

By: Zaffirini, Hall

S.B. No. 38

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain procedural matters in courts exercising probate
3 jurisdiction.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section [361.052](#), Estates Code, is amended to
6 read as follows:

7 Sec. 361.052. REMOVAL WITH NOTICE. (a) The court may
8 remove a personal representative on the court's own motion, or on
9 the complaint of any interested person, after the representative
10 has been cited by personal service to answer at a time and place set
11 [~~fixed~~] in the notice, if:

12 (1) sufficient grounds appear to support a belief that
13 the representative has misapplied, embezzled, or removed from the
14 state, or is about to misapply, embezzle, or remove from the state,
15 all or part of the property entrusted to the representative's care;

16 (2) the representative fails to return any account
17 required by law to be made;

18 (3) the representative fails to obey a proper order of
19 the court that has jurisdiction with respect to the performance of
20 the representative's duties;

21 (4) the representative is proved to have been guilty
22 of gross misconduct, or mismanagement in the performance of the
23 representative's duties;

24 (5) the representative:

1 (A) becomes incapacitated;
2 (B) is sentenced to the penitentiary; or
3 (C) from any other cause, becomes incapable of
4 properly performing the duties of the representative's trust; or
5 (6) the representative, as executor or administrator,
6 fails to[+]

7 [~~(A)~~] make a final settlement by the third
8 anniversary of the date letters testamentary or of administration
9 are granted, unless that period is extended by the court on a
10 showing of sufficient cause supported by oath[~~, or~~

11 [~~(B) timely file the affidavit or certificate~~
12 ~~required by Section 308.004~~].

13 (b) If a personal representative, as executor or
14 administrator, fails to timely file the affidavit or certificate
15 required by Section 308.004, the court, on the court's own motion,
16 may remove the personal representative after providing 30 days'
17 written notice to the personal representative to answer at a time
18 and place set in the notice, by certified mail, return receipt
19 requested, to:

- 20 (1) the representative's last known address; and
21 (2) the last known address of the representative's
22 attorney of record.

23 SECTION 2. Section 404.0035, Estates Code, is amended to
24 read as follows:

25 Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

26 (a) The probate court, on the court's own motion, may remove an
27 independent executor appointed under this subtitle after providing

1 30 days' written notice of the court's intention to the independent
2 executor, requiring answering at a time and place set in the notice
3 ~~[of the court's intent to remove the independent executor]~~, by
4 certified mail, return receipt requested, to the independent
5 executor's last known address and to the last known address of the
6 independent executor's attorney of record, if the independent
7 executor:

8 (1) neglects to qualify in the manner and time
9 required by law; ~~or~~

10 (2) fails to return, before the 91st day after the date
11 the independent executor qualifies, either an inventory of the
12 estate property and a list of claims that have come to the
13 independent executor's knowledge or an affidavit in lieu of the
14 inventory, appraisement, and list of claims, unless that deadline
15 is extended by court order; or

16 (3) fails to timely file the affidavit or certificate
17 required by Section 308.004.

18 (b) The probate court, on its own motion or on motion of any
19 interested person, after the independent executor has been cited by
20 personal service to answer at a time and place set ~~[fixed]~~ in the
21 notice, may remove an independent executor when:

22 (1) the independent executor fails to make an
23 accounting which is required by law to be made;

24 (2) ~~[the independent executor fails to timely file the~~
25 ~~affidavit or certificate required by Section 308.004,~~

26 ~~[(3)]~~ the independent executor is proved to have been
27 guilty of gross misconduct or gross mismanagement in the

1 performance of the independent executor's duties;

2 (3) [~~(4)~~] the independent executor becomes an
3 incapacitated person, or is sentenced to the penitentiary, or from
4 any other cause becomes legally incapacitated from properly
5 performing the independent executor's fiduciary duties; or

6 (4) [~~(5)~~] the independent executor becomes incapable
7 of properly performing the independent executor's fiduciary duties
8 due to a material conflict of interest.

9 SECTION 3. Section [1023.003](#), Estates Code, is amended to
10 read as follows:

11 Sec. 1023.003. [~~APPLICATION FOR~~] TRANSFER OF GUARDIANSHIP
12 TO ANOTHER COUNTY. (a) When a guardian or any other person desires
13 to transfer the transaction of the business of the guardianship
14 from one county to another, the person shall file a written
15 application in the court in which the guardianship is pending
16 stating the reason for the transfer.

17 (b) With notice as provided by Section [1023.004](#), the court
18 in which a guardianship is pending, on the court's own motion, may
19 transfer the transaction of the business of the guardianship to
20 another county if the ward resides in the county to which the
21 guardianship is to be transferred.

22 SECTION 4. Section [1023.004](#), Estates Code, is amended to
23 read as follows:

24 Sec. 1023.004. NOTICE. (a) On filing an application or on
25 motion of a court to transfer a guardianship to another county under
26 Section [1023.003](#), the sureties on the bond of the guardian shall be
27 cited by personal service to appear and show cause why the

1 guardianship [~~application~~] should not be transferred [~~granted~~].

2 (b) If an application is filed by a person other than the
3 guardian or if a court made a motion to transfer a guardianship, the
4 guardian shall be cited by personal service to appear and show cause
5 why the guardianship [~~application~~] should not be transferred
6 [~~granted~~].

7 SECTION 5. Section 1023.005, Estates Code, is amended to
8 read as follows:

9 Sec. 1023.005. COURT ACTION. On hearing an application or
10 motion under Section 1023.003, if good cause is not shown to deny
11 the transfer [~~application~~] and it appears that transfer of the
12 guardianship is in the best interests of the ward, the court shall
13 enter an order:

14 (1) authorizing the transfer on payment on behalf of
15 the estate of all accrued costs; and

16 (2) requiring that any existing bond of the guardian
17 must remain in effect until a new bond has been given or a rider has
18 been filed in accordance with Section 1023.010.

19 SECTION 6. Section 1203.052, Estates Code, is amended by
20 amending Subsection (a) and adding Subsection (a-1) to read as
21 follows:

22 (a) The court may remove a guardian as provided by
23 Subsection (a-1) [~~on the court's own motion, or on the complaint of~~
24 ~~an interested person, after the guardian has been cited by personal~~
25 ~~service to answer at a time and place set in the notice,~~] if:

26 (1) sufficient grounds appear to support a belief that
27 the guardian has misapplied, embezzled, or removed from the state,

1 or is about to misapply, embezzle, or remove from the state, any of
2 the property entrusted to the guardian's care;

3 (2) the guardian fails to return any account or report
4 that is required by law to be made;

5 (3) the guardian fails to obey a proper order of the
6 court that has jurisdiction with respect to the performance of the
7 guardian's duties;

8 (4) the guardian is proved to have been guilty of gross
9 misconduct or mismanagement in the performance of the guardian's
10 duties;

11 (5) the guardian:

12 (A) becomes incapacitated;

13 (B) is sentenced to the penitentiary; or

14 (C) from any other cause, becomes incapable of
15 properly performing the duties of the guardian's trust;

16 (6) the guardian has engaged in conduct with respect
17 to the ward that would be considered to be abuse, neglect, or
18 exploitation, as those terms are defined by Section [48.002](#), Human
19 Resources Code, if engaged in with respect to an elderly or disabled
20 person, as defined by that section;

21 (7) the guardian neglects to educate or maintain the
22 ward as liberally as the means of the ward's estate and the ward's
23 ability or condition permit;

24 (8) the guardian interferes with the ward's progress
25 or participation in programs in the community;

26 (9) the guardian fails to comply with the requirements
27 of Subchapter G, Chapter [1104](#);

1 (10) the court determines that, because of the
2 dissolution of the joint guardians' marriage, the termination of
3 the guardians' joint appointment and the continuation of only one
4 of the joint guardians as the sole guardian is in the best interest
5 of the ward; or

6 (11) the guardian would be ineligible for appointment
7 as a guardian under Subchapter H, Chapter 1104.

8 (a-1) The court may remove a guardian for a reason listed in
9 Subsection (a) on the:

10 (1) court's own motion, after the guardian has been
11 notified, by certified mail, return receipt requested, to answer at
12 a time and place set in the notice; or

13 (2) complaint of an interested person, after the
14 guardian has been cited by personal service to answer at a time and
15 place set in the notice.

16 SECTION 7. Sections 361.052 and 404.0035, Estates Code, as
17 amended by this Act, apply to the estate of a decedent who dies
18 before, on, or after the effective date of this Act.

19 SECTION 8. Sections 1023.003, 1023.004, 1023.005, and
20 1203.052, Estates Code, as amended by this Act, apply to a
21 guardianship created before, on, or after the effective date of
22 this Act.

23 SECTION 9. This Act takes effect September 1, 2017.