

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

**August 18, 2006
9:30 a.m.**

**Supreme Court Courtroom
Supreme Court Building
201 West 14th Street, First Floor
Austin, Texas**

COMMENCEMENT OF MEETING

Judge Burwell called the meeting of the Guardianship Certification Board (GCB) to order on August 18, 2006 at 9:33 a.m. The meeting was held in the Supreme Court Courtroom in the Supreme Court Building 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 of the Office of Court Administration (OCA) called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Galveston - Chair
Jason Armstrong, Lufkin
Leah Cohen, Austin
Garth Corbett, Austin
Dr. Raymond Costello, San Antonio
Carol Patrice Dabner, Dallas
Don D. Ford, Houston
Phillip A. Grant, Round Rock
Marlane Meyer, McAllen
Janis Thompson, Sherman
Patti Turner, Ft. Worth
Robert Warach, El Paso

Gina D. Patterson participated by phone. Others present were Carl Reynolds, Director of Office of Court Administration, Margaret Bennett, General Counsel, Katie Bond, Assistant General Counsel, Antonio Franco, Director of the Guardianship Certification Program, and Meredith Musick, Executive Assistant to the OCA Director. There were no members of the public present at the meeting.

SUPREME COURT LIAISON

Judge Burwell introduced Justice Phil Johnson, the Supreme Court of Texas liaison to the GCB. Justice Johnson stated that the Court appreciates and supports the work done by both the GCB and OCA.

MINUTES OF MAY 6, 2006 MEETING

The minutes of the GCB's meeting held on May 6, 2006 were approved.

ADMINISTRATIVE DIRECTOR'S REPORT

Mr. Reynolds expressed appreciation for Justice Johnson's support.

Mr. Reynolds provided an overview of OCA and summarized the primary areas of OCA's responsibility, including civil justice, criminal justice, court administration, and court technology. He also discussed the Guardianship Certification Program, increased involvement with court systems and the executive branch regarding child protection case management and reporting, and efforts to allow judges and the executive branch to share information electronically and move children to safety and permanency in a more timely fashion.

Mr. Reynolds briefly discussed OCA's Legislative Appropriations Request (LAR), indicating a base budget of 90% was submitted as required by Legislative Budget Board instructions. Six exceptional items were submitted to request funding above the base budget. One exceptional item is for funding to increase staff for OCA's regulatory functions. Other exceptional items include funding to support technology systems and other functions.

Mr. Reynolds described the process for selecting the new Director of the Guardianship Certification Program and introduced the newly-selected Director, Tony Franco. Mr. Franco spoke briefly and stated he looks forward to working with the GCB to make the Guardianship Certification Program successful.

Mr. Reynolds discussed two legislative items that he proposes be presented to the Judicial Council. The first item is a request to reimburse board members for expenses incurred while carrying out duties of the GCB. The second item is a change to Chapter 411 of the Texas Government Code to authorize the GCB to have access to Texas Department of Public Safety criminal history information. Motions passed to approve OCA moving forward on the legislative initiatives as stated above. Mr. Reynolds asked board members to forward any additional legislative items to him before the next meeting of the GCB.

TIMELINE FOR TASKS LEADING UP TO SEPTEMBER 1, 2007

Katie Bond explained the process and timeline for the tasks that must be completed to ensure that guardians are able to be certified by September 1, 2007. Some of the objectives include having Rules and Standards in place and having the Exam Contractor administer at least six exams in diverse locations beginning March 2007. This will provide potential guardians an opportunity to take and retake exams if needed. The OCA will develop application and certification forms and processes. Board members discussed several options for publicizing this process, including communication with the Texas Bar Association and counties and using list serves.

PROPOSED RULES FOR GUARDIANSHIP CERTIFICATION PROGRAM

Mr. Don D. Ford, Chair of the Rules Committee, presented the proposed Rules developed by the Rules Committee. He indicated that the Committee met by conference call six times during the summer to develop the proposed Rules.

The GCB discussed the proposed Rules. The GCB decided to add definitions of “volunteer” and “corporate fiduciary” to Section II (Definitions). No major changes were made to Section III (Certification and Re-Certification), Section IV (Duties of the Board), or Section V (Application Procedure). When the discussion turned to Section VI (Requirements for Certification), the GCB discussed educational and experience requirements but did not make changes to the requirements in the proposed Rules. The GCB made minor changes to Section VII(b)(1) (Requirements for Re-Certification) to clarify that continuing education must be earned prior to the expiration of certification and that allowing guardians to earn continuing education up to that time does not waive late fees under Section V.

Mr. Ford continued his presentation by discussing Section VIII (Board Determination) and Section IX (Review and Appeal of Certification Denial), delineating the process to review, approve, or deny an application and the appeals and hearings process. No changes were made to these rules. Minor changes were made to Section X (Responsibilities of the Certified Guardian) to require a guardian to file a copy of the guardian’s certification in each cause in which the guardian is appointed (new subsection (e)) and to move reporting requirements to this section from Section XIV (new subsections (f), (g), and (h)). No changes were made to Section XI (Disciplinary Criteria) or Section XII (Complaints; Disciplinary Procedure). The GCB modified Section XIII(d) (Approval of Continuing Education) by deleting the list of approved providers of continuing education and adding a provision stating that the GCB will publish a list of approved providers on its web site.

A motion to approve the proposed rules as amended passed. The GCB requested OCA to publish the rules for comment by September 1, 2006, with comments due September 29, 2006.

PROPOSED MINIMUM STANDARDS FOR CERTIFIED GUARDIANS

Mr. Garth Corbett, Chair of the Minimum Standards Committee, presented the proposed Minimum Standards. He stated that the Committee used the National Guardianship Association’s Standards of Practice as the basis for the proposed GCB Minimum Standards; the NGA standards were changed where they were not consistent with Texas law. The proposed standards give attribution to the NGA.

Judge Burwell invited board members to comment on Standards 1 (Applicable Law) through 4 (Relationship with Family Members and Friends of the Ward); there were no comments. The GCB made a minor change to Standard 5(V) (Relationship with Other Professionals and Providers of Service to the Ward) to clarify that the guardian must engage the services of professionals in compliance with the Texas Probate Code. The board members discussed the concept of “substantial harm” in Standard 6 (Informed Consent) but decided not to make a change in the standard. There were no changes to

Standards 7 (Standards for Decision-Making) and 8 (Least Restrictive Alternative). The GCB made a minor change to Standard 9(III) (Self-Determination of the Ward), changing “person-centered planning” to “individualized planning.” Standard 10 (Duties Regarding Diversity and Personal Preferences of the Ward) was changed to require decision-making in the best interest of the ward. Standard 11 (Confidentiality) was changed to clarify that the standard should be applied subject to state and federal law. The GCB decided to delete civil commitment proceedings from Standard 12(E) (Duties of the Guardian of the Person) and to add a requirement that guardians give notice of civil commitments pursuant to Section 770 of the Texas Probate Code. No changes were made to Standard 13 (Guardian of the Person: Initial and Ongoing Responsibilities).

Board members then discussed Standard 14 (Decision-Making about Medical Treatment) and Standard 15 (Decision-Making about Withholding and Withdrawal of Medical Treatment). The Committee proposed three alternatives for each standard. The GCB decided to combine the two standards into one standard entitled Decision-Making about Medical Treatment and to use the language from I, II, and III of Option Two for proposed Standard 14, deleting the last sentence of III. Board members decided to add a new IV to require that decisions about withholding and withdrawing medical treatment should be made in accordance with I, II, and III. Standard 16 (Conflict of Interest: Ancillary and Support Services) was changed to remove legal services from II(A). Board members decided to delete Standard 22 (Guardianship Service Fees) and Standard 25 (Sale or Purchase of a Guardianship Practice). The GCB discussed the proposed definitions and decided to use the definitions of “Guardian,” “Guardianship Program,” “Private Professional Guardian,” and “Ward” that are used in the proposed Rules.

The Minimum Standards Committee will meet before September 1, 2006 to implement the changes made by the GCB in this meeting, and the proposed Minimum Standards will be published for comment by September 1, 2006.

COMMITTEE ASSIGNMENTS

Judge Burwell stated that it will be necessary to make committee assignments for three additional committees. The three committees include: (1) RFP Review Committee comprised of OCA staff and Board member(s) to review proposals and award contract for examination services. Patti Turner volunteered to serve on this committee. (2) Legislative Committee to be staffed by board members who can be available on short notice to assist with legislative matters. Board member Gina Patterson and Judge Guy Herman were mentioned as possible members of this committee. (3) Guardianship Certification Exam Review Committee to review the proposed Texas certification exam prior to rollout. Assignments for the Legislative and Certification Exam Committees will be discussed at the meeting on October 21.

FUTURE BOARD MEETINGS

Judge Burwell stated that the GCB is required to meet quarterly. The GCB voted to meet on Saturday, October 21, 2006 at 9:30 a.m. The proposed Rules and Minimum Standards will be considered for adoption at that time. If adopted, the Rules and Minimum Standards will be given to the Supreme Court of Texas on October 23, 2006.

The Board decided to have its first quarterly meeting of 2007 on Friday, January 19, 2007 at 9:30 a.m.

ADJOURNMENT

Judge Burwell adjourned the meeting at approximately 3:00 p.m.