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WALTZING GUARDIANSHIPS ACROSS TEXAS

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5 W's of Waltzing Guardianships Across Texas

I. Who
II. What
III. Where
IV. When
V. Why

INTRODUCTION

There are 254 counties in Texas. Loving has a population of 134 and Harris county has a population of over 4.5 million people.

This article does not speak to the individual requisites of all 254 counties but instead offers a practical point of view for lawyers as they prepare to transfer a guardianship case. My view as a former statutory probate judge, now practicing in rural communities, is that the law is the same but the exposure to the law of guardianship is not the same for rural judges. It is not far fetched to say that rural judges will rely upon the attorney to know the law and present to them appropriate pleadings and proof. Some, if not all judges with guardianship jurisdiction, are worried about judicial liability for gross negligence. See EC 1201.003. The judge must use reasonable diligence in the performance of duties. As of September 2017, any judge handling a guardianship or probate must be bonded. It is this new exposure to bond liability that have smaller county judges with less familiarity in guardianship laws, over compensating on transfer requirements in their receiving county.

I. Who does the transfer?

Texas Estates Code Section 1023.002 (c): If it appears to the court any time before the guardianship is closed that the proceedings commenced in a court that did not have venue over the proceedings, the court shall, on the application of an interested party, transfer the proceedings to the proper county.

Texas Estates Code Section 1023.003 (a): When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

1023.003 (b): With notice as provided by Section 1023.004, the court in which the guardianship is pending, on the court's own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianships to be transferred.

Practice Tip: There has been great efforts by the JBCC(Judicial Branch Certification Commission) to audit active cases and give judges specific about individual guardianship cases that require attention. The JBCC audits, most notably, have assisted participating courts in closing guardianship cases due to death of the ward, locating missing guardians and wards, as well as, identifying bond and accounting problems that require court intervention. These audit finding are brought to the court's attention, so the judge will see that venue is no longer in their county, and may desire the case go to where it (air quotes) belongs. Effective 2017, a court may transfer the guardianship, to the correct venue, on it's own motion.

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