

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

May 15, 2009

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 May 15, 2009 at 11:08 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

Lesley Ondrechen, Guardianship Certification Program Director at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair

Leah Cohen

Barry Anderson

Jason Armstrong

Garth Corbett

Dr. Raymond Costello

Carol Patrice Dabner

Don Ford III

Marlane Meyer

Kathy Strong

Robert Warach

Jason Armstrong, Dr. Raymond Costello and Carol Patrice Dabner attended via telephone conference call. Susan Eason, Phillip A. Grant, Gina Patterson and Patti Turner did not participate. Others present were Carl Reynolds, Executive Director, Lesley Ondrechen, Guardianship Certification Program Director, María Elena Ramón, General Counsel, Judy Speer-Gamino, Assistant General Counsel, Katie Bond, Assistant General Counsel, and Meredith Musick-Higgins, Executive Assistant, of the OCA. 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).

Ms. Bond introduced Ms. Ramón, who replaced Margaret Bennett as OCA's general counsel, and Ms. Speer-Gamino, a new attorney in the OCA's Legal Division.

MINUTES OF MEETINGS

A. February 20, 2009

Upon motion by Ms. Meyer and second by Mr. Warach, the minutes of the Board's February 20, 2009 meeting were approved as submitted.

B. March 16, 2009

Upon motion by Mr. Warach and second by Ms. Meyer, the minutes of the Board's March 16, 2009 meeting were approved as submitted.

DIRECTORS' REPORTS

Mr. Reynolds did not make a report, but stated he would speak during the agenda item on legislative updates.

The director informed the Board that public member Susan Eason resigned from the Board on May 13, 2009. She will participate in the Application Review Committee meeting scheduled for May 19. The director will inform the Supreme Court's general counsel so she may inform the Governor's office.

Ms. Ondrechen reported that as of May 12, 2009, 232 guardians are certified and 67 are provisionally certified. She also reported that certified guardian in Fort Worth, Ronald Vickers, Jr., died in January. She noted that since the Board's last meeting, 16 people have moved from provisional certification to certification. She also reported that 40 guardians have been re-certified to date. A short discussion about continuing education requirements followed.

The director updated the Board regarding the request for proposals for a Texas-specific exam, as approved by the Board at its March 16 meeting. Three proposals were received by the OCA and are being evaluated. The Chair remarked she had been contacted by a legislator to give a recommendation for one of the entities who planned to submit a proposal. The director asked Board members to refer any questions received to OCA's purchaser, Veronica Strong. The Board will be informed and an announcement placed on the Board's website once the contract is awarded. Ms. Bond noted this will be as close to June 1 as possible to allow the successful vendor ample time to prepare a new exam for the fall.

Ms. Ondrechen reported on the Guardianship Advisory Board (GAB) meeting she attended on May 1. At that meeting, at the chair's request, she summarized the four bills affecting guardianship certification that are pending in the legislative session. Representatives from several local programs shared information at the meeting on getting local judges and communities to appreciate the benefit of guardianship programs.

The director summarized several bills discussed by the GAB. House Bill 889 relates to examination requirements in certain guardianship matters concerning persons with mental retardation. It clarifies that physicians do not have to comply with the Health and Human Services Commission's rules, but psychologists do. Senate Bill 2435 and companion House Bill 4562 relate to medical assistance program reimbursement for guardianship expenses. The bills establish a schedule for guardianship fees for Medicaid recipients with applied income; a guardian's compensation would not exceed \$175 a month.

UPDATE ON 81ST LEGISLATIVE SESSION

Mr. Jones addressed the Board on Senate Bill 271 relating to DADS taking over guardianships in certain circumstances. It passed the Senate, and is pending in committee in the House. There is no fiscal note attached to it, because there is a cap of 55 on the number of wards who can be transferred.

Ms. Ondrechen told the Board about several bills of interest. Senate Bill 1230 and House Bill 610, companion bills with similar language, establish a Legislative Committee on Aging. It would meet at least biannually and would conduct a continuing study of issues relating to the aging population. Senate Bill 1230 was passed by the Senate, referred to the House Human Services Committee and reported favorably. House Bill 610 passed the House and was referred to the Senate Administration Committee.

House Bill 2260 proposes the adoption in Texas of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in Texas. The House Committee substitute removes reference to the Uniform Act and adds section 895 to the Probate Code regarding determining the most appropriate forum for guardianship proceedings for adults. The bill has been placed on the House General State Calendar for hearing.

House Bill 128, mentioned at February's Board meeting, would require all entities that issue business, professional and occupational licenses to verify applicants' eligibility to work in the United States. No action has been taken on the bill since referral to a subcommittee of the House Licensing and Administrative Procedures Committee in March.

The Senate versions of the four bills affecting guardianship certification - Senate Bills 1053, 1055, 1056 and 1057 - have passed through the House Committees and have been sent to the Local and Consent Calendar.

Mr. Reynolds reported on the status of House Bill 3352, regarding information on those declared incapacitated and mental health commitments relating to applying for a concealed handgun license. The bill is intended to bring Texas into compliance with federal law relating to a database used by gun dealers and sale of firearms. The bill has passed the House and is in the Senate on local calendar. The chair noted that mental health and guardianship cases have not been previously reported, and the clerks will have to do so. The mental health data will be more of a problem than guardianship.

PETITION FOR DISCIPLINARY ACTION

The Board considered the petition to initiate disciplinary action against Amy Janeyé Smith. According to the petition, Ms. Smith has failed to provide her new business contact information to the Board and to designate and notify the Board of the designation of a new certified guardian supervisor, as required by Rules XIV(c)(3) and XIV(c)(4)(A). Rule XIV(c)(1) prohibits her from providing guardianship services because she does not have a designated certified guardian supervisor. The director provided a chronology of events. The documentation provided to the

Board showed that Ms. Smith had been given notice as required by the Board's rules. The Disciplinary Review Committee recommended that Ms. Smith's provisional certification be suspended until such time as she provides the required information to the Board.

Ms. Smith was not present, even though she had received notice of the meeting.

Ms. Dabner moved, and Ms. Meyer seconded, to adopt the Committee's recommendation to suspend Ms. Smith's provisional certification until she complies with the rules. After discussion, the chair called the question and asked for a vote. The motion carried.

The Board recessed at 11:56 a.m. and re-convened at 12:43 p.m.

PROPOSED CHANGES TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

Mr. Ford reported on the Rules Committee's meetings on January 14, February 20 and April 29, 2009. He presented the proposed changes to Rules III, V, VI, VII, VIII, IX, X, XI, XII and XIII, and some changes were made. A change to the wording in Rule V(c)(2) and corrections to cites in Rule XII(d) and (e) were agreed to. After discussion, Mr. Ford moved to publish the proposed rule changes for public comment as amended. Mr. Anderson seconded, and the motion carried.

REQUIRED ANNUAL REPORTING DATA RECEIVED

The director summarized the information received from private professional guardians, local guardianship programs, DADS and county clerks. The data indicate there are private professional guardians and/or local programs serving approximately 3,400 wards in 87 counties. Ms. Ondrechen told the Board that clerks from 95 counties did not file the required reports with the Board. The chair noted that although the statute states that clerks "shall" file the reports, there are no enforcement provisions.

Mr. Jones reported that in 2008, DADS served 733 wards directly and 371 through contracted providers. For those 371, the local program is the guardian, but the State pays the contractor. He noted that not all wards served by local programs are through DADS contracts. Dr. Scobey told the Board that there are now approximately 420 wards served through contracted providers; the number reported is as of December 31, 2008. The director answered questions from the Board and the public on specific information provided.

BOARD POLICIES

A. Attendance by Board Members

The director told the Board the words "at least" were added to section 3.a. of the proposed policy, to clarify Board members are required to attend a minimum of two of four regularly scheduled quarterly meetings in person. Ms. Bond noted the statutory reference was included to give context to the policy.

After discussion, Mr. Ford moved to adopt the policy as modified with an effective date of January 1, 2010 and Ms. Meyer seconded. The motion carried.

B. Public Meetings Policy - Attendance by Telephone

Ms. Bond addressed the Board on its current public meetings policy, which has been interpreted to mean that participation by telephone is limited to Board members. The Board has, on occasion, invited certain non-Board members (e.g., vendors) to participate by telephone. Mr. Reynolds had raised the issue of allowing those with business before the Board (applicants and certified guardians who are the subject of complaints) to participate by telephone, which has been the practice of the other two regulatory boards the OCA supports.

The Board discussed general issues, including logistical and financial considerations, distinguishing between those who have business before the Board and public members who have an interest in the Board's business, and participation by telephone only at the committee level. The consensus was to permit telephone participation, determined on a case-by-case basis, at the committee level only. The Board referred the matter to the Rules Committee for consideration. Ms. Bond will prepare a draft. The chair asked Board members with strong ideas on what should be included to send them to Ms. Bond.

PROVISIONAL CERTIFICATION - CONSIDERATION OF PROPOSED EXPIRATION REMINDER LETTER

Mr. Reynolds suggested a cite to the Rules Governing Guardianship Certification on the Board's website. There were no other comments, and the Board adopted the letter as amended.

CONSIDERATION OF APPLICANTS' CRIMINAL HISTORY

A. Define Parameters

Ms. Bond reported this was discussed at the last Rules Committee meeting. She suggested using Chapter 53 of the Occupations Code as a starting point for defining objective factors to add to the Rules that the Board follows when reviewing applicants' criminal histories. She also mentioned Senate Bill 2164, which sets out criteria that the Department of Information Resources must follow when reviewing criminal history for employees, potential employees, contractors and subcontractors. (Director's note: Senate Bill 2164 was still in committee when the legislative session adjourned on June 1, 2009.)

During the discussion that followed, including concerns about limitations on the Board and legislative scrutiny of how criminal histories are reviewed, the chair turned the meeting over to Ms. Cohen. After discussion, Judge Burwell moved to ask the Rules Committee to consider including provisions in other statutory requirements to consider applicants' criminal history, and to report to the Board at its next meeting. Mr. Corbett seconded, and the motion carried.

Judge Burwell resumed the chair.

B. Applicants for Re-certification or Certification: Considered when Applicant Originally Applied for Certification or Provisional Certification, and No New Criminal History

The director told the Board that in these situations, she has been granting certification or re-certification, assuming everything else on the application is in order. The consensus of the Board was this is the correct course of action.

CERTIFIED AND PROVISIONALLY CERTIFIED GUARDIANS' INFORMATION POSTED ON WEBSITE

Ms. Ondrechen reported that a home address is posted on the website if that is the only address that is provided to the Board; e.g., when a certified guardian is self-employed and the home and work address are the same. She told the Board about the practices of the other two regulatory boards the OCA supports. As part of the re-certification process, the director has been sending a letter, along with the reminder letter, reminding guardians of the Board's practice. If anyone objects to his/her home address being posted, it is taken down. There were no comments.

APPOINTMENT OF COMMITTEES

The Chair appointed the following members to serve for the period July 1 through December 31, 2009:

Application Review Committee

Leah Cohen, Chair; Judge Gladys Burwell; Kathy Strong

Denial of Certification Review Committee

Don Ford, Chair; Patti Turner; Phillip A. Grant

Disciplinary Review Committee

Jason Armstrong, Chair; Barry Anderson; Gina Patterson

PUBLIC COMMENT

Mr. Jones and Dr. Scobey commented during the legislative update, required annual reporting and public meetings policy portions of the meeting. No other public comment was made.

ADJOURNMENT

On motion by Mr. Warach and second by Ms. Meyer, the meeting was adjourned at approximately 2:17 p.m.



TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • AUSTIN, TEXAS 78701
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066
512/463-1625 • FAX 512/463-1648

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

PROGRAM DIRECTOR
LESLEY MARTIN ONDRECHEN

June 18, 2009

Dina Pierson Johnson
Harris County Protective Services
Guardianship Program
P.O. Box 20605
Houston, Texas 77225-0605

Re: Request to Extend Provisional Certification Period
Certification Number PG-0018, expires August 15, 2009

Dear Ms. Johnson:

I received your request for an extension of your two-year provisional certification period due to health issues.

Under Rule XIV(f) of the Rules Governing Guardianship Certification, a waiver of the two-year provisional certification period must be approved by the Guardianship Certification Board. I will present your request to the Board at its next regularly scheduled meeting on July 17, 2009. I will notify you in writing of the Board's decision.

The Board will meet in the Tom C. Clark Building, 205 West 14th Street, 6th Floor, Austin at 11:00 a.m. CDT. You are welcome, but not required, to attend.

Please let me know if you have any questions, or if I may be of assistance to you. My direct phone number is 512/475-2873, and my e-mail address is lesley.ondrechen@courts.state.tx.us.

Sincerely,

Lesley Martin Ondrechen
Director, Guardianship Certification Program

:lmo

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

2525 MURWORTH DR., HOUSTON, TX 77054 713-394-4000
MAILING ADDRESS: P.O. BOX 20605, HOUSTON, TX 77225-0605
www.hc-ps.org



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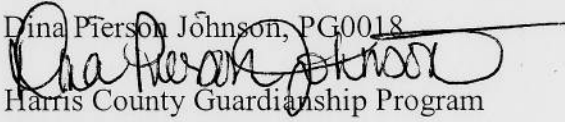
June 12, 2009

Lesley Ondrechen
Guardianship Certification Program
P.O. Box 12066
Austin, TX 78711
512-475-2873

To Whom It May Concern:

I Dina Pierson Johnson, Guardian Case Manager with Harris County Guardianship Program in Houston, TX would like to request a waiver for provisional certification. My provisional certification ends on August 15, 2009. The reason I am requesting a waiver is because I have endured major extenuating circumstances within the past year. I have had major health issues that have caused me to be on Family Medical Leave for approximately three and one half months. I recently took the certification test in Austin on May 18, 2009 and didn't have a passing score. I have been with Harris County Guardianship Program since September 18, 2006 and would love to continue to work with the program in the near future.

Sincerely,

Dina Pierson Johnson, PG0018

Harris County Guardianship Program
713-363-2375-office
713-363-2364-fax

RECEIVED

JUN 18 2009

OFFICE OF
COMMUNITY ADMINISTRATION

Harris County
Commissioners Court

ACCREDITED



COUNCIL ON ACCREDITATION
OF SERVICES FOR FAMILIES
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TEXAS GUARDIANSHIP CERTIFICATION BOARD

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

PROGRAM DIRECTOR
LESLEY MARTIN ONDRECHEN

May 26, 2009

Dina P. Johnson
Harris County Protective Services Guardianship Program
P.O. Box 20605
Houston, Texas 77225-0605

Re: Expiration of Provisional Certification
Provisional Certification Number PG-0018, expires on August 15, 2009

Dear Ms. Johnson:

Your provisional certification by the Texas Guardianship Certification Board (Board) will expire as noted above. This letter is being sent as a courtesy reminder, and no other reminders will be sent. References to rules are to the Rules Governing Guardianship Certification, available at www.courts.state.tx.us/gcb/rules.asp

Rule XIV(f) provides that a provisionally certified guardian may be provisionally certified for only one two-year period, unless a waiver is sought and approved by the Board. If you intend to seek a waiver, be advised that requests for waivers are considered at the Board's regularly scheduled quarterly meetings. A request for waiver should be received at least two weeks in advance of the meeting date to ensure it will be considered. The next meeting is scheduled for July 17, 2009.

Provisional certification is not intended to be permanent; rather, provisionally certified guardians should apply for certification when they meet the requirements for certification. Remember that provisionally-certified guardians must comply with the same continuing education requirements as certified guardians; see Rule XIV(c)(6). Documentation of continuing education hours completed during your provisional certification period will be required at the time you apply for certification. If you have applied for certification, but your application is pending when your provisional certification expires, you may not continue providing guardianship services.

If you do not obtain certification before your provisional certification expires, Rule XIV(f) requires you to provide immediate written notice upon the expiration of your provisional certification to each court in which you are appointed to serve. If you provide guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, then you are also required to provide written notice to DADS and/or the program of the expiration of your provisional certification.

It is your responsibility to ensure your provisional certification remains valid, to timely apply for certification, or to timely request a waiver if that is appropriate to your circumstances. If you have any questions, please contact me. My direct telephone number is 512/475-2873, and my e-mail address is lesley.ondrechen@courts.state.tx.us.

Sincerely,

Lesley Martin Ondrechen
Director, Guardianship Certification Program



TEXAS GUARDIANSHIP CERTIFICATION BOARD

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P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
JUDGE GLADYS BURWELL
Galveston

VICE CHAIR:
LEAH COHEN
Austin

August 15, 2007

Dina P. Johnson
Harris County Protective Services
Guardianship Program
P.O. Box 20605
Houston, Texas 77225-0605

Dear Ms. Johnson:

On behalf of the Texas Guardianship Certification Board, I am pleased to inform you that you have met the qualifications for provisional certification. You are hereby provisionally certified to provide guardianship services in this state.

Certificate Number PG-0018

Issued August 15, 2007

Expires August 15, 2009

Please remember to include your provisional certificate number and the certificate number of your certified guardian supervisor on all papers filed with a court (Rule XIV(c)(5)). You may not state, represent or imply that you are a certified guardian (Rule XIV(e)). You must meet the continuing education requirements established by the Board (Rules VII(b) and XIV(c)(6)). Unless a waiver is sought and approved by the Board, you may not be provisionally certified for more than one two-year period (Rule XIV(f)).

Information, including rules and minimum standards for guardianship services, is available from the Board's website, www.courts.state.tx.us/gcb/gcbhome.asp. If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lesley M. Ondrechen".

Lesley Martin Ondrechen
Director, Guardianship Certification Program

Center for Guardianship Certification
RFP 212-9-0579

**Best and Final
Response to RFP**

Submitted May 28, 2009

Requisition #212-9-0579/Class & Item 924-20
Guardian Examination Services
Guardianship Certification Board
Office of Court Administration
State of Texas

Submitted to
Veronica M. Strong, CTPM
Office of Court Administration
205 West 14th Street, Suite 600
Austin, TX 78701
By Express Mail

Submitted by
Denise Calabrese
Executive Director, Center for Guardianship Certification
717-238-4689
P.O. Box 5704
Harrisburg, PA 17110-0704
info@guardianshipcert.org

Project Director
Sally Balch Hurme
Consultant
Center for Guardianship Certification
202-434-2152
8043 Wellington Road
Alexandria, VA 22308
hurme@erols.com

Examination Fees

Texas guardians will pay CGC a fee of \$175 to sit for the Texas certification examination or re-examination. Applicants electing to exercise the electronic option will be responsible for additional scheduling fees, if any, required by the community testing facility. OCA will separately receive and process applications and fees for certification.

Legislative Update
81st Regular Session

Bill Number	Caption	Summary	Last Action	Date	Effective Date
SB 1053	Relating to the appointment or removal of guardians of incapacitated persons	Person who is required to be certified, but is not, is disqualified to serve; court may remove non-certified guardian upon complaint of GCB.	signed by Governor	06/19/09	09/01/09
HB 2048	identical companion to SB 1053	House sponsor put through Senate version			n/a
SB 1055	Relating to reports and application requirements regarding certain public and private guardians	Streamline reporting requirements for clerks, local guardianship programs, county clerks and DADS to GCB	signed by Governor	06/19/09	09/01/09
HB 2049	identical companion to SB 1055	House sponsor put through Senate version			n/a
SB 1056	Relating to authorizing a criminal justice agency to disclose certain criminal history record information and to orders or disclosure regarding such information	Permits GCB and county clerks to receive criminal history information even if it is subject to non-disclosure. A floor amendment added a subsection regarding non-disclosure of certain juvenile convictions.	signed by Governor	06/19/09	06/19/09
HB 2047	identical companion to SB 1056	House sponsor put through Senate version			n/a
SB 1057	Relating to criminal history record information relating to persons who are certified to provide guardianship services	County clerk may obtain, upon request, a certified or provisionally certified guardian's criminal history record from the GCB.	signed by Governor	06/19/09	06/19/09
HB 2050	identical companion to SB 1057	House sponsor put through Senate version			n/a
HB 128		Regulatory/certification boards would have to determine applicants' eligibility to work in U.S.	referred to House subcommittee	03/11/09	n/a

Bill Number	Caption	Summary	Last Action	Date	Effective Date
HB 610	Relating to the establishment of the Legislative Committee on Aging and other initiatives relating to the aging population of this state	Establishes committee comprised of two senators, two representatives and two public members appointed by the Governor. Committee is to hold initial meeting by 11/01/09.	signed by Governor	06/19/09	09/01/09
SB 1230	similar companion to HB 610		placed on House General State calendar	05/22/09	n/a
HB 3352	Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearms background check	Clerks report information to TxDPS on those declared incapacitated and mental health commitments; intent to bring Texas into compliance with federal law relating to a database used by gun dealers and sale of firearms. Information on court orders issued on or after 09/01/89 and before 09/01/09 must be provided by 09/01/10.	signed by Governor	06/19/09	09/01/09
SB 2344	Relating to examination requirements in certain guardianship matters concerning persons with mental retardation	Clarifies that physicians do not have to comply with HHSC rules, but psychologists do, in determining mental retardation	Signed by Governor	06/19/09	09/01/09
HB 889	identical companion to SB 2344		referred to Senate Jurisprudence	05/19/09	n/a
SB 2435	Relating to medical assistance program reimbursement for guardianship expenses of certain recipients	Compensation for guardian of persons with "applied income" may not exceed \$175 a month.	Signed by Governor	06/19/09	09/01/09
HB 4562	identical companion to SB 2435		referred to Senate Jurisprudence	05/19/09	n/a
SB 559		Requires two files on decedent's estate, one public and one with financial information for court's use only.	referred to Senate Jurisprudence	02/23/09	n/a
SB 319	Relating to providing notice to devisees under a decedent's will	Eliminates requirement for executor to notify all interested parties.	left pending in Senate Jurisprudence	02/18/09	n/a

Bill Number	Caption	Summary	Last Action	Date	Effective Date
HB 29	Relating to qualifications for office of justice of the peace in certain counties	Justices of the peace in urban areas must be attorneys	referred to House subcommittee	03/02/09	n/a
SB 320	Relating to qualifications for office of justice of the peace in certain counties	similar to HB 29, with different requirements	left pending in Senate Jurisprudence	04/15/09	n/a
HB 704		Extends court's jurisdiction for a person in extended foster care to age 21, if person consents or court determines person is incapacitated	signed by Governor	05/23/09	05/23/09
SB 984	identical companion to HB 704		referred to Senate Health & Human Services	03/09/09	n/a
HB 2260	Relating to a determination of whether a probate court of this state is a more appropriate forum than a court of another state with respect to guardianship proceedings involving adults.	Introduced version proposed adoption of UAGAPPIA. House Committee substitute removed reference to UAGAPPIA and added section to Probate Code regarding appropriate forum for guardianship proceedings for adults	placed on House General State Calendar	05/14/09	n/a

Lesley Ondrechen

From: Scobey, Barb [REDACTED]
Sent: Monday, June 15, 2009 9:38 AM
To: Lesley Ondrechen
Subject: RE: Clarification

Thanks. That was my initial interpretation but when Clifford was reading it, he read it differently.

Barbara W. Scobey, Ph.D.
Registered and Texas Certified Guardian
Unit Manager, Policy and Program Development
Guardianship Services Program
(512) 438-4890 - Office; Fax: (512) 438-5344

From: Lesley Ondrechen [mailto:Lesley.Ondrechen@courts.state.tx.us]
Sent: Monday, June 15, 2009 9:07 AM
To: 'Scobey, Barb'
Subject: RE: Clarification

Are you looking at the proposed change to Rule V, about an applicant having 12 months to complete the requirements to be certified or provisionally certified? If so, that refers to imposing a limit on how long an application can be kept pending. In the scenario you describe, that would mean that the provisionally certified guardian who applies for "full" certification has 12 months from the date the application for certification is submitted to complete the necessary requirements. It does not mean that the provisionally certified guardian must apply for certification within 12 months. The provisional certification period remains the same: two years.

Does that help?

From: Lesley Ondrechen
Sent: Monday, June 15, 2009 8:43 AM
To: 'Scobey, Barb'
Subject: RE: Clarification

The Rules Committee and the Board did not discuss any changes to the provisional certification period. To which proposed rule change are you referring? -Lesley

From: Scobey, Barb [REDACTED]
Sent: Friday, June 12, 2009 5:17 PM
To: Lesley Ondrechen
Cc: Walker, Clifford A
Subject: Clarification

We require provisionally certified staff to obtain full certification in one year. With the proposed rule, I have had a question as to whether or not the intent is now to **require** all provisionally certified staff to complete the process within one year. Would you please clarify?

Thanks,

Barb

Barbara W. Scobey, Ph.D.

Lesley Ondrechen

From: Suzanne Cobb [REDACTED]
Sent: Wednesday, June 10, 2009 5:26 PM
To: Lesley Ondrechen
Subject: RE: proposed changes to the Rules Governing Guardianship Certification

Thank you! That gives us an idea of the time frame.

-----Original Message-----

From: Lesley Ondrechen [mailto:Lesley.Ondrechen@courts.state.tx.us]
Sent: Wednesday, June 10, 2009 4:32 PM
To: Suzanne Cobb
Subject: RE: proposed changes to the Rules Governing Guardianship Certification

No, sorry, it won't be quite that fast. July 17 is the day the Board considers any comments to the proposed rules. If all goes well, the Board will approve the proposed rules for submission to the Supreme Court. The Supreme Court has to issue an order adopting the proposed rule changes. We don't know of any reason why they would not adopt this particular rule, but you never know. Hopefully, the rule changes will be adopted by the Supreme Court in the August/September time frame.

Please let me know if you have any other questions. -Lesley

-----Original Message-----

From: Suzanne Cobb [REDACTED]
Sent: Wednesday, June 10, 2009 4:17 PM
To: Lesley Ondrechen
Subject: RE: proposed changes to the Rules Governing Guardianship Certification

Hi, Lesley

We are going to order new agency badges and business cards. Will July 17th be the date we can safely order them with the new "TxCG" designation? Thanks so much!
Suzanne

-----Original Message-----

From: Lesley Ondrechen [mailto:Lesley.Ondrechen@courts.state.tx.us]
Sent: Tuesday, June 09, 2009 1:57 PM
To: Aaryce Hayes; Alex Jones; Alice McAfee; Amy Gleason; Barb Scobey; Carl Reynolds; Carolyn Hill; Charlotte Breen; Chris Larson; Clifford Walker; Colin Coe; Colleen Colton; Cory Pomeroy; Cynthia Mitchell; Dale Wainwright; Dianne Wilson; Ellen Eidelbach Pitluk; Erica Wood; Jan McLaughlin; Judge Guy Herman; Judge Mike Wood; Judge Patrick Ferchill; Judge Steve King; Karen Ellert Pena; Katherine Yoder; Kathleen Anderson; Katie Bond; Kelly Cross; Ken Owens; Kennon L. Peterson; Kevin Heyburn; Melvin Johnson; Mena Ramon; Rachel Johnston; Ryan Sullivan; Sally Hurme; Shawn Hughes; Steve Fields; Suzanne Cobb; Terry Hammond; Timothy McGinnis
Subject: proposed changes to the Rules Governing Guardianship Certification

The Guardianship Certification Board requests comments on proposed amendments to Rules III, V, VI, VII, XI, XII and XII of the Rules Governing Guardianship Certification. Comments are due by 5:00 p.m. on Friday, July 10, 2009.

Please visit the Board's website, www.courts.state.tx.us/gcb, for a summary and text of the proposed amendments and instructions for submitting comments.

Please contact me if you have any questions. Thank you.

Lesley Martin Ondrechen
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512/475-2873
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**Request for Comments on Proposed Amendments
To Rules Governing Guardianship Certification
Guardianship Certification Board**

The Guardianship Certification Board (Board) requests comments on the following amendments to Rules III, V, VI, VII, XI, XII and XII of the Rules Governing Guardianship Certification.

The proposed amendment to Rule III adds a new section (f) permitting certified guardians to use a designation to indicate they are certified by the Board. The proposed amendment to Rule V provides for a timeframe in which applicants for certification or provisional certification must complete the requirements for certification or provisional certification.

The proposed amendments to Rules VI(f)(2) and XI(a)(7) add language regarding civil liability in a surcharge action. Further additions to Rule VI(f)(1) mirror the language regarding disciplinary criteria as stated in Rule XI(a)(8).

The proposed amendment to Rule VII changes the continuing education requirements for certified and provisionally certified guardians so that guardians must comply over a two-year period rather than annually. The proposed amendment to Rule XIII clarifies that continuing education activities, not providers, must be approved by the Board.

The proposed amendments to Rule XII add provisions regarding disclosure of information provided to the Board in a disciplinary action and voluntary recusal of a review panel member from consideration or vote by the Board on the matter for which s/he served on the panel. The amendments also clarify when a Respondent must request a hearing if the Board rejects a Review Committee recommendation to dismiss a Petition.

Comments must be submitted in writing by 5:00 p.m. on July 10, 2009 to Lesley Ondrechen, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711-2066, or lesley.ondrechen@courts.state.tx.us. The Board will consider the proposed amendments and any comments received at a meeting on July 17, 2009.

III. CERTIFICATION AND RE-CERTIFICATION

- (a) To provide guardianship services in this state, the following individuals must be certified by the Board pursuant to Section 111.042, Texas Government Code:
 - 1) an individual who is a private professional guardian;
 - 2) an individual who will provide guardianship services to a ward of a private professional guardian or the Texas Department of Aging and Disability Services on the guardian's or department's behalf; and
 - 3) an individual, other than a volunteer, who will provide guardianship services to a ward of a guardianship program on the program's behalf.
- (b) Notwithstanding subsection (a), an individual who must be certified but does not meet the requirements for certification under Section VI(c) or (d) of these rules may provide guardianship services in this state if the person obtains provisional certification pursuant to Section XIV.
- (c) Notwithstanding any other provision of these rules:
 - 1) pursuant to section 696B of the Texas Probate Code, a family member or friend of an incapacitated person is not required to be certified under these rules to serve as the person's guardian, and
 - 2) an employee of the United States Veterans Administration appointed to serve as a guardian for an incapacitated person under section 601(14)(C) of the Texas Probate Code is not required to be certified under these rules to serve as the person's guardian.
- (d) The Board shall certify all individuals in accordance with these rules. Criteria not rationally related to the performance of guardianship services shall not be used to deny certification.
- (e) Upon certification, the individual will be issued a certificate, which will be valid for two years according to the provisions of Section V(d). New certificates will be issued for successive two-year periods upon timely and satisfactory completion of the re-certification process.
- (f) A certified guardian may use the designation "TxCG" to indicate that the guardian is certified by the Board. Provisionally-certified guardians may not use such designation.

V. APPLICATION PROCEDURE

- (a) Application Forms. Applications for certification, provisional certification, and re-certification shall be made in writing on forms provided by the Board. In appropriate circumstances, the Board may require the applicant to submit information in addition to that called for on the application forms.
- (b) Fees. All fees connected with certification and re-certification shall be set by the Board with the approval of the Supreme Court and are non-refundable. A schedule of fees shall be published on the Board's web site.
 - 1) Application Fee. Each applicant must submit a non-refundable application fee along with the completed application form. No application will be processed until the application fee has been paid. However, an employee of the Texas Department of Aging and Disability Services who is applying for a certificate to provide guardianship services to a ward of the department is exempt from payment of the application fee.
 - 2) Examination Fee. Each applicant must submit a non-refundable examination fee to take the examination approved by the Board that affirms competency in Texas

guardianship matters. The fee must be paid by the date established in the examination schedule.

- 3) Re-certification Fee. Each application for re-certification must be accompanied by a non-refundable re-certification fee. However, an employee of the Texas Department of Aging and Disability Services who is applying for re-certification to provide guardianship services to a ward of the department is exempt from payment of the re-certification fee. No re-certification application may be processed until the re-certification fee, if applicable, has been paid.
 - 4) Late Fee. Each late application for re-certification must be accompanied by a non-refundable late fee.
- (c) Application Procedures.
- 1) Upon receipt of a completed application form, Board staff shall review and accept the application if:
 - A. the application form has been completed;
 - B. the applicant meets the requirements for certification or provisional certification; and
 - C. the appropriate application fee has been paid.
 - 2) An applicant must complete the requirements for certification or provisional certification within twelve (12) months of submitting the application form.
- (d) Application for Re-certification. Certification shall expire on the second anniversary of the date the certificate is issued. Re-certification shall expire every two years thereafter on the same day and month of the original certification. Applications for re-certification accompanied by the appropriate fee must be filed at least ninety (90) days before the certification expires; applications filed after this deadline but within ninety (90) days after the certification expires will be subject to a late fee. Re-certification applications filed more than ninety (90) days after the certification expires shall be denied and the certification process must begin anew.
- (e) Application for Provisional Certification. In addition to the other information required on the application form, an applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.
- (f) Expiration of Certification. Upon expiration of a certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

VI. REQUIREMENTS FOR CERTIFICATION

To qualify for certification, the applicant must pay all required fees, comply with the application procedures herein, and must:

- (a) Be at least twenty-one (21) years of age;
- (b) Be a high school graduate or possess the GED equivalent;
- (c) Have two years of relevant work experience related to guardianship or the following educational or training requirements:
 - 1) a minimum of a bachelors degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship, including but not limited to medical, mental

- health and mental retardation, law, business, accounting, social work, sociology, psychology, human services, protective services, and criminal justice fields, or
- 2) completion of a course curriculum or training specifically related to guardianship approved by the Board;
- (d) Meet one of the following criteria:
- 1) have successfully completed an examination approved by the Board covering Texas law and procedure related to guardianship, and any other examination required and approved by the Board testing knowledge of guardianship issues, or
 - 2) be currently certified by and in good standing with the National Guardianship Foundation and have successfully completed an exam approved by the Board covering Texas law and procedure related to guardianship issues;
- (e) Attest under penalty of perjury as to whether he or she has ever 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), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code; and
- (f) Attest under penalty of perjury as to whether he or she:
- 1) has ever 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;
 - 2) has ever been found civilly liable ~~in an action~~, or settled a claim in an action, including but not limited to a surcharge action, involving that involved allegations of fraud, misrepresentation, material omission, misappropriation, ~~moral turpitude, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty~~, or conversion on the applicant's part; or
 - 3) has ever been denied certification or had his or her certification revoked or suspended in Texas or any other jurisdiction requiring certification, registration or licensure to provide guardianship services.
- (g) Provide the Board with his or her Texas and national criminal history records by having his or her fingerprints submitted to the Texas Department of Public Safety (DPS), to be used by DPS for a Texas criminal history search and forwarded to the Federal Bureau of Investigation for a national criminal history search. The criminal history records resulting from both the Texas and national criminal history searches will then be forwarded to the Board. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the application is submitted.
- (h) If the applicant has ever been adjudged guilty of or pleaded no contest to any crime described in Section VI(e) above, or been relieved of guardian responsibilities, been found civilly liable, settled a claim, or been denied certification or had certification revoked or suspended as described under Section VI(f)(1), (2) or (3) above, the applicant must describe with particularity the circumstances and provide any related documentation requested by the Board.

VII. REQUIREMENTS FOR RE-CERTIFICATION

To be eligible for re-certification, the certified guardian must pay all required fees, apply within the required time, and meet the following requirements:

- (a) The certified guardian must comply with subsections (e), (f), and (g) of Section VI (relating to Requirements for Certification) of these rules.
- (b) Continuing Education. During each two year certification period, the certified guardian must complete at least ~~six~~ twelve hours ~~per year~~ of continuing education and guardianship training by completing a course that has been approved by the Board under Section XIII (relating to Approval of Continuing Education). The ~~six~~ twelve hours shall include a minimum of ~~one hour~~ two hours of ethics. ~~The above two-year continuing education requirement must also include a minimum of~~ and one hour of legislative update.
 - 1) Continuing education must be earned to satisfy the requirements prior to the expiration of the certificate. The certified guardian must list on the application for re-certification the dates, locations, sponsors, number of regular credits and number of ethics credits earned for sufficient continuing education courses to satisfy this requirement. Nothing herein shall be deemed to waive late fees under Section V.
 - 2) A certified guardian may carry forward for the following year's requirement up to two hours of continuing education earned in excess of the minimum six hours; but ethics hours may not be carried forward.
 - 3) The certified guardian must obtain documentation of attendance or completion of a continuing education activity from the sponsoring entity and submit the documentation to the Board along with the certified guardian's application for re-certification.
 - 4) A certified guardian may also earn continuing education credit by speaking at a seminar, teaching a course or authoring a book or article and obtaining approval for this activity under Section XIII (relating to Approval of Continuing Education)

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) Falsely represented or misstated any material fact to the Board;
 - 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), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - 7) Been found civilly liable in an action or settled a claim in an action, including but not limited to a surcharge action, that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

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

XII. COMPLAINTS; DISCIPLINARY PROCEDURE

- (a) Initiation of Process. Any person ("Petitioner"), including the Director, may petition the Board to initiate disciplinary procedures against a certified guardian or provisionally-certified guardian ("Respondent").
- (b) Information Subject to Disclosure. All documents given to the Board in support of or response to a complaint, including the Petition to initiate disciplinary proceedings, are subject to disclosure to the public.
- ~~(b)~~(c) Content of the Petition. The Petition must be submitted to the Board in writing and must include:
- 1) The name and pertinent contact information of the Petitioner and the Respondent;
 - 2) An allegation of the existence of one or more of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria);
 - 3) An adequate factual basis for the allegation(s); and
 - 4) Any necessary documentation or other supporting materials or information.
- ~~(e)~~(d) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Director shall notify the Petitioner that the Petition will not be considered. If a Petition filed by the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Board Chair shall notify the Director that the Petition will not be considered. The Petitioner may re-file an amended Petition.
- ~~(d)~~(e) Review Committee. Once a Petition is determined to conform to the requirements of subsection ~~(b)~~(c), the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the Petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.

(e)(f) Notice; Answer.

- 1) Notice to Respondent. At the same time the Director notifies the Board Chair, the Director will also inform the Respondent in writing that a Petition has been submitted, provide the Respondent with a copy of the Petition, including all supporting materials, as well as a copy of these Rules, and direct that the Respondent submit a written Answer to the Petition, to be received by the Board within fifteen (15) days after the Respondent's receipt of the notice. Respondent may request an extension of time to file an Answer. The request must be made in writing before the expiration of the fifteen (15) day period. For good cause shown, the Review Committee or its designee may extend the Respondent's time to answer for such period as it may determine, but in no event shall the extension exceed thirty (30) days.
- 2) Failure to Submit Answer. If the Respondent fails to submit an Answer within the required time, absent good cause shown, such failure will constitute default, and all facts alleged in the Petition may be taken as true. If the Review Committee believes that such default has occurred, it will recommend to the Board whether any sanctions should be imposed. Absent good cause for the failure to timely submit an Answer, the Board shall enter an order of default and determine any sanctions to be imposed.

(f)(g) Review and Recommendation by Review Committee.

- 1) Review by Review Committee. The Review Committee Chair will schedule at least one meeting to review the Petition and Answer, if any. Additional meetings may be held as deemed necessary by the Review Committee. The Review Committee may seek additional information in its discretion, but it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Petitioner and Respondent.
- 2) Review Committee's Recommendation. If the Review Committee does not request additional information from the Petitioner or Respondent, the Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. If the Review Committee requests additional information, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within fifteen (15) days after the date it receives or should have received the additional information. The Review Committee's recommendation must be in writing and furnished to the Respondent at the same time it is furnished to the Board.

(g)(h) Hearing. If the Review Committee recommends disciplinary action, or if the Board does not adopt a recommendation from the Review Committee to dismiss the Petition, the Respondent may request a hearing. The request must be made no later than fifteen (15) days after the date the Respondent receives the Review Committee's recommendation.

- 1) Hearing Date and Location. If the Respondent timely requests a hearing, the date and location of the hearing will be determined by the Board or its designee. The hearing must be held within one hundred twenty (120) days from the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.
- 2) Notice of Hearing; Requirements. The Board shall give notice of the hearing to the Petitioner and the Respondent. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the

statutes and rules involved; and a short statement of the disciplinary action recommended. The Board must also provide the Respondent a copy of the Review Committee's recommendation.

- 3) Costs of Attending Hearing. The Respondent is responsible for Respondent's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the Respondent's behalf. The Petitioner is responsible for Petitioner's costs of preparing for and attending the hearing.
 - 4) Respondent's Rights at Hearing. At the hearing, the Respondent will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The Respondent may be represented by legal counsel at the hearing.
 - 5) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the Petitioner to show why disciplinary action should be imposed. The burden of proof shall be by a preponderance of the evidence.
 - 6) Board Counsel. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
 - 7) Board Action. The Board will act by majority vote of Board members attending the meeting.
 - 8) Recusal. At the hearing, a member of the Board serving on the Review Panel may recuse him/herself and take no part in the Board's consideration or vote on the matter.
- (h)(i) Default. If the Respondent fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to Respondent, the Board may proceed in the Respondent's absence on a default basis; and
 - 2) the factual allegations in the Petition may be deemed admitted.
- (i)(j) Board Decision. The Board shall notify the Respondent and the Petitioner in writing of its decision not more than forty-five (45) days after the conclusion of the hearing. The written notification shall include an explanation of the basis for the decision and the Board's decision as to any disciplinary action to be imposed, including reprimand, suspension, revocation, or other disciplinary action.
- (j)(k) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- (k)(l) Correspondence. All correspondence and notices herein sent by or to the Petitioner or Respondent should be made by regular and certified mail to ensure receipt of the item served.

XIII. APPROVAL OF CONTINUING EDUCATION

- (a) A continuing education activity must be an organized program of learning dealing with matters that are directly related to the guardianship profession, the services guardians provide, and the legal process involved in guardianship proceedings. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified guardian and the certified guardian's impact on the judicial process and the public. In this Section XIII, the term "certified guardian" includes a provisionally-certified guardian.
- (b) Subject to the requirements contained in Section VII(b) (relating to Requirements for Re-Certification), continuing education activities should include one or more of the following subjects:
 - 1) guardianships;

- 2) trust administration;
 - 3) powers of attorney;
 - 4) mental or physical health or geriatric health;
 - 5) ethics for guardians, including cooperation with lawyers, judges and fellow guardians and courtesy to all litigants;
 - 6) Texas statutes, rules and case law relevant to the guardianship profession;
 - 7) the role and responsibilities of the certified guardian under the Texas Probate Code, rules adopted by the Supreme Court relating to guardianship certification and the Minimum Standards for the Provision of Guardianship Services adopted by the Board; and
 - 8) management issues, including financial planning and accounting.
- (c) The following do not qualify as continuing education activities under these rules:
- 1) attendance or participation at professional or association business meetings, general sessions or policy making sessions;
 - 2) service on a committee or council or as an officer in a professional organization;
 - 3) activities completed to satisfy the requirements of a disciplinary action; and
 - 4) any activity completed as ordered by a judicial officer.
- (d) The Board will publish on its web site a list of courses that are approved by the Board as continuing education activities. Any such activities that are used by a certified guardian to satisfy the requirements of Section VII(b) must meet the requirements of subsections (a) and (b) above.
- (e) Continuing education activities ~~conducted by entities~~ that have not been approved by the Board may be approved by the Board upon written request for approval made by a certified guardian.
- 1) The request for approval must be made on a form provided by the Board and must include a sample brochure or course outline that describes the content of the program, identifies the presenters, indicates the time devoted to each subject and the date and location of the program.
 - 2) The request for approval will be reviewed and approved or denied by the Director. A certified guardian may appeal the Director's denial of a request for approval by submitting a written appeal to the Board within fifteen (15) days of notification of the denial.
 - 3) The Board shall review the denial at its next regularly scheduled meeting. The requesting guardian must be notified of the Board's decision not less than fifteen (15) days after the Board's decision.
- (f) A certified guardian may request up to six hours of continuing education credit during each 2-year certification period for teaching courses, speaking at seminars, or authoring books or articles related to the subject matter specified in Section XIII(b). The certified guardian must submit an application for teaching credit on a form provided by the Board. Credit for preparation and presentation may be provided on the basis of hour-for-hour credit for each hour spent preparing the article or book or making the presentation.

Clarification of Filing Requirement; Addition of Provisions Regarding Child Support Arrearages – Chapter 232, Texas Family Code

V. APPLICATION PROCEDURE

- (a) Application Forms. Applications for certification, provisional certification, and re-certification shall be made in writing on forms provided by the Board. In appropriate circumstances, the Board may require the applicant to submit information in addition to that called for on the application forms.
- (b) Fees. All fees connected with certification and re-certification shall be set by the Board with the approval of the Supreme Court and are non-refundable. A schedule of fees shall be published on the Board's web site.
 - 1) Application Fee. Each applicant must submit a non-refundable application fee along with the completed application form. No application will be processed until the application fee has been paid. However, an employee of the Texas Department of Aging and Disability Services who is applying for a certificate to provide guardianship services to a ward of the department is exempt from payment of the application fee.
 - 2) Examination Fee. Each applicant must submit a non-refundable examination fee to take the examination approved by the Board that affirms competency in Texas guardianship matters. The fee must be paid by the date established in the examination schedule.
 - 3) Re-certification Fee. Each application for re-certification must be accompanied by a non-refundable re-certification fee. However, an employee of the Texas Department of Aging and Disability Services who is applying for re-certification to provide guardianship services to a ward of the department is exempt from payment of the re-certification fee. No re-certification application may be processed until the re-certification fee, if applicable, has been paid.
 - 4) Late Fee. Each late application for re-certification must be accompanied by a non-refundable late fee.
- (c) Application Procedures. Upon receipt of a completed application form, Board staff shall review and accept the application if:
 - 1) the application form has been completed;
 - 2) the applicant meets the requirements for certification or provisional certification; and
 - 3) the appropriate application fee has been paid.
- (d) Application for Re-certification. Certification shall expire on the second anniversary of the date the certificate is issued. Re-certification shall expire every two years thereafter on the same day and month of the original certification. Applications for re-certification accompanied by the appropriate fee must be filed at least ninety (90) days before the certification expires; applications filed after this deadline but within ninety (90) days after the certification expires will be subject to a late fee. Re-certification applications filed more than ninety (90) days after the certification expires shall be denied and the certification process must begin anew. For purposes of this rule, if an application is filed by mail or courier receipted delivery, it shall be deemed

filed on the date it is deposited with the United States Postal Service or courier service as indicated by the postmark or courier receipt.

- (e) Refusal to Accept Application for Re-certification. Notwithstanding (c) above, the Board shall refuse to accept a certified guardian's application for re-certification if the Board receives notice of child support arrearages in accordance with Section 232.0135 of the Texas Family Code. Upon receipt of further notice under Section 232.0135 that the arrearages have been satisfied, the Board shall accept an application for re-certification, subject to the filing requirements and fees contained in these rules.
- (f) Application for Provisional Certification. In addition to the other information required on the application form, an applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.
- (fg) Expiration and Suspension of Certification. Upon expiration, denial of renewal, suspension, or revocation of a certified guardian's certification, the guardian must immediately provide written notice of the expiration, nonrenewal, suspension, or revocation to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

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) Falsely represented or misstated any material fact to the Board;
 - 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), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - 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.
 - 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.
- 9) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.
 - 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).
 - 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) The Board shall suspend certification or provisional certification pursuant to the provisions of Texas Family Code Section 232.011 upon receipt of a final order issued under Texas Family Code Chapter 232.
- (d) 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, and except for suspension of certification or provisional certification pursuant to Texas Family Code Chapter 232, actions by the Board under this section shall be taken in accordance with the procedures set out in Section XII.

New Reporting Requirements

X. RESPONSIBILITIES OF THE CERTIFIED GUARDIAN; REPORTING REQUIREMENTS

- (a) Standards and Rules. A certified guardian must comply with these rules and with the Minimum Standards for the Provision of Guardianship Services.
- (b) Response. A certified guardian must respond to requests for information from the Board or the Director pertaining to renewal of certification, complaints alleging misconduct by the certified guardian, investigative inquiries by the Board or Director, and any audits or reviews of the certified guardian's practice. The certified guardian must respond to such requests for information within the time prescribed in the request. Such times must not be unreasonably short.
- (c) Change of Name or Address. A certified guardian shall notify the Board in writing of any change in name or business name, business or home physical address, or business or home telephone number within thirty (30) days of any change.
- (d) Notice to Board. A certified guardian shall immediately notify the Board if:
 - 1) the guardian is indicted, formally charged, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication to any offense listed in Section VI(e);
 - 2) any of the proceedings listed in Section VI(f) is initiated;
 - 3) events or circumstances would require any changes to the attestation required by Section VI(f); or
 - 4) the guardian is removed as a guardian under Section 761 of the Texas Probate Code.
- (e) Documents Filed with Court. Each document prepared by or on behalf of a certified guardian and filed with a court shall include the certified guardian's certification number.
- (f) Not later than January 31 of each year, each ~~private professional guardian and~~ guardianship program must provide to the Board the following information for the preceding year:
 - 1) the number of wards served by the guardianship program reported by county in which the application to create a guardianship for the ward is filed, and the total number of wards served by the ~~private professional guardian or~~ guardianship program, as applicable;
 - 2) the name, business address, and business telephone number of each individual employed by or volunteering or contracting with the guardianship program to provide guardianship services to a ward or proposed ward of the program;
 - 3) the name of each county in which an individual described in (2) above provides or is authorized to provide guardianship services;
 - 2) 4) the total amount of money received from the State of Texas for the provision of guardianship services; and
 - 3) 5) the total amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.
- (g) ~~In addition to the information required in subsection (f), n~~ Not later than January 31 of each year, each private professional guardian must provide to the Board the following information for the preceding year:

New Reporting Requirements

- 1) the number of wards served by the private professional guardian reported by county in which the application to create a guardianship for a ward is filed and the total number of wards served by the private professional guardian, including the name of the ward and the docket number and court having jurisdiction of the guardianship;
 - 2) the aggregate fair market value of the property of all wards that was managed by the private professional guardian;
 - 3) the name, business address, and business telephone number of each individual who provides guardianship services to a ward of a private professional guardian on behalf of the private professional guardian;
 - 4) the total amount of money received from the State of Texas for the provision of guardianship services;
 - 5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources;
 - 3) 6) whether the private professional guardian was removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; -and
 - 4) 7) reaffirmation of subsections (e) and (f) of Section VI (relating to Requirements for Certification) of these rules; and
 - 8) a copy of the private professional guardian's application for a certificate of registration with each county clerk required by Section 697(a) of the Probate Code.
- (h) Information that must be submitted under subsections (f) and (g) must be submitted on appropriate forms and in the manner determined by the Board.

Participation in Review Committee Meetings by Telephone

IX. REVIEW AND APPEAL OF CERTIFICATION DENIAL

- (a) Denial. The Board may deny an application for certification, provisional certification, or re-certification only if the applicant fails to meet the standards set forth in Section VI (relating to Requirements for Certification), Section VII (relating to Requirements for Re-Certification), or Section XIV (relating to Provisional Certification), as applicable, or if the applicant has met any of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria). The Board must furnish to the applicant a written statement that includes the reason(s) for denying the application.
- (b) Review of denial. Within fifteen (15) days after receipt of notice that the Board has denied an application for certification, provisional certification, or re-certification, the applicant may petition the Board for review of the denial. If a petition for review is timely received, the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.
- (c) Response; Failure to Submit Response. At the same time the Director notifies the Board Chair of the denial, the Director will notify the applicant in writing that the applicant may submit a written response to the denial within fifteen (15) days of receipt of the notice. If the applicant fails to submit a written response within the required time, absent good cause such failure constitutes a default, and the review shall be dismissed without further action by the Review Committee or the Board.
- (d) Review and Recommendation by Review Committee. The Review Committee Chair will schedule at least one meeting to review the denial and response. Additional meetings may be held as deemed necessary. The applicant may attend the Review Committee's meetings in person or by telephone. If the applicant requests to attend by telephone, he or she must be available to participate at the times and in the manner instructed by the Director; failure to be available as instructed shall constitute a waiver of the right to attend by telephone. While the Review Committee may seek additional information in its discretion, it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Board staff and applicant. The recommendation of the Review Committee must be in writing and must be furnished to the applicant at the same time it is furnished to the Board.
- (e) Hearing. If the Review Committee recommends denial of the application for certification, provisional certification, or re-certification, the applicant may request a hearing. Such request must be made not less than fifteen (15) days after the date the applicant receives a copy of the Review Committee's recommendation.

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Participation in Review Committee Meetings by Telephone

- 1) **Hearing Date and Location.** If the applicant timely requests a hearing, the date and location of the hearing will be determined by the Board. The hearing must be held within one hundred twenty (120) days after the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.
 - 2) **Notice of Hearing; Requirements.** The Board shall give notice of the hearing to the applicant. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the reasons the application was denied.
 - 3) **Costs of Attending Hearing.** The applicant is responsible for applicant's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the applicant's behalf.
 - 4) **Applicant's Rights at Hearing.** At the hearing, the applicant will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The applicant may be represented by legal counsel at the hearing.
 - 5) **Conduct of the Hearing; Burden of Proof.** The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the applicant to show why the denial of the application was erroneous. The burden of proof shall be by a preponderance of the evidence.
 - 6) **Board Counsel.** The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
 - 7) **Board Action.** The Board will act by majority vote of Board members attending the meeting.
- (f) **Default.** If the applicant fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to applicant, the Board may proceed in the applicant's absence on a default basis; and
 - 2) the factual allegations in the denial of the application may be deemed admitted.
- (g) **Final Decision.** The Board shall notify the applicant in writing of its decision not more than forty-five (45) days after the conclusion of the hearing.
- (h) **Applicability of section.** This section does not apply to a disciplinary action resulting from a complaint filed and processed under Section XII (relating to Complaints; Disciplinary Procedure).

XII. COMPLAINTS; DISCIPLINARY PROCEDURE

- (a) **Initiation of Process.** Any person ("Petitioner"), including the Director, may petition the Board to initiate disciplinary procedures against a certified guardian or provisionally-certified guardian ("Respondent").
- (b) **Information Subject to Disclosure.** All documents given to the Board in support of or response to a complaint, including the Petition to initiate disciplinary proceedings, are subject to disclosure to the public.

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Participation in Review Committee Meetings by Telephone

- (b)(c) Content of the Petition. The Petition must be submitted to the Board in writing and must include:
- 1) The name and pertinent contact information of the Petitioner and the Respondent;
 - 2) An allegation of the existence of one or more of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria);
 - 3) An adequate factual basis for the allegation(s); and
 - 4) Any necessary documentation or other supporting materials or information.
- (e)(d) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection (b)(c) of this section, the Director shall notify the Petitioner that the Petition will not be considered. If a Petition filed by the Director does not conform to the requirements of subsection (b)(c) of this section, the Board Chair shall notify the Director that the Petition will not be considered. The Petitioner may re-file an amended Petition.
- (d)(e) Review Committee. Once a Petition is determined to conform to the requirements of subsection (b)(c), the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the Petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.
- (e)(f) Notice; Answer.
- 1) Notice to Respondent. At the same time the Director notifies the Board Chair, the Director will also inform the Respondent in writing that a Petition has been submitted, provide the Respondent with a copy of the Petition, including all supporting materials, as well as a copy of these Rules, and direct that the Respondent submit a written Answer to the Petition, to be received by the Board within fifteen (15) days after the Respondent's receipt of the notice. Respondent may request an extension of time to file an Answer. The request must be made in writing before the expiration of the fifteen (15) day period. For good cause shown, the Review Committee or its designee may extend the Respondent's time to answer for such period as it may determine, but in no event shall the extension exceed thirty (30) days.
 - 2) Failure to Submit Answer. If the Respondent fails to submit an Answer within the required time, absent good cause shown, such failure will constitute default, and all facts alleged in the Petition may be taken as true. If the Review Committee believes that such default has occurred, it will recommend to the Board whether any sanctions should be imposed. Absent good cause for the failure to timely submit an Answer, the Board shall enter an order of default and determine any sanctions to be imposed.
- (f)(g) Review and Recommendation by Review Committee.

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Participation in Review Committee Meetings by Telephone

- 1) Review by Review Committee. The Review Committee Chair will schedule at least one meeting to review the Petition and Answer, if any. Additional meetings may be held as deemed necessary by the Review Committee. The Review Committee may seek additional information in its discretion, but it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Petitioner and Respondent.
 - 2) Review Committee's Recommendation. If the Review Committee does not request additional information from the Petitioner or Respondent, the Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. If the Review Committee requests additional information, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within fifteen (15) days after the date it receives or should have received the additional information. The Review Committee's recommendation must be in writing and furnished to the Respondent at the same time it is furnished to the Board.
 - 3) The Petitioner and Respondent may attend the Review Committee's meetings in person or by telephone. If the Petitioner or Respondent requests to attend by telephone, he or she must be available to participate at the times and in the manner instructed by the Director; failure to be available as instructed shall constitute a waiver of the right to attend by telephone.
- (g)(h) Hearing. If the Review Committee recommends disciplinary action, or if the Board does not adopt a recommendation from the Review Committee to dismiss the Petition, the Respondent may request a hearing. The request must be made no later than fifteen (15) days after the date the Respondent receives the Review Committee's recommendation.
- 1) Hearing Date and Location. If the Respondent timely requests a hearing, the date and location of the hearing will be determined by the Board or its designee. The hearing must be held within one hundred twenty (120) days from the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.
 - 2) Notice of Hearing; Requirements. The Board shall give notice of the hearing to the Petitioner and the Respondent. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the disciplinary action recommended. The Board must also provide the Respondent a copy of the Review Committee's recommendation.
 - 3) Costs of Attending Hearing. The Respondent is responsible for Respondent's costs of preparing for and attending the hearing, including any costs associated

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with witnesses called on the Respondent's behalf. The Petitioner is responsible for Petitioner's costs of preparing for and attending the hearing.

- 4) Respondent's Rights at Hearing. At the hearing, the Respondent will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The Respondent may be represented by legal counsel at the hearing.
 - 5) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the Petitioner to show why disciplinary action should be imposed. The burden of proof shall be by a preponderance of the evidence.
 - 6) Board Counsel. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
 - 7) Board Action. The Board will act by majority vote of Board members attending the meeting.
 - 8) Recusal. At the hearing, a member of the Board serving on the Review Panel may recuse him/herself and take no part in the Board's consideration or vote on the matter.
- (h)(i) Default. If the Respondent fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to Respondent, the Board may proceed in the Respondent's absence on a default basis; and
 - 2) the factual allegations in the Petition may be deemed admitted.
- (i)(j) Board Decision. The Board shall notify the Respondent and the Petitioner in writing of its decision not more than forty-five (45) days after the conclusion of the hearing. The written notification shall include an explanation of the basis for the decision and the Board's decision as to any disciplinary action to be imposed, including reprimand, suspension, revocation, or other disciplinary action.
- (j)(k) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- (k)(l) Correspondence. All correspondence and notices herein sent by or to the Petitioner or Respondent should be made by regular and certified mail to ensure receipt of the item served.

Notice of Hearing Requirement

XII. COMPLAINTS; DISCIPLINARY PROCEDURE

- (a) Initiation of Process. Any person ("Petitioner"), including the Director, may petition the Board to initiate disciplinary procedures against a certified guardian or provisionally-certified guardian ("Respondent").
- (b) Information Subject to Disclosure. All documents given to the Board in support of or response to a complaint, including the Petition to initiate disciplinary proceedings, are subject to disclosure to the public.
- ~~(b)~~(c) Content of the Petition. The Petition must be submitted to the Board in writing and must include:
- 1) The name and pertinent contact information of the Petitioner and the Respondent;
 - 2) An allegation of the existence of one or more of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria);
 - 3) An adequate factual basis for the allegation(s); and
 - 4) Any necessary documentation or other supporting materials or information.
- ~~(e)~~(d) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Director shall notify the Petitioner that the Petition will not be considered. If a Petition filed by the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Board Chair shall notify the Director that the Petition will not be considered. The Petitioner may re-file an amended Petition.
- ~~(d)~~(e) Review Committee. Once a Petition is determined to conform to the requirements of subsection ~~(b)~~(c), the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the Petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.
- ~~(e)~~(f) Notice; Answer.
- 1) Notice to Respondent. At the same time the Director notifies the Board Chair, the Director will also inform the Respondent in writing that a Petition has been submitted, provide the Respondent with a copy of the Petition, including all supporting materials, as well as a copy of these Rules, and direct that the Respondent submit a written Answer to the Petition, to be received by the Board within fifteen (15) days after the Respondent's receipt of the notice. Respondent may request an extension of time to file an Answer. The request must be made in writing before the expiration of the fifteen (15) day period. For good cause shown, the Review Committee or its designee may extend the Respondent's time to answer for such period as it may determine, but in no event shall the extension exceed thirty (30) days.
 - 2) Failure to Submit Answer. If the Respondent fails to submit an Answer within the required time, absent good cause shown, such failure will constitute default, and all facts alleged in the Petition may be taken as true. If the Review Committee believes that such default has occurred, it will recommend to the Board whether any sanctions should be imposed. Absent good cause for the failure to timely submit an Answer, the Board shall enter an order of default and determine any sanctions to be imposed.
- ~~(f)~~(g) Review and Recommendation by Review Committee.

Notice of Hearing Requirement

- 1) Review by Review Committee. The Review Committee Chair will schedule at least one meeting to review the Petition and Answer, if any. Additional meetings may be held as deemed necessary by the Review Committee. The Review Committee may seek additional information in its discretion, but it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Petitioner and Respondent.
 - 2) Review Committee's Recommendation. If the Review Committee does not request additional information from the Petitioner or Respondent, the Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. If the Review Committee requests additional information, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within fifteen (15) days after the date it receives or should have received the additional information. The Review Committee's recommendation must be in writing and furnished to the Respondent at the same time it is furnished to the Board.
- (g)(h) Hearing. If the Review Committee recommends disciplinary action, or if the Board does not adopt a recommendation from the Review Committee to dismiss the Petition, the Respondent may request a hearing. The request must be made no later than fifteen (15) days after the date the Respondent receives the Review Committee's recommendation, or within fifteen (15) days of notice that the Board has rejected the Review Committee's recommendation to dismiss the Petition.
- 1) Hearing Date and Location. If the Respondent timely requests a hearing, the date and location of the hearing will be determined by the Board or its designee. The hearing must be held within one hundred twenty (120) days from the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.
 - 2) Notice of Hearing; Requirements. The Board shall give notice of the hearing to the Petitioner and the Respondent. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the disciplinary action recommended. The Board must also provide the Respondent a copy of the Review Committee's recommendation.
 - 3) Costs of Attending Hearing. The Respondent is responsible for Respondent's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the Respondent's behalf. The Petitioner is responsible for Petitioner's costs of preparing for and attending the hearing.
 - 4) Respondent's Rights at Hearing. At the hearing, the Respondent will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The Respondent may be represented by legal counsel at the hearing.
 - 5) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the Petitioner to show why disciplinary action should be imposed. The burden of proof shall be by a preponderance of the evidence.

Notice of Hearing Requirement

- 6) Board Counsel. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
 - 7) Board Action. The Board will act by majority vote of Board members attending the meeting.
 - 8) Recusal. At the hearing, a member of the Board serving on the Review Panel may recuse him/herself and take no part in the Board's consideration or vote on the matter.
- (h)(i) Default. If the Respondent fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to Respondent, the Board may proceed in the Respondent's absence on a default basis; and
 - 2) the factual allegations in the Petition may be deemed admitted.
- (+)(j) Board Decision. The Board shall notify the Respondent and the Petitioner in writing of its decision not more than forty-five (45) days after the conclusion of the hearing. The written notification shall include an explanation of the basis for the decision and the Board's decision as to any disciplinary action to be imposed, including reprimand, suspension, revocation, or other disciplinary action.
- (+)(k) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- (+)(l) Correspondence. All correspondence and notices herein sent by or to the Petitioner or Respondent should be made by regular and certified mail to ensure receipt of the item served.

Adding requirements for supervisors:

XIV. PROVISIONAL CERTIFICATION

- (a) Application for Provisional Certification. An individual who does not meet the requirements for certification in Section VI(c) or (d) may apply for provisional certification in writing on the forms provided by the Board.
- (b) Requirements for Provisional Certification. To be eligible for provisional certification, an applicant must meet all requirements in Section VI other than those listed in (c) and (d). Provisional certification shall expire on the second anniversary of the date the certificate is issued.
- (c) Responsibilities of Provisionally-Certified Guardian.
 - 1) A provisionally-certified guardian may provide guardianship services in this state only under the supervision of a certified guardian supervisor.
 - 2) A provisionally-certified guardian must comply with these rules and with the Minimum Standards for Guardianship Services.
 - 3) Change of Name or Address. A provisionally-certified guardian shall notify the Board in writing of any change in name or business name, business or home physical address, or business or home telephone number within thirty (30) days of any change.
 - 4) Notice to Board. A provisionally-certified guardian shall immediately notify the Board if:
 - A. the provisionally-certified guardian obtains a different supervisor;
 - B. the provisionally-certified guardian is indicted, formally charged, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication to any offense listed in Section VI(e);
 - C. any of the proceedings listed in Section VI(f) is initiated;
 - D. events or circumstances would require any changes to the attestation required by Section VI(f); or
 - E. the provisionally-certified guardian is removed as a guardian under Section 761 of the Texas Probate Code.
 - 5) Documents Filed with Court. Each document prepared by or on behalf of a provisionally-certified guardian and filed with a court shall include the provisionally-certified guardian's certification number and the name and certification number of his or her supervisor.
 - 6) A provisionally-certified guardian must comply with the continuing education requirements in Section VII(b).
- (d) Responsibilities of Supervisor.
 - 1) A supervisor shall:
 - A. assume primary responsibility for guiding the provisionally-certified guardian's work and for supervising, generally and directly, as necessary, the quality of the provisionally-certified guardian's work;
 - B. meet with each provisionally-certified guardian at least once every two weeks, with at least one of these meetings being face-to-face each month;
 - C. assist the provisionally-certified guardian in activities to the extent the supervisor considers it necessary and appropriate;

- D. ensure the provisionally-certified guardian is familiar with the provisions of these rules and the Minimum Standards for Guardianship Services; and
 - E. monitor the provisionally-certified guardian's compliance with these rules and the Minimum Standards for Guardianship Services.
- 2) A supervisor may not supervise more provisionally-certified guardians than a reasonably prudent supervisor operating under substantially similar circumstances would supervise at one time.
 - 3) A supervisor whose certification expires, is revoked, or is suspended may not continue as a supervisor and must notify all provisionally-certified guardians under that person's supervision that the person may not continue as a supervisor.
 - 4) A supervisor shall immediately notify the Board, or cause notice to be sent to the Board, if the supervisor ceases to supervise a provisionally-certified guardian.
 - 5) A supervisor may not:
 - A. be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to a person whom he or she is supervising; or
 - B. be an employee of or under the employment supervision of a person whom he or she is supervising.
- (e) Prohibition on Representation as a Certified Guardian. The supervisor and provisionally-certified guardian may not state, represent, or imply that the provisionally-certified guardian is a certified guardian.
- (f) Expiration of Provisional Certification. A provisionally-certified guardian may be provisionally certified for only one two-year period unless a waiver is approved by the Board. Upon expiration of a provisionally-certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.
- (g) If a provisionally-certified guardian applies to be a certified guardian within one year of obtaining provisional certification, it will not be necessary for the applicant to submit a new criminal history record.

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XVI. CONSEQUENCES OF CRIMINAL OFFENSES

- (a) In determining whether to deny an application for certification or provisional certification under Rule VI(e), refuse to re-certify a certified guardian under Rule VII(a), or discipline a certified or provisionally-certified guardian under Rule XI(a)(6), the Board shall consider the following factors:
- (1) The nature and seriousness of the crime;
 - (2) The relationship of the crime to the provision of guardianship services;
 - (3) The extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified guardian.
- (b) In determining the fitness to perform the duties and discharge the responsibilities of a certified guardian, the Board shall consider, in addition to the factors listed in section (a):
- (1) The extent and nature of the person's past criminal activity;
 - (2) The age of the person when the crime was committed;
 - (3) The amount of time that has elapsed since the person's last criminal activity;
 - (4) The conduct and work activity of the person before and after the criminal activity;
 - (5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) Other evidence of the person's fitness, including letters of recommendation.

Relationships by Consanguinity and Affinity¹

Consanguinity (Relationship by Blood):

- First degree is your father, mother, son, or daughter.
- Second degree is your brother, sister, grandparent, or grandchild.
- Third degree is your great-grandparent, great-grandchild, aunt who is a sister of a parent, uncle who is a brother of a parent, nephew who is a child of a brother or sister, or niece who is a child of a brother or sister.

(Includes half-blood and legal adoption)

Affinity (Relationship by Marriage):

- First degree is your spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, or stepchild.
- Second degree is your brother-in-law (sister's spouse or spouse's brother), sister-in-law (brother's spouse or spouse's sister), spouse's grandparent, spouse's grandchild, grandparent's spouse, or grandchild's spouse.

¹ Source: Texas Gov't Code §§573.022-573.025; Office of the Attorney General, *Traps for the Unwary*, pp. 23-24 (2006).



TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • AUSTIN, TEXAS 78701
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066
512/463-1625 • FAX 512/463-1648

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

PROGRAM DIRECTOR
LESLEY MARTIN ONDRECHEN

Proposed Form 07/17/09

Clerk's Request for Criminal History Report Obtained by the Guardianship Certification Board from the Texas Department of Public Safety or the Federal Bureau of Investigation

Pursuant to Texas Government Code Section 411.1386(a-6) and Texas Probate Code Section 698(a-6) (as amended effective June 19, 2009), I hereby request a copy of the criminal history report obtained by the Guardianship Certification Board on the following individual:

Full Name: _____ Certification Number _____ OR
 Provisional Certification Number _____

Court: : _____ Case Number: _____

TxDPS Report FBI Report Both

As set forth in Texas Government Code Section 411.1386 and Probate Code Section 698, I understand that the criminal history record information obtained:

- is for the exclusive use of the court;
- may be used by the court 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 to appoint any other person proposed to serve as a guardian, including a temporary or successor guardian, other than the ward's or proposed ward's family member or attorney;
- is privileged and confidential;
- may not be released or disclosed to any person or agency except on court order or consent of the individual who is the subject of the report; and
- may be destroyed by the clerk after the information is used for its authorized purpose.

Judge, [court and county]

Printed Name: _____
Date: _____

[Deputy] Clerk, _____ County

Printed Name: _____
Date: _____

Criminal history information will be sent to the official address on file at the Office of Court Administration for the county clerk requesting it.



TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • AUSTIN, TEXAS 78701
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066
512/463-1625 • FAX 512/463-1648

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

PROGRAM DIRECTOR
LESLEY MARTIN ONDRECHEN

Proposed Change - 07/19/09

[date/120 days before expiration]

[name and address]

Re: Re-Certification
Certification Number [], expires on expiration date]

Dear [title and last name]:

Your certification by the Texas Guardianship Certification Board will expire as noted above. This letter concerning the re-certification process is being sent as a courtesy reminder, and no other reminders will be sent.

Your application for re-certification should be filed at least ninety days before your certification expires. An application fee of \$25.00 is required. To avoid payment of a late fee, your application must be ~~received by Board staff~~ filed on or before [90 day date]. The filing date is the date the application is mailed or deposited with a courier service, as indicated by the postmark or courier receipt.

You may apply for re-certification up to ninety days after your certification expires. If your application is ~~received by Board staff~~ filed after [90 day date] but on or before [90 days after], you must pay a late fee of \$75.00 in addition to the application fee.

If your application for re-certification is received more than ninety days after your certification expires (that is, after [90 days after date]), your application for re-certification will be denied. You must begin the certification process anew, including re-taking the required exams.

Please refer to the Rules Governing Guardianship Certification, the re-certification application form and instructions for complete information on what is required to re-certify. These are available on the Board's website, www.courts.state.tx.us/gcb.

It is your responsibility to re-certify and to ensure your application form and accompanying documents are submitted timely. If you have any questions about the re-certification process, please contact me. My direct telephone number is 512/475-2873, and my e-mail address is lesley.ondrechen@courts.state.tx.us.

Sincerely,

Lesley Martin Ondrechen
Director, Guardianship Certification Program