

EXTRAORDINARY REMEDIES IN GUARDIANSHIPS

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I. INTRODUCTION

Guardianship issues can be difficult in the simplest cases. In some instances, extenuating circumstances call for extraordinary remedies.¹ This

1. See *infra* Part IX.A.

paper offers step-by-step guidance and forms to assist the guardianship practitioner in obtaining the best results.

II. TEMPORARY GUARDIANSHIPS

Chapter 1251 of the Texas Estates Code governs the appointment, qualification, duties, and duration of temporary guardians.² A temporary guardianship is an emergency remedy available when imminent danger exists to a proposed ward's physical health and safety, or the ward's estate.³ For purposes of the temporary guardianship only, the proposed ward is not presumed to be an incapacitated person.⁴

A. The Application

An application for the appointment of a temporary guardian must contain the requirements listed in the Estates Code, the clerk must serve the application upon the proposed ward, and the proposed ward's court-appointed attorney *ad litem* must represent the proposed ward at the temporary guardianship hearing.⁵ The hearing takes precedence over all matters on the judge's docket, except for older matters of the same character.⁶ The authors have found it may be necessary to gently remind courts who lack exclusive probate jurisdiction, unlike statutory probate courts, of the importance of hearing temporary guardianship applications immediately.⁷ The proposed ward has the right to be present at the temporary guardianship hearing, to be represented by his or her counsel, and to participate accordingly.⁸

B. The Order

The order appointing the temporary guardian must explicitly list the powers granted to the temporary guardian because the temporary guardian cannot act beyond the scope of authority granted.⁹ The temporary guardian must qualify in the same manner as a permanent guardian, including taking an oath and posting a bond.¹⁰ The term of the appointment of the temporary guardian lasts for no more than sixty days.¹¹ However, in the event of a contest, the court may order that the term last until the conclusion of the hearing that

2. See TEX. EST. CODE ANN. § 1251.001–.153 (West 2014).

3. See *id.* § 1251.010.

4. See *id.* § 1251.002.

5. See *id.* §§ 1251.003, 1251.005, 1251.008.

6. See *id.* § 1251.006(d).

7. See *id.*

8. See *id.* § 1251.008.

9. See *id.* § 1251.010.

10. See *id.* §§ 1251.012, 1251.052.

11. See *id.* § 1251.151.

challenges or contests the application or the date a permanent guardian is appointed.¹² At the end of the temporary guardianship, the temporary guardian must file an account for final settlement.¹³ The temporary guardian is discharged and the sureties released upon proof of proper delivery of the estate assets, as provided in the order of discharge.¹⁴

C. Forms

The following forms can be found in Appendix A: (1) Application for Appointment of Temporary Guardian of Person and Estate, and Application for Appointment of Permanent Guardian of the Person and Estate; and (2) Order Appointing Temporary Guardian of the Person and Estate.¹⁵

III. TEMPORARY RESTRAINING ORDER AND INJUNCTION

In cases where a potentially incapacitated person is clearly being exploited or abused, a party may file for a temporary or a permanent guardianship.¹⁶ The party may also request a temporary restraining order and temporary injunction prohibiting such exploitation or abuse.¹⁷ In some cases, it may be possible to obtain a temporary restraining order without notice to adverse parties.¹⁸

Injunctive relief is also available in an ongoing guardianship proceeding.¹⁹ The general rules for obtaining injunctive relief are found in Part VI, Section 5 of the Texas Rules of Civil Procedure.²⁰ Injunctive relief specifically related to guardianship matters is available pursuant to section 1251.051 of the Texas Estates Code.²¹ Seeking injunctive relief should only be requested where the evidence is clear because, as is discussed below, an applicant is subject to damages if injunctive relief is issued in error.²²

A. Injunctive Relief—Part VI, Section 5 of the Texas Rules of Civil Procedure

Seeking injunctive relief under Part VI, Section 5 of the Texas Rules of Civil Procedure presupposes the existence of a legal proceeding before the court.²³ For example, a party may not obtain a standalone temporary restraining

12. *See id.* § 1251.052.

13. *See id.* § 1251.152.

14. *See id.* § 1251.153.

15. *See infra* Appendix A.

16. TEX. EST. CODE ANN. § 1251.010 (West 2014).

17. *See id.* § 1251.051; TEX. R. CIV. P. 680–93a.

18. TEX. R. CIV. P. 680.

19. EST. § 1251.051.

20. TEX. R. CIV. P. 680–93a.

21. EST. § 1251.051.

22. *See infra* Part III.A.1.b.

23. *See* TEX. R. CIV. P. 680–83.

order prohibiting a closing of a sale; a lawsuit concerning the primary matter must also be before the court.²⁴ As a practical matter, the petition concerning the underlying cause of action and the request for injunctive relief may be filed together.²⁵ Generally, a request for a temporary restraining order will include a request for a temporary injunction.²⁶ A temporary restraining order only lasts for fourteen days, whereas a temporary injunction usually remains in place until the underlying cause of action is finalized.²⁷

1. Temporary Restraining Order

a. Application and Order

A party may seek a temporary restraining order without notice, pursuant to Rule 680 of the Texas Rules of Civil Procedure, by filing a verified complaint citing specific facts clearly showing that “immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.”²⁸ The court must fix the amount of the bond to be given by the applicant.²⁹ A temporary restraining order granted without notice may not last beyond fourteen days, unless extended.³⁰ The order must include the date of the hearing on the application for the temporary injunction, which must be held as soon as possible otherwise the court must dissolve the temporary restraining order.³¹ As a practical matter, the hearing on the temporary injunction application must occur before the temporary restraining order runs out, to avoid a gap in the prohibitions provided in the temporary restraining order.³²

b. Bond

The applicant must file the bond required in the temporary restraining order before the clerk may issue the writ.³³ The bond provides that the applicant will pay any money and costs that may be adjudged against the applicant if the restraining order is dissolved in whole or in part.³⁴ To prevail in a suit on a bond, a claimant must prove that the injunctive relief was issued in

24. *See generally id.*

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.* at 680.

29. *Id.* at 684.

30. *See id.* at 680.

31. *Id.*

32. *See id.*

33. *Id.* at 691.

34. *Id.*

error and that it was later dissolved.³⁵ The claimant does not have to prove the injunctive relief “was obtained maliciously or without probable cause.”³⁶

c. Writ of Injunction

“When the petition, order of the judge and bond have been filed, the clerk shall issue the [writ of injunction].”³⁷ The writ directs and commands the enjoined person to desist and refrain from the commission or continuance of the enjoined act, obey and execute such order as the court ordered, and state the date and time of the hearing on the application for a temporary injunction.³⁸ The writ is then to be served on the enjoined person.³⁹

2. Temporary Injunction

a. Sworn Petition

The applicant’s affidavit must verify the application for a temporary injunction and contain a clear statement of the grounds for the requested relief.⁴⁰ If possible, the application for a temporary restraining order should verify and include the application for a temporary injunction.⁴¹

b. Notice

After the filing of the petition, the clerk shall issue a citation to the defendant to be served and returned as an ordinary citation issued from the court.⁴² A temporary injunction cannot be issued unless notice is given to the adverse party.⁴³

c. Order

An order granting an injunction must state, in great detail, the reasons for its issuance and the restrained acts.⁴⁴ The order “shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought.”⁴⁵

35. *Id.*

36. *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 685–86 (Tex. 1990).

37. TEX. R. CIV. P. 688.

38. *Id.* at 687.

39. *Id.* at 689.

40. *Id.* at 682.

41. *Id.* at 686.

42. *See id.*

43. *Id.* at 681.

44. *Id.* at 683.

45. *See id.*

3. Principles of Equity

“The principles, practice and procedure governing courts of equity shall govern injunction proceedings” to the extent that they do not conflict with the provisions of the statutes.⁴⁶

4. Disobedience

The court may punish defiance of an injunction as contempt.⁴⁷

B. Temporary Restraining Order in Contested Guardianship

Section 1251.051 of the Texas Estates Code provides that the court, on its own motion or on the motion of an interested party, may grant a temporary restraining order under Rule 680 of the Texas Rules of Civil Procedure without issuing additional citation if: (1) an application for a temporary or permanent guardian has been challenged or contested, and (2) the court finds it is “necessary to protect the proposed ward or the proposed ward’s estate.”⁴⁸ As detailed above in Paragraph III.A.1, in order to grant a temporary restraining order without notice to the adverse party, Rule 680 of the Texas Rules of Civil Procedure requires a filed affidavit to include specific facts showing an “immediate and irreparable injury, loss, or damage will result” to the injured party before notice and a hearing is possible.⁴⁹

C. Forms

The following forms can be found in Appendix B: (1) Application for Appointment of Temporary Guardian, Request for Temporary Restraining Order and Temporary Injunction, and Application for Appointment of Permanent Guardian of the Person and Estate; (2) Temporary Restraining Order; (3) Personal Surety Bond for TRO; (4) Order of Temporary Injunction; and (5) Personal Surety Bond for Temporary Injunction.⁵⁰

IV. RECEIVERSHIP

There are rare occasions where, initially, only a guardianship of the person has been established, but circumstances later arise that show the ward’s

46. *Id.* at 693.

47. *Id.* at 692.

48. TEX. EST. CODE ANN. § 1251.051 (West 2014).

49. TEX. R. CIV. P. 680.

50. *See infra* Appendix B.

property is at risk, causing the need to appoint a guardian of the estate.⁵¹ In those cases, the attorney should consider applying instead for a receiver under Chapter 1354 of the Texas Estates Code.⁵² The provisions regarding receivership are less restrictive than those governing a guardianship of the estate; therefore, the use of receivership may allow speedier resolution of issues and result in less cost to the ward by way of attorneys' fees.⁵³

A. Procedure

1. Application and Order

The probate judge may appoint, with or without an application, a receiver to take charge of the estate of an incapacitated person if: (1) it is apparent that all or part of the estate is in danger of injury, loss, or waste and is in need of a guardian or other representative; (2) no guardian of the estate is qualified in this state; and (3) a guardian is not needed.⁵⁴ "The court order must specify the duties and powers of the receiver" necessary to protect, conserve, and preserve the estate.⁵⁵

2. Bond

The appointed receiver must be bonded in an amount the probate judge considers necessary to protect the estate.⁵⁶ The bond must be approved by the judge and filed with the clerk.⁵⁷

B. Authority and Duties of Receiver

1. Securing Assets, Expenditures, and Claims

Apparently, the receiver may present a certified copy of the order appointing the receiver to show the receiver's authority.⁵⁸ The receiver is to "take charge of the endangered estate as provided by the powers and duties [detailed in the court] order of appointment and subsequent orders."⁵⁹ During the pendency of the receivership, the receiver may expend funds, with or without application, for the needs of the ward; however, an order is required.⁶⁰

51. N.Y. State Bar Association, *Report of the Commission on Fiduciary Appointments*, 74 N.Y. St. B. J. 38, 38–41 (Jan. 2002).

52. TEX. EST. CODE ANN. § 1354.001(a) (West 2014).

53. *See id.*

54. *Id.*

55. *Id.* § 1354.001(b).

56. *See id.* § 1354.002(a).

57. *See id.* § 1354.002(b).

58. *See id.* §§ 1324.001–.003.

59. *Id.* § 1354.003.

60. *See id.* § 1354.004(a).

The amount received from the order pays for the education, clothing, or subsistence of the ward.⁶¹ The receiver may invest excess funds upon application and order.⁶² Any investments must be reported to the court “in the same manner that a report is required of a guardian.”⁶³

2. *Monthly Reports and Fees*

Each month the receiver files a sworn statement of account that details “the receiver’s acts; the condition of the estate; the status of the threatened danger to the estate; and the progress made toward abatement of the danger.”⁶⁴ The judge should review the statement, and if the judge is satisfied, the judge will “enter an order approving the expenses and authorizing the reimbursement.”⁶⁵ The receiver’s compensation is the same as the compensation for a guardian of the estate.⁶⁶

C. *Duration of Receivership*

“When the threatened danger has abated and the estate is no longer liable to injury, loss or waste,” the receiver must report to the judge and file a full and final sworn account that contains: (1) all the property received; (2) the property in the receiver’s possession; (3) all sums paid out; (4) all acts the receiver performed concerning the estate; and (5) all property remaining on hand.⁶⁷ Upon citation and hearing, if the court is satisfied that the danger of injury, loss, or waste to the estate has abated and finds that the receiver’s report and account are correct, the court is to enter an order directing the receiver to deliver the estate to the proper person, and discharge the receiver and the sureties on the receiver’s bond.⁶⁸ The court may continue the receivership in effect if the court is not satisfied that the danger has abated or finds the receiver’s report and account unsatisfactory.⁶⁹

It should be noted that Chapter 64 of the Texas Civil Practice and Remedies Code also allows for appointment of a receiver.⁷⁰ The provisions in Chapter 1354 of the Texas Estates Code, however, are specific to guardianships and do not reference the provisions of the Texas Civil Practice and Remedies Code.⁷¹ It seems unnecessary, therefore, to mention Chapter 64 of the Texas

61. *Id.* § 1354.004(b).

62. *Id.* § 1354.005(a).

63. *Id.* § 1354.005(b).

64. *Id.* § 1354.006(a).

65. *See id.* § 1354.006(b).

66. *See id.* § 1354.006(c).

67. *Id.* § 1354.007(a).

68. *Id.* § 1354.008(a), (c).

69. *Id.* § 1354.008(d).

70. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 64.001 (West 1999).

71. *See* TEX. EST. CODE ANN. §§ 1354.001–.009 (West 2014).

Civil Practice and Remedies Code in an application for a receiver in a guardianship case.⁷²

When filing an application for a receiver, check with the court staff to determine whether the court requires the appointment of an attorney *ad litem*, a guardian *ad litem*, or both. The receivership statutes do not specifically mention such appointments, but some courts do require them.⁷³

D. Forms

The following forms can be found in Appendix C: (1) Application for Appointment of Receiver for Estate of Ward, and (2) Order Appointing Receiver.⁷⁴

V. TRANSFERRING GUARDIANSHIP

Chapter 1253 of the Texas Estates Code governs interstate guardianships, meaning the transfer of a foreign guardianship into Texas or the transfer of a Texas guardianship to another state.⁷⁵ Although the authors have not transferred a Texas guardianship to a foreign jurisdiction, statutory probate courts routinely use this as a method of transferring guardianships of the person only to the courts of the jurisdiction in which wards currently reside.⁷⁶ This is an efficient method of managing such courts' dockets, as they are unable to conduct the regular court visits with such wards if they have moved outside the courts' jurisdiction.

A. Streamlined Process

As today's society becomes more mobile, the practitioner should become familiar with the receipt and transfer of foreign guardianship provisions included in sections 1253.051 to 1253.152 of the Texas Estates Code.⁷⁷ These provisions have become more streamlined over the years in order to allow for an easier transfer process.⁷⁸ For instance, certified copies of the guardianship proceedings in the foreign court, instead of exemplified copies, are now satisfactory, thereby decreasing the cost as well as the necessity of educating court clerks on the definition of "exemplified."⁷⁹

72. See CIV. PRAC. & REM. § 64.001.

73. See EST. §§ 1354.001–.009.

74. See *infra* Appendix C(1)–(2).

75. See TEX. EST. CODE ANN. § 1253.001 (West 2014).

76. See *id.* §§ 1253.001–.003.

77. See *id.* §§ 1253.051–.152.

78. See *id.*

79. *Id.* § 1253.051.

B. Application and Notice Requirements

The transfer of a foreign guardianship is a process similar to that of a permanent guardianship, with respect to the pleadings and notice/service requirements.⁸⁰ No medical evidence is required because a determination of the ward's incapacity has already been made and the appointment of an attorney *ad litem* (or guardian *ad litem*, as is done in some cases during a permanent application) is not necessary.⁸¹ Some courts (typically statutory probate courts) will appoint either a court investigator or visitor to meet with the ward and proposed guardian to report to the judge that the transfer is necessary and in the ward's best interest.⁸²

C. The Hearing and the Order

At the time of the transfer hearing, the court "shall give full faith and credit to the provisions of the foreign guardianship order."⁸³ The court should consider modifying the administrative procedures for a transferred guardianship in accordance with local and state law.⁸⁴ The authors understand this to mean that the order granting the transfer may follow in the same manner as that appointing a permanent guardian under Texas law.⁸⁵ The guardian must qualify in the same manner as a permanent guardian, including: taking the oath, posting a bond, and giving notice to the court from which the transfer was made.⁸⁶ Thereafter, the guardian is subject to the same annual requirements as that of a permanent guardian under the Texas Estates Code.⁸⁷

D. Forms

The following relevant forms are included in Appendix D: (1) Application for Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Texas Estates Code; and (2) Order Transferring and Modifying Foreign Guardianship.⁸⁸

VI. TURNOVER

The guardian of the estate of an incapacitated person may possess and manage all property belonging to the ward; collect all debts, rentals, or claims

80. *See id.* §§ 1253.001–.003.

81. *See id.* § 1253.053.

82. *See id.*

83. *Id.* § 1253.053(d).

84. *Id.* § 1253.053(f).

85. *See id.*

86. *See id.* § 1253.052.

87. *Id.* § 1163.002.

88. *See infra* Appendix D.

that are due to the ward; enforce all obligations in favor of the ward; and bring and defend suits by or against the ward.⁸⁹ Not only is the guardian entitled to possession, but the guardian must take possession of the ward's personal property, record books, title papers, and other business papers immediately after receiving letters of guardianship.⁹⁰ Finally, the guardian must use ordinary diligence to collect claims or recover property if there is a reasonable prospect of doing so.⁹¹

A. Motion for Turnover Order

On occasion, a guardian of the estate may have difficulty taking possession of a ward's property.⁹² In that event, the guardian may request relief by filing an application for turnover order pursuant to section 1151.101 of the Texas Estates Code.⁹³ Although it may be possible to seek relief pursuant to section 31.002 of the Texas Civil Practice and Remedies Code—a procedure to reach property in satisfaction of a judgment—this is a more restrictive method and requires additional steps when compared to section 1151.101 of the Texas Estates Code.⁹⁴

B. Estate of Hutchins—Recent Texas Case

A recent Texas case held a Motion for Turnover Order was an appropriate remedy for an executor to recover property belonging to the estate.⁹⁵ In *Hutchins*, one of the beneficiaries of the estate refused to allow the executor to take possession of all of the decedent's assets.⁹⁶ The executor filed a Motion for Turnover Order seeking possession of all estate property under section 37 of the Texas Probate Code, now section 101.003 of the Texas Estates Code.⁹⁷ The beneficiary objected, claiming that the executor failed to first obtain a judgment against her, pursuant to section 31.002 of the Texas Civil Practice and Remedies Code.⁹⁸ The trial court agreed and held the turnover order was inappropriate because there was no judgment against the beneficiary.⁹⁹ The executor filed a Petition for Writ of Mandamus, and the appellate court determined that the executor properly sought relief under section 37 of the Texas Probate Code, not the Texas Civil Practice and Remedies Code.¹⁰⁰ The

89. TEX. EST. CODE ANN. § 1151.101(a) (West 2014).

90. *Id.* § 1151.152(a).

91. *Id.* § 1151.105(a).

92. *Id.* § 1151.101.

93. *Id.*

94. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002 (West 1999).

95. See *In re Estate of Hutchins*, 391 S.W.3d 578, 588 (Tex. App.—Dallas 2012, no pet.).

96. *Id.* at 580.

97. *Id.* at 581.

98. *Id.* at 582.

99. *Id.*

100. *Id.* at 588.

appellate court also held that the trial court improperly determined section 31.002 of the Texas Civil Practice and Remedies Code to be the sole ground for the executor's motion.¹⁰¹ Further, the court held a separate lawsuit was not required for the executor to seek recovery of the property in the beneficiary's possession, as an executor is entitled to possession of estate property during administration.¹⁰² Finally, the court held that a turnover order in probate is an interlocutory order so mandamus is a proper remedy, rather than an appeal.¹⁰³

C. Forms

The following forms can be found in Appendix E: Motion for Turnover Order and Turnover Order.¹⁰⁴

VII. REMOVAL

Chapter 1203, Subchapter B of the Texas Estates Code governs the removal of guardians, both with and without notice to the guardian.¹⁰⁵ Specifically, section 1203.051 provides a laundry list of situations in which a court can remove a guardian, either *sua sponte* or upon the motion of any person interested in the ward's welfare, including the ward.¹⁰⁶

A. Reasons for Removal

1. Without Notice

Removal, for obvious reasons, includes failure to qualify in a timely manner or to file the required inventory.¹⁰⁷ The most common ground for removal without notice is found in section 1203.051(a)(6); however, such reason for removal has become more difficult in recent years because it requires an inability to locate the guardian, the evasion of service, or the misapplication or embezzlement of the ward's assets.¹⁰⁸ In the case of misapplication or embezzlement, the court must appoint a guardian *ad litem* and an attorney *ad litem*.¹⁰⁹ Sworn testimony and clear and convincing evidence must support a case for removal.¹¹⁰

101. *Id.*

102. *Id.* at 589.

103. *Id.* at 590.

104. *See infra* Appendix E.

105. TEX. EST. CODE ANN. §§ 1203.051–.057 (West 2014).

106. *Id.* § 1203.051(a)(1)–(2).

107. *Id.* § 1203.051(a)(1)–(7).

108. *Id.* § 1203.051(a)(6).

109. *Id.* § 1203.051(b).

110. *Id.* § 1203.056(a).

2. *With Notice*

The cases involving removal with notice typically include misapplication or embezzlement of the ward's assets, gross misconduct by the guardian, or failure by the guardian to maintain his or her guardianship certification.¹¹¹

B. Order

The removal order must contain specific requirements.¹¹² Notice must be “personally served on the removed guardian not later than the seventh day” after which the order is signed.¹¹³ A guardian removed without notice for misapplication or embezzlement of the ward's assets may petition for reinstatement as guardian within thirty days after the removal order is signed, in accordance with the provisions of section 1203.056 of the Texas Estates Code.¹¹⁴ The costs of the removal proceeding can be assessed against the removed guardian.¹¹⁵

C. Forms

The following forms can be found in Appendix F: Motion to Remove Guardian; and Order Removing Guardian and Appointing Successor Guardian of the Estate and Permanent Guardian of the Person.¹¹⁶

VIII. RESTORATION AND MODIFICATION

At least one year after the appointment of a permanent guardian, upon application, a court may reconsider the necessity of a guardianship for a particular ward.¹¹⁷ The request may come from a ward or a person interested in the ward's welfare, and the request may be used to modify the guardianship or to completely restore the ward's rights.¹¹⁸

111. *Id.* § 1203.052.

112. *Id.* § 1203.053(a)(1)–(4).

113. *See id.* § 1203.0531(5).

114. *Id.*

115. *Id.* § 1155.152(1).

116. *See infra* Appendix F.

117. *See* TEX. EST. CODE ANN. § 1202.051 (West 2014).

118. *Id.*

A. Getting Started

1. Contents of the Application

An application filed under this section contains specific requirements.¹¹⁹ The application must be sworn to by the applicant and include the following information: (1) the ward's name, sex, date of birth, and address; (2) the name and address of any person currently serving as guardian; (3) a description of the nature of the guardianship, including "the specific areas of protection and assistance and any limitation of rights that [currently] exist"; (4) the type of relief sought, including restoring the ward's capacity, granting the guardian additional powers or duties, or limiting the guardian's powers and duties; and (5) a description of the ward's property and income.¹²⁰ If a guardian's powers are being expanded or limited, the application must also specify "(A) the nature and degree of the ward's incapacity; (B) the specific areas of protection and assistance to be provided to the ward . . . and (C) any limitation of the ward's rights requested to be included in the court's order."¹²¹ If the ward is age sixty or over, the application must include the names and addresses of the ward's spouse, siblings, and children, or if none exists, the ward's next of kin must be included in the application.¹²²

2. Citation

"When an application is filed under Section 1202.051, citation [is required to] be served on: (1) the ward's guardian; and (2) the ward if the ward is not the applicant."¹²³

3. Informal Request from the Ward

A ward may request restoration by informal letter to the court.¹²⁴ "A person who knowingly interferes with the transmission of the [ward's] request to [be restored] may be adjudged guilty of contempt of court."¹²⁵ If a ward files a request for restoration with the court, it is possible that the request will fail to meet the strict requirements of the Texas Estates Code. In that situation, the court may appoint a court investigator or guardian *ad litem* to perform an investigation and make a recommendation to the court.¹²⁶ A guardian *ad litem* appointed for that purpose must prepare and file a report with the court

119. See generally *id.* § 1202.052 (illustrating the requirements of an application).

120. *Id.* § 1202.052(1)–(6), (8).

121. *Id.* § 1202.052(7).

122. *Id.* § 1202.052(9).

123. *Id.* § 1202.053.

124. *Id.* § 1202.054(a).

125. *Id.*

126. *Id.* § 1202.054(b).

detailing the *ad litem*'s findings and conclusions.¹²⁷ A guardian *ad litem* must make the determination whether "it is in the best interest of the ward to terminate or modify the guardianship," and if so, the guardian *ad litem* must prepare and file with the court an application that meets the statutory requirements.¹²⁸

B. Ward's Attorney

An attorney *ad litem* may be appointed to represent the ward in a proceeding "for the complete restoration of the ward's capacity or for the modification of the ward's guardianship."¹²⁹ Unless otherwise specified, the attorney *ad litem* represents the ward only for the purpose of restoring the ward's capacity or modifying the guardianship.¹³⁰ A ward can retain an attorney to initiate or advise the ward in a proceeding to restore the ward's capacity or modify the guardianship.¹³¹ However, an attorney hired by a ward in this situation should proceed cautiously because attorney's fees are only paid from the ward's estate if the court finds the attorney had a good faith belief that the ward had the capacity necessary to retain the attorney's services.¹³²

C. Hearing and Evidence

A hearing for a ward's restoration or modification of a guardianship is a specific proceeding in which the court hears certain evidence. The court only considers "evidence regarding the ward's mental or physical capacity at the time of the hearing."¹³³ The evidence must be relevant to the complete or partial restoration of the ward's capacity or to the modification of the ward's guardianship.¹³⁴ Further, a physician's certificate must be dated "not earlier than the 120th day before the date the application was filed; or after the date the application was filed but before the date of the hearing."¹³⁵ The physician's certificate should include details about the level and severity of the ward's incapacity and the ward's ability, or inability, to provide for himself or herself.¹³⁶ Depending on the nature of the proceeding, the following evidence may be required.¹³⁷

127. *Id.* § 1202.054(c).

128. *Id.*

129. *Id.* § 1202.101.

130. *Id.*

131. *Id.* § 1202.103(a).

132. *Id.* § 1202.103(b).

133. *Id.* § 1202.151(a).

134. *See id.*

135. *See id.* § 1202.152(a)(1)–(2).

136. *See id.* § 1202.152(b)(1)(A)–(C).

137. *See id.* § 1202.153(a)–(c).

1. Evidence to Close Guardianship

Before the court may order the settlement and close a guardianship, “the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.”¹³⁸

2. Evidence to Grant Additional Powers to Guardian

Before the court may grant additional powers to the guardian, “the court must find by a preponderance of the evidence that the current nature and degree of the ward’s incapacity warrants a modification of the guardianship and that some or all of the ward’s rights need to be further restricted.”¹³⁹

3. Evidence to Limit Powers and Duties of Guardian

“Before limiting the powers granted to or duties required to be performed by the guardian . . . the court must find by a preponderance of the evidence that the current nature and degree of the ward’s incapacity warrants a modification of the guardianship” to restore certain rights of the ward.¹⁴⁰

D. The Order

An order to completely restore a ward’s capacity or to modify a guardianship must state the guardian’s name, the ward’s name, and whether the underlying guardianship is a guardianship of the person, the estate, or both.¹⁴¹ Again, depending on the nature of the proceeding, there may be additional requirements.¹⁴²

1. Order to Restore Ward’s Capacity

An order restoring a ward’s capacity must include findings indicating that the ward’s incapacity resulted from a mental condition; that the ward is no longer incapacitated; that there is no further need for a guardianship of the ward; and that the mental capacity of the ward is completely restored.¹⁴³ Further, the order must include language that requires the guardian to immediately settle the guardianship and deliver all of the remaining

138. *Id.* § 1202.153(a).

139. *Id.* § 1202.153(b).

140. *Id.* § 1202.153(c).

141. *Id.* § 1202.154(a)(1)–(3).

142. *See id.* § 1202.155.

143. *Id.*

guardianship estate to the ward, and that requires the clerk to revoke letters of guardianship after the guardianship is settled and closed.¹⁴⁴

2. Order to Modify Guardianship

An order modifying a guardianship must include findings of fact and specify:

- (1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward . . . and the ward's property;
- (2) the areas of protection and assistance to be provided to the ward;
- (3) any limitation of the ward's rights;
- (4) . . . whether the ward retains the right to vote; and
- (5) that the clerk shall modify the letters of guardianship to conform to the order.¹⁴⁵

3. Order to Dismiss Application

If the court finds that a modification or restoration is not necessary, the court should dismiss the application and specify that the guardian's powers, limitations, or duties remain unchanged.¹⁴⁶

E. Removal of Firearm Disability

Finally, there is a new procedure if a guardianship is terminated because a person's rights are fully restored. That person may file an application for an order requesting removal of the person's disability to purchase firearms under 18 U.S.C. § 922(g)(4) with the court that created the guardianship.¹⁴⁷

F. Only One Time a Year

“A person may not reapply for complete restoration of a ward's capacity or modification of a ward's guardianship before the first anniversary of the date of the hearing on the last preceding application, except as otherwise provided by the court”¹⁴⁸ Thus, a ward may only revisit the issue on an annual basis.¹⁴⁹

144. *Id.* § 1202.155(4)(B).

145. *Id.* § 1202.156.

146. *Id.* § 1202.157.

147. *See id.* § 1202.201; *see also* 18 U.S.C. § 922(g)(4) (2012) (stating that it shall be unlawful for anyone who has been adjudicated as mentally defective or who has been committed to a mental institution to ship, transport, or possess a firearm).

148. TEX. EST. CODE ANN. § 1202.055 (West 2014).

149. *Id.*

G. Forms

In Appendix G, the following forms can be found: Application to Restore Ward's Capacity and Close Guardianship, Order Restoring Ward's Capacity, and Report of Guardian Ad Litem, which does not recommend restoration.¹⁵⁰

IX. MANDAMUS

A. Extraordinary Remedy

Mandamus is an extraordinary remedy available “only to correct a clear abuse of discretion or violation of a duty imposed by law when there is no other adequate remedy.”¹⁵¹ A writ of mandamus is issued by a higher court to a lower court or court official compelling the performance of a ministerial act of said official—as opposed to other acts of said official, such as those of discretion.¹⁵² Writs of mandamus are available to the guardianship practitioner.¹⁵³ However, the appellate cases on the issue are few and far between and, as detailed below, are often intertwined with related probate proceedings.¹⁵⁴

B. Case Law

There are few reported cases concerning the use of mandamus in probate matters, and even fewer relating specifically to guardianship issues. One such case is *In re Balzas*.¹⁵⁵ In *Balzas*, the relator—the person seeking a writ of mandamus—was the guardian of the person of the ward.¹⁵⁶ After a contested guardianship hearing, all parties agreed, “as to form and substance,” to the appointment of the relator as guardian and dismissal of the underlying litigation.¹⁵⁷ However, the order signed by the judge on the date of the hearing varied from the “clean” order later signed by the judge a month after.¹⁵⁸ The difference was whether the relator was appointed as guardian of the person only or as guardian of the person and the estate.¹⁵⁹ A subsequent motion was filed to remove the relator as guardian, which resulted in the relator filing a motion for

150. See *infra* Appendix G.

151. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (quoting *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985)).

152. See generally *In re Mask*, 198 S.W.3d 231 (Tex. App.—San Antonio 2006, orig. proceeding) (granting a conditional writ of mandamus).

153. See *id.*

154. *Id.*

155. *In re Balzas*, No. 04-13-00838-CV, 2014 Tex. App. LEXIS 1782 (Tex. App.—San Antonio 2014, orig. proceeding).

156. See *id.* at 1–2.

157. *Id.* at 3.

158. *Id.*

159. *Id.* at 4.

judgment *nunc pro tunc* and a motion to vacate the later order due to a typographical error after the expiration of the judge's plenary power.¹⁶⁰ The trial judge denied both motions and the guardian subsequently filed a petition for writ of mandamus.¹⁶¹ In this original mandamus proceeding, the earlier order was found to be final and appealable.¹⁶² The trial court could have corrected any errors during the plenary period.¹⁶³ Due to the substantive differences between the earlier order and later order, the later order was found to be void and should have been vacated on motion of the relator.¹⁶⁴ Mandamus was conditionally granted, and writ was issued only if the trial court failed to comply with the decision.¹⁶⁵

There are several mandamus cases arising out of a probate or guardianship proceeding dealing with ancillary matters, such as medical malpractice, discovery, disqualification of counsel, and transfer of venue. One such case is *Henry v. LaGrone*, wherein the guardian of a ward's estate filed suit in the probate court of one county against a trustee for breach of fiduciary duty and to remove the trustee.¹⁶⁶ The trustee filed a petition for declaratory judgment in the county court of a different county to avoid having to appear in the probate court of the initially filed county.¹⁶⁷ However, the guardian successfully petitioned for a writ of mandamus, and the entire case ended up before the probate court.¹⁶⁸ The court temporarily withheld a writ of mandamus, as the issued opinion should compel performance by the judge of the lower court.¹⁶⁹ "A writ of mandamus will issue only if the judge and the clerk fail to act in accordance with our expectations."¹⁷⁰ However, the authors understand that the county court in the *Henry* case refused to act according to the appellate court's ruling until served with the writ of mandamus.¹⁷¹

Other examples of mandamus issues dealing with ancillary matters to a probate or guardianship case include: *In re Willa Peters Hubberd Testamentary Trust*, the court issued a writ of mandamus for a modification of a trust; *In re Texas Farmers Insurance Co.*, the court allowed mandamus for discovery in a personal injury suit; *In re Gunn*, the court issued mandamus for a

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Henry v. Lagrone*, 842 S.W.2d 324, 325 (Tex. App.—Amarillo 1992, orig. proceeding).

167. *See id.*

168. *See id.* at 325–27.

169. *See id.* at 328.

170. *Id.*

171. *See generally id.* (demonstrating that the appellate court issued a writ of mandamus because of the county court's failure to comply with their expectations).

disqualification of counsel in a medical malpractice case; and *In re San Jacinto County*, the court issued mandamus for a transfer of venue.¹⁷²

C. Procedure

A petition for writ of mandamus and related filings must meet the requirements of Rule 52 of the Texas Rules of Appellate Procedure.¹⁷³

D. Forms

An example of an Original Petition for Writ of Mandamus can be found in Appendix H.¹⁷⁴

X. CONCLUSION

Extraordinary remedies are available to assist the practitioner in navigating difficult guardianship cases.¹⁷⁵ These remedies can be quite effective, and it is worth an attorney's time to learn how to use these methods.¹⁷⁶ In some guardianship cases, the matter will not otherwise reach a successful resolution.¹⁷⁷

172. See *In re Willa Peters Hubberd Testamentary Trust*, 432 S.W.3d 358 (Tex. App.—San Antonio 2014, no pet.); *In re Tex. Farmers Ins. Co.*, No. 02-13-00449-CV, 2014 WL 345677 (Tex. App.—Fort Worth 2014, mem. op.); *In re Gunn*, No. 14-13-00566-CV, 2013 WL 5631241 (Tex. App.—Houston [14th Dist.] 2013, mem. op.); *In re San Jacinto Cnty.*, 416 S.W.3d 639 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

173. TEX. R. APP. P. 52.

174. See *id.*

175. See *supra* Part IX.A.

176. See *supra* Part VII.

177. See *supra* Part VI.C.

APPENDIX A(1)

*[STYLE]***APPLICATION FOR APPOINTMENT OF TEMPORARY
GUARDIAN OF PERSON AND ESTATE, AND APPLICATION FOR
APPOINTMENT OF PERMANENT GUARDIAN OF PERSON AND
ESTATE**

TO THE HONORABLE PROBATE COURT:

NOW COMES Sunny Wayne Smith, an interested person concerning John Wayne, the “Proposed Ward,” and files this Application for Appointment of Temporary Guardian of Person and Estate, Request for Temporary Restraining Order and Temporary Injunction, and Application for Appointment of Permanent Guardian of the Person and Estate, and would respectfully show the Court the following:

**I. APPLICATION FOR APPOINTMENT OF TEMPORARY
GUARDIAN OF PERSON AND ESTATE**

1.01 John Wayne, (“Proposed Ward”), the person for whom the appointment of a temporary guardian is sought, is a ninety-three (93) year old, adult male whose date of birth is March 10, 1917, and whose driver’s license number is unknown. He is an incapacitated person as defined in section 1002.017(2) of the Texas Estates Code. Proposed Ward is located at the residential address of 721 Hollywood Drive, Fort Worth, Tarrant County, Texas 76102, where Proposed Ward can be served with process.

1.02 Applicant is a child of Proposed Ward and is a person interested in the welfare of the Proposed Ward. Applicant’s address is as follows: Sunny Wayne Smith, 7119 Rodeo Drive, Fort Worth, Tarrant County, Texas 76102. Applicant would show that it would be in Proposed Ward’s best interest that Applicant or a suitable person be appointed Temporary Guardian of the Person and Estate of the Proposed Ward. The Proposed Ward’s mental and physical condition has deteriorated due to dementia and overall deteriorating health. It is believed that various individuals may be exploiting Proposed Ward financially, and may be failing to provide adequate medical care for Proposed Ward, and Proposed Ward is believed to be in immediate need of a guardian of the person and estate.

1.03 A temporary guardianship of Proposed Ward’s person and estate is sought.

1.04 The Court has jurisdiction and venue over these proceedings pursuant to section 1023.001 of the Estates Code because Proposed Ward is currently located in Tarrant County, Texas.

1.05 The specific facts requiring the immediate appointment of a temporary guardian of the person and estate of the Proposed Ward are detailed

below. Proposed Ward's current medical condition is more fully set forth in the medical records previously filed herein, including the Physician's Certificate of Dr. Jane Shultz, M.D., dated March 17, 2009, a copy of which is attached hereto as **Exhibit "A."** According to Dr. Shultz, Proposed Ward is incapacitated mentally and physically due to dementia, heart disease, and kidney disease, and has extreme vision loss, which dementia and vascular disease will continue to worsen. A developmental disability is not the basis of the physician's diagnosis of incapacity. Proposed Ward's incapacities make him extremely susceptible to financial abuse, and it is believed that Proposed Ward has made, and continues to make, gifts of money to various individuals that have not known Proposed Ward for any length of time. Further, Proposed Ward's funds are limited, and the gifts are in excess of what Proposed Ward can afford to gift to others. Further, Proposed Ward refuses proper and necessary medical treatment and personal care. Further, there is great concern that Proposed Ward's current living arrangements are not sufficient for the level of care needed by Proposed Ward.

1.06 Based upon the facts alleged above, there exists an imminent danger and an immediate necessity for Proposed Ward to have a temporary guardian of his person and estate appointed to protect Proposed Ward from financial abuse, to provide his proper medical care, to properly manage his medication, and to provide his proper level and quality of care.

1.07 Applicant requests that Applicant or a suitable person be appointed as Temporary Guardian of the Person and Estate of Proposed Ward.

1.08 No guardianship for Proposed Ward currently exists in this or any other state.

1.09 The temporary guardian of the person and estate should be granted the following powers:

a. The power to apply for, arrange for, and consent to any and all medical, psychological, or psychiatric examinations, treatment, tests, or evaluations for Proposed Ward, but not the power or authority to consent to in-patient psychiatric commitment of Proposed Ward.

b. The power to consent to or object to medical and dental treatment for Proposed Ward, including surgery.

c. The power to take charge and control of the person of Proposed Ward, including having physical possession of Proposed Ward, and to establish Proposed Ward's legal domicile and place of residence.

d. The power to apply for, consent to, and enroll Proposed Ward in private or public residential care facilities, including 24-hour facilities or nursing home facilities.

e. The power to apply for and to secure an identification card, social security card, or other identification documents for Proposed Ward.

f. The power to apply for, receive, and manage funds from all private or governmental sources, including monthly social security income.

g. The power to have access to any and all of Proposed Ward's medical records, health records, and protected health information from any and all covered entities pursuant to 45 C.F.R. §§ 160–164, Health Insurance Portability and Accountability Act (HIPAA). This power and authority applies to any and all information governed by HIPAA and should be complied with by any and all health care providers and insurance companies that have provided treatment, testing, or services. "Protected Health Information" regarding Proposed Ward's records is to be given the most liberal interpretation by Proposed Ward's health care providers and is to include any and everything regarding Proposed Ward's health condition. This authority allows the Guardian to request and obtain copies of any of the protected health information, including any chemical dependency records, AIDS/HIV testing, results or treatment, and all other treatment, testing, or records that the Guardian deems necessary. This authority shall supersede any prior agreements that Proposed Ward may have executed with Proposed Ward's providers regarding access or disclosure, or lack thereof, of Proposed Ward's protected health information. This authorization only expires upon a written revocation by this Court delivered to the health care provider.

h. The power to sign a Do Not Resuscitate Order on behalf of Proposed Ward.

i. The power and right to determine who may and who may not visit Proposed Ward, and to deny access to Proposed Ward to anyone whose visits are not in the Proposed Ward's best interest, as determined by the temporary guardian.

j. The power to manage Proposed Ward's real and personal property, including bank accounts or other deposit or investment accounts, annuities, life insurance policies, and any other asset in which Proposed Ward may have an interest.

k. The power to have access at any time to any safe deposit box rented by Proposed Ward, to remove part or all of the contents thereof, and to surrender said safe deposit box.

l. The power, with prior permission of the Court, to take any legal action necessary or appropriate to enforce or protect any property rights of Proposed Ward to defend, pay, compromise, settle, or adjust any liability for any debt or obligation owed to settle, compromise, or release any claims held or asserted.

m. The power, with prior permission of the Court, to sell, exchange, or otherwise dispose of property of Proposed Ward.

n. The power to manage, maintain, repair, or insure property (real, personal or mixed, tangible or intangible), or any interest therein owned by Proposed Ward.

o. The power to apply for a Certificate of Title upon, and endorse and transfer title to, any automobile or other motor vehicle of Proposed Ward, and to represent in such transfer assignment that the title to said motor vehicle is

free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

p. The power, with prior permission of the Court, to maintain or purchase policies of insurance insuring the life, health, property, or interests of Proposed Ward (including Medicare, Social Security, or any other private or public welfare program) and with regard to such policies, to take such action as may be appropriate to obtain possession and control of such policies or to collect the proceeds of such policies.

q. The power to cause to be prepared, to execute, and to file any tax return, claim for refund, or other document that must or should be filed or to pay any tax (including penalties or interest) shown to be due by such return, to represent Proposed Ward before any taxing authority, in any matter, with authority to execute a waiver of any type, to consent to extensions of any type on behalf of Proposed Ward, to compromise or settle any tax liability asserted against Proposed Ward, and to make any return or report for Proposed Ward to any governmental agency or authority that Proposed Ward may be entitled or required to make.

r. The power to do such other and further acts concerning the Proposed Ward and the property and interests of the Proposed Ward and the Proposed Ward's estate as the Court may from time to time direct by express authorization through written order.

1.10 Applicant brings this Application in good faith and for just cause and requests that her attorneys' fees and expenses relating to this Application and the appointment of a guardian be approved and paid out of the Proposed Ward's guardianship estate.

II. APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF PERSON AND ESTATE

2.01 Proposed Incapacitated Person. John Wayne, ("Proposed Ward"), the person for whom the appointment of a temporary guardian is sought, is a ninety-three (93) year old, adult male whose date of birth is March 10, 1917, and whose driver's license number is unknown. Proposed Ward is unmarried, and his parents are deceased. He is an incapacitated person as defined in section 1002.017(2) of the Texas Estates Code. Proposed Ward is located at the residential address of 721 Hollywood Drive, Fort Worth, Tarrant County, Texas 76102, where Proposed Ward can be served with process.

2.02 Applicant. Applicant is a child of Proposed Ward and is a person interested in the welfare of the Proposed Ward. Applicant's address is as follows: Sunny Wayne Smith, 7119 Rodeo Drive, Fort Worth, Tarrant County, Texas 76102. Applicant would show that it would be in Proposed Ward's best interest that Applicant or a suitable person be appointed Guardian of the Person and Estate of the Proposed Ward. The Proposed Ward's mental and physical condition has deteriorated due to dementia and overall deteriorating health. It is

believed that various individuals may be exploiting Proposed Ward financially and may be failing to provide adequate medical care for Proposed Ward, and Proposed Ward is believed to be in immediate need of a guardian of the person and estate.

2.03 Proposed Guardian. Applicant requests that the Court appoint Applicant or a suitable person to serve as Guardian of the Person and Estate of Proposed Ward. The names, addresses, and telephone numbers of the Proposed Ward's adult relatives, if any, are listed immediately below:

Name & Relationship to Proposed Ward

Sunny Wayne Smith, Applicant and Daughter
7119 Rodeo Drive
Fort Worth, Texas 76102

2.04 Nature of Incapacity. Proposed Ward's current medical condition is more fully set forth in the medical records previously filed herein, including the Physician's Certificate of Dr. Jane Shultz, M.D., dated March 17, 2009, a copy of which is attached hereto as **Exhibit "A."** According to Dr. Shultz, Proposed Ward is incapacitated mentally and physically due to dementia, heart disease, and kidney disease, and has extreme vision loss, which dementia and vascular disease will continue to worsen. A developmental disability is not the basis of the physician's diagnosis of incapacity. Proposed Ward's incapacities make him extremely susceptible to financial abuse, and it is believed that Proposed Ward has made, and continues to make, gifts of money to various individuals that have not known Proposed Ward for any length of time. Further, Proposed Ward's funds are limited, and the gifts are in excess of what Proposed Ward can afford to gift to others. Further, Proposed Ward refuses proper and necessary medical treatment and personal care. Further, there is great concern that Proposed Ward's current living arrangements are not sufficient for the level of care needed by Proposed Ward.

2.05 Specific Areas of Protection and Assistance Requested. Applicant requests Proposed Guardian be granted the full powers allowed under the Estates Code.

2.06 Limitation of Rights Requested. Applicant requests the rights of Proposed Ward be fully limited, including that Proposed Ward will no longer have the right to vote in a public election, or to hold or obtain a license to operate a motor vehicle.

2.07 Estate. It appears that Proposed Ward may own real and personal property valued as follows:

- a. Real Property: None
- b. Personal Property
 1. Personal Checking Account, with deposit of \$133,000.00
 2. 2008 Cadillac Automobile, value unknown

2.08 Miscellaneous. Applicant requests the term of the guardianship to be not less than one year. To the Applicant's knowledge, there is no guardianship established for Proposed Ward in this or any other state. Venue is proper in this county because Proposed Ward resides in Tarrant County, Texas, and was located here at the time this Application was filed.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that notice of this Application be given as required by law, and that the Court:

a. Appoint Applicant or a suitable person Temporary Guardian of the Person and Estate of Proposed Ward, with all of the duties and powers set forth herein.

b. Appoint Applicant or a suitable person to serve as Guardian of the Person and Estate of Proposed Ward with all of the duties and powers as set forth herein; and

c. Order such further relief as the Court may deem appropriate.

Respectfully submitted,

ATTORNEYS FOR APPLICANT

[NOTARY ACKNOWLEDGMENT]

APPENDIX A(2)

[STYLE]

**ORDER APPOINTING TEMPORARY GUARDIAN OF PERSON
AND ESTATE**

On this day, the Court considered the Application for Appointment of Temporary Guardian of the Person and Estate, filed by Sunny Wayne Smith. The Court, after considering the application and evidence submitted and citation having been returned, finds substantial evidence exists of the following:

1. The Court finds that it has jurisdiction over the subject matter and parties herein and venue is proper in this Court.

2. There is probable cause to believe that an imminent necessity exists to appoint a temporary guardian under section 1251.001 *et seq.* of the Texas Estates Code.

3. That the Proposed Ward has been served with notice of this proceeding prior to the entry of this Order.

4. That all prerequisites of law have been met.

5. The Court further finds by substantial evidence that John Wayne (“Proposed Ward”) is an incapacitated person and that there exists an imminent danger that the physical health or safety of Proposed Ward will be seriously impaired, or that Proposed Ward’s estate will be seriously damaged or dissipated, unless immediate action is taken.

6. The Court further finds that Sunny Wayne Smith is a suitable person, not otherwise disqualified by law, to serve as Temporary Guardian of the Person and Estate for Proposed Ward.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Sunny Wayne Smith is hereby appointed Temporary Guardian of the Person and Estate of John Wayne, and the Clerk of this Court shall issue Letters of Temporary Guardianship of the Person and Estate upon said Temporary Guardian’s taking and filing an oath to faithfully discharge the duties of Temporary Guardian of the Person and Estate and giving a corporate surety bond in the amount of \$150,000.00, which is the proper amount hereby fixed in accordance with law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Temporary Guardian of the Person and Estate shall have the following powers:

a. The power to apply for, arrange for, and consent to any and all medical, psychological, or psychiatric examinations, treatment, tests or evaluations for Proposed Ward, but not the power or authority to consent to in-patient psychiatric commitment of Proposed Ward.

b. The power to consent to or object to medical and dental treatment for Proposed Ward, including surgery.

c. The power to take charge and control of the person of Proposed Ward, including having physical possession of Proposed Ward, and to establish Proposed Ward's legal domicile and place of residence.

d. The power to apply for, consent to, and enroll Proposed Ward in private or public residential care facilities, including 24-hour facilities or nursing home facilities.

e. The power to apply for and to secure an identification card, social security card, or other identification documents for Proposed Ward.

f. The power to apply for, receive, and manage funds from all private or governmental sources, including monthly social security income.

g. The power to have access to any and all of Proposed Ward's medical records, health records, and protected health information from any and all covered entities pursuant to 45 C.F.R. §§ 160–164, Health Insurance Portability and Accountability Act (HIPAA). This power and authority applies to any and all information governed by HIPAA and should be complied with by any and all health care providers and insurance companies that have provided treatment, testing, or services. "Protected Health Information" regarding Proposed Ward's records is to be given the most liberal interpretation by Proposed Ward's health care providers and is to include any and everything regarding Proposed Ward's health condition. This authority allows the Temporary Guardian to request and obtain copies of any of the protected health information, including any chemical dependency records, AIDS/HIV testing, results or treatment, and all other treatment, testing, or records that the Temporary Guardian deems necessary. This authority shall supersede any prior agreements that Proposed Ward may have executed with Proposed Ward's providers regarding access or disclosure, or lack thereof, of Proposed Ward's protected health information. This authorization only expires upon a written revocation by this Court delivered to the health care provider.

h. The power to sign a Do Not Resuscitate Order on behalf of Proposed Ward.

i. The power and right to determine who may and who may not visit Proposed Ward, and to deny access to Proposed Ward to anyone whose visits are not in the Proposed Ward's best interest as determined by the Temporary Guardian.

j. The power to manage Proposed Ward's real and personal property, including bank accounts or other deposit or investment accounts, annuities, life insurance policies, and any other asset in which Proposed Ward may have an interest.

k. The power to have access at any time to any safe deposit box rented by Proposed Ward, to remove part or all of the contents thereof, and to surrender said safe deposit box.

l. The power, with prior permission of the Court, to take any legal action necessary or appropriate to enforce or protect any property rights of Proposed

Ward to defend, pay, compromise, settle, or adjust any liability for any debt or obligation owed to settle, compromise, or release any claims held or asserted.

m. The power, with prior permission of the Court, to sell, exchange, or otherwise dispose of property of Proposed Ward.

n. The power to manage, maintain, repair, or insure property (real, personal or mixed, tangible or intangible), or any interest therein owned by Proposed Ward.

o. The power to apply for a Certificate of Title upon, and endorse and transfer title to, any automobile or other motor vehicle of Proposed Ward, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

p. The power, with prior permission of the Court, to maintain or purchase policies of insurance insuring the life, health, property, or interests of Proposed Ward (including Medicare, Social Security, or any other private or public welfare program) and, with regard to such policies, to take such action as may be appropriate to obtain possession and control of such policies or to collect the proceeds of such policies.

q. The power to cause to be prepared, to execute, and to file any tax return, claim for refund, or other document that must or should be filed or to pay any tax (including penalties or interest) shown to be due by such return, to represent Proposed Ward before any taxing authority, in any matter, with authority to execute a waiver of any type, to consent to extensions of any type on behalf of Proposed Ward, to compromise or settle any tax liability asserted against Proposed Ward, and to make any return or report for Proposed Ward to any governmental agency or authority that Proposed Ward may be entitled or required to make.

r. The power to do such other and further acts concerning the Proposed Ward and the property and interests of the Proposed Ward and the Proposed Ward's estate as the Court may from time to time direct by express authorization through written order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all powers of attorney held for Proposed Ward are hereby stayed and suspended until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to section 1251.051 of the Estates Code, the Temporary Guardianship shall continue to be effective and enforced until the conclusion of the hearing challenging or contesting the application for a permanent guardian or on the date a permanent guardian appointed by the Court for the Proposed Ward qualifies to serve as the Proposed Ward's guardian

SIGNED this ____ day of _____, 2014.
JUDGE PRESIDING

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD’S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER’S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER’S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER’S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.”

APPENDIX B(1)

*[STYLE]***APPLICATION FOR APPOINTMENT OF TEMPORARY
GUARDIAN OF THE ESTATE, REQUEST FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION, AND
APPLICATION FOR APPOINTMENT OF PERMANENT
GUARDIAN OF PERSON AND ESTATE**

TO THE HONORABLE PROBATE COURT:

NOW COMES, Dahlia McGillicuddy, Applicant and Guardian Ad Litem, and files this Application for the Appointment of Temporary Guardian of the Estate, Request for Temporary Restraining Order and Temporary Injunction, and Application for Appointment of Permanent Guardian of the Person and Estate of ERICA YVETTE DARHEE, an alleged incapacitated person (“Proposed Ward”), and would respectfully show the Court the following:

**I. APPLICATION FOR APPOINTMENT OF TEMPORARY
GUARDIAN**

1.01 Proposed Incapacitated Person. ERICA YVETTE DARHEE, (“Proposed Ward”), the person for whom the appointment of a guardian is sought, is an eighty-five (85) year old, adult female whose date of birth is August 21, 1926, and whose driver’s license number is unknown. She is an incapacitated person as defined in section 1002.017(2) of the Texas Estates Code. Proposed Ward’s residential address is 222 Mandy, Fort Worth, Tarrant County, Texas 76118. However, Proposed Ward is currently living with her daughter and can be served with process, as follows: 1111 Cloudy Spring, Fort Worth, Tarrant County, Texas 76111.

1.02 Kind of Guardianship. A temporary guardianship of Proposed Ward’s estate is sought. Applicant would show that it would be in Proposed Ward’s best interest to appoint a temporary guardian to protect the Proposed Ward and handle her financial affairs. No guardianship for Proposed Ward currently exists in this or any other state.

1.03 Proposed Guardian. Applicant requests that a suitable person be appointed Temporary Guardian of the Estate.

1.04 Venue. The Court has jurisdiction and venue over these proceedings pursuant to section 1023.001 of the Texas Estates Code because Proposed Ward currently resides in Tarrant County, Texas.

1.05 Need for Guardianship. The Physician’s Certificate of Dr. Yvette Chester, which was filed herein on June 22, 2012, is attached hereto, is dated within 120 days of the filing of this Application, and is based upon an examination the physician performed not earlier than 120 days from the date this Application was filed. A developmental disability is not the basis of the

Physician's diagnosis of total incapacity, as Proposed Ward's mental and physical condition has deteriorated due to dementia. It is believed that at least one individual is financially exploiting Proposed Ward. Based upon the foregoing facts, there exists an **imminent danger and an immediate necessity** for Proposed Ward to have a temporary guardian to protect her.

1.06 **Powers.** The Temporary Guardian of the Estate should be granted the following powers:

a. The power to manage Proposed Ward's real and personal property, including bank accounts or other deposit or investment accounts, annuities, life insurance policies, and any other asset in which Proposed Ward may have an interest.

b. The power to have access at any time to any safe deposit box rented by Proposed Ward, to remove part or all of the contents thereof, and to surrender said safe deposit box.

c. The power, with prior permission of the Court, to take any legal action necessary or appropriate to enforce or protect any property rights of Proposed Ward to defend, pay, compromise, settle, or adjust any liability for any debt or obligation owed to settle, compromise, or release any claims held or asserted.

d. The power, with prior permission of the Court, to sell, exchange, or otherwise dispose of property of Proposed Ward.

e. The power to manage, maintain, repair, or insure property (real, personal or mixed, tangible or intangible), or any interest therein owned by Proposed Ward.

f. The power to apply for a Certificate of Title upon, and endorse and transfer title to, any automobile or other motor vehicle of Proposed Ward, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

g. The power, with prior permission of the Court, to maintain or purchase policies of insurance insuring the life, health, property, or interests of Proposed Ward (including Medicare, Social Security, or any other private or public welfare program) and with regard to such policies, to take such action as may be appropriate to obtain possession and control of such policies or to collect the proceeds of such policies.

h. The power to cause to be prepared, to execute, and to file any tax return, claim for refund, or other document that must or should be filed or to pay any tax (including penalties or interest) shown to be due by such return, to represent Proposed Ward before any taxing authority, in any matter, with authority to execute a waiver of any type, to consent to extensions of any type on behalf of Proposed Ward, to compromise or settle any tax liability asserted against Proposed Ward, and to make any return or report for Proposed Ward to any governmental agency or authority that Proposed Ward may be entitled or required to make.

i. The power to do such other and further acts concerning the Proposed Ward and the property and interests of the Proposed Ward and the Proposed Ward's estate as the Court may from time to time direct by express authorization through written order.

1.07 **Estate.** It appears that Proposed Ward may own real and personal property valued as follows:

A. Real Property

1. 100% ownership interest in 222 Mandy
Fort Worth, Tarrant County, Texas
Value per Tarrant County Appraisal District: \$43,500.00

B. Personal Property

1. Bank of Hibernia, value unknown
2. Big American Bank
Account No. xxxx2222 \$150,000.00
3. Cherry Picker Investments, value unknown

Total: value unknown

Proposed Ward is also the beneficiary of The Darhee Family Living Revocable Trust.

1.08 **Powers of Attorney.** Applicant requests that the Court suspend and stay all powers of attorney while the temporary guardianship is pending.

II. REQUEST FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

2.01 **Request for Temporary Restraining Order and Temporary Injunction.** Dahlia McGillicuddy, Guardian Ad Litem and Applicant, complains of and requests the Court to restrain and enjoin the following individuals: Cyrene E. Vangelis, individually, as agent for ERICA YVETTE DARHEE, and as successor co-trustee of The Darhee Family Living Revocable Trust, who resides at 1111 Cloudy Spring, Fort Worth, Tarrant County, Texas 76111, and who can be served with process at that address; and Betty Jepps, individually, as agent for ERICA YVETTE DARHEE, and as successor co-trustee of The Darhee Family Living Revocable Trust, who resides at 4534 Vanette, Fort Worth, Tarrant County, Texas 76211, and who can be served with process at that address, from the following:

- a. Having access to, or accessing, the real and personal property of ERICA YVETTE DARHEE;
- b. Expending, distributing, or disbursing funds of ERICA YVETTE DARHEE, including funds held in the The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of ERICA YVETTE DARHEE;
- c. Selling, transferring, assigning, or disbursing, in any way, any assets of ERICA YVETTE DARHEE, any assets held in the The Darhee Family Living Revocable Trust, or any funds held in any other trust for the

benefit of ERICA YVETTE DARHEE to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and
d. Entering the residence of Proposed Ward, located at 222 Mandy, Fort Worth, Tarrant County, Texas 76118, without further order of the Court.

2.02 **Venue.** Applicant seeks a restraining order and temporary injunction herein by a motion incidental to this Application; therefore, venue of this action for a restraining order and temporary injunction is determined by proper venue for the primary relief sought by Applicant.

2.03 **Facts.** The Proposed Ward is unable to handle her personal and financial business. Applicant incorporates by reference the facts stated in Article I, above.

2.04 **Irreparable Injury and Inadequate Legal Remedy.** The Proposed Ward has been and likely will continue to be financially exploited, and continued use of the assets of the Proposed Ward will result in the further diminution in value of her assets. It is believed that Cyrene E. Vangelis and Betty Jepps do not have the ability to respond in damages at the end of the current litigation, and Cyrene E. Vangelis' and Betty Jepps' wrongful acts are recurrent or continuous or threaten to be so.

2.05 **Notice.** It is essential that the Court immediately and temporarily restrain Cyrene E. Vangelis and Betty Jepps from continuing with the conduct described in this Application. It is essential that the Court act immediately, prior to notice on Cyrene E. Vangelis and Betty Jepps and a hearing on the matter.

III. APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN OF PERSON AND ESTATE

3.01 **Proposed Incapacitated Person.** ERICA YVETTE DARHEE, ("Proposed Ward"), the person for whom the appointment of a guardian is sought, is an eighty-five (85) year old, adult female whose date of birth is August 21, 1926, and whose driver's license number is unknown. She is an incapacitated person as defined in section 1002.017(2) of the Texas Estates Code. Proposed Ward's residential address is 222 Mandy, Fort Worth, Tarrant County, Texas 76118. However, Proposed Ward is currently living with her daughter, and can be served with process, as follows: 1111 Cloudy Spring, Fort Worth, Tarrant County, Texas 76111.

3.02 **Proposed Guardian.** Applicant requests that a suitable person be appointed Guardian of the Person and that a suitable person be appointed Guardian of the Estate. Proposed Ward is unmarried, and her parents are deceased. The names, addresses, and telephone numbers of the Proposed Ward's adult relatives, if any, are listed immediately below:

Name & Relationship to Proposed Ward

Cyrene E. Vangelis, Daughter
1111 Cloudy Spring
Fort Worth, Texas 76111
817-555-1345

Betty Jepps, Daughter
4534 Vanette
Fort Worth, Texas 76211
817-555-6989

3.03 Nature of the Incapacity. The Physician's Certificate of Dr. Yvette Chester, which was filed herein on June 22, 2012, is attached hereto, is dated within 120 days of the filing of this Application, and is based upon an examination the physician performed not earlier than 120 days from the date this Application was filed. A developmental disability is not the basis of the Physician's diagnosis of total incapacity, as Proposed Ward's mental and physical condition has deteriorated due to dementia. It is believed that at least one individual is financially exploiting Proposed Ward. Based upon the foregoing facts, there exists a need for a Permanent Guardian of the Person and Estate for Proposed Ward to protect her.

3.04 Specific Areas of Protection and Assistance Requested. Applicant requests Proposed Guardian be granted the full powers allowed under the Texas Estates Code.

3.05 Limitation of Rights Requested. Applicant requests the rights of Proposed Ward be fully limited, including that Proposed Ward will no longer have the right to vote in a public election and to hold or obtain a license to operate a motor vehicle.

3.06 Estate. It appears that Proposed Ward may own real and personal property valued as follows:

A. Real Property

1. 100% ownership interest in 222 Mandy,
Fort Worth, Tarrant County, Texas
Value per Tarrant County Appraisal District: \$43,500.00

B. Personal Property

1. Bank of Hibernia, value unknown
2. Big American Bank
Account No. xxxx2222 \$150,000.00
3. Cherry Picker Investments, value unknown

Total: value unknown

Proposed Ward is also the beneficiary of The Darhee Family Living Revocable Trust.

Proposed Ward receives approximate monthly income as follows:

Income Source, Monthly Income & Annual Income

Teacher's Retirement: \$2,000; \$24,000

Social Security: \$1,632; \$19,584

Total: \$3,632; \$43,584

3.07 **Miscellaneous.** Applicant requests the term of the guardianship to be not less than one year. To the Applicant's knowledge, there is no guardianship established for Proposed Ward in this or any other state. Proposed Ward's daughter, Cyrene E. Vangelis, holds a Statutory Durable Power of Attorney dated March 14, 2013. Venue is proper in this county because Proposed Ward resides in Tarrant County, Texas, and resided here at the time this Application was filed.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that notice of this Application be given as required by law, and that the Court:

a. Appoint a suitable person to serve as Guardian of the Person and Estate of Proposed Ward with all of the duties and powers as set forth herein, and suspend all powers of attorney signed by Proposed Ward while the guardianship is pending;

b. Restrain and enjoin Cyrene E. Vangelis, individually, as agent for ERICA YVETTE DARHEE, and as successor co-trustee of The Darhee Family Living Revocable Trust; and Betty Jepps, individually, as agent for ERICA YVETTE DARHEE, and as successor co-trustee of The Darhee Family Living Revocable Trust, from the following:

1. Having access to, or accessing, the real and personal property of ERICA YVETTE DARHEE;
 2. Expending, distributing, or disbursing funds of ERICA YVETTE DARHEE, including funds held in the The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of ERICA YVETTE DARHEE;
 3. Selling, transferring, assigning, or disbursing, in any way, any assets of ERICA YVETTE DARHEE, any assets held in the The Darhee Family Living Revocable Trust, or any funds held in any other trust for the benefit of ERICA YVETTE DARHEE to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and
 4. Entering the residence of Proposed Ward, located at 222 Mandy, Fort Worth, Tarrant County, Texas, without further order of the Court.
- c. Order such further relief as the Court may deem appropriate.

Respectfully submitted,

Dahlia McGillicuddy, GUARDIAN AD
LITEM

State Bar No. 1234567

BRAMBLE, MCGILLICUDDY &
FELLOWES, P.C.

123 Blueberry Street

Fort Worth, Texas 76111

Telephone: 817-555-1212

Facsimile: 817-555-1213

Email: dhmgillicuddy@bahoo.com

THE STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Dahlia McGillicuddy, Applicant in the foregoing Application for the Appointment of Temporary Guardian of the Estate, Request for Temporary Restraining Order and Temporary Injunction, and Application for Appointment of Permanent Guardian of the Person and Estate, known to be the person whose name is subscribed to the above and foregoing Application and on her oath stated that such Application contains a correct and complete statement of the matters as known to Applicant, to which it relates and all the contents thereof are true, complete, and correct to the best of Applicant's knowledge.
Dahlia McGillicuddy

SWORN TO AND SUBSCRIBED BEFORE ME on this the ____ day of _____, 2014
Notary Public in and for the State of Texas

APPENDIX B(2)

[STYLE]

TEMPORARY RESTRAINING ORDER

Dahlia McGillicuddy, Applicant and Guardian Ad Litem, filed her Request for Temporary Restraining Order and Temporary Injunction. Evidence presented to the Court supports the facts set out in Applicant's pleadings that the Proposed Ward's estate will suffer irreparable harm unless an order to preserve and protect the assets of Proposed Ward, Erica Yvette Darhee, and the status quo and the property and rights and protection of Erica Yvette Darhee, during the pendency of this action, and that Cyrene E. Vangelis and Betty Jepps, individually, as agents for Erica Yvette Darhee, and as successor co-trustees of The Darhee Family Living Revocable Trust, are temporarily restrained during the pendency of this action from the following:

1. Having access to, or accessing, the real and personal property of Erica Yvette Darhee;

2. Expending, distributing, or disbursing funds of Erica Yvette Darhee, including funds held in the The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of Erica Yvette Darhee;

3. Selling, transferring, assigning, or disbursing, in any way, any assets of Erica Yvette Darhee, any assets held in the The Darhee Family Living Revocable Trust, or any funds held in any other trust for the benefit of Erica Yvette Darhee to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and

4. Entering the residence of Proposed Ward, located at 222 Mandy, Fort Worth, Tarrant County, Texas, without further order of the Court.

The Court finds that Cyrene E. Vangelis and Betty Jepps will commit the foregoing acts before notice can be given and a hearing is had on Applicant's Motion for Temporary Injunction; if the commission of these acts is not restrained immediately, Erica Yvette Darhee will suffer irreparable injury because Cyrene E. Vangelis and Betty Jepps will commit the acts complained of before Applicant can obtain a judgment and to the irreparable detriment of Erica Yvette Darhee.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Cyrene E. Vangelis and Betty Jepps, individually, as agents for Erica Yvette Darhee, as successor co-trustees of The Darhee Family Living Revocable Trust, and their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with Cyrene E. Vangelis and Betty Jepps, are immediately restrained from:

1. Having access to, or accessing, the real and personal property of Erica Yvette Darhee;

2. Expending, distributing, or disbursing funds of Erica Yvette Darhee, including funds held in the The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of Erica Yvette Darhee;

3. Selling, transferring, assigning, or disbursing in any way, any assets of Erica Yvette Darhee, or any assets held in the The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of Erica Yvette Darhee, to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and

4. Entering the residence of Proposed Ward, located at 222 Mandy, Fort Worth, Tarrant County, Texas, without further Order of the Court.

The Clerk of the above-entitled Court shall forthwith on the filing by Applicant of the bond hereinafter required and on approving the same according to the law, issue a temporary restraining order in conformity with the law and the terms of this Order.

IT IS, FURTHER, ORDERED that Cyrene E. Vangelis and Betty Jepps appear before this Court on the ___ day of _____, 2014, at ___ o'clock, a.m., in the courtroom of this Court, then and there to show cause, if any there be, why a temporary injunction should not be issued as requested by Applicant. The Clerk of the Court is hereby directed to issue a show cause notice to Cyrene E. Vangelis and Betty Jepps to appear at the temporary injunction hearing.

This Order shall not be effective unless and until Applicant executes and files with this Clerk a personal surety bond in conformity with the law in the amount of \$100.

SIGNED this ___ day of _____, 2014, at ___ o'clock p.m.
JUDGE PRESIDING

APPENDIX B(3)

[STYLE]

**PERSONAL SURETY BOND FOR TEMPORARY RESTRAINING
ORDER**

STATE OF TEXAS §
COUNTY OF TARRANT §

Whereas, the Honorable Judge _____, did on _____, 2014, sign an order in the above-referenced cause granting a temporary restraining order against Cyrene E. Vangelis and Betty Jepps, and requiring Dahlia McGillicuddy, Guardian Ad Litem and Applicant, to make, execute, and file an injunction bond in the sum of one hundred dollars (\$100.00), payable to the adverse parties Cyrene E. Vangelis and Betty Jepps, before issuance of the writ of injunction; therefore:

Know all men by these presents, that we, the undersigned Dahlia McGillicuddy, acting for Applicant, as principal, and Brenda Harris and Mindy Sue Mason as sureties, acknowledge ourselves bound to pay to Cyrene E. Vangelis and Betty Jepps the sum of one hundred dollars (\$100.00), conditioned that Applicant will abide by the decision that may be made in the aforesaid cause, and that they will pay all sums of money and costs that may be adjudged against them if the temporary restraining order ordered on _____, 2014, in the aforesaid cause, enjoining Cyrene E. Vangelis and Betty Jepps, shall be dissolved in whole or in part.

Dahlia McGillicuddy, Principal
Brenda Harris, Surety
Mindy Sue Mason, Surety
123 Blueberry Street
Fort Worth, Texas 76111

Approved this ____ day of _____, 2014.
PRESIDING JUDGE

APPENDIX B(4)

*[STYLE]***ORDER OF TEMPORARY INJUNCTION**

Due notice having been given, on this day came to be heard the request for a temporary injunction filed by Dahlia McGillicuddy, Guardian Ad Litem and Applicant in this cause, and the parties, after considering the circumstances, have agreed and are requesting that the Court order the following:

That Cyrene E. Vangelis and Betty Jepps, individually, as agents for Erica Yvette Darhee (sometimes hereinafter referred to as “Proposed Ward”), and as successor co-trustees of The Darhee Family Living Revocable Trust, be temporarily enjoined during the pendency of this guardianship proceeding from the following:

1. Having access to, or accessing, the real and personal property of Erica Yvette Darhee;

2. Expending, distributing, or disbursing funds of Erica Yvette Darhee, including funds held in The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of Erica Yvette Darhee;

3. Selling, transferring, assigning, or disbursing, in any way, any assets of Erica Yvette Darhee, any assets held in The Darhee Family Living Revocable Trust, or any funds held in any other trust for the benefit of Erica Yvette Darhee to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and

4. Entering the residence of Proposed Ward, located at 311 Martha Jean, White Settlement, Tarrant County, Texas 76108, without further order of the Court.

The Court, having reviewed the parties’ proposed terms above detailed, finds that the terms are in the best interest of the Proposed Ward, and that the Agreed Temporary Injunction should be entered.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, until the conclusion of the hearing challenging or contesting the application for a permanent guardian, or on the date a permanent guardian appointed by the Court for the Proposed Ward qualifies to serve as the Proposed Ward’s guardian, or until judgment in this cause is otherwise rendered by this Court, Cyrene E. Vangelis and Betty Jepps, individually, as agents for Erica Yvette Darhee, and as successor co-trustees of The Darhee Family Living Revocable Trust, whether acting by themselves or through their agents, servants, employees, officers, and attorneys, and all those persons in active concert or participation with Cyrene E. Vangelis and Betty Jepps, are commanded forthwith to desist and refrain from:

1. Having access to, or accessing, the real and personal property of Erica Yvette Darhee;

2. Expending, distributing, or disbursing funds of Erica Yvette Darhee, including funds held in The Darhee Family Living Revocable Trust, or funds held in any other trust for the benefit of Erica Yvette Darhee;

3. Selling, transferring, assigning, or disbursing, in any way, any assets of Erica Yvette Darhee, any assets held in The Darhee Family Living Revocable Trust, or any funds held in any other trust for the benefit of Erica Yvette Darhee, to Cyrene E. Vangelis, Betty Jepps, or any person or entity, pending final hearing in this suit; and

4. Entering the residence of Proposed Ward, located at 311 Martha Jean, White Settlement, Tarrant County, Texas 76108, without further order of the Court.

IT IS FURTHER ORDERED that the clerk shall forthwith issue a temporary injunction in conformity with the law and the terms of this order.

SIGNED: _____, 2014.
JUDGE PRESIDING

APPENDIX B(5)

[STYLE]

PERSONAL SURETY BOND FOR TEMPORARY INJUNCTION

STATE OF TEXAS §
COUNTY OF TARRANT §

Whereas, the Honorable Judge _____, did on _____, 2014, sign an order in the above-referenced cause granting an Agreed Order of Temporary Injunction against Cyrene E. Vangelis and Betty Jepps, and requiring Dahlia McGillicuddy, Guardian Ad Litem and Applicant, to make execute, and file an injunction bond in the sum of one hundred dollars (\$100.00), payable to the adverse parties Cyrene E. Vangelis and Betty Jepps, before issuance of the writ of injunction; therefore:

Know all men by these presents, that we, the undersigned Dahlia McGillicuddy, Guardian Ad Litem and Applicant, as principal, and Brenda Harris and Mindy Sue Mason, as sureties, acknowledge ourselves bound to pay to Cyrene E. Vangelis and Betty Jepps the sum of one hundred dollars (\$100.00), conditioned that Applicant will abide by the decision that may be made in the aforesaid cause, and that they will pay all sums of money and costs that may be adjudged against them if the agreed order of temporary injunction ordered on _____, 2014, in the aforesaid cause, enjoining Cyrene E. Vangelis and Betty Jepps, shall be dissolved in whole or in part.

Dahlia McGillicuddy, Principal
Brenda Harris, Surety
Mindy Sue Mason, Surety
123 Blueberry Street
Fort Worth, Texas 76111

Approved this ____ day of _____, 2014.

PRESIDING JUDGE

APPENDIX C(1)

[STYLE]

**APPLICATION FOR APPOINTMENT OF RECEIVER FOR
ESTATE OF WARD**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Nicholas Charming, Guardian of the Person of Anthony William Darden, an Incapacitated Person, (“Applicant”), and files this Application for the Appointment of a Receiver for Estate of Ward pursuant to section 1354.001 of the Texas Estates Code, and shows the following in support:

1.01 Anthony William Darden (“Ward”) is an adult male, born July 3, 1967, who resides at Pleasant Valley Residential Facility, 5555 Live Oak Road, Fort Worth, Texas. On August 12, 2013, this Court appointed Nicholas Charming as Guardian of the Person for Ward. No guardian of the estate was appointed for Ward at that time, and Ward remained living in his residence located at 8543 Craddock Lane, Fort Worth, Tarrant County, Texas (“Residence”). Ward owns a 100% interest in the Residence.

1.02 Ward’s physical condition has deteriorated significantly, and it has been necessary to place Ward in a residential facility in order for Ward to receive the necessary level of care. There is no likelihood that Ward will recover sufficiently to return to the Residence.

1.03 The Residence and its contents are in danger of injury, loss, or waste, and is in need of a representative to prevent same. The equity in the Residence and the contents are valued at approximately \$50,000.

1.04 There is no guardian of the estate who has been appointed in this State.

1.05 A guardian of the estate is not needed, as the appointment of a receiver is a less restrictive alternative to the appointment of a guardian of the estate at this time.

1.06 Applicant requests that this Court appoint a suitable person as a receiver of Ward’s Residence and its contents, and order specific duties and powers of the receiver that the Court considers necessary for the protection, conservation, and preservation of Ward’s estate, including but not limited to, the duty and power to:

- a. Sell Ward’s Residence and its contents without further order of the Court;
- b. Expend the sale proceeds to pay legal fees as ordered by the Court;
- c. Provide for the needs of the Ward upon application and as ordered by the Court; and
- d. Report to the Court as required by Chapter 1354 of the Texas Estates Code.

WHEREFORE, Applicant respectfully requests that upon proper notice and hearing of this Application, the Court enter an order:

1. Appointing a suitable person as receiver to take immediate control of Ward's Residence and its contents;
2. Detailing specific duties and powers of the receiver as above stated; and
3. Granting such other and further relief to which Applicant may show himself entitled.

Respectfully Submitted,

Michael Balding
State Bar No.
Balding, Avery & Newman, P.C.
400 East Fourth Street, Suite 123
Wisconsin City, Texas 76102-4808
Telephone: 817-123-4567
Telecopier: 817-123-4568
Email: MBalding@bahoo.com
ATTORNEY FOR APPLICANT

APPENDIX C(2)

[STYLE]

ORDER APPOINTING RECEIVER

On this date, came to be heard the *Application for Appointment of Receiver*, filed herein on _____, by Nicholas Charming, Guardian of the Person of Anthony William Darden, an Incapacitated Person. Nicholas Charming appeared in person and through his attorney of record, Michael Balding. The Court finds that Anthony William Darden (“Ward”) appeared in person and through his attorney and guardian ad litem, Dan Jansen. After hearing the evidence presented, the Court finds that:

1. The Ward is a totally incapacitated person who resides at Pleasant Valley Residential Facility, 5555 Live Oak Road, Fort Worth, Texas;
2. Ward is under a guardianship of the person in this cause number and there is no guardianship of the estate;
3. The estate is in danger of injury, loss, or waste;
4. The endangered property of Ward is located at 8543 Craddock Lane, Fort Worth, Tarrant County, Texas (“Residence”);
5. This Court has venue and jurisdiction of this proceeding and of all necessary parties;
6. The appointment of a receiver is a less restrictive alternative to the appointment of a guardian of the estate at this time;
7. A receiver of the property of Ward should be appointed for the protection, conservation, and preservation of the estate; and
8. Lester Moore is deemed qualified by the Court to be appointed as Receiver.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Lester Moore is appointed as Receiver of **Anthony William Darden** and granted authority over the property of Anthony William Darden for the protection, conservation, and preservation of the estate.

IT IS FURTHER ORDERED that the Receiver shall be given the following duties and powers:

1. The power to enter into contracts to market and sell Ward’s real and personal property, including the real property and contents located at 8543 Craddock Lane, Fort Worth, Tarrant County, Texas without further order of the Court; and
2. To expend the Ward’s funds to pay legal fees and to provide for the needs of Ward upon application and order of the Court.

IT IS FURTHER ORDERED that the Receiver shall be required to post a cash bond in the amount of \$100/OR a personal surety bond in the amount of \$100/OR a corporate surety bond in the amount of \$100, in the time required by law.

IT IS FURTHER ORDERED that on the filing and approval of the Receiver's bond as required, the Clerk of the Court shall issue a certified copy of this Order showing the authority of the Receiver herein.

IT IS FURTHER ORDERED that when the estate is no longer liable to injury, loss, or waste, the Receiver shall report to the Court, file with the Clerk a full and final sworn account, and apply to deliver the estate to those persons entitled to receive the same and to seek discharge.

Signed this ___ day of _____.
JUDGE PRESIDING

APPENDIX D(1)

[STYLE]

**APPLICATION FOR RECEIPT AND ACCEPTANCE OF A
FOREIGN GUARDIANSHIP PURSUANT TO SECTION 1253.051 OF
THE ESTATES CODE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES MICHAEL SCOTT, Applicant, and files this Application for Receipt and Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Texas Estates Code with respect to DWIGHT SCHRUTE, an incapacitated person, and subject to a guardianship in Lackawanna County in the State of Pennsylvania, and in support thereof, represents to the Court as follows:

1. GUARDIANS' NOTICE TO WARD AND FOREIGN COURT. DWIGHT SCHRUTE ("Ward"), an incapacitated person, is in the process of relocating to Tarrant County, Texas and will reside at 100 Beet Farm Lane, Fort Worth, Tarrant County, Texas 76126. DWIGHT SCHRUTE may be personally served with the Application for Receipt and Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Estates Code ("Application") at said address. The Court of Common Pleas for Lackawanna County, State of Pennsylvania, in and for Lackawanna County ("the Foreign Court") will be given notice of this Application by delivery of a file marked copy of the same to Robert California, Lackawanna County Circuit Clerk, P.O. Box 100, Scranton, Pennsylvania 18503.

2. BEST INTEREST. Applicant requests that this Court find that the receipt and acceptance of the guardianship from the Foreign Court to this Court is in the best interest of the Ward. Applicant is the brother of the Ward and guardian of the Ward's person and estate in the State of Pennsylvania. The Ward is in the process of moving to Tarrant County, Texas, to reside with Applicant. Therefore, it is necessary to transfer the foreign guardianship to Tarrant County, Texas. The receipt and transfer of the foreign guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in Texas or another state, and the Application has been filed in the Court that is best suited to consider the matter.

3. WARD'S INCAPACITY. Applicant asks this Court to give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the Ward's incapacity and the rights, powers, and duties of the guardians. Certified copies of the Petition for the Appointment of Guardian, Notice of Hearing, Summons, Motion to Appoint Guardian ad Litem, Order Appointing Guardian ad Litem and Setting Hearing, Findings of Fact, Conclusions of Law and Order Appointing Guardian, Report of Guardian ad Litem, Answer of Guardian ad Litem, and Bond of Legal Representative are attached. No Surety is on file herein.

4. KIND OF GUARDIANSHIP. Applicant seeks guardianship of the person of the Ward in Texas. Applicant believes that a guardian of the person is necessary for the protection and welfare of the Ward and requests that Applicant be appointed guardian of the person to handle the personal affairs of the Ward.

5. PROPOSED GUARDIAN. Applicant requests that he be appointed guardian of the person of the Ward to assist him in managing his personal affairs. Applicant is the brother of the Ward. Applicant's physical address is 100 Beet Farm Lane, Fort Worth, Tarrant County, Texas 76126, and Applicant's mailing address is 100 Beet Farm Lane, Fort Worth, Tarrant County, Texas 76126. Applicant is not disqualified by law to serve as guardian for the Ward.

6. VENUE. This Court has venue of this proceeding because the Ward resides in Tarrant County.

7. DUTIES AND POWERS OF GUARDIAN. Applicant requests that the Guardian of the Person of the Ward be granted the following specific powers and duties necessary to protect the rights of Ward as a result of the Ward's incapacities:

a. To review, to take possession of, and to consent to the disclosure of the Ward's medical or dental records.

b. To apply for, arrange for, and consent to any and all psychological, psychiatric, or medical examinations, tests, or evaluations for the Ward.

c. To consent to or object to medical and dental treatment for the Ward, including surgery, but not the power or authority to consent to a sterilization or abortion for the Ward.

d. To apply for, to consent to, and to enroll the Ward in non-residential aging or Alzheimer's programs and services that are reasonably required and needed by the Ward and that are operated by public and private agencies and facilities.

e. The duty to live with the Ward or, alternatively, the power and authority to make application for, to consent to, and to enroll the Ward in private and public residential care facilities.

f. To make application for, to consent to, and to place the Ward in private and public 24-hour care facilities or nursing home facilities.

g. To apply for and to receive funds from governmental sources for the Ward, including:

- i. Social Security,
- ii. Medicare,
- iii. Supplemental Security Income Benefits (SSI),
- iv. HUD Section 8 Rent Subsidies,
- v. Childhood Disability Benefits under the Old-Age Survivors and Disability,
- vi. Insurance Program,
- vii. Aid to Families with Dependent Children (AFDC), and

viii. Veteran's Benefits.

h. To apply for and to consent to governmental services on the Ward's behalf, including:

- i. Vocational Rehabilitation Programs,
- ii. Medicaid Services,
- iii. Food Stamps, and
- iv. Veteran's Benefits.

i. To have possession and control of the Ward and to deny anyone access to the Ward if such is in the best interest of the Ward.

j. To do such other and further acts concerning the Ward as the Court may from time to time direct by express authorization through written order of the Court.

8. PROPERTY OF WARD. The Ward is the primary beneficiary of a special needs trust established in Pennsylvania in 2004 created by FANNIE SCHRUTE, the Ward's sister. The corpus of the trust consists of retirement benefits to which the Ward is entitled as the result of the death of his mother and father. The Ward receives retirement income of approximately \$2,000.00 per month as the result of the death of his mother and father, which is directly deposited to said trust. Any other income or property to which the Ward is entitled has been placed in the special needs trust for the benefit of the Ward. Applicant would show that there is no necessity for the appointment of a guardian of the Ward's estate in the state of Texas.

WHEREFORE, Applicant respectfully requests that this Court grant this Application for Receipt and Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Estates Code with the powers requested herein, and grant Applicant such further relief as the Court may deem appropriate.

Respectfully submitted,

Catherine H. Goodman
State Bar No. 00790858
Shannon, Gracey, Ratliff & Miller, L.L.P.
420 Commerce Street, Suite 500
Fort Worth, Texas 76102
Telephone: (817) 336-9333
Facsimile: (817) 336-3735
ATTORNEY FOR APPLICANT

Verification

STATE OF TEXAS §§
COUNTY OF TARRANT §

MICHAEL SCOTT, Applicant, first being duly sworn, upon his oath, deposes and says:

“My name is MICHAEL SCOTT, and I am an Applicant in the above-styled and numbered cause. I have read and examined the foregoing Application for Receipt and Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Estates Code which is to be filed in this cause and all allegations contained therein are true and correct to the best of my knowledge.”
MICHAEL SCOTT, Applicant

SWORN TO AND SUBSCRIBED BEFORE ME by MICHAEL SCOTT on
the _____ day of _____, 2014.

Notary Public, State of Texas

APPENDIX D(2)

[STYLE]

**ORDER TRANSFERRING AND MODIFYING FOREIGN
GUARDIANSHIP**

On this day, the Court considered the Application for Receipt and Acceptance of a Foreign Guardianship Pursuant to Section 1253.051 of the Texas Estates Code filed by MICHAEL SCOTT (“Application”).

The Court, having read the Application herein, having received the pleadings from the Court of Common Pleas of Lackawanna County, State of Pennsylvania, in and for Lackawanna County, and being fully advised in the premises, hereby makes the following findings of fact by clear and convincing evidence:

1. That the proposed guardianship requested in the Application is not a collateral attack on an existing guardianship in another jurisdiction in this or another state;
2. That the Application has been filed in the Court best suited to hear this matter;
3. That DWIGHT SCHRUTE (“Ward”) is an incapacitated person as defined by section 1002.017(2) of the Estates Code, and has no legal guardian of his person and estate in the state of Texas, and that the incapacity is evidenced by recurring acts or occurrences within the preceding six (6) month period and not by isolated instances of negligence or bad judgment;
4. That the receipt and acceptance of the guardianship from the Court of Common Pleas of Lackawanna County, State of Pennsylvania, in and for Lackawanna County, is in the best interest of the Ward;
5. That it is in the best interest of the Ward to have the Court appoint a guardian of his person in the state of Texas; and
6. That the rights of the Ward will be protected by the appointment of a guardian of his person.

The Court hereby makes the following findings of fact by a preponderance of the evidence:

1. The Ward is a resident of Tarrant County, Texas, and this Court has jurisdiction and venue to appoint a guardian of the person of the Ward;
2. That notice has been properly served on those persons required by the Estates Code;
3. That the Ward was not present in Court, the personal appearance of the Ward at the hearing being unnecessary or inadvisable because the Ward’s incapacities are such that the Ward would not have been able to understand or participate in the hearing, and to require the Ward to participate in the hearing would not be in his best interest;

4. MICHAEL SCOTT is the brother of the Ward and a guardian in the State of Pennsylvania and is eligible to act as guardian and is a proper person to be appointed guardian of the person of the Ward;
5. That the Ward is totally without capacity to care for himself;
6. That there is no necessity for the appointment of a guardian of the estate for the Ward in the state of Texas;
7. That the Ward has not executed any powers of attorney in favor of anyone;
8. That by virtue of the Ward's incapacities and legal disabilities, the following legal and civil rights and powers should be removed from the Ward:
 - a. The right to vote in a public or private election.
 - b. The right to travel.
 - c. The right to make any gifts of real or personal property.
 - d. The power to drive and obtain a driver's license.
 - e. The power to execute a Directive to Physicians (Living Will).
 - f. The power to execute a Power of Attorney.
 - g. The power to execute any and all legal documents or contracts.
 - h. The power to marry.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. MICHAEL SCOTT ("Guardian") is hereby appointed as Guardian of the Person of the Ward, and is hereby granted full authority over the Ward's person with all powers to act on the Ward's behalf as authorized under the Estates Code, and to do such other and further acts concerning the Ward as the Court may, from time to time, direct by express authorization through written order of the Court, and specifically including the ability to apply for a passport on behalf of the Ward, and the rights of the Ward are limited to the extent not inconsistent herewith, including the right to hold or obtain a license to operate a motor vehicle.
2. The Guardian appointed is hereby ordered to swear and subscribe to an oath that he will faithfully discharge the duties of Guardian of the Person of the Ward;
3. The Guardian shall give good and adequate personal bond in the amount of one hundred dollars (\$100.00);
4. Upon the filing of the Guardian's oath and approval of the Guardian's bond as required herein, the Court shall issue Letters of Guardianship to MICHAEL SCOTT as Guardian of the Person of DWIGHT SCHRUTE;
5. A petition for adjudication that a guardianship is no longer needed by the Ward may not be filed within a period of one (1) year from the date of the signing of this Order without special leave of the Court;

6. That by virtue of the Ward's incapacities and legal disabilities, the following legal and civil rights and powers are hereby removed from the Ward:
 - a. The right to vote in a public or private election.
 - b. The right to travel.
 - c. The right to make any gifts of real or personal property.
 - d. The power to drive and obtain a driver's license.
 - e. The power to execute a Directive to Physicians (Living Will).
 - f. The power to execute a Power of Attorney.
 - g. The power to execute any and all legal documents or contracts.
 - h. The power to marry;
7. That this Court gives full faith and credit to the provisions of the guardianship order concerning the determination of the Ward's incapacity and the rights, powers, and duties of the Guardian of the Ward in Lackawanna County, Pennsylvania;
8. That Guardian report to this Court on the condition of the Ward and on the condition of his estate each year; and
9. That the Clerk of the Court shall coordinate with the Clerk of the Court of Common Pleas of Lackawanna County, State of Pennsylvania, in and for Lackawanna County, to facilitate an orderly transfer of the guardianship.

SIGNED this ____ day of _____, 2014.

JUDGE PRESIDING

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD’S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER’S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER’S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER’S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE

THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.”

APPENDIX E(1)

[STYLE]

APPLICATION FOR TURNOVER ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ROBERT PINTUCK, Temporary Guardian of the Estate of GILBERT WOFORD, by and through his Attorney of Record, and makes and files this *Application for Turnover Order*, and in support thereof would show the Court as follows:

I. Petitioner is ROBERT PINTUCK, the Temporary Guardian in this estate, having qualified as such on October 7, 2013. As such, Petitioner is a person interested in this estate. Petitioner may be served with citation and notice by and through his Attorney of Record, ROBERT MCGILLIAND, H.E.S. Tuff, LLC, 1300 Beaux Court, Fort Worth, Texas 76102. Respondent, GRANT WOFORD, may be served with citation at 1000 Blue Court, Fort Worth, Tarrant County, Texas 76100.

Guardian ad Litem, CAROLINE DOGOODER, may be served with citation and notice at:

200 West Sixth Street, Suite 1700, Fort Worth, Texas 76102.

Attorney ad Litem, JAMES G. BEIGNETS, may be served with citation and notice at:

2345 West East Street, Fort Worth, Texas 76102.

II. Petitioner would show the Court that there is currently pending in Cause Number 2013- _____, in the Probate Court Number ____, Tarrant County, Texas, a guardianship action styled IN RE: GUARDIANSHIP OF GILBERT WOFORD. Petitioner would show the Court that there was not sufficient time to apply to the Court prior to instituting this action for permission to incur costs and attorney's fees, because of the nature of the relief requested, and because of the potential for continued damage to the Ward's property and estate. Petitioner respectfully requests the Court to ratify, approve, and further authorize Petitioner, as Temporary Guardian, to proceed herein, and incur further and additional attorney's fees and costs, as may be necessary to bring this matter to conclusion, including appeals if necessary. Petitioner would show the Court that there is a reasonable prospect of recovery of property, and that it is in the best interests of this estate to proceed herein.

III. GILBERT WOFORD is the owner of certain real and personal property located at 1000 Blue Court, Fort Worth, Tarrant County, Texas 76100. Specifically, and based upon the sworn testimony of said GRANT WOFORD taken in open court on October 7, 2013, said GILBERT WOFORD is the sole owner of the following personal property

_____ [list property]

Petitioner would show the Court that this property is currently located at the residence at 1000 Blue Court, Fort Worth, Tarrant County, Texas 76100, or it is in the possession and control of Respondent, GRANT WOFORD. Further, Petitioner would show the Court that said GRANT WOFORD is in possession and control of the residence, and has failed and refused to allow Petitioner, as Temporary Guardian of Estate, or Petitioner's agents to enter the premises to retrieve the property of the Ward. Said GRANT WOFORD has actual knowledge of the appointment of Petitioner as such Temporary Guardian and specifically knows that the Temporary Guardian has exclusive authority to take possession of the property of the Ward herein.

V. Petitioner would show the Court that on October 7, 2013, Temporary Guardian made a formal demand on Respondent, GRANT WOFORD, for **all** property belonging to the Ward, GILBERT WOFORD, to be turned over to Petitioner. Petitioner would show the Court that said GRANT WOFORD has failed and refused to disclose or deliver all such property, and is hiding, secreting, and causing damage and devaluation of assets belonging to GILBERT WOFORD. Specifically, Petitioner would show the Court that said GRANT WOFORD has been driving a vehicle belonging to the Ward, and hid or secreted same on October 7, 2013, because he knew Temporary Guardian was going to take possession of such vehicle. Further, Petitioner would show the Court that Respondent has failed and refused to return such vehicle to Petitioner. Further, Petitioner would show the Court that Respondent has possession and control of several vehicles belonging to GILBERT WOFORD, and that said Respondent and persons acting in concert with him may hide same, or refuse to cooperate in allowing Petitioner to take possession of such vehicles. Petitioner requests the Court to **ORDER** said GRANT WOFORD to immediately deliver and turn over to Petitioner, as Temporary Guardian, the vehicles described hereinabove, as well as any other property belonging to the Ward.

VI. Petitioner would show the Court that it is necessary, in order to discharge his fiduciary duties as guardian herein and to protect the interests of the Ward, to specifically authorize and empower Temporary Guardian, any peace officer in the State of Texas, and in particular the Constable of Precinct _____, Tarrant County, Texas to enter the premises located at 1000 Blue Court, Fort Worth, Tarrant County, Texas 76100, **BY FORCE, IF NECESSARY, AND WITHOUT NOTICE TO ANY OCCUPANTS**, and specifically allow the Temporary Guardian to take possession of, and remove from the premises the above described vehicles, AND any and all other property belonging to the Ward, GILBERT WOFORD.

VII. Petitioner would show the Court that at all times material hereto, said Respondent was acting in a fiduciary capacity with respect to GILBERT WOFORD, and owed the duties of a fiduciary to said GILBERT WOFORD. Petitioner would show the Court that the actions of said Respondent, GRANT WOFORD, were willful, intentional, and intended to damage the Ward and/or

the Ward's Estate. Further, such actions were in breach of the fiduciary duties owed by Respondent to the Ward and/or the Ward's Estate. It was necessary for Petitioner to incur reasonable attorney's fees and costs of court to preserve and protect the Ward's Estate, for which such fees and costs Petitioner requests the Court enter judgment against Respondent. Further, Petitioner requests the Court enter judgment against said Respondent for all actual damages that may be shown, as a result of the devaluation, spoilage, or waste of assets belonging to the Ward. Further, Petitioner requests the Court to enter judgment against Respondent, GRANT WOFORD, and any persons acting in active concert with him, for punitive or exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that citation issue as required by law to Respondent and that upon hearing hereof that this Court order said Respondent to fully disclose and turnover all property and assets belonging to the Ward; that this Court specifically authorize and empower the Temporary Guardian, any Peace Officer of the State of Texas, and in particular the Constable of Precinct __, Tarrant County, Texas to enter the premises located at 100 Blue Court, Fort Worth, Texas 76100, BY FORCE AND WITHOUT NOTICE TO ANY OCCUPANTS, and to secure and allow the property of the Ward described above to be taken by the Temporary Guardian; that judgment be entered against Respondent for actual damages, punitive damages, attorney's fees, and costs of court; and for such other and further relief in law or in equity to which Petitioner may show himself justly entitled.

Respectfully submitted,

ROBERT MCGILLIAND
State Bar No. 000000001
H.E.S. Tuff, LLC
1300 Beaux Court
Fort Worth, Texas 76102
PHONE: (817) 333-3333
FAX: (817) 333-3334
Email: rmHES.tuff@bahoo.com
ATTORNEY FOR PETITIONER

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT PINTUCK, Petitioner herein, who being by me duly sworn did state upon his oath that he has read the above and foregoing instrument, and that in

so far as is known to such Petitioner, all the allegations of such Original Petition are true in substance and in fact and that no material fact or circumstance, within the knowledge of Petitioner, been omitted therefrom.

ROBERT PINTUCK, Temporary Guardian
Texas Certificate No. G-00-00002
Petitioner

SUBSCRIBED AND SWORN to before me on the ____ day of _____,
2014, to certify which witness my hand and official seal below.

(S E A L) _____

Notary Public in and for the State of Texas

My Commission Expires: _____

Typed/Printed Name of Notary

CERTIFICATE OF SERVICE

APPENDIX E(2)

[STYLE]

TURNOVER ORDER

On this day the *Application for Turnover Order* filed by ROBERT PINTUCK, Temporary Guardian herein, was presented to the Court. On considering the evidence and the agreement of the parties, the Court finds and concludes that the property of GILBERT WOFORD should be preserved and protected, and makes the following findings and orders:

1. In order for ROBERT PINTUCK to discharge his duties as Temporary Guardian of the Estate of GILBERT WOFORD, it is necessary for Applicant to be in possession of all property and records belonging to GILBERT WOFORD.

2. ROBERT PINTUCK is entitled to an order for the delivery of all property and records belonging to GILBERT WOFORD as requested, for the reason that said property and records are not exempt from attachment, execution, or any other type of seizure for the satisfaction of liabilities and cannot be readily attached or levied on by ordinary legal process.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that GRANT WOFORD, and all other persons in active concert with him, or persons with possession or control over assets belonging in any manner to GILBERT WOFORD, shall immediately turn over **ALL** such property and assets to ROBERT PINTUCK as Temporary Guardian of the Estate of GILBERT WOFORD, pending further orders of this Court. Delivery of such items shall occur on or before 5:00 p.m. on Friday, the ____ day of _____, 2014, by delivery to the Law Offices of H.E.S. Tuff, LLC, 1300 Beaux Court, Fort Worth, Texas 76102. ROBERT PINTUCK as Temporary Guardian of the Estate of GILBERT WOFORD or his Attorney of Record shall give a proper receipt for all items delivered, and ROBERT PINTUCK as Temporary Guardian of the Estate of GILBERT WOFORD shall maintain possession and control of such property, pending further orders of this Court.

SIGNED this _____ day of _____, 2014, at _____ o'clock
____.m.

JUDGE PRESIDING

APPENDIX F(1)

*[STYLE]***MOTION TO REMOVE GUARDIAN**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES AMY FARRAH FOWLER, Guardian ad Litem for SHELDON COOPER and Movant herein, and in support of this Motion shows:

I. It has come to Movant's attention that PENNY, Temporary Guardian of the Person and Permanent Guardian of the Estate of SHELDON COOPER, has misapplied or embezzled part of the property committed to her care as guardian.

II. Movant requests that this Court, pursuant to section 1203.051 of the Texas Estates Code, immediately, and without notice, remove PENNY as Temporary Guardian of the Person and Permanent Guardian of the Estate of SHELDON COOPER, and immediately appoint a suitable person or entity as Successor Guardian of the Estate and Permanent Guardian of the Person.

WHEREFORE, Movant hereby respectfully requests that this Court immediately, and without notice, remove PENNY as Temporary Guardian of the Person and Permanent Guardian of the Estate of SHELDON COOPER, and immediately appoint a suitable person or entity as Successor Guardian of the Estate and Permanent Guardian of the Person, and that Movant have all other and further relief to which she may be justly entitled.

Respectfully submitted,

Amy Farrah Fowler
State Bar No. 00123456
FOWLER AND KOOTHRUPALIE, LLP
777 Main Street, Suite 2400
Fort Worth, Texas 76102-4905
Telephone: (817) 314-0009
Telecopier: (817) 314-0008
GUARDIAN AD LITEM

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was sent via facsimile to Mr. Leonard Hofstadter, Attorney for Guardian, PENNY, on this day of _____, 20__.

Amy Farrah Fowler

APPENDIX F(2)

[STYLE]

**ORDER REMOVING GUARDIAN AND APPOINTING SUCCESSOR
GUARDIAN OF THE ESTATE AND PERMANENT GUARDIAN OF
THE PERSON**

This Court, having considered the Motion to Remove Guardian filed herein by AMY FARRAH FOWLER, Guardian ad Litem for SHELDON COOPER (“Ward”), the affidavits, and arguments of counsel, makes the following findings of fact and conclusions of law based upon clear and convincing evidence:

1. That the Ward has previously been found by the Court to be an incapacitated person.

2. That a continued necessity exists for the appointment of a guardian of the person and estate of the Ward, and it is in the best interest of the Ward that a successor guardian be appointed for her estate and a permanent guardian be appointed for her person.

3. That the rights of the Ward and the Ward’s property will be protected by the appointment of a successor guardian of her estate and a permanent guardian of her person.

The Court makes the following findings of fact and conclusions of law based upon a preponderance of the evidence:

1. That PENNY has misapplied or embezzled part of the property committed to her care as guardian;
2. This Court has jurisdiction and venue to appoint a guardian of the person and estate of the Ward;
3. That notice has been properly served on those persons required by the Texas Estates Code;
4. That the Ward was not present in Court but was represented by her Attorney ad Litem;
5. HOWARD WOLOWITZ is eligible to act as permanent guardian of the person and is a proper entity to be appointed guardian of the person of the Ward;
6. AMY FARRAH FOWLER is eligible to act as successor guardian of the estate and is a proper person to be appointed guardian of the estate of the Ward;
7. That the Ward is totally without capacity to care for himself and manage his finances;
8. That the Ward has executed powers of attorney;
9. That by virtue of the Ward’s incapacities and legal disabilities, the following legal and civil rights and powers should be removed from the Ward:

- a. The right to travel.
 - b. The right to make any gifts of real or personal property.
 - c. The power to drive and obtain a driver's license.
 - d. The power to execute a Directive to Physicians (Living Will).
 - e. The power to execute a Power of Attorney.
 - f. The power to execute any and all legal documents or contracts.
 - g. The power to marry; and
10. That it will be necessary in order to give effect to the powers and authority of the Guardian of the Person and that it would be in the best interest of the Ward, and for the protection of the Ward and others, that the Tarrant County Sheriff's Department, any other peace officer, and/or an ambulance service or non-emergency transportation service be ordered to remove the Ward from her current residence and transport the Ward to such place as the Guardian of the Person directs.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that PENNY is hereby REMOVED from serving as Temporary Guardian of the Person and Permanent Guardian of the Estate of the Ward, all Letters of Guardianship previously issued to PENNY shall be surrendered and are cancelled, and that PENNY shall immediately turn over to the Successor Guardian of the Ward's Estate any and all assets of the Ward's estate in her possession.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that HOWARD WOLOWITZ is appointed as Guardian of the Person of the Ward, and that upon the execution of a Personal Surety Bond in the amount of one hundred dollars (\$100.00), and when the Guardian of the Person has qualified according to law, the Clerk of this Court shall issue Letters of Guardianship to HOWARD WOLOWITZ, who shall have the following specific powers and authority:

1. To review, to take possession of, and to consent to the disclosure of the Ward's medical or dental records.
2. To apply for, arrange for, and consent to any and all psychological, psychiatric, or medical examinations, tests, or evaluations for the Ward.
3. To consent to or object to medical and dental treatment for the Ward, including surgery, but not the power or authority to consent to a sterilization or abortion for the Ward.
4. To apply for, to consent to, and to enroll the Ward in non-residential aging or Alzheimer's programs and services that are reasonably required and needed by the Ward and that are operated by public and private agencies and facilities.
5. The duty to live with the Ward or, alternatively, the power and authority to make application for, to consent to, and to enroll the Ward in private and public residential care facilities.

6. To make application for, to consent to, and to place the Ward in private and public 24-hour care facilities or nursing home facilities.
7. To apply for, to consent to, and to enroll the Ward in appropriate educational, vocational, and recreational services.
8. To have possession and control of the Ward and to deny anyone access to the Ward if such is in the best interest of Ward.
9. To do such other and further acts concerning the Ward as the Court may from time to time direct by express authorization through written order of the Court.
10. The Tarrant County Sheriff's Department, any other peace officer, and/or an ambulance service or non-emergency transportation service be ordered to remove the Ward from her current residence and transport the Ward to such place as the Guardian of the Person directs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that AMY FARRAH FOWLER is appointed as Successor Guardian of the Estate of the Ward, and that upon the execution of a Corporate Surety Bond in the amount of \$100,000.00, and when the Successor Guardian of the Estate has qualified according to law, the Clerk of this Court shall issue Letters of Guardianship to AMY FARRAH FOWLER, who shall have the following specific powers and authority:

1. To possess and manage the properties of the Ward, including all bank accounts, securities accounts, annuities, and other investments of the Ward, and to have possession and management of the Ward's home, the Ward's personal possessions, and any other property owned by the Ward. To have total access to all records and past transactions of Ward and his attorney-in-fact with respect to such properties.
2. To take possession of the Ward's cash on hand or on deposit, the Ward's stocks, bonds, or other securities, and the Ward's accounts at financial institutions or at stock or brokerage firms and to open new accounts and to be the authorized signatory on such accounts.
3. To collect debts, rentals, wages, or other claims due the Ward.
4. To pay, compromise, or defend claims against the Ward, subject to court approval.
5. To represent the Ward in any legal action, subject to court approval.
6. To contract and to incur other obligations on the Ward's behalf, and to renew and extend any obligations, subject to court approval.
7. To collect and give receipt for any monies, rents, dividends, interest, trust proceeds, and any and all other types of income payable to or receivable by the Ward.
8. To apply for and to receive funds from governmental sources for the Ward, including:

- i. Social Security,
 - ii. Medicare,
 - iii. Supplemental Security Income Benefits (SSI),
 - iv. HUD Section 8 Rent Subsidies,
 - v. Childhood Disability Benefits Under the Old-Age Survivors and Disability Insurance Program Aid to Families with Dependent Children (AFDC), and
 - vi. Veteran's Benefits.
9. To apply for and to consent to governmental services on the Ward's behalf, including:
 - i. Vocational Rehabilitation Programs,
 - ii. Medicaid Services,
 - iii. Food Stamps, and
 - iv. Veteran's Benefits.
 10. To apply for and to secure insurance on the Ward's behalf for the Ward's property and the Ward's person.
 11. To file a federal income tax return on the Ward's behalf and to pay federal, state, and local taxes of the Ward.
 12. To review, to take possession of, and to consent to the disclosure of the Ward's legal, financial or other confidential books, documents or other records, including the power to enter into the Ward's safe deposit box.
 13. To meet the Ward's housing needs by renting real property for the Ward's residence.
 14. To consent to or to object to the Ward marrying.
 15. To employ and to discharge from employment attorneys, accountants, appraisers, and other persons necessary in the administration of the estate of the Ward.
 16. To employ and to discharge from employment nurses, sitters, caregivers, tutors, therapists, and other persons engaged to assist the Ward.
 17. To do such other and further acts concerning the property and interests of the Ward and the Ward's estate as the Court may from time to time direct by express authorization through written order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that by virtue of the Ward's incapacities and legal disabilities, the following legal and civil rights and powers are hereby removed from the Ward:

- a. The right to travel.
- b. The right to make any gifts of real or personal property.
- c. The power to drive and obtain a driver's license.
- d. The power to execute a Directive to Physicians (Living Will).
- e. The power to execute a Power of Attorney.
- f. The power to execute any and all legal documents or contracts.

g. The power to marry.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

1. That Successor Guardian of the Estate report to this Court on the condition of the Ward's estate each year.
2. That Guardian of the Person report to this Court on the condition of the Ward each year.
3. That all powers of attorney executed by the Ward are hereby revoked.

SIGNED on this _____ day of _____, 2014.

JUDGE PRESIDING

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.”

APPENDIX G(1)

[STYLE]

**APPLICATION TO RESTORE WARD'S CAPACITY AND CLOSE
GUARDIANSHIP**

Genevieve A. Lipscomb, Guardian ad Litem for DINA DANIEL in the above-entitled and numbered cause, and Applicant herein, applies on behalf of DINA DANIEL ("Ward") to restore the capacity of Ward, and to close the guardianship of the estate and person pursuant to sections 1202.051 and 1202.052 of the Texas Estates Code, and in support of this application, would show the Court as follows:

1.01 DINA DANIEL ("Ward") is an adult female who resides at 4500 Lake Garden Drive, Fort Worth, Tarrant County, Texas 76120. The Ward's date of birth is February 14, 1950. Pursuant to section 1202.053(2) of the Texas Estates Code, as Ward is the Applicant herein, no citation on Ward is required. Ward will be provided with a file marked copy of this Application.

1.02 This Court entered an Order on December 1, 2000, declaring Ward to be totally incapacitated, and appointing Ward's sister, DELLA DANIEL, as Guardian of Ward's Person and Estate with full authority. DELLA DANIEL ("Guardian") resides at 4500 Lake Garden Drive, Fort Worth, Tarrant County, Texas 76120. Citation must be served upon Guardian pursuant to section 1202.053(1) of the Texas Estates Code, and such citation shall be served on Guardian's attorney of record pursuant to section 1051.055 of the Texas Estates Code.

1.03 The relief sought herein is restoration of Ward's capacity, as Ward is no longer an incapacitated person. Ward's mental condition has become stable with medication, and, according to Ward's treating physician, Melvin Heal, M.D., she is no longer an incapacitated person. Dr. Heal is a physician licensed in this state, and Dr. Heal's written letter or certificate is attached hereto as Exhibit "A," which letter or certificate complies with section 1202.152 of the Texas Estates Code.

1.04 Ward is no longer an incapacitated person and it would be in the best interest of the Ward to restore her capacity and close the guardianship of the person and estate.

1.05 Applicant is of the understanding that the Guardian does not oppose restoration of the Ward.

1.06 The approximate value and description of Ward's property, including any compensation, pension, insurance, or allowance to which Ward is or may be entitled is as follows: _____

1.07 Ward is a single person, over the age of sixty (60) years, with no children and her parents are deceased. Her only sibling is her Guardian, at 4500 Lake Garden Drive, Fort Worth, Tarrant County, Texas 76120.

WHEREFORE, Applicant requests that the Court find that DINA DANIEL is no longer an incapacitated person and that her capacity should be restored; that the Guardian of the Person and Estate of the Ward should file a final report and accounting; the Guardianship of the Person and Estate of DINA DANIEL be closed; and that Applicant have such other and further relief to which she may be entitled.

Respectfully submitted,

Genevieve A. Lipscomb
State Bar No. 12345678
Lipscomb and Burnett, L.L.P.
123 Main Street, Suite 2000
Fort Worth, Texas 76102
Telephone: (817) 333-3456
Facsimile: (817) 333-3457
GUARDIAN AD LITEM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was delivered to all attorneys of record on this _____ day of _____, 2014, as following:

Mr. Rudy Rivers Via CMRRR# _____
Rivers, Brooks & Pond, LLC and Via Fax: _____
3456 Oceans Blvd.
Fort Worth, Tarrant County, Texas 76120

Genevieve A. Lipscomb

APPENDIX G(2)

[STYLE]

ORDER RESTORING WARD'S CAPACITY

On this day came before this Court the Application to Restore Ward's Capacity and Close Guardianship filed herein by GENEVIEVE A. LIPSCOMB, Guardian ad Litem for DINA DANIEL in the above-entitled and numbered cause, requesting the Court to restore the capacity of DINA DANIEL and to close the guardianship of the person and estate of DINA DANIEL pursuant to sections 1202.051 and 1202.052 of the Texas Estates Code.

DINA DANIEL ("Ward") was present in court. GENEVIEVE A. LIPSCOMB, Applicant and Guardian ad Litem/Attorney ad Litem herein, was present in court.

The Court, having read the Application herein, having reviewed the physician's statement of Melvin Heal, M.D., having heard the testimony of DINA DANIEL and GENEVIEVE A. LIPSCOMB, and being fully advised in the premises hereby, makes the following findings of fact by a preponderance of the evidence:

1. This Court has jurisdiction and venue over these proceedings.
2. That notice has been properly served on those persons required by the Texas Estates Code.
3. A guardianship of the person and estate is currently pending in the above-entitled and numbered cause, and DINA DANIEL is the Ward of such guardianship.
4. DELLA DANIEL is currently serving as Guardian of the Person and Estate of the Ward.
5. The Ward is no longer an incapacitated person, as the mental capacity of DINA DANIEL is completely restored.
6. There is no further need for a guardianship of the person or estate.
7. The rights of the Ward will be protected if the guardianship is closed.
8. DELLA DANIEL, Guardian of the Person and Estate herein, shall immediately file a final report and account for final settlement with this Court, and deliver all of the remaining assets of the estate to DINA DANIEL.
9. The Clerk shall revoke Letters of Guardianship upon the filing of the final report by DELLA DANIEL, Guardian of the Person, as well as the filing and approval of the final account of DELLA DANIEL, Guardian of the Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the capacity of DINA DANIEL is hereby restored and that a guardianship of the person and estate is no longer necessary.

2. DELLA DANIEL shall immediately file her final report and account for final settlement, and deliver all of the remaining assets of the estate to DINA DANIEL.
3. That upon the filing and approval of a final report of the Guardian of the Person, as well as the filing and approval of the account for final settlement of the Guardian of the Estate, the guardianship of DINA DANIEL be closed and the Clerk shall revoke Letters of Guardianship issued to DELLA DANIEL.

SIGNED this __ day of __, 2014.

JUDGE PRESIDING

APPENDIX G(3)

[STYLE]

REPORT OF GUARDIAN AD LITEM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Lucy McGulley, a practicing attorney in Tarrant County, Texas, having on December 15, 2013, been appointed by this Court as Guardian ad Litem for Ricardo Lessick, pursuant to section 1202.054 of the Texas Estates Code, and makes this report to the Court as follows:

1. On December 18, 2013, I received a copy of the Order appointing me as Guardian ad Litem for Ricardo Lessick (the "Ward"). Thereafter, I investigated the request for restoration by the Ward. I reviewed copies of the documents on file furnished by the Court, which included the letters requesting restoration sent in by Mr. Lessick, and thereafter met with Ricardo Lessick.
2. I also communicated with Ethel Ball, Ward's Guardian of the Person, Fred Vance, the trustee of Mr. Lessick's special needs trust, Dr. Marcus Welby, M.D., Ward's physician, and others, requesting further information concerning the Ward's personal history, medical history, and to obtain information on the advisability of restoring some or all of the Ward's rights.
3. Based on the above-detailed investigation, it would be in Ricardo Lessick's best interest not to have any of his rights restored and to continue to have Ethel Ball serve as Guardian of his Person.

Dated: _____.

Respectfully submitted,

Lucy McGulley
State Bar No. 15016961
Bernard, McGulley, and Seastruck
200 California Street, Suite 800
Fort Worth, Texas 76102
Telephone: 817-225-2203
Facsimile: 817-225-6421
GUARDIAN AD LITEM

APPENDIX H

NO. _____
IN THE COURT OF APPEALS
_____ DISTRICT OF TEXAS
_____, TEXAS

In Re ABC 123 XYZ Company, Relator

Original Proceeding From the _____ *Court, of* _____ *County, Texas*

ORIGINAL PETITION FOR WRIT OF MANDAMUS

ORAL ARGUMENT REQUESTED.

[*firm name*]

[*attorney name*]

[*address*]

[*telephone number*]

[*fax number*]

[*state bar i.d. number*]

[*email address*]

ATTORNEYS FOR RELATOR

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IDENTITY OF PARTIES AND COUNSEL

The following is a complete list of all parties, as well as the names and addresses of all counsel.

PARTIES

COUNSEL

Relator(s):

[name]

[names and addresses of relator's counsel]

[names of any additional relators and names and addresses of their counsel]

Respondent(s):

[name]

[names and addresses of respondent's counsel]

[names of additional respondents and names and addresses of their counsel]

Real Party in Interest:

[name]

[names and addresses of real party in interest's counsel]

I. STATEMENT OF THE CASE

1. This is a _____ arising from _____.
2. Respondent is Honorable _____, Presiding Judge of _____ County, Texas.
3. Relator ABC 123 XYZ Company seeks relief from an _____ order issued by Respondent granting/denying _____.
4. Relator does not seek any habeas corpus relief.
5. This Original Proceeding is first filed in the Court of Appeals and not with the Texas Supreme Court.

II. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction under TEX. GOV. CODE § 22.221(b)(1). The Texas Supreme Court has concurrent jurisdiction with this

Court. This Original Petition is first presented to the Court of Appeals rather than to the Texas Supreme Court because no compelling reason exists not to do so. TEX. R. APP. P. 52.3(e).

III. ISSUE PRESENTED

1. Did the Trial Court commit error, correctable by mandamus relief when it _____?
 - A. Did the Trial Court commit error in _____?
 - B. Is the error correctable by mandamus relief?

IV. STATEMENT OF FACTS

V. ARGUMENT

- A. Trial Court erred in _____.
 - B. The Trial Court's error is correctable by mandamus relief.
-

VI. PRAYER

Respondent's Order (App. ____ at APP0000123), _____, should be vacated and Respondent should be ordered to _____.

Respectfully submitted,
[firm name]
[attorney name]
[address]
[telephone number]
[fax number]
[state bar i.d. number]
[email address]
ATTORNEYS FOR RELATOR

CERTIFICATION OF REVIEW

Pursuant to TEX. R. APP. P. 52.3(j), the undersigned counsel for Relators certifies that the undersigned has reviewed this Petition and concluded that every factual statement in the Petition is supported by competent evidence included in the Appendix or Record.

CERTIFICATION OF SERVICE

I certify that a true and correct copy of the Original Petition for Writ of Mandamus was served on the following counsel of record by facsimile and certified mail, return receipt requested, and by email on _____, 2014. Appendix or Record: _____

Certification of Length Compliance

1. This computer generated Petition complies with applicable length limitations because it contains _____ words, excluding the parts of the Petition exempted by TEX. R. APP. P. 9.4(i)(1), and it also is not longer than 50 pages, as provided by Local Rule _____, made applicable to Original Proceedings by Local Rule _____. The word count was performed by redacting from this Petition, in a duplicate computer file, those portions of this Petition that by Rule are not included in the type-volume limitation, and then accessing the word processing program's word count function. The undersigned counsel for Relator certifies that the undersigned believes this methodology substantially conforms with the rules of this Court.
2. This Petition complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a proportionately spaced typeface (New Times Roman) using MS Word 2010 in text font size 14 points and footnote font size 12 points.

Sample only - additional documents must also be filed with this petition – see TEX. R. APP. P. 52.

