

JOHANSON'S



WITH RELATED STATUTES, INCLUDING THE TEXAS TRUST CODE,  
SUMMARY OF 2017 LEGISLATIVE CHANGES, SIGNIFICANT  
RECENT CASE DECISIONS, AND DISPOSITION AND  
DERIVATION TABLES

ANNOTATIONS BY  
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# The Ad Litem Manual 2018

## I. INTRODUCTION:

**GOALS:** To help the reader to become familiar with:

1. the types of proceedings in which ad litem may be appointed;
2. the varying roles of the ad litem in different proceedings;
3. fulfilling the responsibilities of an attorney ad litem or guardian ad litem in the different proceedings;
4. how to before the bench and in dealing with court personnel; and
5. some specifics on fee applications.

This manual deal primarily with the uncontested aspects of a guardianship and only briefly with contests.

For more information on guardianship litigation, see:

1. State Bar of Texas Seminars on:
  - Advanced Estate Planning and Probate (Litigation Breakout Section)
  - Advanced Guardianship Course
  - Fiduciary Litigation Course
2. Tarrant County Probate Bar Association Probate Litigation Seminar in Fort Worth (every other fall).

For a very insightful commentary on dealing with ad litem, see Hopper, Craig, *Call in the Sheriff: Handling Overzealous Ad Litem and Other Outlaws*, 2010 Advanced Guardianship Course, State Bar of Texas. For an excellent discussion of the responsibilities of ad litem in areas outside of guardianship, see Smith, Dani D., *Attorney Ad Litem and Guardian ad Litem: An Overview of the Roles and Liabilities in Non-Guardianship Cases*, 2018 Advanced Estate Planning and Probate Course, State Bar of Texas.

### A. Initial Query: Why Should the Judge Care?

Tex. Est. Code § 1201.003 provides that "A judge is liable on the judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter."

While this is not the same as personal liability (See *Twiligear v. Carrell*, 148 S.W.3d 502 (2004 Tex. App. Houston 14<sup>th</sup> District 2004) (pet. denied)), judges with probate jurisdiction, especially statutory probate judges, do not relish having a target on the back of their robes.

Active judicial oversight, requiring guardians to timely account, and employing ad litem to assist the court in enforcing the probate code, are the best

defenses the courts have in minimizing loss to the wards and eventual distributees in probate.

**Judicial Bonds** — as of November 1, 2017, any county-level judge (Constitutional County Court or County Court at Law) who handles probate or guardianship matters must furnish a surety bond - In counties with a population of 125,000 or less, this bond must be \$100,000.00.

- In counties with a population of more than 125,000, this bond must be \$250,000.00.

- Judges of Statutory Probate Courts must furnish a bond of \$500,000.00, mandated by Tex. Govt Code § 25.00231.

- The bond is to be conditioned that the judge will perform the duties required by the Texas Estates Code (i.e. follow-up on Inventories and Accountings, monitor guardianships)

- The bond is to provide coverage for losses caused by the gross negligence of county-level judge.

- In lieu of a bond, the county may elect to obtain insurance instead.

## B. Certification Requirements:

An Attorney Ad Litem must be certified to obtain appointments in guardianship proceedings. A Guardian Ad Litem need not be so certified. Additionally, the attorney for the Applicant must be so certified. Tex. Est. Code §1054.201.

Certification requires completion of a State Bar of Texas-sponsored four hour CLE course on guardianship law and procedure, including one hour on alternatives to guardianship and supports and services available to proposed wards. Tex. Est. Code § 1054.201(b). These courses are available on videotape, in live presentations and via internet.

Once certification is obtained, a copy of the certificate should be forwarded to the appropriate courts. Re-certification is required every two (2) years until the attorney has been certified for four years, and then the certification is effective for a four (4) year period. Tex. Est. Code § 1054.202.

When a certificate has expired, a new certificate must be obtained for the attorney to be eligible for appointment as an Attorney Ad Litem. Tex. Est. Code § 1054.203.

The certification requirement applies during administration of the guardianship as well. In *Guardianship of Marburger*, 2010 Tex. App. LEXIS

SUBTITLE F. EVALUATION, MODIFICATION,  
OR TERMINATION OF GUARDIANSHIP

CHAPTER 1201. EVALUATION OF GUARDIANSHIP

SUBCHAPTER A. REVIEW OF GUARDIANSHIP

- § 1201.001. Determining Guardian's Performance of Duties.
- § 1201.002. Annual Examination of Guardianship; Bond of Guardian.
- § 1201.003. Judge's Liability.
- § 1201.004. Identifying Information.

SUBCHAPTER B. ANNUAL DETERMINATION TO CONTINUE,  
MODIFY, OR TERMINATE GUARDIANSHIP

- § 1201.051. Applicability.
- § 1201.052. Annual Determination.
- § 1201.053. Method of Determination.
- § 1201.054. Form of Determination.

SUBCHAPTER A. REVIEW OF GUARDIANSHIP

§ 1201.001. Determining Guardian's Performance of Duties

The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian's ward.

Added by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, eff. Jan. 1, 2014.

Leading Cases

*Guardianship of DeLuna*, 286 S.W.3d 379 (Tex. App.—Corpus Christi 2008, no writ) (probate judge's denial of approval of parties' settlement of personal injury action was arbitrary and unreasonable; writ of mandamus granted).

§ 1201.002. Annual Examination of Guardianship; Bond of Guardian

(a) At least annually, the judge shall examine the well-being of each ward of the court and the solvency of the bond of the guardian of the ward's estate.

(b) If after examining the solvency of a guardian's bond as provided by Subsection (a) the judge determines that the guardian's bond is not sufficient to protect the ward or the ward's estate, the judge shall require the guardian to execute a new bond.

(c) The judge shall notify the guardian and the sureties on the guardian's bond as provided by law.

Added by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, eff. Jan. 1, 2014.

§ 1201.003. Judge's Liability

A judge is liable on the judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter.

Added by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, eff. Jan. 1, 2014.

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