

**Guardianship Certification Board  
Board Meeting  
February 1, 2008  
11:00 a.m.  
Office of Court Administration  
205 W. 14th St., 6th Floor, Austin, Texas**

**AGENDA**

- I. Roll Call
- II. Minutes of October 26, 2007 Meeting
- III. Directors' Reports
- IV. Committee Reports
  - A. Application Review Committee
  - B. Rules Committee
- V. Review of Applications for Certification
- VI. Policies and Rules
  - A. Proposed Rule XV, Alternative Dispute Resolution
  - B. Proposed Amendment of Rule XI(a), Grounds for Denial of Certification
  - C. Proposed Amendment to Ethics Policy
- VII. Request for Extension of Provisional Certification Period
- VIII. Enforcement of Certification Requirements
- IX. Public Comment
- X. Future Meetings

The Board may meet in closed session on any agenda item listed, in accordance with the Board's Public Meetings Policy.

# **GUARDIANSHIP CERTIFICATION BOARD**

## **MINUTES OF MEETING**

October 26, 2007

11:00 a.m.

Office of Court Administration  
205 W. 14th St., Suite 605  
Austin, Texas

### **COMMENCEMENT OF MEETING**

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on October 26, 2007 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, Executive Assistant at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair  
Leah Cohen, Vice-Chair  
Garth Corbett  
Dr. Raymond Costello  
Carol Patrice Dabner  
Susan Eason

Don D. Ford  
Philip A. Grant  
Marlane Meyer  
Patti Turner  
Robert Warach

Leah Cohen, Dr. Raymond Costello, Susan Eason, Marlane Meyer and Robert Warach attended via telephone conference call. Jason Armstrong, Gina Patterson, Kathy Strong and Janis Thompson did not participate. Others present were Carl Reynolds, Administrative Director; Lesley Ondrechen, Director of the Guardianship Certification Program; Katie Bond, Assistant General Counsel, and Meredith Musick, Executive Assistant, all of the OCA. Members of the public present at the meeting were Tim McGinnis and Barbara Scobey of the Texas Department of Aging and Disability Services (DADS), Melvin Johnson of the Texas Council for Developmental Disabilities, Esther Williams, Dale Williams, Harold Foraker and Shenetha Harrison-Toliver.

### **MINUTES OF JULY 27, 2007 MEETING**

Upon motion by Ms. Meyer and second by Ms. Eason, the minutes were approved as submitted.

### **DIRECTORS' REPORTS**

Mr. Reynolds reported to the Board on the status of OCA's data management reporting project, advising that the new reporting forms may not be effective until September 2009. This allows vendors time to re-tool to accommodate new requirements on the new forms. Judge Herman's proposal that the appointee report indicate whether the appointed guardian is an attorney, a

family member, a guardianship program, etc. has been referred to the Supreme Court of Texas as a separate matter from OCA's project. The proposed new forms for district and county courts, including probate courts, will be presented to the Judicial Council at its December 7 meeting for comment.

Ms. Ondrechen advised that Janis Thompson, a public member, had tendered her resignation from the Board. The Supreme Court will appoint her successor from a list of candidates provided by the governor.

Ms. Ondrechen reported that as of October 25, 2007, 141 guardians have been certified, and 52 have been provisionally certified. This includes two provisionally certified guardians who moved to full certification, both of whom are DADS employees. Ten applications for certification are pending, including the two to be discussed at today's meeting; two provisional applications, both of which will be discussed today, are pending.

Ms. Ondrechen reported on several procedural matters: secure name search criminal history reports for applicants whose fingerprints were rejected twice by the FBI; revision of the application for provisional certification; a certified copy of the disposition from applicants with deferred adjudication or a conviction must be provided to the director before any action will be taken on the application; and the \$25 application fee will be collected from provisionally certified guardians who apply for full certification, except DADS employees who are exempt from fees. Ms. Ondrechen told the Board that a provisionally certified guardian, who had been referred to the Disciplinary Review Committee, voluntarily surrendered her certification. No disciplinary action was taken, but for future cases, a disciplinary action log will be maintained.

She advised the Board of the results of the October 6 exams. Board members and examinees have commented on the lack of Texas-specific study materials; Ms. Ondrechen will contact the National Guardianship Association, and will report to the Board at its next meeting.

Ms. Ondrechen reported on the National Guardianship Association conference she had attended earlier in the month, including giving an update on the GCB to the Guardianship Advisory Board which met during the conference. The Chair remarked on the final presentation given at the conference, and offered to provide copies of the materials to those who did not attend. Ms. Ondrechen also gave an update on continuing education matters.

The Chair addressed the Board on the need for an evacuation plan for all wards, and advised that she requires it as part of the annual reports filed by guardians. She brought sample plans for Board members' review.

Ms. Ondrechen reported on administrative matters including an update on certification software, the completion of a business continuity plan for the Board, and criminal history reporting. Finally, she brought a recently issued attorney general opinion concerning fees collected by county courts to the Board's attention.

## **REVIEW OF APPLICATIONS FOR CERTIFICATION**

The Board went into closed session at 11:38 a.m. to discuss agenda item IV - Review of Applications for Certification, in accordance with sections 7(f) of its Public Meetings Policy. No vote was taken during closed session. The Board reconvened in public session at 1:13 p.m.

Dr. Costello, chair of the Denial of Certification Review Committee, told the Board that, after review of additional documents provided to it by the applicant, the Committee recommended approval of certification for Esther Williams. Dr. Costello so moved, and Mr. Warach seconded. Ms. Williams addressed the Board on her experience providing guardianship services informally to a family member. After discussion, a vote was taken and the motion carried.

Mr. Grant moved to defer consideration of the provisional certification application of Shenetha Harrison-Toliver until additional information can be obtained. Ms. Meyer seconded, and the motion carried.

Harold Foraker responded to Board members' questions about details of his application. The Board suggested provisional certification as an alternative.

Mr. Ford moved to approve Mr. Foraker for certification, with no recommendation for provisional certification, and Ms. Meyer seconded. The director asked the Board to approve a waiver of the requirement for a high school diploma or a GED. Mr. Ford moved to approve certification for Mr. Foraker, and to waive the requirement for a high school diploma or a GED. At the request of Dr. Costello for separate motions, Mr. Ford amended his motion to approve a waiver of the requirement for a high school diploma or a GED, based on Mr. Foraker's extensive post-high school education. Upon second by Ms. Meyer, the waiver was granted.

Mr. Ford then moved for approval of certification, with no requirement for provisional certification, and Ms. Meyer seconded. A vote was taken and certification was denied due to lack of experience. Mr. Grant, Ms. Turner, Mr. Warach, Dr. Costello, and Ms. Dabner noted for the record they would be in favor of provisional certification for Mr. Foraker.

Mr. Grant moved, and Ms. Meyer seconded, to defer action on Latorya Williams' application for provisional certification until the Board's next regularly scheduled meeting, and to encourage her to attend. The Board discussed conducting an independent investigation. Mr. Grant amended his motion to defer consideration of Ms. Williams' application for provisional certification until the Board's next regularly scheduled meeting, to request additional information as discussed in closed session. Mr. Warach seconded, and the motion carried. The Board instructed the director to send letters to Ms. Harrison-Toliver and to Ms. Williams expressing the Board's wishes.

## **ENFORCEMENT OF CERTIFICATION REQUIREMENTS**

The Board discussed a letter received from the statutory probate judge in Denton County, regarding guardians who are not certified but who continue to serve as guardians. The consensus of the Board was that no action will be taken at this time.

## **POLICIES AND RULES**

### **A. Proposed Division of Responsibilities Policy**

Ms. Ondrechen noted this policy is required by statute, Government Code 111.022. Mr. Ford moved to adopt the policy as written. Upon second by Mr. Grant, the motion carried.

### **B. Proposed Access to Board Records Policy**

Ms. Ondrechen told the Board she drafted this policy to address privacy of applicants, but noted the need to deal with the broader issue of access to Board's records. The policy's purpose is to document that Board records are maintained and access is granted pursuant to Rule 12 of the Rules of Judicial Administration, not the Public Information Act. The Chair noted that item 6 in the proposed policy states that criminal history reports will not be maintained as part of an applicant's file once certification is granted. Mr. Ford moved to adopt the policy as written. Upon second by Ms. Meyer, the motion carried.

### **C. Proposed Amendment of Public Meetings Policy**

Ms. Bond noted that two items were changed in the policy. The first item concerns making recordings or preparing minutes for all Board meetings, except that consultations with an attorney in closed sessions do not have to be recorded; this mirrors a provision in the Open Meetings Act. The second provides for emergency meetings and the emergency addition of items to an agenda. Upon motion by Ms. Meyer and second by Mr. Warach, the amendments were approved.

### **D. Proposed Amendment of Rule XI(a), Grounds for Denial of Certification**

Ms. Bond advised the Board that this amendment adds a provision that making a false representation or material misstatement of fact to the Board is grounds for denial, suspension or revocation of certification. Mr. Grant moved that the proposed amendment to Rule XI(a) be posted for public comment, and then reviewed at the next Board meeting. Upon second by Ms. Meyer, the motion carried.

### **E. Proposed Alternative Dispute Resolution Rules**

Ms. Bond reminded the Board that Section 111.019 of the Government Code requires the Board to develop a policy to encourage the use of alternative dispute resolution procedures. She also reminded the Board that she had previously drafted a policy, but the Board's consensus was that the matter should be addressed in a rule. Ms. Bond discussed some of the provisions, and reported that she had reviewed similar rules for the Court Reporters Certification Board, the State Office of Administrative Hearings and the Department of Licensing and Regulation in the course of preparing the proposed rule. Judge Burwell moved that the rule be referred to the Rules Committee for detailed review. Mr. Ford seconded, and the motion carried.

### **EXAM SCHEDULE FOR 2008**

Lesley Richards, certification coordinator at the Center for Guardianship Certification (CGC), joined the meeting by conference call. Ms. Ondrechen proposed that two of the three contracted exams in calendar year 2008 be held to coincide with the Texas Guardianship Association's spring and fall conferences, April 16-18 in Corpus Christi and November 12-14 in Waco. Ms. Ondrechen noted that she had been approached at the Guardianship Advisory Board meeting about holding an exam in East Texas. After discussion, the consensus of the Board was to hold the third exam in a more western part of the state, because the other two locations are southeast and central. Ms. Ondrechen will contact Ms. Richards to begin the process of choosing locations, and will report to the Board.

### **COMMITTEE ASSIGNMENTS**

Ms. Ondrechen had noted earlier in the meeting that the Chair had replaced Ms. Thompson on the Disciplinary Review Committee with Garth Corbett through December 31, 2007. The Chair reviewed current committee assignments, through December 31, 2007. The Rules Committee will remain a standing committee; members are Don Ford (chair), Carol Dabner, Philip Grant and Marlane Meyer. The Minimum Standards Committee will also remain a standing committee; members are Garth Corbett (chair), Dr. Raymond Costello, Patti Turner and Susan Eason. The Chair made the following committee assignments for the first six months of 2008 (January 1 through June 30):

Application Review Committee

Gina Patterson (chair), Carol Dabner and Philip Grant

Denial of Certification Review Committee

Marlane Meyer (chair), Jason Armstrong and Robert Warach

Disciplinary Review Committee

Kathy Strong (chair), Leah Cohen and Don Ford

### **PUBLIC COMMENT**

Applicants for certification who attended the Board meeting responded to questions earlier in the meeting. No other public comment was made.

### **FUTURE BOARD MEETINGS**

After review of calendars, holidays and other events provided by Ms. Ondrechen, the Board scheduled its 2008 quarterly meetings for January 25, April 25, July 25 and October 24.

(NOTE: Conflicts with the January 25 and April 25 dates were brought to the director's attention after the meeting was adjourned. Those meetings have been re-scheduled for February 1 and May 2, respectively.)

### **ADJOURNMENT**

On motion by Mr. Ford and second by Mr. Grant, the meeting was adjourned at 2:42 p.m.

PROPOSED 2/1/08  
AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION  
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

**XV. ALTERNATIVE DISPUTE RESOLUTION**

- (a) Policy. The Board encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures. By doing so, the Board does not waive immunity from suit or sovereign immunity under the Eleventh Amendment to the United States Constitution.
- (b) Initiation of Settlement Conference. At any time after the filing of a complaint against a certified guardian or provisionally certified guardian, and before the Board has conducted a hearing on the complaint, the Director may initiate a Settlement Conference. The Director may initiate the Settlement Conference on the Director's own motion or on the request of any party; ~~However~~however, Settlement Conferences are completely voluntary; ~~all~~All parties must agree before a Settlement Conference can be convened.
- (c) Parties to Settlement Conference. The Complainant and Respondent are the parties in a Settlement Conference. The Board (through one or more Board members, staff, or counsel) may also participate as a party in a Settlement Conference at the sole option of the Board Chair.
- (d) Purpose of Settlement Conference. A Settlement Conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary proceeding or to reach agreement about how to handle disputed matters. The parties may use a mediator for the Settlement Conference pursuant to (f) below or conduct the Settlement Conference without a mediator.
- (e) Power to Settle in Settlement Conference.
- 1) Does Not Bind Board. The Complainant and the Respondent may not bind the Board to any resolution of a complaint pending before the Board. If the Complainant and the Respondent are able to resolve some or all of the issues, the Board may consider this fact, and the terms of the agreement, in determining what action, if any, to take on the complaint.
  - 2) Participation of Board Member. The Board Chair may appoint one or more Board members or staff to attend the Settlement Conference. The Board representative shall attend the Settlement Conference and participate in the proceedings in good faith and in an effort to resolve the dispute within the parameters of any instructions received from the Board.
  - 3) Review of Settlement by Board. In the event a settlement of some or all of the disputed issues is reached during the Settlement Conference, the Board shall review the terms of the settlement at the next regularly-scheduled Board meeting.
    - (A) Upon review of the settlement, the Board may:
      - (i) Accept the settlement terms;
      - (ii) Reject the settlement terms and restore all proceedings on the complaint to the status quo as it existed immediately prior to the Settlement Conference; or
      - (iii) Refer the matter for further negotiation.
    - (B) The Director shall notify all parties of any action taken by the Board.

**PROPOSED 2/1/08  
AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION  
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION**

- (f) Use of Mediator in Settlement Conference.
- 1) Agreement of Parties. The parties may agree to retain a mediator to assist with the Settlement Conference. Parties who wish to explore this option will be given a reasonable time to do so by the Chair.
    - (A) The parties shall notify the Chair in writing of their agreement to retain a mediator. That notice must include: the name, address, and telephone number of the mediator selected, a statement that the parties have entered into an agreement with the mediator as to the rate and method of his or her compensation, and an affirmation that the mediator is qualified to serve as described herein.
    - (B) Upon receipt of a properly-filed notice that complies with this section, the Chair will enter an order referring the case to the mediator.
  - 2) Appointment if No Agreement. If the parties do not agree to a mediator, the Chair may appoint an individual to serve as mediator in the Settlement Conference. If any party objects promptly and with good cause to the mediator appointed, the Chair will appoint another qualified individual to serve as mediator. An objection will be considered prompt if it is received by the Director within ten (10) days of the date of the order appointing the mediator.
  - 3) Qualifications of Mediator. An individual appointed to serve as a mediator under (1) or (2) above must meet the qualifications set forth in Section 154.052, Texas Civil Practice and Remedies Code. Pursuant to Section 154.052(c), an individual who has served as a probate judge in Texas may be appointed to serve as a mediator.
- (g) Payment of Costs. The Board shall not pay any fees or costs associated with the Settlement Conference unless good cause is shown and the Board and the Office of Court Administration agree to do so prior to the Settlement Conference.
- (h) Confidentiality of Communications. All communications in the Settlement Conference between or among the parties, and between each party and the mediator, if any, are confidential under the same terms as provided in Section 154.053(b) and (c) of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceeding. Notes taken during the Settlement Conference by the parties and the mediator shall be destroyed at the end of the process.
- (i) Time Frame for Settlement Conference and Schedule for Disciplinary Action. A Settlement Conference is not intended to delay the process, including the hearing of the action, except by order of the Chair. Deadlines and settings in the disciplinary action may be extended only by motion to, and order of, the Chair.



**PROPOSED 2/1/08  
AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION  
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION**

- (j) Agreement to be Memorialized.
  - 1) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the Settlement Conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential and not become a part of the disciplinary action case file if there is no requirement of law to the contrary.
  - 2) Any part of an agreement that may affect the disposition of the disciplinary action (such as agreements concerning relevant facts) must be filed in the record of the disciplinary action.
  - 3) Whether a final written agreement reached through a Settlement Conference is subject to or excepted from required disclosure, or is confidential, will be determined in accordance with applicable law.
- (k) Conduct of Mediator. If the parties use a mediator for the Settlement Conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Board matters discussed with the parties in the Settlement Conference. The mediator will report to the Board in writing whether the Settlement Conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.
- (l) Required Filings. Any ~~motion requesting~~request for the appointment of a mediator, any objection to the referral of the matter to a Settlement Conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the Settlement Conference must be filed with the GCB.
- (m) Other Disputes. Where appropriate and feasible, the Board will attempt to resolve other disputes in which the Board is a party using alternative dispute resolution procedures in lieu of litigation.

PROPOSED AMENDMENT TO RULE XI(a)

XI. DISCIPLINARY CRITERIA

(a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has:

- 1) Failed to comply with any of these rules;
- 2) Failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;
- 3) Failed to pay any applicable fee established by the Board;
- 4) Failed to meet the requirements for certification, provisional certification, or re-certification established by the Board;

As posted for public comment:

- 5) Made any false representations or misstatements of material fact to the Board;

Incorporating public comment:

- 5) Falsely represented or misstated any material fact to the Board;

5)6) Been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.07 (deadly conduct), 22.08 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;

6)7) Been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

7)8) Been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

8)9) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.

9)10) Failed to notify the Board of a violation of any of the provisions set forth in subsections (e) and (f) of Section VI (relating to Requirements for Certification).

10)11) Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.

(b) The Board may suspend or revoke certification or provisional certification if the certificate was granted:

- 1) Contrary to these rules and the requirements for certification set forth in Section VI (relating to Requirements for Certification) or the requirements

**PROPOSED - 02/01/08**

for Provisional Certification set forth in Section XIV (relating to Provisional Certification); or

- 2) To an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Board.

- (c) Denial of an application for certification, provisional certification, or recertification shall be in accordance with Section IX. Except for denial of certification, provisional certification, or recertification, actions by the Board under this section shall be taken in accordance with the procedures set out in Section XII.

## Lesley Ondrechen

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**From:** Margaret Bennett  
**Sent:** Tuesday, November 20, 2007 1:46 PM  
**To:** Lesley Ondrechen  
**Subject:** RE: GCB - Request for Comments

Lesley: The Board's proposed rule would provide as follows:

"(a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has . . . made any false representations or misstatements of material fact to the Board."

I believe this could be interpreted to allow disciplinary action if the guardian has made any false representations to the Board, even if they were not of material fact. I suggest the following language instead:

"(a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has . . . falsely represented or misstated any material fact to the Board."

Thank you for your consideration of these comments.

Margaret Bennett  
General Counsel  
Office of Court Administration

## Lesley Ondrechen

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**From:** Lesley Ondrechen  
**Sent:** Thursday, November 01, 2007 2:09 PM  
**To:** Aaryce Hayes; Alex Jones; Alex Melis; Amy Gleason; Barb Scobey; Beverly McClure; Carl Reynolds; Carolyn Hill; Charlotte Breen; Chris Larson; Clifford Walker; Colin Coe; Colleen Colton; Cynthia Mitchell; Dianne Wilson; Donna Baugh; Erica Wood; Jan McLaughlin; Jody Hughes; Judge Guy Herman; Judge Mike Wood; Judge Steve King; Katherine Yoder; Kathleen Anderson; Katie Bond; Ken Owens; Lisa Hobbs; Lisa Kaufman; Margaret Bennett; Melvin Johnson; Patrick Ferchill; Phil Johnson; Ryan Sullivan; Sally Hurme; Shawn Hughes; Steve Fields; Suzanne Cobb; Terry Hammond; Timothy McGinnis  
**Cc:** Carl Reynolds; Katie Bond; Carol Patrice Dabner; Don D. Ford III; Dr. Raymond Costello; Garth Corbett; Gina Patterson; Janis Thompson; Jason Armstrong; Judge Gladys Burwell; Kathy Strong; Leah Cohen; Marlane Meyer; Patti Turner; Phillip A. Grant; Robert Warach; Susan Eason  
**Subject:** GCB - Request for Comments



Proposed  
Amendment to Rule XI

The Guardianship Certification Board requests comments on a proposed amendment to the Rules Governing Guardianship Certification. The proposed amendment adds making false statements or material misstatements of facts to the Board to the list of grounds in Rule XI(a) for taking disciplinary action, including denial, suspension or revocation of certification. The attached document contains the proposed amendment.

Comments must be submitted in writing by 5:00 p.m. on November 30, 2007 to Lesley Ondrechen, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711-2066, or to [lesley.ondrechen@courts.state.tx.us](mailto:lesley.ondrechen@courts.state.tx.us). The Board will consider the proposed amendment and any comments received at a meeting on February 1, 2008.

Lesley Martin Ondrechen  
Director, Guardianship Certification Program Office of Court Administration  
512/475-2873  
[lesley.ondrechen@courts.state.tx.us](mailto:lesley.ondrechen@courts.state.tx.us)

## **Request for Comments on Proposed Amendment to Rule XI(a) of the Rules Governing Guardianship Certification**

The Guardianship Certification Board (Board) requests comments on the following amendment to the Rules Governing Guardianship Certification. The proposed amendment adds making false statements or misstatements of material fact to the Board to the list of grounds in Rule XI(a) for taking disciplinary action, including denial of certification or provisional certification.

Comments must be submitted in writing by 5:00 p.m. on November 30, 2007 to Lesley Ondrechen, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711-2066, or [lesley.ondrechen@courts.state.tx.us](mailto:lesley.ondrechen@courts.state.tx.us). The Board will consider the proposed amendment and any comments received at a meeting on February 1, 2008.

### **Proposed Amendment**

The proposed amendment adds a new paragraph (5) to Rule XI(a) and re-numbers the remaining paragraphs:

#### **XI. DISCIPLINARY CRITERIA**

- (a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has:
- 1) Failed to comply with any of these rules;
  - 2) Failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;
  - 3) Failed to pay any applicable fee established by the Board;
  - 4) Failed to meet the requirements for certification, provisional certification, or re-certification established by the Board;
  - 5) Made any false representations or misstatements of material fact to the Board;
  - ~~5)6)~~ Been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.07 (deadly conduct), 22.08 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;

~~6)7)~~ Been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

~~7)8)~~ Been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

~~8)9)~~ Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.

~~9)10)~~ Failed to notify the Board of a violation of any of the provisions set forth in subsections (e) and (f) of Section VI (relating to Requirements for Certification).

~~10)11)~~ Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.

(b) The Board may suspend or revoke certification or provisional certification if the certificate was granted:

- 1) Contrary to these rules and the requirements for certification set forth in Section VI (relating to Requirements for Certification) or the requirements for Provisional Certification set forth in Section XIV (relating to Provisional Certification); or
- 2) To an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Board.

(c) Denial of an application for certification, provisional certification, or recertification shall be in accordance with Section IX. Except for denial of certification, provisional certification, or recertification, actions by the Board under this section shall be taken in accordance with the procedures set out in Section XII.

**GUARDIANSHIP CERTIFICATION BOARD  
ETHICS POLICY**

**(Effective ~~May 6, 2006~~ Including Amendments Through , 2008)**

**1. Definitions**

“Agency” means the Office of Court Administration of the Texas Judicial System ~~of Texas~~.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage to the beneficiary or to any other person in whose welfare the beneficiary has a direct and substantial interest.

“Board” means the Guardianship Certification Board.

“Contract” includes all contracts and amendments to contracts such as depository contracts; interagency and interlocal contracts; contracts for consultant services, professional services, and utility services; and requests for lease and leases for office space.

“Public member” means one of the four members appointed to the Board by the Supreme Court from a list of nominees provided by the governor.

“Texas trade association” means a cooperative and voluntarily joined statewide association of business or professional competitors in Texas designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

**2. Policy**

The purpose of this policy is to restate constitutional, statutory, and common-law principles of ethical conduct to guide Guardianship Certification Board (“~~Board~~”) members in the conduct of Board business. This is not an exhaustive treatment of all potential areas of conduct or misconduct.

**3. Membership on the Board**

A. It is grounds for removal from the Board if:

1. Aa member:

a. Is unable to discharge the member’s duties for a substantial part of the member’s term because of illness or disability;

b. Is absent from more than half of the regularly scheduled full Board meetings that the member is eligible to attend during a calendar year ~~or is absent from more than two consecutive regularly scheduled full Board meetings~~, unless the absence is excused by a majority vote of the Board;



- c. Is an officer, employee, or paid consultant of a Texas trade association in the field of guardianship; or
  - d.- Is required to register as a lobbyist under Chapter 305, Government Code on behalf of a profession related to the operation of the Board.; or
  - 2. Aa member's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of guardianship.
- B. It is grounds for removal from the Board if the member is a public member and the member or the member's spouse:
- 1. Is certified by the ~~board~~Board or is registered, certified, or licensed by a regulatory agency in the field of guardianship;
  - 2. Is a person employed by or managing a business entity or other organization regulated by or receiving funds from the Agency;
  - 3. Owns or controls, directly or indirectly, more than a ten percent interest in a business entity or other organization regulated by or receiving funds from the Agency; or
  - 4. Uses or receives a substantial amount of tangible goods, services, or funds from the Agency, other than reimbursement authorized by law for expenses.
- C. Holding another office is incompatible with Board membership if one office might impose its policies on another office or subject it to control in some other way; i.e., if the duties of the two positions are inconsistent or in conflict, or if one office is subordinate to the other. Incompatibility is not the same as a conflict of interest, although it may involve a conflict of interest; incompatibility requires the involvement of two governmental offices or positions, while a conflict of interest - with a nongovernmental interest - may arise when only one office or position is involved.

#### **4. Training Requirement**

- A. A Board member may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the member completes a training program that provides information regarding:
- 1. The legislation that created the Board;
  - 2. The role and functions of the Board;

3. The current budget and the results of the most recent formal audit of the Board;
  4. ~~The requirements of the Open Meetings Act (although it does not apply to the Board), the Public Information Act (although it does not apply to the Board), Rule 12 of the Rules of Judicial Administration, the administrative procedures law~~ conflict of interest laws, and other laws relating to public officials ~~to include conflict of interest laws~~; and
  5. This and any other applicable ethics policies adopted by the Board or the Texas Ethics Commission, as well as the Board's Public Meetings Policy and Access to Board Records Policy.
- B. As often as necessary, the Director, or designee, shall provide Board members with information regarding requirements for office, to include responsibilities related to standards of conduct.

## 5. Standards of Conduct

- A. A Board member is not required to file the personal financial statement required by Chapter 572, Subchapter B, Government Code.
- B. A Board member should not:
1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the Board member in the discharge of official duties or that the member knows or should know is being offered with the intent to influence the member's official conduct;
  2. Accept employment or engage in business or professional activity that the Board member might reasonably expect would require or induce the Board member to disclose confidential information acquired by reason of the official position;
  3. Accept other employment or compensation that could reasonably be expected to impair the Board member's independence of judgment in the performance of the Board member's official duties;
  4. Make a personal investment that could reasonably be expected to create a substantial conflict between the Board member's private interest and the public interest; or
  5. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Board member's official powers or performed the Board member's official duties in favor of another.

## 6. Acceptance of Certain Benefits Prohibited

- A. A Board member may not solicit, accept, or agree to accept any benefit in exchange for any exercise of official discretion.
- B. A Board member may not solicit, accept, or agree to accept, ~~on behalf of any person~~, a benefit from a person who the Board member knows or should know is:
  - 1. Interested in a contract, purchase, claim, or other pecuniary transaction that may be substantially affected by the performance or nonperformance of the Board member's official duties; or
  - 2. Subject to certification, regulation, or investigation by the Board.
- C. A Board member may accept a benefit in a situation described by Section ~~V~~VI.-B. above if the benefit is:
  - 1. A fee or other benefit that the member is legally entitled to receive or for which the member has given legitimate consideration in a non-official capacity;
  - 2. A gift based on kinship or a relationship independent of the member's official status; or
  - 3. Not cash or a negotiable instrument and is an item worth less than \$50.
- D. A Board member may not solicit, accept, or agree to accept an honorarium in consideration for services that the member would not have been requested to provide but for the member's official position. Although other standards might be violated, this section does not prohibit a Board member from accepting meals, transportation, and lodging expenses in connection with a conference or similar event in which the Board member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, ~~or from accepting meals in connection with such an event.~~

## 7. Private Interest in Measure or Decision~~Contract~~

- ~~A. A Board member who has a personal or private interest in a decision pending before the Board, other than a financial interest in a contract as covered by Section VII. B., shall publicly disclose the fact to the Board in an open meeting. The Board member may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade or occupation. A "personal or private interest" would~~

~~include a non-financial, fiduciary interest in a contract with, or other decision affecting, an entity other than the Board.~~

~~B. If a Board member has a financial interest in a contract between the Board and another entity, the contract is void. This result applies even if the financial interest is remote, contingent, or indirect, and the result cannot be cured by disclosure and recusal.~~

## 8. Nepotism

~~A. A Board member may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of a person who is to be directly or indirectly compensated from public funds if the person is related to the Board member or another Board member within the third degree by consanguinity or within the second degree by affinity.~~

~~B. A person's relatives within the prohibited degree of relationship are:~~

~~1. within the third degree of consanguinity, are the person's: parent, child, brother, sister, grandparent, grandchild, great-grandparent, great-grandchild, aunt who is a sister of a parent of the person, uncle who is a brother of a parent of the person, nephew who is a child of a brother or sister of the person, or niece who is a child of a brother or sister of the person.~~

~~2. A person's relatives within the second degree by affinity are: the person's spouse;~~

~~1. A parent, child, brother, sister, grandparent, or grandchild of the person's spouse; and~~

~~2. The spouse of the person's parent, child, brother, sister, grandparent, or grandchild.~~

~~B. A Board member may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of a person who is to be directly or indirectly compensated from public funds if the person is related to the Board member or another Board member within the third degree by consanguinity or within the second degree by affinity.~~

~~C. This prohibition in Section 8.A does not apply if the person is employed in the position immediately before the appointment of the Board member to whom the person is related in the prohibited degree, and that prior employment is continuous for at least 30 days.~~

~~D. If the prohibition in Section 8.A does not apply due to Section VIII-C., and the person continues in the position, the Board member to whom the person is related~~

in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the person if that action applies only to the person and is not taken to affect a bona fide class or category of employees.

## 9. Abuse of Office

- A. A Board member may not intentionally or knowingly violate a law relating to the member's office, or misuse government property, services, personnel, or other thing of value, in order to obtain a benefit or harm or defraud another person.
- B. A Board member acting under color of office, and knowing the conduct is unlawful, may not intentionally deny or impede another person's exercise or enjoyment of any right, privilege, power, or immunity, or subject another person to sexual harassment.
- C. A Board member may not use non-public information acquired by virtue of official status to speculate, ~~or~~ achieve a pecuniary gain or achieve-acquire a pecuniary gaininterest in any property, transaction, or enterprise that may be affected by the information, or aid another person in speculating, ~~or~~ achieving a pecuniary gain or achieving-acquiring a pecuniary gaininterest in any property, transaction, or enterprise that may be affected by the information.
- D. A Board member may not disclose or misuse non-public information that is acquired by virtue of official status, in order to obtain a benefit or harm or defraud another person.

## 10. Political Activity

A Board member may not use the member's official authority or influence or permit the use of a program administered by the Board to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.

## 11. Conduct After Service

A former Board member may not make any communication or appear before an officer or employee of the Board with intent to influence and on behalf of any person ~~(including oneself)~~ in connection with any matter on which the person seeks official action (or inaction), for a period of two (2) years after terminating service on the Board. This prohibition applies even if the Board initiates the contact and even if the former Board member is communicating on the member's own behalf, subject to the member's unless the former member is exercising his or her due process rights.

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\_\_\_\_\_, Chair  
Texas Guardianship Certification Board



# TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14<sup>TH</sup> STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 463-1648  
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR  
JUDGE GLADYS BURWELL, Galveston  
VICE CHAIR  
LEAH COHEN, Austin

PROGRAM DIRECTOR  
LESLEY MARTIN ONDRECHEN

**PROPOSED 02/01/08**

[name, address]

Re: Certification by Guardianship Certification Board

Dear [title and last name]:

It has come to the attention of the Guardianship Certification Board (Board) that you are providing guardianship services in Texas, but are not certified by the Board. Although you may be a registered guardian with the Center for Guardianship Certification (f/k/a the National Guardianship Foundation), your Registered Guardian status is not equivalent to certification by the Board.

Under Government Code Chapter 111, the following individuals who provide guardianship services must be certified by the Board as of September 1, 2007:

- an individual who is a private professional guardian, other than an attorney or corporate fiduciary;
- an individual who provides services to a ward of a private professional guardian or a ward of the Department of Aging and Disability Services on the guardian's or Department's behalf;
- an individual, other than a volunteer, who provides services to a ward of a guardianship program on the program's behalf.

If you fall into one of these three categories, you must be certified by the Board in order to continue to provide guardianship services in Texas. Applications, complete instructions, requirements for certification and other information, including rules and minimum standards, are available from the Board's website, [www.courts.state.tx.us/gcb/gcbhome.asp](http://www.courts.state.tx.us/gcb/gcbhome.asp)

If you have any questions, or if I may be of assistance to you, please contact me. My direct phone number is 512/475-2873, and my e-mail address is [lesley.ondrechen@courts.state.tx.us](mailto:lesley.ondrechen@courts.state.tx.us).

Sincerely,

Lesley Martin Ondrechen  
Director, Guardianship Certification Program

**HARRIS COUNTY PROTECTIVE SERVICES  
FOR CHILDREN AND ADULTS  
GUARDIANSHIP PROGRAM**

2525 MURWORTH Dr., HOUSTON, TEXAS 77054 713-363-2300  
MAILING ADDRESS: P.O. BOX 20605, HOUSTON, TX 77225-0605  
www.hccps.org



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December 28, 2007

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To Whom It May Concern:

I am writing in request for an extension to the Provisional Guardianship Certification. I'm currently employed with Harris County, but will be reporting for Military Active Duty due to mobilization/deployment orders from my Army Reserve Unit. I plan to return to my position here at Harris County upon the ending of my mobilization/deployment. This mobilization/deployment has been ordered for approximately one year in support of Operation Enduring Freedom Contingencies for Afghanistan Coalition Forces.

The mobilization will begin approximately in March of 2008 and end in May of 2009. I will have used 5 months of the 2 year provisional certification before I leave for mobilization/deployment. I'm requesting that the 19 months remaining in the provisional certification period be placed on hold until my official return (undetermined) in the summer of 2009.

**A deferment of my Provisional Guardianship Certification is requested.**

Your time and efforts are greatly appreciated, and the undersigned can be reached at 713-363-2386.

Sincerely,

K. David Ridenour  
Representative Payee Program  
Harris County Guardianship  
713-363-2386



## MEMORANDUM

TO: The Honorable Roy Blair; Mary Grim, Coke County Clerk; The Honorable Allen Amos; Barbara Hoffmann, Concho County Clerk; The Honorable Fred Deaton; Debbi Puckett, Crockett County Clerk; The Honorable Leon Standard; Reba Criner, Irion County Clerk; The Honorable Delbert R. Roberts; Haydee Torres, Kimble County Clerk; The Honorable Jerry Bearden; Pam Beam, Mason County Clerk; The Honorable Randy Young; Tina A. Smith, McCulloch County Clerk; The Honorable Richard Cordes; Polly Reeves, Menard County Clerk; The Honorable Larry Isom; Terri Pullig, Reagan County Clerk; The Honorable Johnny F. Griffin; Peggy Williams, Schleicher County Clerk; The Honorable Ralph Fides; Susan Wyatt, Sterling County Clerk; The Honorable Carla W. Garner; Veronica E. Hernandez, Sutton County Clerk; Judge Michael D. Brown; Liz McGill, Tom Green County Clerk; Ted Wood, Office of Court Administration; Leslie Ondrechen, Texas Guardianship Certification Board; Amy Rigby and John R. Norris, III, Texas Guardianship Advisory Board; Kathleen Anderson, HHSC, Lettitia McPherson; and Trenton Berrie

FROM: John W. Caldwell, Jr., Program Director of the Guardianship Alliance of the Concho Valley

DATE: January 15, 2008

RE: Requirements under Section 697 and 698 of the Texas Probate Code

The Guardianship Alliance of the Concho Valley is a program of The Arc of San Angelo, Inc. It is a guardianship program as defined in Section 111.011 of the Texas Government Code.

The Guardianship Alliance of the Concho Valley has recently filed its Annual Statement of Public Guardian for the Guardianship Alliance of the Concho Valley for the period of January 1, 2007, through December 31, 2007. We have received a number of calls from various county clerks concerning the reason for the filing of the statement and what obligations the clerk has under the Texas Probate Code after the statement has been filed.

The Guardianship Alliance offers its services in the following counties: Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton and Tom Green. At the present time, the Guardianship Alliance is serving as guardian of the person for wards in cases pending only in Tom Green County and Concho County.

The Guardianship Alliance has three (3) employees and twenty-two (22) trained volunteer advocates. Sixteen (16) of the volunteers are currently providing guardianship services in guardianship cases pending in Tom Green County. Two (2) of the volunteers are currently providing guardianship services in a guardianship case pending in Concho County. Four (4) of the volunteers have been trained, but are not currently providing guardianship services.

Section 697A(a) of the Texas Probate Code requires each guardianship program operating in a county to submit annually to the county clerk a statement containing the name, address, and telephone numbers of each individual employed by or volunteering or contracting with the program to provide guardianship services to a ward or proposed ward of the program. The county clerk must then submit to the Guardianship Certification Board the information received from such guardianship program not later than February 1 of each year. TEX. PROB. CODE § 697A(c).

The county clerk of the county having venue over the proceeding for the appointment of guardian shall obtain criminal history record information that is maintained by the Texas Department of Public Safety or the Federal Bureau of Investigation identification division relating to each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward on the program's behalf. TEX. PROB. CODE § 698(a).

The criminal history record information obtained is for the exclusive use of the court and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk may destroy the criminal history information records after the records are used for the purposes authorized by Section 698 of the Texas Probate Code. TEX. PROB. CODE § 698(b).

The court shall use the criminal history information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, or appoint any other person proposed to serve as guardian other than the ward's or proposed ward's family members or an attorney. TEX. PROB. CODE § 698(c).

The county clerk may charge a \$10.00 fee to recover the costs of obtaining criminal history information records authorized by Section 698(a) of the Texas Probate Code. TEX. PROB. CODE § 698(e).

The Texas Probate Code does address situations where a guardianship program wishes to have a new employee or volunteer provide guardianship services in a case, but criminal history record information has not yet been obtained by the county clerk for the county in which the guardianship case is pending. In that situation a person may submit to the county clerk a copy of the person's criminal history record information required under Section 698(a)(5) not later than ten (10) days before the date of the hearing to appoint a guardian. TEX. PROB. CODE § 698(a-5). The person must have obtained the criminal history record information from the Texas Department of Public Safety or the Federal Bureau of Investigation not earlier than the 30<sup>th</sup> day before the date of the hearing. Id.

Section 697 of the Texas Probate Code requires that the Guardianship Alliance, as a guardianship program, file its annual statement with each of the county clerks in our thirteen county area in which we operate. We are also required to list all of our employees and all of our volunteers who might provide guardianship services to a ward or proposed ward of the program

regardless of whether the volunteer is actually then providing guardianship services in a pending case.

Since the employees of the guardianship program provide guardianship services in any case in which the program is appointed guardian, each county clerk would need to obtain criminal history record information for all such employees. The question remains as to whether the county clerk in each of the thirteen counties needs to obtain criminal history record information for all the program's volunteers, or only those volunteers who are currently providing guardianship services in guardianship cases pending in that particular county.

Section 698(a) provides that the clerk of the county having venue over the proceeding for the appointment of a guardian shall obtain criminal history record information concerning a guardianship program's employees and volunteers. TEX. PROB. CODE § 698(a)(4). It is our position that only the county clerks of the counties in which the volunteers are currently providing guardianship services in guardianship cases pending in their county would need to obtain the criminal history record information for the volunteers who are providing guardianship services in cases then pending in that particular county. In the instant situation, the county clerk of Tom Green County would need to obtain the criminal history record information for all three (3) employees and sixteen (16) volunteers. The county clerk of Concho County would need to obtain such information for all three (3) employees and two (2) volunteers. The county clerks for the other eleven counties would only need to obtain such information concerning the three (3) employees. As stated above, if a new volunteer was going to be used in a guardianship case, then the Guardianship Alliance would need to submit to the county clerk a copy of the proposed volunteer's criminal history record information not later than the 10<sup>th</sup> day before the date of the hearing to appoint a guardian as provided in Section 698(a-5) of the Texas Probate Code as the program's expense.

These statutory provisions are relatively new and I am still struggling to understand the duties of the Guardianship Alliance and the county clerks. Therefore, I would appreciate it if you would let me know your thoughts concerning requirements under Sections 697 and 698 of the Texas Probate Code.