

BILL ANALYSIS

Senate Research Center
82R2021 CLG-D

S.B. 481
By: Harris
Jurisprudence
2/24/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 761 of the Texas Probate Code provides several reasons why a guardian of an incapacitated person may be removed from his or her position as guardian without notice in an ex parte hearing. For example, a guardian may be removed without notice for the embezzlement of funds, or for neglecting or cruelly treating a ward.

Section 762 allows a guardian who is removed to file for reinstatement with the court within 10 days after removal. However, there is no requirement that a guardian be served with notice of the removal or notice of his or her right to file for reinstatement. This has resulted in guardians who are family members of a ward being removed and not having notice of the removal in time to file for reinstatement.

S.B. 481 would require notice to be personally served on a removed guardian not later than the seventh day after the court signs the order of removal. The notice must include a copy of the order of removal as well as a statement regarding the removed guardian's right to file for reinstatement under Section 762. The bill also extends the time period within which the removed guardian may file for reinstatement from 10 to 30 days. The bill will ensure that any removed guardian will have notice of the removal and will provide time to file for reinstatement.

S.B. 481 also requires that a court hold a hearing on an application for reinstatement as soon as practicable, but not later than 60 days after the order of removal.

As proposed, S.B. 481 amends current law relating to the removal of a guardian of an incapacitated person ordered by a court.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 761, Texas Probate Code, by adding Subsection (a-1), as follows:

(a-1) Requires the court clerk to issue notice of an order rendered by the court removing a guardian under Subsection (a)(1) (relating to removing a guardian who neglects to qualify in the manner and time required by law), (2) (relating to removing a guardian who fails to return within 30 days after qualification, unless certain exemptions apply), (3) (relating to removing a guardian who, having been required to give a new bond, fails to do so within the time prescribed), (4) (relating to removing a guardian who absents himself from the state for a period of three months at one time without permission of the court, or removes from the state), (6) (relating to removing a guardian who has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care), (7) (relating to removing a guardian who has neglected or cruelly treated a ward), or (8) (relating to removing a guardian who has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit) of this section. Requires that the notice:

- (1) state the names of the ward and the removed guardian;
- (2) state the date the court signed the order of removal;
- (3) contain the following statement printed in 12-point bold font:

"If you have been removed from serving as guardian under Section 761(a)(6) or (7), Texas Probate Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 762 (Reinstatement After Removal), Texas Probate Code, to determine whether you should be reinstated as guardian. The application must be filed not later than the 30th day after the date the court signed the order of removal.";

- (4) contain as an attachment a copy of the order of removal; and
- (5) be personally served on the removed guardian not later than the seventh day after the date the court signed the order of removal.

SECTION 2. Amends Sections 762(a), (c), and (d), Texas Probate Code, as follows:

(a) Authorizes a guardian who is removed under Section 761(a)(6) or (7) of this code, rather than a personal representative who is removed under Section 761(a)(6), of this code, to file, not later than the 30th, rather than 10th, day after the date the court signs the order of removal, an application with the court for a hearing to determine whether the guardian should be reinstated. Makes a conforming change.

(c) Requires the court to hold a hearing on an application for reinstatement under this section as soon as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. Requires the court, if, at the conclusion of the hearing, it is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, to set aside an order appointing a successor guardian, if any, and to enter an order reinstating the applicant as guardian of the ward or estate. Makes nonsubstantive and conforming changes.

(d) Makes conforming changes.

SECTION 3. Makes application of the changes in law made by this Act to Sections 761 and 762, Texas Probate Code, prospective.

SECTION 4. Effective date: September 1, 2011.