

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

October 24, 2008

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 October 24, 2008 at 11:05 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

Meredith Musick-Higgins, 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
Dr. Raymond Costello	Kathy Strong
Carol Patrice Dabner	Patti Turner
Susan Eason	Robert Warach

Jason Armstrong, Dr. Raymond Costello, Marlane Meyer, Gina Patterson, Kathy Strong, Patti Turner and Robert Warach attended via telephone conference call. Garth Corbett did not participate. Others present were Carl Reynolds, Administrative Director; Lesley Ondrechen, Guardianship Certification Program Director; Meredith Musick-Higgins, Executive Assistant; and Katie Bond, Assistant General Counsel, all of the OCA. Justice Phil Johnson of the Supreme Court of Texas and Kevin Heyburn from the Office of the Attorney General were also present. 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) and Jan McLaughlin of the Harris County Guardianship Program.

MINUTES OF JULY 25, 2008 MEETING

Upon motion by Ms. Strong and second by Mr. Anderson, the minutes of the Board's July 25, 2008 meeting were approved as submitted.

DIRECTORS' REPORTS

Mr. Reynolds addressed the Board on legislative issues. He reported that he is in contact with Senator Uresti concerning sponsorship of the four proposals for which the Texas Judicial

Council (TJC) adopted resolutions in support. Several proposals by the Probate, Mental Health and Guardianship workgroup will be considered by the TJC's Legislative Committee, and then the full TJC. If resolutions in support are adopted, OCA will work on Senate sponsorship for those proposals. In response to a comment by the Chair, Mr. Reynolds told the Board that Angela Garcia, OCA's Judicial Information Manager, will become conversant with reporting requirements for Texas compliance with the Brady Bill. Ms. Garcia may address the Board at a future meeting.

Ms. Ondrechen introduced Justice Phil Johnson, the Board's liaison on the Supreme Court of Texas and Kevin Heyburn from the Office of the Attorney General, who has been assigned to serve as the Board's prosecutor in disciplinary matters.

The director reported that as of October 23, 2008, 200 guardians are certified and 67 are provisionally certified. She also reported that a certified guardian in Austin, David Pharis, died in September. She noted that the terms of four members and one public member expire on February 1, 2009; re-appointments are being considered by the Supreme Court.

Ms. Ondrechen told the Board she had spoken at the National Guardianship Association's conference earlier in the month about the certification process in Texas, and how we have fared in the first year. She has been invited to speak at the Texas Guardianship Association's fall conference next month on certification, concentrating on re-certification and continuing education.

The director reported that the Conference of State Court Administrators and the Council of Chief Justices has adopted a resolution in support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The American Bar Association has funding to develop a web-based clearinghouse to disseminate educational materials on the need for the act. The National Center for State Courts is launching a center for Elders and the Courts as a result of a grant from the Retirement Research Foundation in Chicago. It is intended to be a primary resource for the judiciary and court staff on issues relating to guardianship, aging and elder abuse. She mentioned one administrative matter, regarding small corrections to travel vouchers.

Finally, Ms. Ondrechen mentioned an attorney general's opinion regarding whether generic agenda items satisfy notice requirements under the Open Meetings Act. She noted that the OCA and the GCB are not subject to the Open Meetings Act, and are not bound by AG opinions interpreting it. Mr. Reynolds noted that the law always required notice; problems can arise if action items are included under general descriptions such as "Directors' Reports."

PETITIONS FOR DISCIPLINARY ACTION

A. Consideration of Recommendation of the Disciplinary Review Committee

Sevie Dean has failed to provide her new business contact information to the Board, as required by Rule X(c), despite repeated requests by the director. The director summarized the recommendation before the Board, and provided a chronology of events. The documentation

provided to the Board showed that Ms. Dean had been given notice as required by the Board's rules.

Mr. Armstrong moved that Ms. Dean's certification be suspended until such time as she provides the required information to the Board. Ms. Meyer seconded, and the motion carried.

B. Consideration of Form: Petition to Initiate Disciplinary Procedures

Based on Board review at its May meeting, the director changed the format and added an instruction sheet to her draft form. Mr. Reynolds suggested including a link to the Rules Governing Guardianship Certification and to the Minimum Standards Governing Guardianship Services on the form and on the instruction sheet. In response to a question by Ms. Cohen, Ms. Ondrechen told the Board that the instruction sheet indicates what information is required. The director will make the suggested changes, and have the form posted to the Board's website. Because the use of the form is not mandatory, formal adoption by the Board is not required.

REQUEST FOR EXTENTION OF PROVISIONAL CERTIFICATION PERIOD

Ms. Ondrechen told the Board that Rodney Hamilton, whose provisional certification expires in October 2009, requested an extension of his provisional certification period for medical reasons. She cautioned the Board not to discuss Mr. Hamilton's medical information in the public meeting. The Board discussed an extension versus an additional two-year certification period. The director was instructed to inform Mr. Hamilton that an extension will not be granted, and to ask him to contact the Board when his certification is within ninety days of expiring, if he believes he needs additional time to prepare for full certification. He can then request a waiver and request another two-year provisional certification period.

DESIGNATION FOR GUARDIANS CERTIFIED AND PROVISIONALLY CERTIFIED BY THE BOARD

The Board discussed use of a uniform designation. The consensus of the Board was any such designation should be a part of the Rules Governing Guardianship Certification. Board staff will research how this is handled in other states. The Chair suggested, and the Board concurred, that it be taken up by the Rules Committee.

PROPOSED RULE CHANGES

The proposed rule changes were approved by the Board at its July 25 meeting. The director reported that no public comments were received during the thirty day comment period. She told the Board that a certified guardian had posed a question about supervisors meeting with provisionally certified guardians; he was invited to comment, but did not. There being no discussion, Mr. Ford moved that the Board approve the proposed amendments for submission to the Supreme Court.

Justice Johnson questioned the proposed amendment to Rule XIV permitting meetings between provisionally certified guardians and certified guardian supervisors by means other than face-to-face. Mr. Ford explained the history and the reasoning behind the requirement. After

discussion, including unusual circumstances such as natural disasters and comment by Mr. Jones, Mr. Ford proposed requiring one meeting each month must be face-to-face while retaining the requirement to meet at least once every two weeks, and the director proposed new wording. There being no further discussion, Mr. Ford revised his motion that the Board approve the proposed changes to the rules as amended for submission to the Supreme Court. Mr. Grant seconded, and the motion carried.

The meeting adjourned at 12:01 p.m. and re-convened at 12:35 p.m.

PROPOSED LEGISLATION REGARDING GUARDIANSHIP CERTIFICATION

The Senate Committee on Government Organization meets Monday, October 27 to discuss an interim charge about reducing costs and streamlining the process for obtaining criminal history background checks on licensing professionals. This charge directly relates to one of the proposals for legislation. The director will attend the meeting.

Ms. Ondrechen directed the Board's attention to the four resolutions in support of legislative proposals approved by the TJC and some pending items from the Probate, Mental Health and Guardianship workgroup. Ms. Ondrechen summarized the legislative process. The director reminded the Board that during the 80th Legislative Session in 2007, several Board members had volunteered to be available for testimony before the House and Senate as required. Judge Burwell and Ms. Cohen volunteered. The director will contact Mr. Corbett and ask if he can be available as he was last session.

In response to a question from the Chair, Mr. Reynolds indicated the OCA is not seeking House sponsorship at this time. He noted that Representatives Hartnett and Naishtat have been supportive of guardianship issues.

RE-CERTIFICATION

A. Consideration of Re-Certification Application Form

The Board reviewed the proposed form prepared by the director. Reporting of continuing education hours earned during the time an applicant was provisionally certified will be removed from the application for re-certification. The Application for Certification form will be changed to require those hours to be reported when an individual applies for certification. Mr. Ford suggested clarifying that education and employment history information is needed only if it has changed since original certification. He also noted revisions to the form will be made once rule changes regarding denial, revocation or suspension of certification in Texas or other jurisdictions requiring licensure or certification of guardians are adopted by the Supreme Court.

Mr. Ford suggested the applications for certification, provisional certification and re-certification be changed to include a question regarding civil liability on an action in surcharge. A rule change would be required; this will be taken up at the next meeting of the Rules Committee. The Board discussed adding "breach of fiduciary duty" to the list of circumstances on the questions regarding removal as a guardian and civil liability. This will be added to the application for re-

certification, application for certification and application for provisional certification. The director will change the latter two forms and have them posted to the Board's website.

The Board discussed the continuing education requirement, vis a vis the requirement that the re-certification application be filed ninety days before expiration of certification. The form will be changed to indicate that continuing education credit claimed must either be on the approved list, or a request for approval must accompany the application for re-certification.

Ms. Ondrechen told the Board about working with the Department of Public Safety about the possibility of re-running the required criminal history reports without an application being re-fingerprinted. Mr. Grant raised the possibility of not requiring new criminal history reports. Ms. Bond and Dr. Scobey gave the Board information on how other licensing boards deal with this issue. The Rules Committee will address this requirement at its next meeting.

The director stated she intends to have the re-certification form and instructions posted by early January, pending the outcome of her discussions with DPS regarding criminal history reports. She will send reminder letters to certified guardians approximately four months before certification expires. Provisionally certified guardians will be sent letters three months before expiration stating that their provisional certification is expiring.

B. Continuing Education

Ms. Cohen reported that she had complaints about the number of hours approved for continuing education by the Board. The Board discussed the approval process, including lack of information on a topic - particularly keynote speakers - that demonstrates its relevance to the provision of guardianship services. Dr. Scobey, Ms. McLaughlin and Mr. Jones commented on this subject. The Chair asked all Board members to communicate with the director as they become aware of continuing education activities and ask her to consider them for approval.

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

Ms. Bond told the Board this arises from a recommendation by Barbara Deane, chief of the Administrative Law Division at the OAG. Ms. Deane recommends that Board members who participate in a review panel/committee recuse themselves from discussion, deliberation and voting on Board action. Ms. Bond has done some research on how other boards handle this, but would like to do more. This proposal will be reviewed by the Rules Committee at its next meeting. Ms. Bond will talk with Mr. Jones regarding DADS' recusal policy as part of her research, and will present it to the Rules Committee.

Ms. Cohen acted as chair during Judge Burwell's short absence from the meeting.

APPOINTMENT OF COMMITTEES

Ms. Cohen noted that the Chair appointed the following members to serve for the period January 1 through June 30, 2009:

Application Review Committee

Robert Warach, Chair
Dr. Raymond Costello
Susan Eason

Denial of Certification Review Committee

Barry Anderson, Chair
Don Ford
Gina Patterson

Disciplinary Review Committee

Carol Dabner, Chair
Garth Corbett
Marlane Meyer

PUBLIC COMMENT

Mr. Jones and Dr. Scobey commented during discussion of the proposed rule changes. Mr. Jones, Dr. Scobey and Ms. McLaughlin commented during the discussion of the continuing education component of re-certification. No other public comment was made.

PROPOSED SCHEDULE FOR 2009 QUARTERLY MEETINGS

After review of the proposed dates provided by the director - taking into account holidays, legislative deadlines and other events - the Board scheduled its 2009 quarterly meetings for February 20, May 15, July 17 and October 16. The director noted a special meeting of the Board may be necessary if anything else needs to be done regarding the re-certification process.

ADJOURNMENT

On motion by Mr. Grant and second by Ms. Dabner, the meeting was adjourned at approximately 1:42 p.m.