

Ethical Considerations in Managing Difficult Wards
JBCC Code of Ethics for Certified Guardians

1. *Ward's Independence and Self-Reliance Promoted.* Guardianships in Texas are designed to grant authority over an incapacitated person only to the extent necessary to promote and protect the incapacitated person's well-being. To that end, the guardian must seek to encourage the development or maintenance of maximum independence and self-reliance to the extent consistent with the ward's health and safety and financial circumstances, with the eventual goal, if possible, of self-sufficiency.

This most important ethical consideration in the Code of Ethics and Minimum Standards for Guardianship Services creates very difficult quandaries for guardians supervising wards. In particular, with wards living in the community independently, as opposed to wards residing in an Assisted Living Facility, Skilled Nursing Facility, Group Home, or other supervised environment, guardians are faced with difficult dilemmas of balancing the exertion of control over the ward's lives for their benefit and well-being versus allowing the ward to make decisions to encourage their development and independence. The guardian must complete a thorough initial assessment of the ward, not only because it is a necessary part of the duties and responsibilities of the guardian, but also to evaluate whether it is possible to allow the ward the opportunity to develop or maintain independence and self-reliance. A guardian must evaluate the baseline standard for a ward's independence and self-reliance when considering the ward's health, safety, and financial circumstances.

It is not uncommon for wards to not recognize the extent of their incapacity or disability, even after having the diagnosis for years. Many times, these wards believe nothing is wrong with themselves and they are perfectly normal citizens in society. The wards will repeatedly tell the guardian want they do not need nor want any guardian involved in their lives who is telling them where to live, what medical care and treatments the ward is to receive, who the ward may or may not marry, that ward is not allowed to hold a driver's license or operate a motor vehicle, and that ward is not permitted to own or possess any firearms or ammunition. Hence, it is crucial for the guardian to build a rapport and relationship with these difficult wards who have a hard time accepting their limitations and the rights removed or restricted by courts in guardianship proceedings. The initial and ongoing assessment is incredibly important in documenting the ward's wishes and requests together with an evaluation of whether ward's incapacity may be improving and a modification of the guardianship may be appropriate to restore some rights previously removed from the ward, or if the ward has fully recovered from his/her incapacity, the full restoration of rights and termination of the guardianship.

Guardians are often challenged by weighing the extent of their authority to manage and control a ward's life and rights against this ethical obligation to seek and encourage the development or maintenance of maximum independence and self-reliance required by the Code of Ethics. For these difficult wards who live in the community and are used to making their own decisions, it is imperative for the guardian to keep a handle on their ward's circumstances

while still allowing the ward to feel as though they are in charge of their lives. Particularly difficult wards will often threaten guardians with violence or making false reports of abuse, neglect, or exploitation when the ward feels that the guardian is making choices for the ward that the ward would not choose for themselves despite the fact that the ward's preferred path is clearly not in the best interest of the ward. When faced with difficult wards making such accusations and threats, the best method I have found to work is to inform the ward that you do not appreciate and will not tolerate being threatened and then redirect the ward to topics that you know interest him/her. Oftentimes, the ward is just lashing out in anger at their circumstances or it is just their inherent personality that makes them feel more secure. Sometimes, it is part of their medical diagnoses (think of an inoperable brain tumor that is growing and pressing against the parts of their brain that control emotional regulation). For a guardian's own mental health and determining the proper response, it is important to distinguish what is causing a ward to make such threats and accusations. Regardless of the reason, a guardian must keep meticulous records, including meeting and progress notes, records of phone calls, saving emails, and all medical records to ensure the guardian is in compliance with the minimum standards and code of ethics should a ward follow through on a threat and make a report to local authorities, the Court, or the JBCC.

In an ideal world, every ward, especially those in the community living independently, can improve their capacity and can seek to have their rights restored and guardianship terminated. It is the duty and responsibility of the guardian to pursue and provide supports, services, and therapies that may help the ward improve their daily lives and grow their level of independence with the goal of becoming self-sufficient, if at all possible.

For Ward's with assets and private insurance, it is significantly easier (but still not easy) to set up programs and services that can provide outpatient or in-home supports and services. Private insurance can offer in-network providers willing and able to work with you to coordinate services and appointments and handle all the submission of claims for billing to the insurer.

However, for indigent Wards, if they are living in the community and not in a nursing home on Medicaid, it can be far more challenging to work with various Medicaid programs to provide supports and services as there are applications to be filed, benefit programs to navigate, providers to identify, and schedules to coordinate. Community-based Medicaid programs have long been difficult to manage and navigate, making it difficult for wards to receive services and therapy when they do not live in facilities where providers are used to coming to.

2. Fiduciary Relationship. A guardian is a fiduciary of a ward under the guardian's care and must exhibit the highest degree of loyalty and fidelity in the guardian's relations with the ward.

In the Guardian's Code of Ethics, a fiduciary is defined as an individual, agency, or organization that has agreed to undertake for another a special obligation of trust and

confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract. Courts have held that "[a] fiduciary duty is the highest duty recognized by law." *Rawhide Mesa-Partners, Ltd. v. Brown McCarroll, L.L.P.*, 344 S.W.3d 56, 60 (Tex. App.— Eastland 2011, no pet.) As such, a fiduciary duty includes the duty to act with loyalty and in good faith, with integrity of the strictest kind, fair and honest dealing, and the duty not to conceal matters which might influence a fiduciary's actions to the ward's detriment. See *Hartford Cas. Ins. v. Walker County Agency, Inc.*, 808 S.W.2d 681, 688 (Tex. App. – Corpus Christi 1991, no writ).

Generally speaking, a guardian owes the ward a high duty of good faith, fair dealing, honest performance, and strict accountability. In Texas, a fiduciary's duties are generally described as the following: a duty of loyalty, a duty of care, a duty of obedience, and a duty of good faith and fair dealing.

- **Duty of Loyalty.** Under the duty of loyalty, the guardian must act in good faith and not allow personal interests to prevail over the ward's interests.
- **Duty of Care.** Under the duty of care, the guardian must perform his duties with the care that an ordinarily prudent person would use under similar circumstances.
- **Duty of Good Faith.** As a fiduciary duty, it requires the guardian to place the interest of the ward before the guardian's own.

With difficult wards, it can often be challenging to not get angry with wards for failing to follow simple directions from the guardian or medical providers. It can be frustrating to work with wards who refuse to accept the guardian's help. It is also a huge problem when wards lie or deceive their guardian because of the dangers that wards can put themselves in by being actively involved in the community and making "friends" outside of the guardian's knowledge. Such circumstances routinely lead to financial exploitation or abuse (including sexual abuse), and it is very difficult to manage a ward who is dishonest with the guardian. As noted above, wards can often respond with vitriol and venom to try to exert control over their circumstances, usually to the ward's own detriment if the guardian is upholding his/her fiduciary duty.

During these times, it is crucial for the guardian to take a deep breath and remember the situation they are in and the fiduciary duty owed to the ward. It is elemental for the guardian to put the ward's needs first. It is also elemental for the guardian to not lie or deceive the ward on any topic, from medical conditions and treatments to handling of their finances to communications with the ward's family or friends. Trust between the guardian and ward is paramount and without it, I believe it is nearly impossible to have an effective relationship between the guardian and ward. However, when a guardian finds himself/herself in a position where trust has been broken between the ward and guardian, it is advisable to evaluate whether the guardian can continue to serve as a fiduciary or if resigning is the best path and sometimes setting a status conference with the court and bringing the ward before the Judge to

explain the dishonesty may help the ward understand the seriousness of having an honest relationship with the guardian.

3. Confidentiality. A guardian must treat information relating to a ward under the guardian's care as confidential and may disclose such information only with the consent of the ward or, if the ward cannot give consent, only as necessary to promote and protect the ward's wellbeing. To the extent not inconsistent with the ward's direction and best interests, or to the extent necessary to respond to a complaint or investigation, a guardian may disclose information about the ward's condition to family and friends of the ward or to an appropriate government entity. A guardian must disclose information about those matters specified in Section 1151.056, Texas Estates Code, to a ward's spouse, parents, siblings and children, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056, Texas Estates Code.

The duty of confidentiality goes hand in hand with the fiduciary duty from paragraph 2 above. In the context of managing difficult wards, the main concern about confidentiality is to ensure that a guardian is not to discuss anything pertaining to a ward's care. The guardian must exercise care not to reveal the names of their wards or any information relating to the guardian's care of the ward to any one. With respect to investigations by CPS, APS, police, sheriff's offices, or other authorities, the guardian may disclose information about the ward's condition to the investigating authority. A difficult ward will sometimes instruct the guardian not to disclose any information about the ward to anyone, which is well within the ward's rights, but the guardian must weigh the ward's request against the language of this provision of the Ethics Code. If the ward is asking the guardian to not disclose an illness or a fall or some other malady requiring medical attention, it is almost a certainty the guardian needs to disclose the issue to the ward's medical provider as necessary to promote and protect the ward's wellbeing. Additionally, the ward's family, who has requested notice in writing and has not been convicted of abuse, neglect, or exploitation and does not have a protective order with respect to the ward, is entitled receive notice of information regarding the ward's death, change of residence, admission to an acute care facility, or if a ward is staying somewhere other than his/her residence for more than a week. The guardian is entitled to rely on the Affidavit filed by the Applicant in the guardianship case as required by newly enacted legislation at Section 1101.003 of the Estates Code.

Bottom line is, if there is a question as to whether a guardian should disclose any information about any ward, difficult or not, the default should be to not disclose any information unless the ward consents to the disclosure or the disclosure meets one of the exceptions in the Ethics Code section above.

4. Ward's Preferences Generally Respected. When making decisions on behalf of a ward, a guardian must strive to act in accordance with the known or ascertainable preferences of the ward, including preferences expressed in valid estate planning documents, unless to do so would cause substantial harm to the ward's person or property, in which case the guardian should make decisions that are in

the best interest of the ward. A guardian must regularly visit and, to the extent feasible, confer with the ward regarding decisions to be made in and on the ward's behalf. To the extent not inconsistent with the ward's direction and best interests, a guardian may confer with family and friends of the ward concerning the ward's preferences.

Guardians certified by the JBCC require the guardian to visit each ward no less than once per month. Guardians not certified by the JBCC typically are required to visit their wards at least once every three months.

Under this section of the Code of Ethics, it is very important for the guardian to establish a rapport with the ward and to establish open lines of communication between the guardian and ward during the first visit/assessment or as soon thereafter as possible. It's important to discuss many important topics with the ward. However, if the ward does not believe a guardianship was needed, the ward may shut down and not tell you anything about his or her preferences with respect to the ward's care – at least until the guardian makes a choice that the ward does not agree with! In a situation where the ward refuses to (or is incapable) discuss his or her estate planning documents, medical care preferences, and after death funeral plans, the guardian must do some digging into the ward's past to try to determine the ward's preferences on these topics. Often, if you can find and speak with a family member or long-time friend, you can learn more about ward's life and his/her preferences and perhaps gain some insights and information that can be used to build trust and rapport with the ward, with the goal of having ward open up to the guardian about his/her preferences. If you are unable to find anyone else with knowledge of the ward prior to the ward's incapacity, the Ethics Code instructs the guardian to make decisions that are in the best interest of the ward.

The guardian should discuss all medical decisions with the ward, first and foremost, and also with the ward's medical doctor or provider, the care manager (if one exists), and other experts on the potential impacts and side effects of any proposed treatment plans, procedures, and/or surgeries. In most occasions, the ward trusts his/her physician and instructs the guardian to proceed with consenting with the proposed treatment. In these cases, as guardian, I often act as a devil's advocate just discussing the alternative with the ward and ensuring the ward understands what he/she is agreeing to do. It is exceptionally rare for a ward to disagree with their own trusted physician's advice. Often, wards have been seeing the same physician for far longer than the guardian has been in place, so there is a level of trust between the ward and the physician.

As guardian, the author has experienced multiple wards claiming they never want any care from a doctor at all! Of course, the wards proclaim this is how they feel when they are physically healthy. However, once there is physical pain from a fall or a nasty virus or illness that causes the ward to feel very sick, the ward will agree to go see a physician or get emergency care.

From my perspective, the “difficult” wards often have little hesitation explaining to the guardian exactly how the ward wants their life managed - by allowing them to make the decisions. As guardian, I often reply that so long as I do not think the decisions the ward is making for his or her own life are detrimental to their well-being and are in their best interest, the guardian should allow the ward to make these decisions, even if the decision may not be the ideal decision for his or her circumstances. As guardian, I try to only step in and substitute my judgment for the ward’s expressed preferences when the ward is clearly making decisions that are not in the ward’s best interest and could result in problems for the ward.

5. Duty of Competence. A guardian of the person must make reasonable and informed decisions about the ward’s residence, care, treatment, and services. A guardian of the estate must take care of and manage the estate as a prudent person would manage the person’s own property unless relevant law imposes a higher standard of care. In either case, a guardian must exercise reasonable diligence to remain informed about options available to the ward to promote independence and self-reliance. A guardian must refrain from making decisions outside of the scope of authority granted to the guardian by law or court order.

Continuing from the prior discussion, as a guardian of the person, the importance of discussing the ward’s medical diagnoses and treatments with the ward’s physician cannot be overstated. As guardian, I always personally take my wards to the doctor’s appointments and annual physical exams to ensure I am fully apprised of the ward’s mental and physical condition. I have been personally lucky to have even my “difficult” wards understand that I am there to help the ward understand the medical treatment options available to the ward for the diagnoses. In situations where the ward is difficult and refuses to make any effort to communicate his/her preferences, then the guardian must document the efforts and make a decision in the ward’s best interest in consultation with the physician, care manager, and relevant family members. It is required that the guardian consider all information and exercise reasonable diligence in understanding the various facets of the decision to be made before making the decision, including ensuring that the decision is not outside the scope of powers and duties granted to the guardian in the appointment order.

As for determining a ward’s residence, guardians should make every effort to allow the ward to have input when choosing the ward’s domicile and principal residence. However, wards often have a difficult time accepting the fact they can no longer live in their home and will live in denial and refuse to cooperate with the guardian in trying to find a new residence. The guardian should make every effort to explain the situation to the ward. But, if the ward continues to deny to be involved in the guardian’s decision to establish the ward’s residence, the guardian has no choice but to use the guardian’s own reasoning to make a decision on the ward’s principal place of residence in the ward’s best interest based on the factors that the guardian believes are the most important to the ward.

For guardians of the estate, guardians should be prepared for difficult wards refusing to give up information about their assets and income. Naturally, a ward in denial about his/her incapacity is likely to complain about spending the money they worked their whole lives for on care the ward does not believe is necessary or in their best interest. But, as a guardian of the estate, it is a part of the job to evaluate the needs and wants of the ward and to ensure these needs are met and the ward is happy with the items provided to him or her for leisurely, educational, and vocational activities and medical needs.

Difficult wards may also attempt to exert control of the guardian of the estate's management and investment plans for the ward's estate. Guardians may look to safekeeping agreements to reduce their bond and eliminate risk. Safekeeping agreements prevent the guardian, ward, or any other person access to the funds put into the safekeeping agreement account with a qualified financial institution absent a specific court order. Safekeeping agreements may be hard to explain to ward but it should be highlighted for wards that experience or show paranoia that the guardian or the government is trying to take their money.

Guardians must work to manage and invest a ward's funds as a reasonable, prudent person would do. If the ward has a financial planner or CPA in place, that can be very helpful. If not, the guardian will need to build relationships with a trustworthy Certified Financial Planner and Certified Public Accountant. Within 180 days of appointment, the guardian of the estate must file an investment plan with the court for approval of investment of the Ward's estate that has typically been developed with the assistance of a CFP and a CPA to maximize the value of the estate while providing sufficient income to pay for ward's monthly expenses. With difficult wards, it is recommended, if possible, to consider the ward's risk tolerance demonstrated in the management of their estate throughout their life and to not invest in risky investments and assets that could have a risk of loss to ward's estate. Once again, the key to dealing with the estate as the guardian of a difficult ward is communication! Showing the difficult ward, who still understands finances but is unable to manage them by himself/herself, that you are using their income and assets for their care and benefit serves to assuage their concerns. But, you should be wary that if you discuss finances with your ward once, the ward will likely continue to expect you to discuss all aspects of their financial position with them going forward. For a difficult ward who does not understand budgeting and investments, it is likely better to take a broad stroke approach to discussing the ward's finances in keeping the discussions general rather than getting bogged down in the specific income/expenses and investment charts that make up the ward's portfolio.

Last, but not least, be sure that as a guardian of the estate, you are keeping copies of all receipts and detailed records of all transactions involving the ward's estate. The author highly suggests never paying with cash for any of ward's expenses because it can be so hard to keep track of and account for cash. Guardianship checking accounts should come with debit cards and checks that are much easier to track the ward's expenditures and provide detailing records on

the bank statements themselves to match the receipts that the guardian of the estate has kept and scanned into the ward's file.

6.Less Restrictive Alternatives Preferred. In determining the ward's residence, a guardian must strive to select a residence that represents the least restrictive environment available, both practically and financially. In making decisions relating to the ward's health, the guardian must strive to select care, treatment and service options that represent the least restrictive form of intervention available, both practically and financially. In either event, the guardian must give due consideration to the ward's preferences and well-being.

In many guardianship cases, guardians are appointed for wards that are already in their least restrictive environment available, both practically and financially. However, as has been the common theme throughout this paper, when a ward resides independently in the community and has strong feelings about his/her capabilities to manage his/her own decisions and care, it is extremely difficult for the guardian to evaluate when it is appropriate and the right time for the ward to move into a more restrictive environment, such as an assisted living, skilled nursing, or locked memory care facility. A ward who has lived independently his/her entire life will almost certainly refuse to participate in any discussion of moving into a more restrictive environment.

This problem is not limited to the guardian/ward relationship. Many children face similar pushback from their parents when the elderly become unable to safely manage their own care in their homes. Moving a difficult ward from his/her own house into an independent living, assisted living, or skilled nursing environment is one of the most challenging issues a guardian can face because it can easily lead to a breakdown, or even destruction, of the trust between the ward and the guardian. The author has faced this issue as guardian with his ward's on a handful of occasions, and direct, open, and honest communication has not been an effective method of discussing the ward's need for a more restrictive living environment. However, given the fiduciary duty a guardian has to a ward, there does not appear to be an available alternative.

Furthermore, Section 1151.051(e) of the Texas Estates Codes provides:

(e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:

(1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement before the eighth business day after the person's receipt of the notice; or

(2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day.

Thus, unless there is an emergency (e.g. ward attempts to elope from his/her home or facility or a medical emergency), the guardian must provide notice to the court and file an application to

place the ward in a more restrictive environment along with serving citation on the ward and notice to any person who has requested notice.

Another problematic consideration is the financial means of the ward and financial burden of rapidly rising housing costs over the past 3-5 years. Even if the ward has significant financial means, finding quality housing and care for the ward's needs can be difficult, especially if the ward is difficult and unappreciative of care and attention from others. Wards can be off putting and quickly wear out their welcome at facilities if they are unable to behave properly. While there are strict discharge requirements for skilled nursing facilities, it does not always stop nursing homes from finding creative ways to "dump" uncooperative wards on other facilities or in behavioral health hospitals through involuntary discharge proceedings.

Here again, it is important for the guardian to keep communication open with the ward regarding the ward's preferences for their residence. The guardian should work with the ward's physician and care team to explain to the ward what is the least restrictive level of care that can be used to ensure the ward's needs are met while still striving to maintain self-reliance and independence.

7.Avoidance of Conflicts of Interest and Self-Dealing. A must avoid conflicts of interest and refrain from personally engaging in transactions with the ward and other forms of self-dealing, except in a manner authorized by law.

This section should be very clear and easy to understand. Even with difficult wards, there is no excuse for a guardian to ever engage in any behavior or activity that could even be considered a conflict of interest and/or self-dealing. In all ethical discussions of serving as guardian for a ward, it is imperative that the guardian must avoid even the appearance of any conflict of interest or self-dealing. Failure to do this will ultimately result in investigations and inquiries that could lead to the revocation of the certified guardian's license.

8.Responsibility to Keep Court Apprised of Condition of Ward's Person or Property. A guardian must keep the court monitoring the guardianship apprised of the guardian's and ward's whereabouts and the condition of the ward's person and estate, including timely filing reports and accounts as required by law or court order, and updating the court regarding significant, material changes as they occur.

With this ethical duty, a difficult ward cannot prevent a guardian from doing his/her job in filing the required annual report of the guardian of the person and the annual accounting of the guardian of the estate. However, a difficult ward can absolutely have an impact on a guardian of the estate's ability to prepare an accurate and timely Inventory, Appraisal, and List of Claims, which sets the foundational figures for the ward's estate at the time of the guardian of the estate's qualification. A difficult ward could hide, fail to disclose, or be wholly unaware of his/her ownership interest in real and personal property owned by the ward that must be discovered and managed by the guardian of the estate. It can often take months for the

guardian of the estate to conduct an investigation of the ward's assets existing as of the date of qualification of the guardian. While the guardian of the estate must file the Inventory, Appraisal, and List of Claims within 30 days of qualification, the guardian of the estate may file supplemental or amended inventories at any time, including at the same time as the filing of the Annual Account if it is later discovered that there were undiscovered or undisclosed assets in the initial inventory or the if the values of the assets as of the date of qualification were different from the initial valuation.

Also, it is important to keep the Court apprised of the ward's residence. As noted above, a difficult ward can sometimes be involuntarily discharged from facilities and living environments. So, it is important to file the appropriate Notice of Change of Address and any other documents to keep the court apprised of the ward's whereabouts. Sometimes, if the ward is refusing to move from an unsafe or unsuitable residence, it is necessary to file a Notice to the Court to Place Ward in a More Restrictive Care Facility, or in the alternative, Application to Place Ward in a More Restrictive Care Facility Pursuant to Estates Code Section 1151.051(e), which is discussed in greater detail above.

If there are other major changes or decisions to be made by a guardian regarding a ward, the guardian's attorney (or the guardian himself/herself) should reach out to the court and bring the issue to the court's attention by requesting a status conference to discuss any major changes or decisions any time the guardian feels that court guidance would benefit the ward and the guardianship. In the author's experience, the courts do not mind having brief status conferences to get updates on the ward and to help guardians with difficult decisions or helping to correct wards who are being difficult toward the guardian. The judges are often willing to serve in the role of accepting blame for a difficult decision the guardian must make for the ward's benefit and best interest.

9. Responsibility to Seek Modification or Termination of Guardianship. A guardian must seek modification of the terms of the guardianship or termination of the guardianship when appropriate to promote the independence and self-reliance of the ward. Upon termination of a guardianship, the guardian must settle and close the guardianship competently and without unnecessary delay.

Throughout the guardianship, the guardian has a duty to continually evaluate the ward's capacity and determine whether the guardianship should be modified or even terminated as a less restrictive alternative to guardianship. This is especially true if the ward asks the guardian to explore the termination of the guardianship or to restore one or more of the rights that were removed in the order appointing guardian. A difficult ward, even one who was only recently adjudicated to be incapacitated, has the right to request to have the guardianship terminated or modified and the rights restored. In a situation where the ward has requested the termination of the guardianship or modification of the rights, the guardian should point the ward to the initial appointment letter the guardian provided at the initial meeting after appointment. This letter must include, at a minimum, contact information for the court

monitoring the guardianship, the local area agency on aging, local area agency on disabilities, the local area agency for intellectual and developmental disabilities, and the JBCC. If the ward has misplaced the letter, the guardian should provide the ward with another letter and with the contact information and advise the ward that he/she may write a letter to the court requesting to have the guardianship reviewed for a restoration of rights and termination. It is not permissible for the guardian to prevent the ward from asking the court for a restoration of ward's rights and termination of the guardianship, even for difficult wards or wards who clearly still do not have capacity. It is up to the court to decide how to respond to a letter from the ward requesting a restoration and termination of the guardianship. Some wards are incapable of writing and/or reading, in which case, the guardian should assist the ward in writing a letter to the presiding court requesting a modification or termination of the guardianship.

When difficult wards merely threaten to report the guardian to the court out of frustration with a guardian's decision or their circumstances generally, the guardian should still be supportive of the ward and advise the ward to write a letter to the court to inform the court of their feelings and desires. It may be cathartic to the ward to write down his/her emotions. Many times the difficult wards have experienced abuse, neglect, or exploitation and have lost trust in other people because of how they have been treated in the past. Allowing wards to express themselves and listening to wards is among the greatest feelings for both the ward and guardian. It can help the guardian understand where the ward's thoughts are and what is important to the ward and improve the guardian's ability to relate to and provide the right kind of care and support to the ward.

10. Responsibility to Manage Caseload. A guardian must not accept a new appointment if doing so would substantially and adversely affect the guardian's ability to fulfill duties to any ward already under the guardian's care. When a guardian can no longer effectively perform the duties of a guardian to a ward under the guardian's care, the guardian must take necessary steps to alert the court of the need for the appointment of a successor guardian.

Currently, a guardian is prohibited from having more than 40 wards under his/her care at any given time. In the author's opinion 40 wards is still far too many for any one guardian to realistically take on unless all 40 of those wards only require their once per month visit and have no emergency situations come up. The number used to be 50 wards in 2021.

Any guardian who has had a difficult or needy ward understands that sometimes a single ward can require up to 20-40 hours of billable time per month. Perhaps the difficult ward will not require that much time each and every month, but those wards living in the community on their own can often feel lonely and feel the need to reach out. As guardian, the author typically spends 3-6 hours per month managing a ward's care, visiting the ward, and dealing with the ward's issues.

With difficult wards who continuously lie or misrepresent facts about themselves, who refuse any help from the guardian, or where there is a breakdown in communication and trust, it can be

necessary and appropriate for the guardian to file a Application to Resign as Guardian and Application for Appointment of a Successor Guardian. When unfortunate situations like these arise, it is helpful to the courts for the guardian to have done the legwork to find a replacement guardian willing and able to accept the appointment as the successor guardian. However, finding a successor guardian before the guardian files the application is not always possible, so sometimes a guardian will just have to file the application with the court asking the court to appoint any suitable guardian in the court's discretion.

A guardian should be very cognizant of the amount of time available to devote to his/her wards, and a guardian should not accept an appointment as a guardian of a ward if the guardian does not have the time required to adequately administer the needs of the ward. While not always possible, especially in the context of emergency or temporary guardianship, the guardian should also try to do an initial assessment of the ward prior to accepting the appointment to determine how difficult a proposed ward's needs are. These initial assessments can help the guardian remain in compliance with this final ethics code section by screening potential wards and ensuring the guardian is capable of managing the ward's person and estate.