

## **GUARDIANSHIP CERTIFICATION BOARD**

### **MINUTES OF MEETING**

February 20, 2009

11:00 a.m.

Office of Court Administration

205 W. 14th St., Sixth Floor

Austin, Texas

### **COMMENCEMENT OF MEETING**

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on February 20, 2009 at 11:08 a.m. The meeting was held at the Office of Court Administration in Austin, Texas. Notice of this meeting was posted on the GCB's website and distributed to interested persons in accordance with the GCB's public meetings policy.

### **ATTENDANCE OF MEMBERS**

Lesley Ondrechen, Guardianship Certification Program Director at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair

Barry Anderson

Jason Armstrong

Garth Corbett

Carol Patrice Dabner

Susan Eason

Don Ford III

Phillip A. Grant

Marlane Meyer

Gina Patterson

Kathy Strong

Patti Turner

Robert Warach

Phillip A. Grant, Kathy Strong and Robert Warach attended via telephone conference call. Leah Cohen and Dr. Raymond Costello did not participate. Others present were Lesley Ondrechen, Guardianship Certification Program Director and Katie Bond, Assistant General Counsel, of the OCA. Members of the public present at the meeting were Alex Jones and Dr. Barbara Scobey of the Texas Department of Aging and Disability Services (DADS).

### **MINUTES OF OCTOBER 24, 2008 MEETING**

Upon motion by Ms. Meyer and second by Mr. Anderson, the minutes of the Board's October 24, 2008 meeting were approved as submitted.

### **DIRECTORS' REPORTS**

The director informed the Board that Justice Dale Wainwright is now its liaison on the Supreme Court. She also mentioned that due to a change in staffing at OCA, there is a new contact person for travel vouchers. She reminded the Board that as of January 1, 2009, mileage reimbursement decreased to 55¢ per mile.

Ms. Ondrechen reported that as of February 17, 2009, 215 guardians are certified and 73 are provisionally certified. She also reported that a certified guardian in Austin, Rosetta Williams,

died earlier in the week. She noted that since the Board's last meeting, 16 people have moved from provisional certification to certification.

The director told the Board that the Supreme Court's general counsel has been in contact with the Governor's office regarding the re-appointment of public member Grant. Ms. Ondrechen will attempt to ascertain the status of Mr. Grant's re-appointment.

The director reported that she had listened to a webcast on "Why States Should Enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act" earlier in the month. The webcast has been archived, and the PowerPoint presentation is also available. As previously reported to the Board, Judge Guy Herman had indicated the Act will be studied in the coming interim before any recommendation is made about adopting the Act in Texas.

Ms. Ondrechen told the Board she had been invited to speak to the Harris County Protective Services Guardianship Program staff next week, focusing on continuing education and re-certification. She noted the Texas Guardianship Association's spring conference will be held April 13-15 in San Angelo.

The director reported on an inquiry she had received from Amy Rigby, a court investigator in Harris County who has served on the Guardianship Advisory Board, about receiving continuing education credits for service on boards. She had responded that the national continuing education credits are different from Texas, but that Ms. Rigby was welcome to comment to the Rules Committee and/or the Board.

Finally, Ms. Ondrechen told the Board that Judge Ferchill favors raising the limit from \$50,000 to \$200,000 for trusts under Probate Code 867. The director asked if Board members were aware of any private professional guardians who serve as trustees under Probate Code Section 867, and none were. The Board discussed the ramifications of changing the statute, and noted some financial institutions that are willing to administer smaller trusts.

#### **UPDATE ON 81ST LEGISLATIVE SESSION**

The Chair addressed the Board regarding data collection pursuant to laws regulating the purchase of firearms. Federal law requires states to go back twenty years in collecting information on those declared incapacitated and mental health commitments on applicants for a gun license. Representative Naishtat and Senator Ellis are potential sponsors for a Texas law, which proposes going back ten years. States can lose federal funding if they do not comply. Mr. Jones commented that the proposed state legislation would add certain categories to the federal database of prohibited persons (e.g., adjudicated incapacitated under a guardianship or subject of a mental health or mental retardation commitment).

The director reported that there is a Senate and House sponsor for the four proposed bills regarding guardianship certification. Senator Uresti's staff has reported the bills will be filed by February 23. She summarized House Bill 128, which would require entities that issue

professional licenses to verify an applicant's ability to work in the U.S., and noted it has been referred to the Licensing and Administrative Procedures Committee.

Ms. Bond advised the Board that guardianship certification bills will be heard by the House Judiciary and Civil Procedure Committee and the Senate Jurisprudence Committee. For the benefit of those Board members who agreed to be available to testify, she noted the Committees meet on Mondays and Wednesdays, respectively.

The Chair told the Board about two bills that would affect guardianship procedures. House Bill 889 changes capacity assessment for mental retardation (certificate of medical examination would replace determination of mental retardation, and more detail would be required in the certificate for all types of incapacity). Senate Bill 559 would require two files on every decedent's estate, one public and one with financial information for the court's use only. While not included in the introduced version of the bill, this requirement could apply to guardianship estates.

She also reported on Senate Bill 319, which would eliminate Probate Code Section 128A, requiring an executor to notify all interested parties. The bill has been heard by the Senate Jurisprudence Committee.

Ms. Bond noted a bill requiring justices of the peace in urban areas to be attorneys (House Bill 29 and Senate Bill 320, with different population requirements). Mr. Jones reported on House Bill 704 (companion Senate Bill 984), which would extend the court's jurisdiction for a person in extended foster care to age 21, if the person consents or the court determines the person is incapacitated. The Chair reminded the Board to be aware of the legislative session events; Ms. Bond told the Board that Committee hearings can be watched live over the internet through the Texas Legislature Online website. The director noted the last day to file new bills is March 13. The Chair informed the Board that the Probate Code codification being presented to the legislature this session relates to decedents' estates and powers of attorneys. Guardianship will be studied in the coming interim, and will be considered by the legislature for codification in 2011. All codification would be effective in 2012.

#### **ATTENDANCE AT BOARD MEETINGS**

The Chair addressed the Board on personal attendance at meetings. Board policy allows attendance in person or by conference call. The statute requires a member to attend half of the regularly scheduled meetings, and does not specify whether attendance is by conference call or in person. Ms. Bond noted the statute allows the Board to excuse the absences of members who do not meet threshold of attendance.

The Chair asked the Board to consider whether some amount of personal attendance should be required. After discussion, Mr. Ford moved to adopt a Board policy requiring personal attendance at two of each year's four regularly scheduled Board meetings. After further discussion, Mr. Ford amended his motion to add the Board may consider and excuse the in-

person absences if a member is not in compliance. Ms. Meyer seconded the amended motion, and it carried.

The Board recessed at 12:06 p.m., and re-convened at 12:51 p.m.

### **REQUIRED ANNUAL REPORTING**

The director summarized the reports received from private professional guardians, guardianship programs, DADS and county clerks. She will prepare a more detailed analysis for the Board's next meeting, including the possibility of using the reports to identify the counties served by each private professional guardian and guardianship program. The director will send the chair a list of counties which did not file a report

The Chair mentioned new monthly reporting forms, by which clerks report certain information to the OCA. She told the Board about some of the changes affecting probate cases, including the number of guardianships filed. The new forms go into effect September 1, 2010.

### **CERTIFICATION EXAMINATION PROCEDURES**

Ms. Ondrechen advised the Board that the OCA's contract with the Center for Guardianship Certification, which administers the required national and Texas-specific exams on behalf of the Board, expires on August 31, 2009. OCA is working on a Request for Proposals for a new contract. The director suggested the Board consider its examination requirements. The Board discussed requiring both national and Texas exams, or requiring only a Texas exam. The consensus of the Board was to refer the matter to the Rules Committee. It will address the issue of whether to continue to require a national exam, and make a recommendation to the Board at its next regularly scheduled meeting.

### **CONSIDERATION OF APPLICATION FOR CERTIFICATION AND APPLICATION FOR PROVISIONAL CERTIFICATION FORMS**

The director noted proposed changes to the applications to comply with a recent change to Rule VI(f)(3), and to clarify that all work experience should be provided, whether or not it relates to the provision of guardianship services. She noted no change was made to the instruction sheet for provisional certification, but the certification instructions were amended to clarify when a new criminal history report is required from an applicant who is provisionally certified at the time the application is made. The Board made some nonsubstantive formatting changes to the application forms, and approved the forms and the instructions for posting to its website.

### **PROPOSED CHANGES TO RULES GOVERNING GUARDIANSHIP CERTIFICATION**

Mr. Ford reported on two meetings of the Rules Committee. He advised the Board that Ms. Bond recommended, and the Committee concurs, waiting to submit proposed rule changes to the Supreme Court until after the legislative session.

He told the Board that the Committee considered changing the continuing education requirement from six hours each year to 12 hours for the two-year certification period at its meeting earlier

that morning, and recommends the change to Rule VII(b). Mr. Ford summarized the proposals to amend Rules III(f), V(c)(2), VI(f)(2), which will incorporate the proposed addition submitted as new subsection (f)(4), and XII(g)(8). The Board discussed the last proposal, which requires recusal of Disciplinary Review Committee members from considering or voting on the matter at the hearing. Each member gave his or her opinion on recusal, and no consensus was reached.

Mr. Ford suggested changing the function of the Disciplinary Review Committee from reviewing a complaint and making a recommendation to the Board to a screening committee. The Board discussed that change, including the authority of the Committee to dismiss a complaint, whether the full Board would consider each complaint, and when a hearing could be held. The Board referred all proposals back to the Rules Committee for further review.

## **RE-CERTIFICATION**

### **Consideration of Re-Certification Application Form**

The Board made nonsubstantive formatting changes, and then approved the form and instructions for posting to the Board's website.

### **Reminder Letters**

The director discussed the draft letter, noting that the exact dates an applicant for re-certification must submit the application (90 days before expiration) and when an application for re-certification will be denied (90 days after expiration) will be part of each reminder letter. The Board adopted the letter as submitted.

### **Expiration of Certification**

After discussion, the consensus of the Board was to notate expired certifications on its website as "expired, but eligible for late renewal" when they are within 90 days after expiration. On the 91st day following expiration, the certified guardian will be removed from the list if no application for re-certification has been filed.

### **Re-Certification Form Letter**

The Board reviewed the form letter drafted by the director, and approved it as submitted.

## **PUBLIC COMMENT**

Mr. Jones commented during the legislative update portion of the meeting. Dr. Scobey and Mr. Jones commented during discussion of the certification examination requirements. No other public comment was made.

## **ADJOURNMENT**

On motion by Ms. Dabner and second by Ms. Meyer, the meeting was adjourned at approximately 2:37 p.m.