

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

July 25, 2008

11:00 a.m.

Supreme Court of Texas Courtroom
201 W. 14th St., First Floor
Austin, Texas

COMMENCEMENT OF MEETING

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on July 25, 2008 at 11:02 a.m. The meeting was held at the Supreme Court of Texas 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

Meredith Musick, Executive Assistant at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair	Don D. Ford, III
Leah Cohen, Vice-Chair	Phillip A. Grant
Barry Anderson	Marlane Meyer
Jason Armstrong	Gina Patterson
Garth Corbett	Kathy Strong
Dr. Raymond Costello	Patti Turner
Carol Patrice Dabner	Robert Warach

Dr. Raymond Costello, Marlane Meyer, Gina Patterson and Kathy Strong attended via telephone conference call. Susan Eason did not participate. Others present were Lesley Ondrechen, Guardianship Certification Program Director; Meredith Musick, Executive Assistant; and Katie Bond, Assistant General Counsel, all of the OCA. Members of the public present at the meeting were Alex Jones of the Texas Department of Aging and Disability Services (DADS) and Aaron Alarcon.

MINUTES OF MAY 2, 2008 MEETING

A correction was made by Ms. Meyer on page 4 of the draft minutes. Upon motion by Ms. Meyer and second by Mr. Warach, the minutes of the Board's May 2, 2008 meeting were approved as corrected.

DIRECTORS' REPORTS

Ms. Ondrechen reported that as of July 24, 2008, 198 guardians are certified and 58 are provisionally certified. Eight applications for certification and four applications for provisional certification are pending.

The director informed the Board that the next examination is scheduled for July 31 in Lubbock. The Harris County Guardianship Program is hosting an exam at its offices on September 23.

Ms. Ondrechen reminded the Board that four members' and one public member's terms expire on February 1, 2009; information has been provided to those five members about re-appointment.

Ms. Ondrechen brought two questions from certified guardians to the Board's attention. The first concerns use of volunteers to fulfill the requirement that a guardian visit a ward monthly. While the Board cannot issue "advisory opinions" (that is, make a decision on an issue when there is no complaint before it), the chair suggested that the guardian should contact the judge and follow his/her direction. The other question concerns a designation that will signify a guardian is certified by the Board. After discussion, Ms. Cohen requested that certification and education be placed on the agenda for the October meeting.

Finally, the director spoke to the Board on several administrative matters, including an update on a searchable database of certified guardians and travel.

PETITIONS FOR DISCIPLINARY ACTION

A. Consideration of Recommendations of the Disciplinary Review Committee

Mr. Armstrong, chair of the Disciplinary Review Committee, reported on the Disciplinary Review Committee meeting held on July 15, 2008. He began his report with the complaint filed against Aaron Alarcon and Cindy Brown. The Board went into closed session at 11:20 a.m. to discuss confidential information contained in the complaint and response, in accordance with Sections 7(a) and (f) of its Public Meetings Policy. No vote was taken during closed session. The Board reconvened in open session at 11:41 a.m.

Mr. Armstrong stated that the Disciplinary Review Committee recommends dismissal of the complaint against Mr. Alarcon and Ms. Brown. Upon motion of Mr. Grant and second by Mr. Anderson, the Board adopted the Committee's recommendation.

The director told the Board that the Disciplinary Review Committee recommended suspension of certification for Sevie Dean, the respondent in the other complaint the Committee considered at its July 15 meeting. However, because the time to request a hearing has not elapsed, the recommendation will not be presented to the Board at this time. The director also informed the Board that, due to a procedural error on her part, the Board's attempted suspension of Olga Levario, adopted at its May 2 meeting, is ineffective. The respondent has now complied with the rules; therefore, disciplinary action is not warranted. The suspension will be removed, and it will be treated as though it did not occur.

B. Procedures for Scheduling Hearings on Disciplinary Actions

The director told the Board that the Rules Committee is proposing a change to Rule XII. The proposed change will permit a Board designee to set a hearing, thereby eliminating the

requirement to convene the Board to do so. Ms. Bond recommended the Board adopt a procedure delegating such authority to the director until such time as the rule change is adopted. Mr. Ford moved and Mr. Warach seconded that authority to set a hearing be delegated to the director or her designee until such time as a change to the rules is adopted. The motion carried.

POLICY REGARDING PARTICIPATION (OR RECUSAL) OF REVIEW COMMITTEE MEMBERS IN BOARD VOTE ON COMMITTEE RECOMMENDATIONS

Ms. Bond reported that Barbara Deane, chief of the Administrative Law Division at the Office of the Attorney General, suggested that the Board consider adopting a policy on whether committee members can participate in a Board action based on a committee recommendation. The Board discussed concerns, including ex parte communication and a committee member becoming an advocate for a particular position. Mr. Jones commented on DADS procedures. Mr. Warach moved and Mr. Grant seconded that the item be tabled until the October meeting, so staff can do further research and provide information on practices of other regulatory boards and agencies. The motion carried.

The Board recessed at 12:10 p.m., and reconvened at 1:03 p.m.

REPORT FROM GUARDIANSHIP CERTIFICATION LEGISLATIVE WORKGROUP ON PROPOSED TOPICS FOR 81ST LEGISLATURE, REGULAR SESSION

Ms. Ondrechen reported on the three meetings of the legislative workgroup, which resulted in seven proposals for legislative change the Board will consider. The proposals will be presented to the Legislative Committee of the Texas Judicial Council on August 7 in the form of resolutions by the Council endorsing the proposals. Ms. Ondrechen told the Board that the Texas Judicial Council next meets on September 19; pre-filing of legislation begins on November 10, and the 81st Legislature convenes on January 13, 2009.

Criminal History Subject to Non-Disclosure. The Board considered the proposal that it be added to the list of agencies who may receive criminal history reports even when the incident is subject to non-disclosure. After discussion, Ms. Dabner moved that the Board recommend the resolution be forwarded to the Legislative Committee of the Texas Judicial Council, and Ms. Cohen seconded. The motion carried.

Persons Disqualified to Serve as Guardians. The Board considered the proposal that lack of required certification be added to the list of reasons a person is disqualified from appointment as a guardian. After discussion, Mr. Ford moved and Mr. Anderson seconded that the Board recommend the resolution be forwarded to the Legislative Committee of the Texas Judicial Council. The motion carried.

Enforcement Provisions. The Board considered the proposal to add discretionary enforcement remedies, including administrative penalties and injunctive relief, against guardians who are required to be certified but are not. After lengthy discussion, Ms. Meyer moved and Ms. Dabner seconded that the Board disapprove the resolution in its present form. The motion carried.

The Board discussed other possible enforcement remedies, including amendments to Probate Code Sections 601 and 761. Mr. Warach moved and Ms. Dabner seconded that the GCB be added to the list of interested parties in Probate Section 601(15), for purposes of seeking removal of guardian who is disqualified to serve. After further discussion, Mr. Warach amended his motion to add the GCB to those parties who may file a motion to have a guardian removed under Probate Code 761(c), and Mr. Anderson seconded. The consensus of the Board was that its authority to seek removal should be limited to motions filed under Probate Code 761(c)(10), which cites disqualification to serve under Probate Code Section 681. Mr. Warach amended his motion to recommend to the Legislative Committee of the Texas Judicial Council that the GCB be authorized by Probate Code Section 761(c) to bring lack of certification to a court's attention in a removal motion filed under subsection (c)(10). Mr. Ford seconded, and the motion carried.*

Reporting Requirements for Private Professional Guardians, Local Guardianship Programs, the Department of Aging and Disability Services and County Clerks. The Board considered the proposal to streamline reporting requirements, to eliminate duplicate reporting, and to provide for consistent reporting dates for reports filed with the Board by the entities listed. The new requirements should also provide better, more useful information to the Board. Mr. Ford moved that the Board recommend the resolution be forwarded to the Legislative Committee of the Texas Judicial Council, and Mr. Anderson seconded. The motion carried.

Appointment of Private Professional Guardians. The Board considered the proposal to clarify that both registration with the county clerk and certification by the Board are required for a private professional guardian to be appointed. Ms. Ondrechen noted a correction to the reference to the Probate Code; it should read Section 696, not Section 681. Mr. Warach moved that the Board recommend the corrected resolution be forwarded to the Legislative Committee of the Texas Judicial Council, and Ms. Strong seconded. The motion carried.**

Reduction of Criminal History Check Requirements. The Board considered the proposal to eliminate the requirement for a criminal background check by the county clerk on a potential guardian who is certified by the Board, which receives fingerprint-search criminal history reports on its applicants. Mr. Corbett moved that the Board recommend the resolution be forwarded to the Legislative Committee of the Texas Judicial Council, and Mr. Warach seconded. The motion carried.

Immediate Suspension of Certification Under Certain Circumstances.

The Board discussed the proposal to suspend a guardian's certification without advance notice to the guardian in certain circumstances. After discussion, Ms. Meyer moved and Ms. Patterson seconded that the Board disapprove the motion in its present form. The motion carried. Following further discussion, the chair moved and Ms. Meyer seconded that the proposal be tabled for further study over the next two years, and no action be proposed for the upcoming 81st Legislative Session. The motion carried.

REPORT FROM RULES COMMITTEE ON PROPOSED RULE CHANGES

Mr. Ford reported on two meetings of the Rules Committee. He summarized the changes to the rules the Committee proposes, including some revisions to the proposals made at the meeting earlier in the day. Proposals to amend Rules VI(e), VI(f), VI(h), VI(i), XI(a), XII(e), XII(f) and XIV(d) were discussed. Mr. Ford moved, and Ms. Meyer seconded, that the Board accept the proposed rule changes as amended and publish them for public comment. The motion carried. Any comments received will be considered by the Board at its October meeting.

The director noted proposed changes to the applications and instructions for certification and provisional certification, to clarify disclosure requirements regarding criminal history. Upon motion by Ms. Meyer and second by Ms. Dabner, the Board adopted the changes. New applications and instructions will be posted to the Board's website.

COMBINATION OF RULES AND MINIMUM STANDARDS COMMITTEES

The director proposed combining the two committees in the interest of efficiency. After discussion, the consensus of the Board was to keep the two committees separate.

PUBLIC COMMENT

Mr. Jones commented during the discussion on agenda items V- policy regarding participation or recusal of review committee members in Board vote on committee recommendations, VI-rule changes, VII-legislative proposals and VIII-combination of rules and minimum standards committees. No other public comment was made.

FUTURE BOARD MEETINGS

The last Board meeting for 2008 is scheduled for October 24. The Board will consider scheduling its 2009 meetings at that time; the director will provide proposed dates for 2009 prior to the October meeting.

ADJOURNMENT

On motion by Ms. Dabner and second by Mr. Warach, the meeting was adjourned at approximately 3:20 p.m.

Director's Notes

* The recommendations on enforcement provisions and on persons disqualified to serve as guardian were combined into one resolution for presentation to the Legislative Committee.

** After further review, Ms. Ondrechen and Ms. Bond concluded that the statute in its current form already accomplishes the desired result. Board members were notified of the director's intent to pull this resolution from consideration by the Judicial Council.