

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE C. PROCEDURAL MATTERS

CHAPTER 1054. COURT OFFICERS AND COURT-APPOINTED PERSONS

SUBCHAPTER A. ATTORNEYS AD LITEM AND INTERPRETERS

Sec. 1054.001. APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN. In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.002. TERM OF APPOINTMENT. (a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section [1054.001](#) is in the ward's best interests, the attorney's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian in accordance with Subchapter [D](#), Chapter [1101](#);

(2) appoints a successor guardian; or

(3) denies the application for appointment of a guardian.

(b) The term of appointment of an attorney ad litem appointed under Section [1054.001](#) continues after the court appoints a temporary guardian under Chapter [1251](#) unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 6.029, eff. January 1, 2014.

Sec. 1054.003. ACCESS TO RECORDS. An attorney ad litem appointed under Section [1054.001](#) shall be provided copies of all of

the current records in the guardianship case. The attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.004. DUTIES. (a) An attorney ad litem appointed under Section [1054.001](#) shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

- (1) the law and facts of the case;
- (2) the proposed ward's legal options regarding disposition of the case;
- (3) the grounds on which guardianship is sought; and
- (4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.

(b) Before the hearing, the attorney ad litem shall review:

- (1) the application for guardianship;
- (2) certificates of current physical, medical, and intellectual examinations; and
- (3) all of the proposed ward's relevant medical, psychological, and intellectual testing records.

(c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem's opinion regarding:

- (1) whether a guardianship is necessary for the proposed ward; and
- (2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. [39](#)), Sec. 4, eff. September 1, 2015.

Sec. 1054.005. APPOINTMENT OF INTERPRETER. At the time the court appoints the attorney ad litem under Section 1054.001, the court shall appoint a language interpreter or sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.006. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY. (a) The following persons may at any time retain an attorney who holds a certificate required by Subchapter E to represent the person's interests in a guardianship proceeding instead of having those interests represented by an attorney ad litem appointed under Section 1054.001 or another provision of this title:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 1202.103; and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may remove an attorney ad litem appointed under Section 1054.001 or any other provision of this title that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

Added by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.030, eff. January 1, 2014.

Sec. 1054.007. ATTORNEYS AD LITEM. (a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;

(2) a proposed ward;

- (3) a nonresident;
- (4) an unborn or unascertained person; or
- (5) an unknown or missing potential heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

Added by Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. [2080](#)), Sec. 6, eff. January 1, 2014.

SUBCHAPTER B. GUARDIANS AD LITEM

Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN GUARDIANSHIP PROCEEDING. The judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.052. APPOINTMENT OF GUARDIAN AD LITEM RELATING TO CERTAIN OTHER SUITS. In the interest of judicial economy, the court may appoint as guardian ad litem under Section [1104.354](#)(1) the person who has been appointed attorney ad litem under Section [1054.001](#) or the person who is serving as an ad litem for the ward's benefit in any other proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.053. TERM OF CERTAIN APPOINTMENTS. Unless the court determines that the continued appointment of a guardian ad litem appointed in a proceeding for the appointment of a guardian is in the ward's best interests, the guardian ad litem's term of appointment expires, without a court order, on the date the court:

- (1) appoints a guardian; or
- (2) denies the application for appointment of a guardian.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.054. DUTIES. (a) A guardian ad litem is an officer of the court.

(b) A guardian ad litem shall protect the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests.

(c) The guardian ad litem shall:

(1) investigate whether a guardianship is necessary for the proposed ward; and

(2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.

(d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. [39](#)), Sec. 5, eff. September 1, 2015.

Sec. 1054.055. COMPENSATION AND EXPENSES. (a) A guardian ad litem is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

(b) The fees and expenses of a guardian ad litem appointed under Section [1104.354](#)(1) are costs of the litigation proceeding that made the appointment necessary.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.056. IMMUNITY. (a) Subject to Subsection (b), a guardian ad litem appointed under this subchapter or Section [1102.001](#) or [1202.054](#) to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion

given in the capacity of guardian ad litem.

(b) This section does not apply to a recommendation or opinion that is:

(1) wilfully wrongful;

(2) given:

(A) with conscious indifference to or reckless disregard for the safety of another;

(B) with malice; or

(C) in bad faith; or

(3) grossly negligent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER C. COURT VISITORS

Sec. 1054.101. INAPPLICABILITY OF SUBCHAPTER TO CERTAIN GUARDIANSHIPS. This subchapter does not apply to a guardianship created only because the appointment of a guardian for a person is necessary for the person to receive funds from a governmental source.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.102. OPERATION OF COURT VISITOR PROGRAM.

(a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards.

(b) A court, other than a statutory probate court, that has jurisdiction of a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the area the court serves.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.103. EVALUATION OF WARD OR PROPOSED WARD. A court, at any time before a guardian is appointed for a proposed ward or during the pendency of a guardianship of the person or estate, may appoint a court visitor to evaluate the ward or proposed

ward and provide a written report that substantially complies with Section [1054.104](#)(b) on:

(1) the request of any interested person, including the ward or proposed ward; or

(2) the court's own motion.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.104. EVALUATION REPORT. (a) A court visitor appointed under Section [1054.103](#) shall file the report on the evaluation of a ward or proposed ward not later than the 14th day after the date the court visitor conducts the evaluation. The court visitor shall swear under penalty of perjury that the report is accurate to the best of the court visitor's knowledge and belief.

(b) A court visitor's report must include:

(1) a description of the nature and degree of the ward's or proposed ward's capacity and incapacity, including a description of the ward's or proposed ward's medical history, if reasonably available and not waived by the court;

(2) a medical prognosis and list of the ward's or proposed ward's treating physicians, when appropriate;

(3) a description of the ward's or proposed ward's living conditions and circumstances;

(4) a description of the ward's or proposed ward's social, intellectual, physical, and educational conditions;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the guardian's most recent visit, if a guardian has been appointed;

(7) a recommendation as to any modification needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.105. COMPENSATION. (a) A court that operates a

court visitor program shall use persons willing to serve as court visitors without compensation to the greatest extent possible.

(b) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services provided in an amount set by the court, to be taxed as costs in the proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER D. COURT INVESTIGATORS

Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP APPLICATION. On the filing of an application for guardianship under Section [1101.001](#), a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.152. GENERAL DUTIES. A court investigator shall:

(1) supervise a court visitor program established under Subchapter C if the court for which the investigator is appointed operates that type of program and, in that capacity, shall serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and

(3) perform other duties as assigned by the judge or required by this title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 414 (S.B. [1016](#)), Sec. 2, eff. September 1, 2017.

Sec. 1054.153. INVESTIGATION REPORT. (a) A court investigator shall file with the court a report containing the court investigator's findings and conclusions after conducting an

investigation under Section [1054.151](#) or [1054.152](#).

(b) In a contested case, the court investigator shall provide copies of the report of the court investigator's findings and conclusions to the attorneys for the parties before the earlier of:

(1) the seventh day after the date the court investigator completes the report; or

(2) the 10th day before the date the trial is scheduled to begin.

(c) Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Evidence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.154. EFFECT OF SUBCHAPTER ON OTHER LAW. Nothing in this subchapter supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.155. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS. If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section [1054.151](#) or [1054.152](#), the court shall provide written notice of that fact to the ward or proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

Added by Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. [1438](#)), Sec. 6, eff. September 1, 2015.

Sec. 1054.156. APPOINTMENT OF COURT INVESTIGATOR FOR CERTAIN COURTS. (a) The judge of a court as defined by Section [1002.008](#)(a)(1) or (2), other than a statutory probate court, may appoint a court investigator if the appointment is authorized by the commissioners court.

(b) The commissioners court may authorize additional court investigators for a county if necessary.

(c) The commissioners court shall set the salary of a court investigator.

(d) The appointment of a court investigator by the judge of a statutory probate court is governed by Section [25.0025](#), Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 414 (S.B. [1016](#)), Sec. 3, eff. September 1, 2017.

SUBCHAPTER E. QUALIFICATIONS TO SERVE AS COURT-APPOINTED ATTORNEY

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see S.B. [615](#) and S.B. [626](#), 87th

Legislature, Regular Session, for amendments affecting the following section.

Sec. 1054.201. CERTIFICATION REQUIRED. (a) An attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) The State Bar of Texas shall require four hours of credit for certification under this subchapter, including one hour on alternatives to guardianship and supports and services available to proposed wards.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. [39](#)), Sec. 6, eff. September 1, 2015.

Sec. 1054.202. CERTIFICATE EXPIRATION. (a) Except as provided by Subsection (b), a certificate issued under this subchapter expires on the second anniversary of the date the certificate is issued.

(b) A new certificate obtained by a person to whom a certificate under this subchapter was previously issued expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1054.203. ELIGIBILITY FOR APPOINTMENT ON EXPIRATION OF CERTIFICATE. An attorney whose certificate issued under this subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.