

## GUARDIANSHIP CERTIFICATION BOARD

### MINUTES OF MEETING

October 21, 2006  
9:30 a.m.

Texas Law Center  
1414 Colorado Street, Room 202  
Austin, Texas

#### COMMENCEMENT OF MEETING

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on October 21, 2006 at 9:45 a.m. The meeting was held at the Texas Law Center 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

Katie Bond, attorney at the Office of Court Administration (OCA), called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Galveston – Chair  
Leah Cohen, Austin  
Garth Corbett, Austin  
Carol Patrice Dabner, Dallas  
Don D. Ford, Houston  
Phillip A. Grant, Round Rock  
Marlane Meyer, McAllen  
Janis Thompson, Sherman (participated by phone)  
Gina D. Patterson, Houston  
Patti Turner, Ft. Worth

Others present were Carl Reynolds, Administrative Director of Office of Court Administration, Margaret Bennett, General Counsel, Katie Bond, Assistant General Counsel, and Antonio Franco, Director of the Guardianship Certification Program. Members of the public present at the meeting were Colleen Colton, Executive Director, Guardianship Services Inc., Ft. Worth, Kathleen Anderson, Health and Human Services Commission (HHSC), Alex Jones and Barbara Scobey, Texas Department of Aging and Disability Services (DADS), and Justice Phil Johnson of the Supreme Court of Texas.

#### **MINUTES OF AUGUST 18, 2006 MEETING**

The minutes of the GCB's meeting held on August 18, 2006 were approved.

#### **ADMINISTRATIVE DIRECTORS' REPORT**

Carl Reynolds reported on a project with the Texas Judicial Council which sets policy for the Texas Judicial Branch. The project involves reporting of judicial activity by local clerks; he will report on the status of the project at a future meeting. There is also a longer term project to refine the way that all types of cases at all levels of courts are reported to the State. This effort includes a probate data sub-workgroup that is meeting for the first time next week. Material about this workgroup was sent to Board Members and their comments are welcomed on this material. Antonio Franco reported that OCA has awarded the contract for the development and administration of the examination on Texas guardianship law and rules to the National Guardianship Foundation (NGF). NGF will conduct examinations beginning March 2007 through July 2007 at seven locations, including San Antonio, El Paso, Lubbock, Midland/Odessa, Dallas/Ft. Worth, Houston, Rio Grande Valley, and Tyler. Sally Herme (NGF) is forming a committee comprised of Texas experts to develop the Texas examination. Representatives whose names were submitted for this committee by GCB include attorneys, judges, master guardians and a DADS representative.

### **PROPOSED RULES REGARDING CERTIFICATION PROGRAM**

Mr. Don D. Ford, Chair of the Rules Committee, reported on the Committee's review of the comments to the proposed Rules. Comments were solicited from approximately 120 judges and other public stakeholders. A summary of all comments is included in the Board packet.

Some of the comments received include the following: fees should not be too high; there should be an apprenticeship program for individuals to work under a certified guardian to get the experience required in order to be certified; clarity is needed regarding application for re-certification; the bankruptcy prohibition should be removed; should consider grandfathering current registered guardians; and should consider requiring only a Texas-specific exam.

The Board discussed the comments. The Board changed the wording of Rule V(d) regarding the expiration of certification. The Board also revised Rule VI(c)(1) and deleted the prohibition on bankruptcy from Rule VI(f). The Board made minor wording changes to Rules VII(b), IX(b), and XII(d). On motion and second, the Board approved the proposed Rules as amended, and directed that the rules be submitted to the Supreme Court for approval.

### **PROPOSED EXEMPTION OF INDIVIDUALS WHO ASSIST WITH DEVELOPMENT OF EXAMINATION**

Mr. Ford made two motions regarding exemption of individuals who assist with development of the examination from the requirements of proposed Rule VI.

First, he moved that that the Board waive the examination requirement in proposed Rule VI for those persons who assist the NGF in preparing and writing the exam. The motion was seconded, and the Board approved the motion.

Mr. Ford then moved that the Board approve an exemption from payment of the exam fee for those persons who take the exam as part of the NGF's beta-testing of the exam. The motion was seconded, and the Board approved the motion.

### **PROPOSED FEES FOR GUARDIANSHIP CERTIFICATION PROGRAM**

The proposed rules do not state specific fee amounts to be charged for application, examination, and re-certification. To facilitate changes in fee amounts, fees will be posted on the Board web site once they are approved by the Board and the Supreme Court. The proposed fee for the Texas examination is \$100 (the fee for the NGF national exam is \$150). The Board discussed the impact of fees on potential guardians and guardianship programs and approved an initial application fee of \$25.00, a re-certification fee of \$25.00, and a late fee of \$75.00. Justice Johnson, the Supreme Court Liaison to the Board, joined for part of this discussion. In consultation with Justice Johnson, the Board established a schedule for publicizing the fee amounts, receiving comments from stakeholders, obtaining final Board approval of the fee amounts, and sending them to the Supreme Court for approval. On motion and second, the Board approved the fees for posting for comments, which will be due November 10, 2006. The Board will meet by telephone on November 13, 2006 to review any comments received and approve the fees for submission to the Supreme Court for approval.

### **PROPOSED MINIMUM STANDARDS FOR CERTIFIED GUARDIANS**

The Board considered the Proposed Minimum Standards for Certified Guardians. The Board approved Standards 1 and 2 without revision. The Board revised Standard 3.I to required the guardian to maintain a professional relationship rather than avoiding personal relationships. The Board revised Standard 4 by deleting proposed Paragraph VII and by making stylistic changes to Paragraphs III and IV. Standard 5 was approved with no revisions.

The Board added "shall make a good faith effort" to Standard 6.III and Standard 8.III.B and approved those standards as revised. Standards 7 and 9 were approved as proposed. Standard 10 was modified to state "The guardian shall make a good faith effort to determine the extent to which the ward identifies with particular ethnic, religious, cultural and personal values and to make decisions consistent with these values in the best interest of the ward." The Board approved Standard 11 as proposed.

In Standard 12, the Board deleted Paragraph D regarding keeping the affairs of the ward confidential since this topic is already addressed in Standard 11. The Board also revised proposed Paragraph G in Standard 12 (which will be re-numbered as Paragraph F) to read: "To petition the Court for modification or termination of the guardianship when the ward's capacity is partially or completely restored." Standard 13 was approved as proposed. Standard 14, Paragraph II was changed to "The guardian shall ensure that all reasonably available medical care necessary for the ward is provided". The Board added "make a good faith effort to" to Paragraph III and added a new Paragraph V to read: "Subject to available local and financial resources, the guardian shall explore treatment options in medical interventions posing a significant risk to the ward". The Board

considered the three alternatives for Standard 15, decided to use Alternative 3, added “Subject to court approval...” to the introduction to Paragraph II, and deleted C from Paragraph II.

The Board revised Standard 16.II to read: “The guardian shall supervise all income and disbursements of the estate in accordance with the Texas Probate Code”. The board also deleted reference to specific sections of the Texas Probate Code in Standard 16.X. Standards 17 and 18 were approved as proposed. On Standard 19, the Board chose to adopt Alternative 1 for Section I. The Board also deleted Sections III and IV. The Board changed Standard 20 to address “modification and termination” rather than “termination and limitation.” The Board added “provide care, supervise, and...” to Standard 21. The Board added “make a good faith effort” to Standard 22. Finally, the Board deleted the definition of “Capacity” and decided not to adopt DADS’ proposed addition to the definition of “Direct Services.”

The Board approved the Standards as amended.

### **ISSUES FOR 80<sup>TH</sup> LEGISLATIVE SESSION**

Two issues were identified: (1) reimbursement of Guardianship Certification Board members, and (2) authority for Guardianship Certification Board to obtain criminal history information. The Judicial Council adopted resolutions supporting these items. The Board also identified the issue of obtaining statutory authority to adopt rules that will permit provisional certification or apprenticeship as discussed in comments on the proposed rules.

### **COMMITTEE ASSIGNMENTS**

Phillip Grant, Patti Turner, Leah Cohen, Don D. Ford, Gina Patterson, and Judge Gladys Burwell will be available to respond to legislative requests and hearings.

### **FUTURE BOARD MEETINGS**

The next Board meeting will be a telephone meeting tentatively scheduled for November 13, 2006.

### **ADJOURNMENT**

Judge Burwell adjourned the meeting.