilant applicants. To comply with the requirements, the applicant must mail a copy of the application, as well as a written notice, by certified mail, return receipt requested (or other mail that provides proof of delivery) to certain persons that includes the information required in the citation. TEC § 1051.102 sets forth the specific contents that must be included in the citation.

M. Once the applicant receives the green cards or other proof of delivery of the notices, the applicant must file an affidavit of notice with the court. The affidavit must include copies of the notices provided, as well as proofs of delivery. The affidavit must state: (A) that the notice was mailed; and (B) the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery.

N. Unless intellectual disability forms the basis for the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that conforms to TEC § 1101.103 (the "Doctor's Letter"). There are several items of new information that must now be included in the Doctor's Letter.

I recommend visiting the Travis County Probate Court website and see the new forms available on guardianship. Judge Guy Herman is the administrative judge for probate and his website has a wealth of information.

O. Guardian must be "qualified" to serve. A qualified guardian must:

- Not be a minor or otherwise incapacitated;
- Not be someone who is incapable of prudently managing and controlling the person and estate of the ward because of the guardian's inexperience, lack of education, or other good reason;
- Not be someone the court finds unsuitable;
- Not be someone whose conduct is notoriously bad;
- Not be someone who is indebted to the proposed ward (unless they pay the debt before appointment)
- Not be someone who asserts a claim adverse to the proposed ward or the proposed ward's property;
- Not be someone

who is a party (or whose parent is a party) to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court determines that the lawsuit is not in conflict with the lawsuit claim of the proposed ward; or appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward's lawsuit claim;

- Not disqualified under a declaration of guardian the ward properly executed;
- Be certified as a private professional guardian under certain circumstances;
- Either a Texas resident or appoint a resident agent;
- Not be someone under a protective order for having committed family violence.

P. Standing versus disqualification - Do not confuse standing with disqualification - The standard for determining a person's standing to file a guardianship application under TEC § 1055.001(b) is distinct from the standard for determining whether a person is disqualified from serving as guardian under TEC § 1104.354.

Q. Attorney Fees - To understand how attorney's fees and expenses are generally handled, it is helpful to start with TEC § 1155.054. An applicant must "succeed" to recover attorney's fees and expenses out of the proposed ward's estate. TEC § 1155.054 does not require that the applicant be the person appointed to recover attorney's fees and expenses from the proposed ward's estate. The court must affirmatively find that the applicant acted in good faith and for just cause

in filing and prosecuting the application. The fees must be reasonable and necessary and in amounts the court considers equitable and just. If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may require the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney's fees required to be reimbursed to the estate.

R. Costs - The general cost statute is a fun and complex maze. If you run into a cost issue, read, and then re-read TEC § 1155.151. Costs are specifically defined to include the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and court appointed interpreters.

A party may not have to pay costs, but only if that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Texas Rules of Civil Procedure 145 that shows the party is unable to afford the costs, if no guardianship estate or no management trust has been created for the ward's benefit or the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs. There is now a litany of "safe-harbor" facts that can be included in an affidavit of

inability to pay to make it sufficient. An affidavit of inability to pay costs filed under Texas Rules of Civil Procedure 145 can be contested, and the court, at a hearing, must review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs.

Certain individuals and entities are exempt from paying costs. The following are not required to pay court costs on the filing of or during a guardianship proceeding: (1) an attorney ad litem; (2) a guardian ad litem; (3) a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs; (4) a nonprofit guardianship program; (5) a governmental entity; and (6) a government agency or nonprofit agency providing guardianship services.

S. The Order - drafting an order appointing a guardian requires examining several different Code sections which will necessarily depend on the type of guardianship that is being established. Start with TEC § 1101.101, which outlines the general findings and proof required. Note the different evidentiary standards: certain findings must be made by clear and convincing evidence while others must be made by the preponderance of the evidence. For example the findings

that no alternatives to guardianship exists must be by clear and convincing standards. Don't forget the findings that the ward lacks the capacity to operate motor vehicle, vote or determine residency. check TEC § 1101.153 last, which is entitled "General Contents of Order Appointing Guardian." Note that if the letter or certificate under § 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of § 1101.103(b).

T. Registration of Guardianships and Guardianship Training– All guardianships must now be registered. To begin the process visit <https://www.txcourts.gov/jbcc/register-a-guardianship/>

Effective June 1, 2018, a proposed guardian may not be appointed unless they complete the training required under new Sec. 155.204, Government Code.

There is no cost for the registration or training. Register the guardianship information online with the JBCC, complete the guardianship training and criminal history through JBCC.

(The guardian or their attorney may enter the information). Attorneys, certified guardians, and corporate fiduciaries are not required to have the criminal history or guardianship training. Pre-existing guardians appointed prior to June 1, 2018 are not required to have a criminal history or guardianship training.

There is no requirement in statute or rule that makes the registration a prerequisite to setting a hearing. However, courts are not granting hearings state wide unless the guardianship has registered.

Guardianship registrations will be processed in the order in which they are received. There is a backlog on obtaining the registration certificate. Courts are scheduling hearings with the old way of submitting the criminal background check through DPS separately prior to the hearing and then several months later the certification of registration is sent to the courts by JBCC.

A person applying to be appointed TEMPORARY guardian for no longer than 60 days is not required to complete the training; if the temporary guardianship is extended or made permanent by the Court, the guardian must first complete the required training.

JBCC will provide online training, or the printed materials and instructions, to the proposed guardian.

- The proposed guardian must complete the training at least 10 days

before the hearing on the application.

- The proposed guardian will receive a certificate of completion, and JBCC will notify the Court when they have completed the training.

Clients without computers may have to utilize libraries or in some cases, attorney offices to complete the training. It is recommended that the attorney register the guardianship and then allow the client/applicant to complete the training.

Criminal History Background Requirement

- A proposed guardian or temporary guardian may not be appointed unless the criminal history background information is obtained by JBCC and provided to the Court at least 10 days prior to the hearing date.

- Name (including former names) and date of birth search of DPS criminal history records if the estimated value of the liquid assets of the guardianship estate is \$50,000 or less

- Fingerprint-based search of FBI criminal history records if the value of the liquid assets of the guardianship estate is more than \$50,000.

6. The Rest of the Story

- Story 1 – The guardianship application did not include a medical capacity assessment. Those were obtained and husband’s doctor deemed husband with capacity. Wife’s doctor found her with limited capacity and in need of

assistance. Alternatives working for both husband and wife. Guardianships dismissed. Unfortunately, during the process, the husband died from a heart attack before he could see the guardianship suit dismissed. The stress of the lawsuit was too much for him to handle. Wife in the midst of grieving over the death of her husband had to endure two hearings that resulted in the dismissal.

- Story 3 – A guardianship may be unavoidable. The ward is nonverbal needs 24-hour care. Case is still pending.

7. CONCLUSION

Guardianships in some cases is the only answer to safeguard the person and estate of the ward. The rise in guardianships and legislation of 2015 reforming a lot of the guardianship procedures, was an effort to limit the amount of abuse and exploitation that was occurring through guardianships. There are alternatives available to maintain a person’s liberty and before seeking a guardianship, those alternatives should be evaluated and explored before pursuing a guardianship. Attorneys equipped with resources and ability to think outside the box is key to protecting the proposed ward from expensive litigation, heartache and loss of liberty that may or may not be what is in the best ward’s interest.