

# Understanding the Guardianship Multiverse

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**Shekinah Hammonds Davis**

Texas Guardianship Association  
2024 Annual Conference  
San Antonio, Texas  
September 18, 2024

# Housekeeping Matters

- Thank you for the kin
- This should not substitute legal advice
- Caveat
  - Adult guardianships
  - No interstate jurisdictional issues
  - No mental health remedies





# Review of Hollywood Guardianship S

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Brittany Spears





# Review of Hollywood Guardianship S

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Nichelle Nicols



# Who May Be Apply?

- Any Person interested in welfare of Ward



# The Application

- Must state:
  1. Nature and degree of alleged **incapacity**
  2. Whether alternatives were considered and whether they are feasible



# The Application

- Value of the Estate
- Supports and services
- Term of the guardianship
- Names and contact information for next of kin

***Texas Estates Code 1101.001***



# Citation Personally Served on Ward

PRIVATE PROCESS

Case Number:



S06002

**VS.**

IN THE DISTRICT COURT  
438th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

(Note: Attached Document May Contain Additional Litigants.)

## CITATION

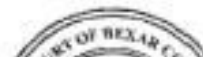
"THE STATE OF TEXAS"

Directed To:

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION REQUESTS FOR DISCLOSURE AND ATTACHED DISCOVERY, a default judgment may be taken against you." Said ORIGINAL PETITION REQUESTS FOR DISCLOSURE AND ATTACHED DISCOVERY was filed on the 27th day of October, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 2ND DAY OF DECEMBER A.D., 2020.

Mary Angie Garcia





# Appointment of Attorney ad Litem

- AAL represents the proposed Ward



***Texas Estates Code 1054.001***

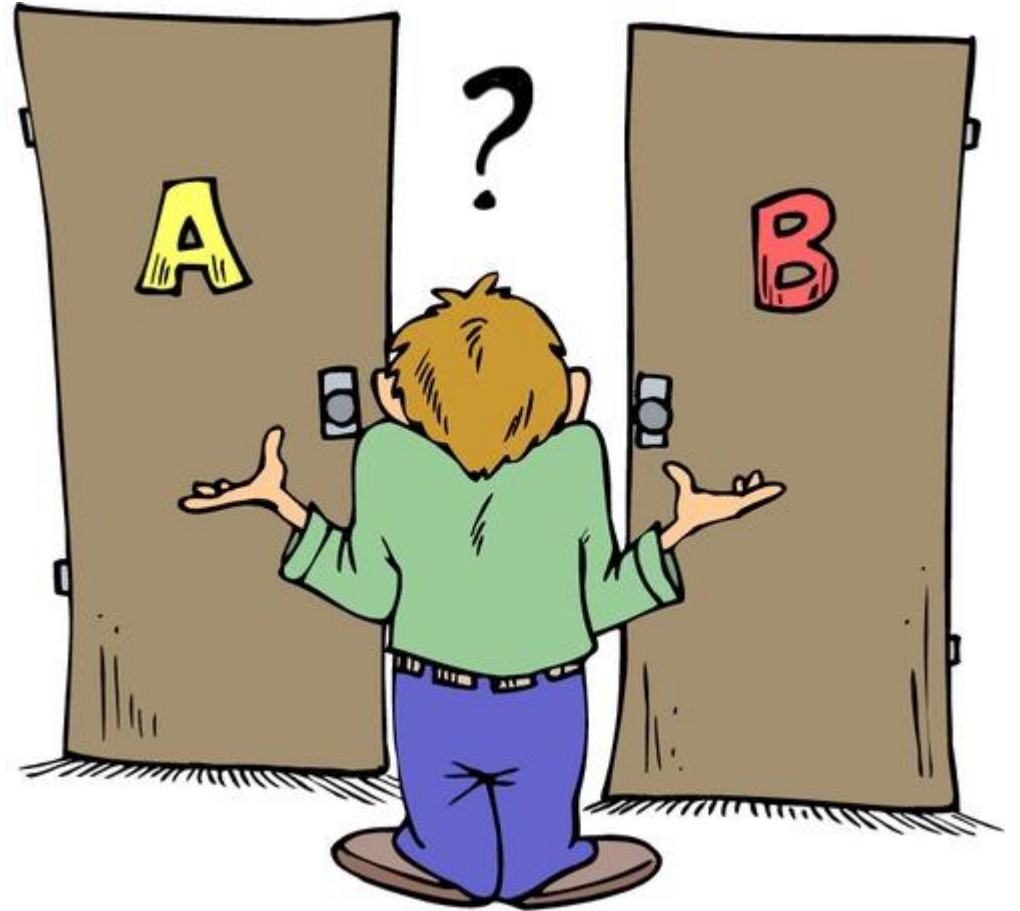
# Healthcare Certificate of Mental/Medical Exam



- Who may examine the proposed Ward?
  - Medical Doctor (licensed in Texas)
  - Psychiatrist
  - Psychologist (just added in 2023)
  - Advanced Practice Registered Nurse (MD must sign off)
  - **NOT Physician's Assistant**  
*Texas Estates Code 1101.103*

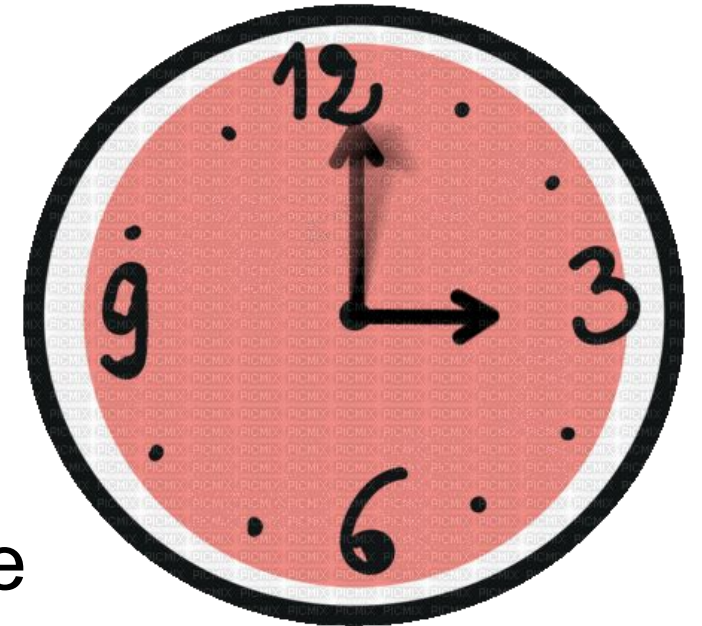
# Types of Guardianships

- Guardian of the Estate
  - Manages the financial affairs
- Guardian of the Person
  - Manages the medical and care decisions



# Duration of Guardianships

- **Temporary Guardian** (Emergency Proceeding)
  - “Substantial evidence of incapacity”
  - Probable cause that person and or estate would become impaired if guardian not appointed
  - Appointment within 10 days of filing
  - Expires in 60 days
- **Permanent Guardian**
  - Person is not able to manage finances or care
  - 4-6 to establish
  - Remains in effect until Court order terminates or death



# Priority of Serving as Guardian

- Spouse
- Parent
- Next of Kin

***Texas Estates Code 1104.101-103***



# Qualification

1. Register with JBCC (TGC 155.151)
2. Online Guardianship Course (TGC 155.20)
3. Criminal Background check
  1. No felonies (TGC 155.205)
  2. No crimes of moral turpitude
    1. Theft
    2. Fraud
    3. Theft by Check
    4. Forgery
    5. Identity Theft
    6. Perjury and...



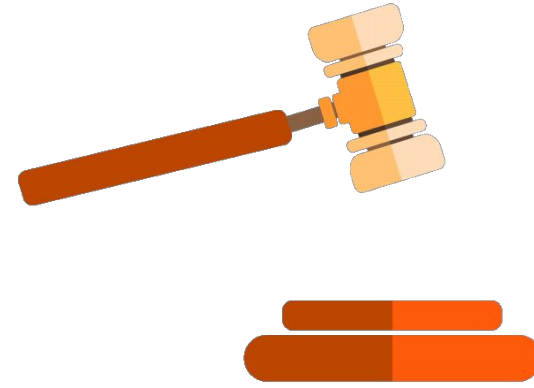
# Qualification

4. Personal Representative Form
5. Court Instructions Form
6. Oath
7. Bond



# The Hearing

- Must prove:
  - BLOW
  - No alternatives
  - Supports and Services not feasible to avoid need of guardianship
  - Person to be appointed is “suitable”
  - Incapacity (partial or total)





# Guardianship

- Guardian must take Oath and Bond
- Tips on Bond
  - Safekeeping Agreements
  - Move Funds to Guardianship Friendly Bank
  - Keep the PODs when accounts are moved
  - Must bond for all income and liquid assets (not refunds)



# I Care A Lot



# Reporting Requirements

1. Inventory – Guardian must file a list of property within 30 days of qualification

- (may require an appraisal)
- include VIN for vehicle
- include claims
- Maybe use “Affidavit in Lieu of Inventory”

*Texas Estates Code 1104.202 et seq*





# Reporting Requirements ts

2. Publication – The Guardian must notice all creditors by publication of the appointment of a Guardian

*Texas Estates Code 1153.001(a)(1)*

# **Reporting Requirements**

## **3. Monthly Allowance –**

The Guardian must request permission from the Court on what funds are spent each month



***Texas Estates Code 1156.001***

# Reporting Requirements

A black rectangular sign with the word "WARNING" written in red, bold, capital letters.

## 4. Investment Plan

- The guardian must seek permission from the Court to invest funds of the estate
- Current investments can be maintained for 1 year
- Do it at your own peril

# Reporting Requirements

## 5. Application for Sale of Personal Property & Real Property

- a. Application
- b. Order
- c. Report
- d. Decree

***Texas Estates Code  
1158.051, 101, 251***



# Reporting Requirements

6. Expense Application – The Guardian must seek permission to expend funds on unexpected expenses

\*Reasonable

\*\*Necessary





# Requirement

S

## 6. Expense Application –

Is it reasonable to buy champagne with the Ward's money and use it to create an organic cleaning solution?



# Reporting Requirements: Expense Applications



Is it necessary that the Ward's house floors should be replaced with marble instead of tile?

# Applications

It is necessary to fly first class to come visit the Ward?



# Reporting Requirements

## 7. Annual Report

- Ward's Address
- Guardian's Address
- Supports and Services
- Emergency Detention
- Bond Payment
- Ward's Bill of Rights

**Texas Estates Code 1163.101**

BILL OF RIGHTS				
Not Specifically Limited by the Court, as a Protected Person You Have the Right To:				
<p>Have the contact information for the probate court.</p> 	<p>Development, self-reliance and independence.</p> 	<p>Be treated with respect, recognition, dignity and individuality.</p> 	<p>Live where you choose.</p> 	<p>Have supported services.</p> 
<p>Have an allowance.</p> 	<p>See a doctor.</p> 	<p>Have control of your life.</p> 	<p>Submit complaints without fear.</p> 	<p>Communicate in your native language.</p> 
<p>Participate in social settings.</p> 	<p>Participate in religious activities.</p> 	<p>Participate in recreational activities.</p> 	<p>Employment.</p> 	<p>Rehabilitation.</p> 

# Reporting Requirements

8. Annual  
Accountings

- Keep all  
receipts

- Keep all  
check stubs

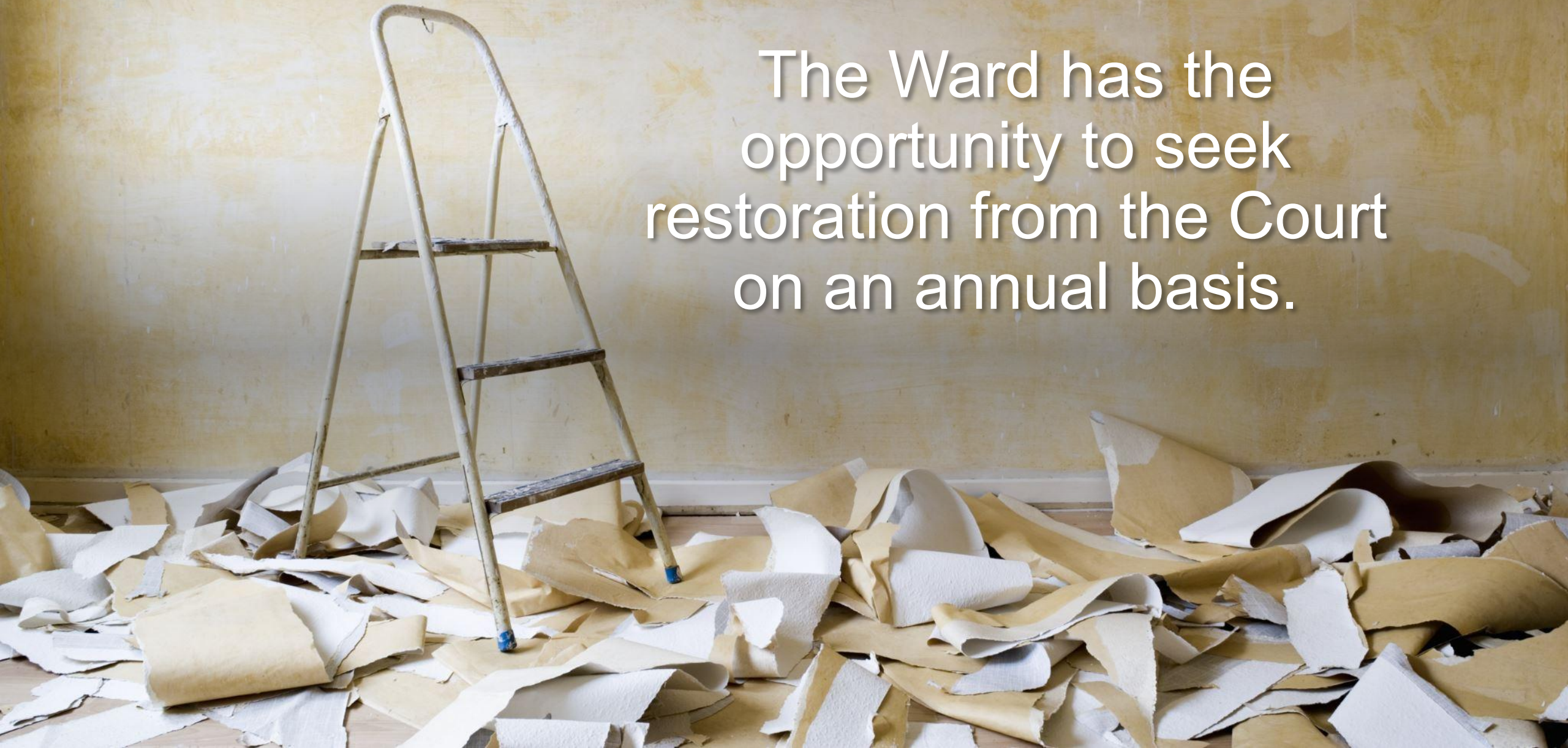
- Maintain a  
check  
register

- no cash  
withdrawals

# Modification/Restoration

*Texas Estates Code 1202.001*

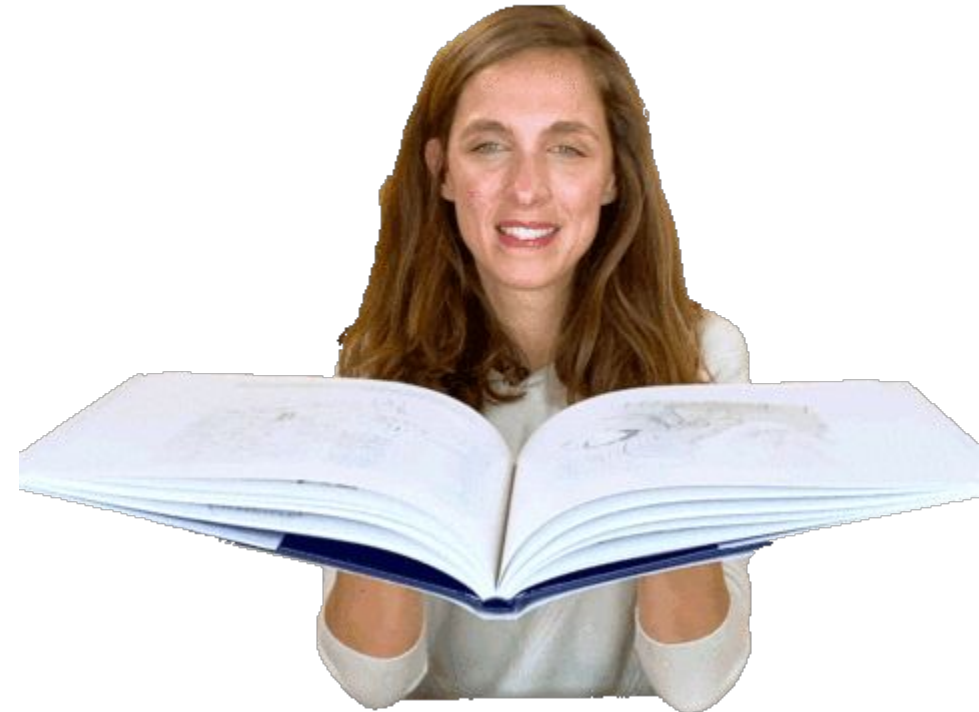
The Ward has the opportunity to seek restoration from the Court on an annual basis.



# Closing a Guardianship

1. File a Final Accounting
2. File a Final Report
3. Waiver of Notice from Ward/Executor
4. Discharge Guardian bond

***Texas Estates Code 1204.001***



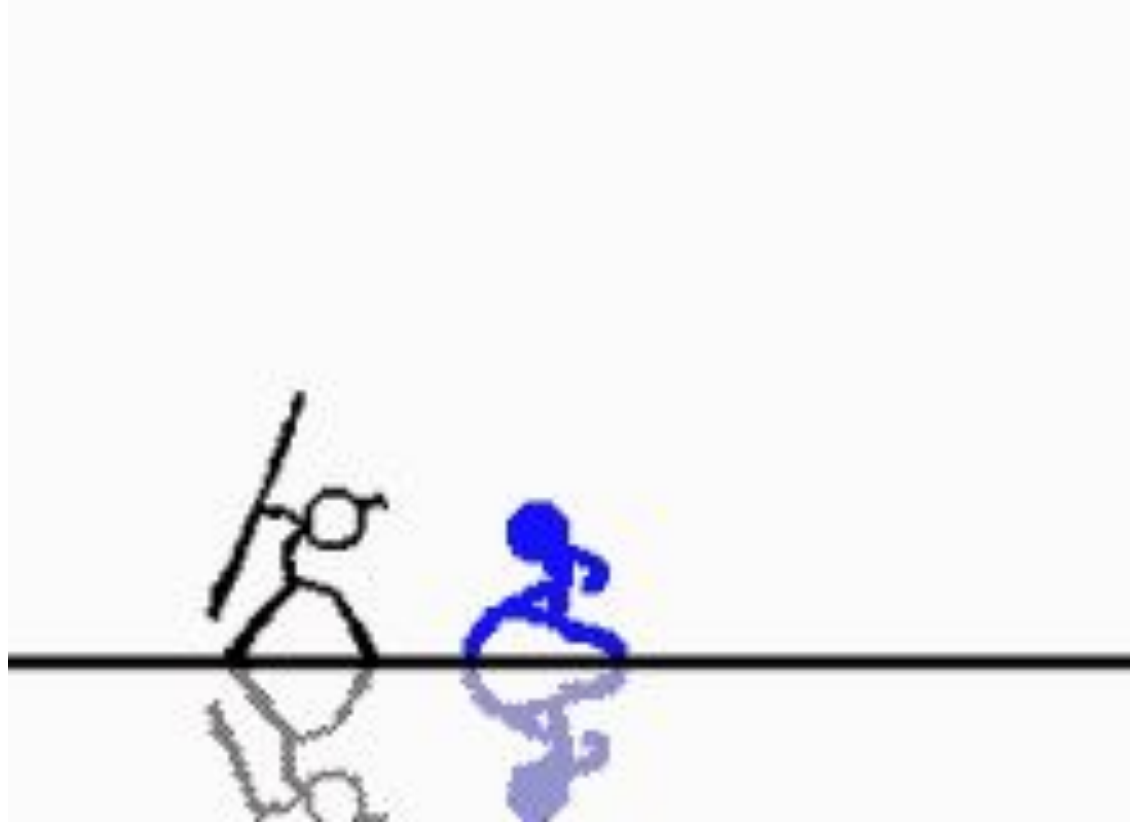
# Court Visitor

- In some counties, the Court will send a visitor to visit the Ward on an annual basis.





# Roles of the Guardian

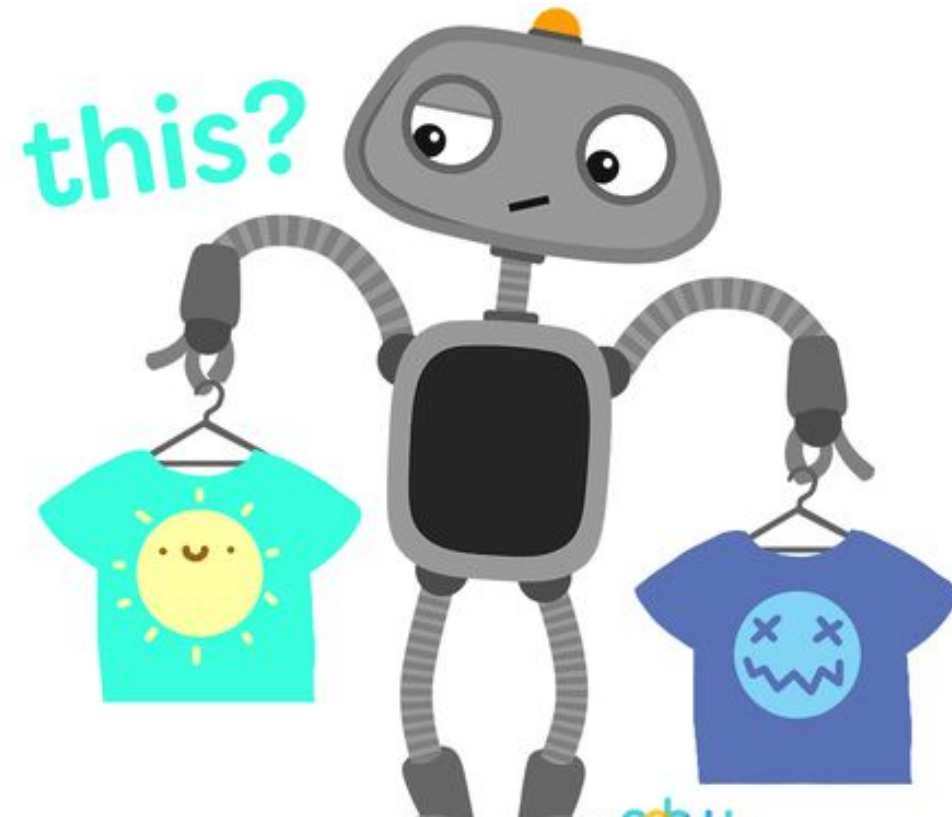


- **Advocate**
- **Monitor**
- **Decision Maker**

# Alternatives to Guardianship of the Estate

*Texas Estates Code 1002.0015*

1. Statutory Durable Power of Attorney
2. Revocable or Management Trust
3. Community Administration
4. Court Created Management Trusts
5. Court Registry
6. Sale of Property without a Guardianship
7. Access and Management of Ward's Funds as Guardian of the



# Alternatives to Guardianship of the Person

1. Medical Power of Attorney
2. Surrogate Decision Maker
3. OOH DNR

***Texas Estates Code 1002.0015***



*The End*

