

FILED

NO. GAT 0004-2009

2009 JAN -7 PM 1:54

IN THE MATTER OF
THE GUARDIANSHIP OF
MICHAEL KIDD
AN INCAPACITATED PERSON

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IN THE PROBATE COURT
CLERK OF
COLLIN COUNTY, TEXAS

**MOTION FOR APPOINTMENT OF ATTORNEY AD LITEM
IN TEMPORARY GUARDIANSHIP PROCEEDING**

TO THE HONORABLE JUDGE OF SAID COURT:

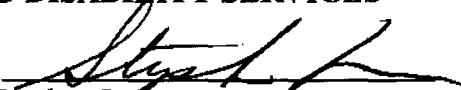
NOW COMES, Movant, Texas Department of Aging and Disability Services (DADS), and requests the Court to appoint an attorney *ad litem* to represent Michael Kidd, Proposed Ward and subject of the suit. DADS would show as follows:

1. DADS filed an Application for Appointment of Temporary Guardian for the Proposed Ward on January 07, 2009.
2. Section 875(d) of the Texas Probate Code requires the appointment of an attorney *ad litem* to represent the Proposed Ward in such a proceeding.

WHEREFORE, PREMISES CONSIDERED, Movant prays that the court grant this motion and order the appointment of an attorney ad litem to represent the Proposed Ward. If the Ward is found indigent, Guardian further prays that the county pay the attorney ad litem fee in compliance with §665A of the Texas Probate Code.

Respectfully submitted,

**TEXAS DEPARTMENT OF AGING
AND DISABILITY SERVICES**

By: 

Stephen Love
Guardianship Attorney
State Bar No. 24036996
2001 Loy Lake Rd., Suite D
Sherman, TX 75090
Phone: (903) 892-7861
Fax: (903) 892-7833

ATTORNEY FOR THE GUARDIAN DADS

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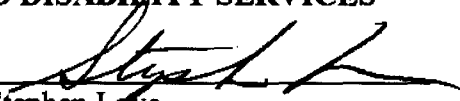
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ATTORNEY FOR THE GUARDIAN DADS

Ann Lemelle

Provisional Certification Number: PG-0098

Guardianship Specialist and Agent for the Guardian DADS

Nicole McCown

Certified Guardian Supervisor

Certification Number: G-08-0161


4. apply to the court, if such meaningful communication cannot be established or if the attorney ad litem believes the person's wishes may be in direct conflict with that person's best legal interests, for the appointment of a guardian ad litem to represent the best general interests of the ward or proposed ward and to take the place of the ward or proposed ward as the client in giving orders and directions to the attorney.

5. attend all court hearings on the pending matter or application.

6. review all pleadings, inventories, and accountings; certificates of current physical, medical, and intellectual examinations; and all of the ward's or proposed ward's relevant medical, psychological, and intellectual testing records.

7. file timely all answers and pleadings necessary to protect the legal interests of the ward or proposed ward.

SIGNED this 7 day of January, 2009.


Weldon Copeland, Judge Presiding (B2)

cc by Clerk to:

Texas Department of Aging and Disability Services; Stephen Love; Bert Starr

GUARDIANSHIP OF

MICHAEL KIDD

INCAPACITATED PERSON

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IN THE PROBATE COURT

NO. 1

COLLIN COUNTY, TEXAS

ORDER APPOINTING GUARDIAN AD LITEM

On this date came on for hearing in this cause the need and propriety of the appointment of a guardian ad litem for the best interest of the person named above.

IT IS ORDERED that the following attorney is appointed guardian ad litem to represent that person.

Bert Starr; P.O. Box 261034

Plano, Tx 75026

972-633-2588

The guardian ad litem should

1. Visit Michael Kidd, interview him or her, and investigate his or her surroundings by not later than twenty-one days from the date this order is signed.
2. Determine if communication with the person can be established.

SIGNED on this the 9th day of January, 2009.



Weldon Copeland, Judge
Probate Court No. 1

NO. GA1-0004-2009

IN THE MATTER OF
THE GUARDIANSHIP OF
MICHAEL KIDD
AN ALLEGED INCAPACITATED PERSON

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IN THE PROBATE COURT
OF
COLLIN COUNTY, TEXAS

**ORDER APPOINTING TEMPORARY GUARDIANSHIP
OF THE PERSON AND ESTATE**

On this day came to be considered the application filed in the above-entitled and -numbered cause by the Texas Department of Aging and Disability Services ("DADS" or "Temporary Guardian" herein) for Letters of Temporary Guardianship of the Person and Estate of Michael Kidd, an Incapacitated Person.

Applicant, the Texas Department of Aging and Disability Services, appeared by and through its designated employee-representative, Ann Lemelle, and its attorney of record, Stephen Love. Michael Kidd, ("Ward" herein) appeared in person and through his Court-appointed attorney *ad litem*, Bert Starr.

After hearing the evidence in support of the application, the Court finds:

That this Court has jurisdiction over this matter;

That this hearing was held in compliance with § 875(f)(1) of the Texas Probate Code;

That notice was given to all persons interested in this person and estate pursuant to § 875 of the Texas Probate Code;

That the Texas Department of Aging and Disability Services is eligible and is a proper party to act as Temporary Guardian of the Person and Estate of Michael Kidd, an Incapacitated Person, and that no other person eligible and qualified to serve is available;.

The Court further finds that substantial evidence exists that Michael Kidd, Ward, is totally incapacitated because of Senile Dementia, that there is imminent danger that the physical health or

safety of the Ward will be seriously impaired and that the Ward's estate will be seriously damaged or dissipated unless immediate action is taken.

The Court further finds that substantial evidence exists that Michael Kidd, Ward, is totally incapacitated because of a mental condition and lacks capacity to operate a motor vehicle and lacks capacity to vote in an election.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the application for temporary guardianship be granted and that the Texas Department of Aging and Disability Services is appointed as Temporary Guardian of the Person and Estate for Michael Kidd, an Incapacitated Person.

IT IS FURTHER ORDERED that this order appointing the Texas Department of Aging and Disability Services as Temporary Guardian of the Person and Estate of Michael Kidd, an Incapacitated Person, shall be effective and the Clerk of Court shall attach a certificate to the order showing compliance upon the taking of the oath. Quyen Truong, as agent for the guardian DADS, will take the oath for DADS. It is **ORDERED** that, pursuant to § 161.107 of the Texas Human Resources Code, no bond be required of the Texas Department of Aging and Disability Services.

IT IS FURTHER ORDERED by the Court that the Temporary Guardianship of the Person and Estate of Michael Kidd, an Incapacitated Person, shall be effective until March 14, 2009, which is sixty (60) days from the date of this order in accordance with § 875(h) of the Texas Probate Code.

IT IS FURTHER ORDERED that the Temporary Guardian of the Person and Estate shall have the following powers:

As Temporary Guardian of the Person:

- a) the right to have physical possession of the Ward and establish the Ward's legal domicile, including selecting the appropriate placement;
- b) the duty of care, supervision, and protection of the Ward;

- c) the duty to see that the Ward is provided with clothing, food, medical and psychiatric care within the limits of the Ward's financial resources or entitlements;
- d) the power to consent to medical, and psychiatric treatment and procedures, including surgery, unless consent by a guardian is prohibited by other law;
- e) pursuant to §§ 166.039 and 166.088 of the Texas Health and Safety Code, the power to make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the Proposed Ward and the power to execute an Out-of-Hospital Do-Not-Resuscitate (DNR) Order on behalf of the Ward.

As Temporary Guardian of the Estate:

- f) possession and management of all property belonging to the Ward, including all financial accounts;
- g) the duty to spend sums from the Ward's estate to provide food, clothing and shelter for the Ward;
- h) the duty and power to apply for any government benefits to which the Ward is entitled and expend any necessary for the Ward's care.

IT IS FURTHER ORDERED that limitations are imposed on the Ward that are consistent with the powers granted to the Temporary Guardian in the preceding paragraph of this order:

For Temporary Guardianship of the Person, that the Ward no longer have the right to:

- a) operate a motor vehicle;
- b) vote in a public election or any other matter;
- c) execute a will, or make a codicil or amendment to any existing will;
- d) execute a trust or make an amendment to any existing trust;
- e) execute a power of attorney or make an amendment to any existing power of attorney;
- f) make decisions or give consent to medical or surgical treatment;
- g) choose his domicile or residence.

For a Temporary Guardianship of the Estate, which the Ward no longer have the right to:

- h) make a gift of real or personal property;
- i) contract for goods or services, hire or terminate persons employed to assist the Proposed Ward;
- j) personally access funds placed in guardianship accounts;
- k) manage property.

IT IS FURTHER ORDERED by the Court that any Medical Power of Attorney issued by the Ward is suspended and the power to make medical decisions on behalf of the Ward is vested in the Guardian upon qualification of the Temporary Guardian pursuant to § 166.156 of the Texas Health and Safety Code.

IT IS FURTHER ORDERED by the Court that any Durable or Non-Durable Powers of Attorney for financial matters issued by the Ward are suspended as of the date of the Temporary Guardian's qualification until the date on which the term of the temporary guardian expires pursuant to § 485(b) of the Texas Probate Code.

IT IS FURTHER ORDERED that the duly appointed attorney *ad litem* for the Ward, Bert Starr, is hereby awarded a fee of \$ 600⁰⁰ for his services in this temporary guardianship matter. Because sufficient funds exist in the Ward's estate, the Guardian of the Estate is hereby directed to pay said fee to the attorney *ad litem* from the assets of the Ward's estate.

IT IS FURTHER ORDERED that no fees, including but not limited to *ad litem* fees, filing fees, costs of certifying orders, and service costs, be assessed against the Texas Department of Aging and Disability Services pursuant to § 161.107 Texas Human Resources Code.

Signed this 13 day of January, 2009.


JUDGE PRESIDING

NO. GA1-0004-2009

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AN ALLEGED INCAPACITATED PERSON

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IN THE PROBATE COURT
OF
COLLIN COUNTY, TEXAS



**APPLICATION FOR APPOINTMENT OF
TEMPORARY GUARDIAN OF PERSON AND ESTATE**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to the authority granted in § 161.101 of the Texas Human Resources Code and § 875 of the Texas Probate Code, the Texas Department of Aging and Disability Services (hereinafter referred to as "Applicant" or "DADS"), files this application to be appointed as Temporary Guardian of the Person and Estate of Michael Kidd. Applicant's designated employee-representative is Ann Lemelle, Guardianship Specialist for the Texas Department of Aging and Disability Services. Applicant's address is 1545 W. Mockingbird Lane, Suite 2000, Dallas, Dallas County, Texas 75235.

Applicant would show the Court the following:

**I.
VENUE**

Michael Kidd, the Proposed Ward, is an adult Male born on November 12, 1938. Proposed Ward owns property at 1405 Andover Lane, Richardson, Collin County, Texas. This Court, therefore, has jurisdiction and venue of this proceeding.

Michael Kidd, the Proposed Ward, resides at Heritage Manor Healthcare Center, 1621 Coit Road, Plano, Collin County, Texas.

This Court, therefore, has jurisdiction and venue of this proceeding.

II.

CITATION AND NOTICE

Pursuant to § 875(e) of the Texas Probate Code, the following persons should be served by personal citation:

1. Proposed Ward, Michael Kidd who must be personally served and may be located at Heritage Manor Healthcare Center, 1621 Coit Road, Plano, Collin County, Texas.
2. Proposed Ward's attorney *ad litem* to be appointed by the Court. However, the Applicant expects that the attorney *ad litem* will accept service by certified mail or personal delivery under Probate Code § 634.
3. Texas Department of Family and Protective Services (DFPS), the Court-appointed conservator having control of the care and welfare of the Proposed Ward. Applicant expects that DFPS will sign a waiver of citation and notice after receipt of a copy of this application.
4. Proposed Ward's spouse, Eugenia Kidd, who may be personally served at Heritage Manor Healthcare Center, 1621 Coit Road, Plano, Collin County, Texas.

The Applicant requests that the Clerk of the Court issue the appropriate citation and notice to all parties named above at the addresses given, as well as posting notice of this guardianship as required by § 875 of the Texas Probate Code.

While the following persons are not required to be served notice pursuant to § 875 of the Texas Probate Code, the Applicant will mail a copy of the application for guardianship and notice by registered or certified mail, return receipt requested, to the following persons:

1. Adult children of Proposed Ward:
None
2. Adult siblings of Proposed Ward:
Adult Sibling's whereabouts are unknown
3. The administrator or operator of the facility or institution in which the Proposed Ward resides is:
Bobbie Scchovec, Heritage Manor Healthcare Center, 1621 Coit Road, Plano, Texas 75075.

III.

PROPOSED GUARDIAN

In compliance with § 161.101 of the Texas Human Resources Code, DADS is the state agency responsible for serving as guardian for incapacitated, disabled or elderly persons referred by the Department of Family and Protective Services (DFPS), Adult Protective Services (APS), who were victims of abuse, neglect or exploitation and for children aging out of DFPS Child Protective Services Program (CPS) conservatorship who require a guardian upon becoming an adult. Proposed Ward is incapacitated to a degree requiring the immediate appointment of a Temporary Guardian, and Proposed Ward has no one who is able to properly take care of or protect Proposed Ward's person and to manage the Proposed Ward's estate. There is no one known, other than Applicant, willing to make application for appointment as Temporary Guardian and able to perform the duties of Temporary Guardian. Applicant is qualified and suitable to serve as Temporary Guardian and requests to be appointed Temporary Guardian for the Proposed Ward.

IV.

FACTS, REASONS FOR GUARDIANSHIP AND IMMINENT DANGER

The Proposed Ward is incapacitated by a physical or mental condition and is thereby substantially unable to provide food, clothing, or shelter for himself, or to care for his own physical health. The Proposed Ward is suffering from Dementia, Seizure Disorder, Fracture of the Hips, and Anemia resulting in him being unable to independently perform activities of daily living. His decline in cognitive and reasoning abilities has resulted in poor judgment and compromised decision-making ability that has placed his health and safety at risk.

A temporary guardianship is necessary because of imminent danger to the person of the Proposed Ward for the following reasons: Proposed Ward's banks accounts have dramatically decreased from approximately \$60,000 to \$7,845.61 in less than a year, but the Proposed Ward

