

## **GUARDIANSHIP CERTIFICATION BOARD**

### **MINUTES OF MEETING**

May 2, 2008

11:00 a.m.

Office of Court Administration

205 W. 14th St., Suite 605

Austin, Texas

#### **COMMENCEMENT OF MEETING**

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on May 2, 2008 at 11:04 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, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair

Leah Cohen, Vice-Chair

Barry Anderson

Jason Armstrong

Garth Corbett

Dr. Raymond Costello

Carol Patrice Dabner

Susan Eason

Don D. Ford, III

Phillip A. Grant

Marlane Meyer

Kathy Strong

Patti Turner

Robert Warach

Jason Armstrong, Dr. Raymond Costello, and Kathy Strong attended via telephone conference call. Gina Patterson did not participate. Others present were Carl Reynolds, Administrative Director; Lesley Ondrechen, Guardianship Certification Program Director; Celeste Ortiz, Administrative Assistant; and Katie Bond, Assistant General Counsel, all of the OCA. Barbara Deane and Ellen Sameth of the Office of the Attorney General were also present. Members of the public present at the meeting were Dr. Barbara Scobey of the Texas Department of Aging and Disability Services (DADS), Jan McLaughlin of the Harris County Guardianship Program, Rodney Pat Ramsey, Ronald W. Wegscheid, Glenda Pinkston, Jim Pinkston, Sandra Higgins and Mike Higgins.

#### **MINUTES OF FEBRUARY 1, 2008 MEETING**

A typographical error was noted on page 2 of the draft minutes. Upon motion by Ms. Meyer and second by Mr. Anderson, the minutes of the Board's February 1, 2008 meeting were approved as corrected.

## **DIRECTORS' REPORTS**

Ms. Ondrechen reported that as of May 1, 2008, 173 guardians are certified, and 65 are provisionally certified. Ten applications for certification are pending, including the one considered by the Application Review Committee, which will report later in the meeting. Three applications for provisional certification are pending.

The director reminded the Board that the Supreme Court adopted a rule change in March, making false statements or misrepresentations of material fact to the Board grounds for denial of certification

Ms. Ondrechen advised that the Texas Exam Committee met in Dallas at the end of March, and analyzed, re-worked, eliminated and added new questions to the exam. The national portion of the exam was also updated following a recent meeting of the national committee. The re-vamped version of the exams were administered on April 21; the results of those exams are expected by mid-May. The next exam will be given in Lubbock in July.

Ms. Ondrechen reported on the Guardianship Advisory Board meeting and the Texas Guardianship Association's Spring Conference, including her presentation on certification, held in April in Corpus Christi. She informed the Board that her proposal to speak on Certification of Guardians in Texas-One Year Later at the National Guardianship Association's Annual Conference was accepted.

Ms. Ondrechen directed the Board's attention to maps she had prepared to present the results of her analysis of required reports received from DADS, local programs, private professional guardians and county clerks. The Board discussed the results, and how the reporting requirements were communicated to certified guardians. Ms. Ondrechen will compile information on certified guardians who did not report and provide that to the Board.

The Board reviewed a complaint form the director had drafted. The Board discussed the use of the form, including notification to an employing guardianship programs and notification to the judge with probate jurisdiction when the complaint is filed. Ms. Bond noted the meeting was not noticed to discuss the first topic; she suggested convening the Rules Committee to discuss and report to the Board. Notification to the judge with probate jurisdiction at the time the complaint is filed will be on the agenda for the Board's July meeting.

Ms. Ondrechen reported on letters of caution, pending disciplinary actions, and preliminary results of the Office of Court Administration's customer service survey, which were very favorable. She spoke to the Board about administrative matters: use of state rates when traveling on Board business, strategic planning, performance measures and OCA's legislative appropriations request.

Mr. Reynolds told the Board that although the comment period has expired, comments may still be made on the proposed rules changing the monthly reporting requirements from county and district clerks to the Office of Court Administration.

## **COMMITTEE REPORTS**

### **A. Application Review Committee**

In the absence of the Committee chair, Ms. Ondrechen reported that the Application Review Committee had reviewed an application for certification by Cathy Howell. The Committee voted to approve her certification, pending receipt of her exam results.

### **B. Consideration of Procedures for Processing Applicants with Fine-Only Offenses**

Mr. Grant discussed the three levels of misdemeanors; most class C misdemeanors are punishable by a fine only. He believes convening the Application Review Committee is not necessary when an applicant's only offense is a class C misdemeanor. He also stated that some class C misdemeanors may be crimes of moral turpitude, in which case the Application Review Committee should be convened. Ms. Bond noted that the Board can consider only what an applicant was convicted of, not charged with.

Mr. Grant moved, and Ms. Meyer seconded, that the director have authority to approve applications for certification, without convening the Application Review Committee, when the applicant's only offense is a class C misdemeanor, providing it is not a crime of moral turpitude. The motion carried.

## **PROPOSED RULE XV, ALTERNATIVE DISPUTE RESOLUTION**

Ms. Bond reported on two comments received during the public comment period. The first commenter, Terry Hammond, asked if legal counsel could be present during the alternative dispute resolution process; the director replied that it was not prohibited. The Board discussed adding language to specifically state that each party may be represented by counsel, and agreed to add it to the end of subsection C. Mr. Grant moved, and Mr. Ford seconded, that the Board accept proposed Rule XV as amended, and that it be forwarded to the Supreme Court for adoption. The second comment was made by Mr. Anderson, who clarified that he found no conflicts with the provisions of the 11th Amendment to the U.S. Constitution. There being no further discussion, a vote was taken and the motion carried.

## **PETITIONS FOR DISCIPLINARY ACTION**

### **A. Consideration of Recommendations of the Disciplinary Review Committee**

The Board went into closed session at 11:55 a.m. to discuss agenda item IVA - Consideration of Recommendations of the Disciplinary Review Committee, in accordance with sections 7(a) of its Public Meetings Policy. Ms. Deane participated in the closed session as legal counsel to the Board. No vote was taken during closed session. The Board reconvened in public session at 1:09 p.m.

Ms. Strong, chair of the Disciplinary Review Committee, stated that the Committee's recommendation is to dismiss the petition filed against Ronald Wegscheid by Glenda Pinkston, and to send an educational/compliance assistance letter to Mr. Wegscheid. The Chair offered the petitioner and the respondent two minutes each to make comments regarding the Committee's recommendation.

Mr. Wegscheid's attorney, Mr. Ramsey, and the complainant, Ms. Pinkston, each addressed the Board. Ms. Strong stated that the recommendation to dismiss is based on lack of jurisdiction to address the complaint. Mr. Grant stated the Board cannot advise a complainant on other remedies that might be available.

Mr. Grant moved, and Ms. Dabner seconded, to dismiss the complaint against Mr. Wegscheid for lack of jurisdiction. The motion carried.

Mr. Anderson moved that Board staff send an educational/compliance assistance letter to Mr. Wegscheid on behalf of the Board and the Committee, and Mr. Warach seconded. Mr. Grant and Ms. Meyer commented they did not see the need for a letter. The motion failed.

Ms. Strong reported to the Board on a complaint filed by the director against Olga Levario. Ms. Levario has failed to provide her new business contact information to the Board, as required by Rule X(c), despite repeated requests by the director. The Disciplinary Review Committee recommended suspension of her certification, until such time as she complies with Rule X(c). Ms. Levario received notice of the Disciplinary Review Committee's meeting and subsequent recommendation and was notified that the Board would consider the recommendation at this meeting.

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

#### **B. Consideration of Procedures for Scheduling Hearings on Disciplinary Actions**

Ms. Bond noted that the Rules require the Board to decide when a hearing on a disciplinary action will be held. The Chair recommended that until a rule change can be made, the director will identify possible dates, then convene a telephone meeting for the Board to decide on a specific hearing date.

The Board discussed other topics for consideration by the Rules Committee, including delegating the authority to set a hearing to the Disciplinary Review Committee or to the director, convening a Board meeting for the sole purpose of setting a hearing date, whether to take testimony under oath, and a mechanism for granting a continuance. The director will schedule a meeting of the Rules Committee.

## **TOPICS FOR 81ST LEGISLATURE, REGULAR SESSION**

The Chair told the Board that the Legislature has mandated that the Probate Code be codified during the next session. She is serving on a committee for decedents' estates, and guardianship estates will also be included. The Board discussed several topics for consideration for legislative changes (including criminal history background checks, enforcement provisions and reporting requirements), relevant interim charges and draft legislative proposals to the Judicial Council.

### **A. Formation of Legislation Workgroup**

The Board reviewed a list of people interested in participating. Dr. Scobey volunteered to participate in the workgroup on behalf of DADS. Judge Burwell and Mr. Warach also volunteered. The consensus was to meet as an informal workgroup, not as a Board committee. The director will schedule a meeting to take place before the Judicial Council's Legislative Committee meeting on May 23.

## **APPOINTMENT OF COMMITTEES**

The Chair appointed members to serve on three committees, for the period July 1 through December 31, 2008, as follows:

### Application Review Committee

Phil Grant, chair; Patti Turner; Barry Anderson

### Denial of Certification Review Committee

Garth Corbett, chair; Leah Cohen; Dr. Raymond Costello

### Disciplinary Review Committee

Jason Armstrong, chair; Judge Gladys Burwell; Susan Eason

## **PUBLIC COMMENT**

No public comment was made.

## **FUTURE BOARD MEETINGS**

Ms. Ondrechen reminded the Board that its remaining 2008 quarterly meetings are scheduled for July 25 and October 24. Staff will work on finding a better venue before the next Board meeting. She also noted that the 2009 meetings will be scheduled at the October 24 meeting.

Ms. Bond will inquire regarding re-application for those Board members whose terms expire February 1, 2009 and will report at the next meeting.

## **ADJOURNMENT**

On motion by Mr. Grant and second by Mr. Warach, the meeting was adjourned at approximately 2:00 p.m.



# TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14<sup>TH</sup> 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

July 16, 2008

*By Certified Mail 7007 0220 0004 5095 7156 and by Regular First Class Mail*

Cindy Brown  
Aaron Alarcon  
Guardianship Services, Inc.  
P.O. Box 11481  
Fort Worth, Texas 76110

Re: Complaint filed by Kathie Seidel

Dear Ms. Brown and Mr. Alarcon:

At its meeting on July 15, the Disciplinary Review Committee of the Guardianship Certification Board considered the Petition for Disciplinary Action filed by Kathie Seidel. The Committee voted to recommend that the petition be dismissed.

On behalf of the Committee, I am sending this letter to notify you in writing of the Committee's recommendation. By copy of this letter, I am notifying the Guardianship Certification Board of the Committee's recommendation, as required by Rule XII(f)(2).

The Board will consider the Committee's recommendation at its July 25 meeting. You are welcome to attend the Board meeting. If the Board does not adopt the Committee's recommendation, you will then have the opportunity to request a hearing (Rule XII(g)). You will be advised in writing of the Board's decision.

Please contact me if you have any questions. My direct phone number is 512/475-2873.

Sincerely,

Lesley Martin Ondrechen  
Director, Guardianship Certification Program

cc: Guardianship Certification Board  
Kathie Seidel, by certified mail 7007 0220 0004 5095 7163 and by regular first class mail



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# TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14<sup>TH</sup> 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

July 16, 2008

*By Certified Mail 7002 0510 0001 9172 [REDACTED], by Regular First Class Mail and by UPS Overnight Delivery*

Olga Levario  
[REDACTED]

Dear Ms. Levario:

As you were informed by letter dated May 7, 2008, the Guardianship Certification Board considered a complaint against you at its May 2, 2008 meeting. The Board adopted the Disciplinary Review Committee's recommendation to suspend your certification.

It has come to the attention of the Board that notice was not sent to you regarding the Board meeting on May 2, 2008. (You were notified of the Disciplinary Review Committee's recommendation and of your right to request a hearing by letter dated April 17, 2008.) Because you were not notified of the date and time of the Board meeting at which the recommendation would be considered, the Board will reconsider the Committee's recommendation at its next meeting.

The Board will meet on July 25, 2008 at 11:00 a.m. The meeting will be held in the Supreme Court of Texas courtroom, 201 West 14th St., 1st Floor, Austin, Texas. You are welcome to attend the meeting.

This notice is being sent to you by certified and regular first class mail, as required by Rule XII(k) of the Rules Governing Guardianship Certification. It is also being sent by overnight delivery to ensure you receive it timely.

Please contact me if you have any questions. My direct phone number is 512/475-2873.

Sincerely,

*L. M. Ondrechen*

Lesley Martin Ondrechen  
Director, Guardianship Certification Program

cc: Guardianship Certification Board



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**Lesley Ondrechen**

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**From:** Lesley Ondrechen  
**Sent:** Thursday, July 17, 2008 12:19 PM  
**To:** 'olga levario'  
**Subject:** RE: Hearing

Thank you. I will present this to the Board on July 25. -Lesley Ondrechen

---

**From:** olga levario [mailto:olga.levario@gmail.com]  
**Sent:** Thursday, July 17, 2008 11:49 AM  
**To:** Lesley Ondrechen  
**Subject:** Re: Hearing

That is fine, but I wish that my work address and my employer name remain private. I work as Teacher currently for Shearer Hills Baptist Church Early Childhood Center. Please do not mail me correspondence there, please continue to mail it to my home address. Their address is 12615 San Pedro, SA, TX 78216, 210-545-2175.

On Thu, Jul 17, 2008 at 11:18 AM, Lesley Ondrechen <Lesley.Ondrechen@courts.state.tx.us> wrote:  
Dear Ms. Levario,

First, for clarification, the July 25 date is not a hearing. It is a meeting of the Guardianship Certification Board. You are entitled to request a hearing because disciplinary action (the suspension of your certification) was recommended to the Board by its Disciplinary Review Committee.

The complaint was initiated by me, as Board staff, on March 14, 2008. The reason for the complaint is your failure to notify the Board when your employer, work address and work telephone number changed. Your certification was suspended by the Board on May 2, until such time as you complied with the requirement to provide current work information. You were inadvertently not notified of the Board meeting on May 2, which is why I have asked the Board to reconsider the disciplinary action taken at its next meeting on July 25.

If you no longer provide guardianship services and do not wish to retain your certification, you may voluntarily surrender it. To do so, I need a statement in writing from you to that effect. If you do wish to retain your certification, please provide your current employer's name, address and telephone number. If you provide that in writing before July 25, I can then ask the Board to consider rescinding the suspension of your certification.

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

---

**From:** olga levario [mailto:olga.levario@gmail.com]  
**Sent:** Thursday, July 17, 2008 10:54 AM  
**To:** Lesley Ondrechen  
**Subject:** Hearing

Ms. Ondrechen,

I have received a letter about a complaint that was filed against me back in May of this year, I stopped working for the state guardianship program in October of 2007. I am not able to attend the

hearing that has been scheduled for July 25th. I am interested in knowing what this complaint is about and who filed it. Thank you for your time.

Sincerely,  
Olga Levario

## Lesley Ondrechen

---

**From:** Lesley Ondrechen  
**Sent:** Monday, July 21, 2008 3:06 PM  
**To:** 'olga levario'  
**Subject:** Guardianship Certification Board/certification

Dear Ms. Levario,

In reviewing items for the Board meeting on July 25, I find I have a couple more questions for you.

It is my understanding that you wish to retain your guardianship certification, is that correct? You have asked that your business address not be used for Board correspondence. Because you do not wish your employer and business address be used, your home address would be used instead on the Board's website listing certified guardians. Is that acceptable to you?

Thank you for your prompt attention.

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

## 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), ~~22.07~~ 22.05 (deadly conduct), ~~22.08~~ 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 by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion; or
  - 2) has ever been found civilly liable in an action, or settled a claim, involving allegations of fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion on the applicant's part; or
  - 3) has ever been denied certification or had his or her certification revoked 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) Not engage in conduct that demonstrates a lack of fitness to perform the duties and discharge the responsibilities of a person providing guardianship services.
- (H) (i) 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, or settled a claim, or been denied certification or had certification revoked as described under Section VI(f)(1), or (2) or (3) above, the applicant must describe with particularity the circumstances and provide any related documentation requested by the Board.

## **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), ~~22.07~~ 22.05 (deadly conduct), ~~22.08~~ 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) 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) 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.
- (c) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection (b) 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) 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) Review Committee. Once a Petition is determined to conform to the requirements of subsection (b), 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) 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, for good cause shown, may request an extension of time to file an answer. The request must be made before the expiration of the fifteen (15) day period. The Committee or its designee may extend the Respondent's time to answer for such period as it may determine.

- 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) 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. The Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. The recommendation of the Review Committee must be in writing and must be furnished to the Respondent at the same time it is furnished to the Board. However, if the Review Committee requests additional information from the Petitioner or Respondent, or if Respondent, for good cause shown, timely requests additional time to marshal and present documents or other information, the Review Committee may extend its review for such period as it may determine. In either event, its recommendation is due fifteen (15) days after it receives the additional information.
- (g) 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.
- (h) 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) 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) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- (k) 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.

#### **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 face-to-face with each provisionally-certified guardian at least once every two weeks If the provisionally-certified guardian and the supervisor demonstrate unforeseen circumstances that prevent a face to face meeting, then one meeting per month may be held by telephone conference call;
    - 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.
- (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.



**Guardianship Certification Board**  
 205 W. 14<sup>th</sup> Street, Suite 600, Tom C. Clark Bldg, Austin,  
 Texas 78701

<p><b>\$25.00</b>  <b>Application Fee</b>          Must accompany this          application</p>
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**Certification Application Form**

1. Name	Last				First				M.I.		Suffix		2. Date of Birth	mm/dd/yyyy	
3. Address (both home and work addresses must be provided; check preference for Board-related mailings)	Home <input type="checkbox"/>	Street				City				State		Zip		Phone	
	Work <input type="checkbox"/>	Street or P.O. Box				City				State		Zip		Phone	
	Email Address								Other Phone (e.g., cell)				FAX		
4. Education	High School	High School Name				High School Location				Graduation Date: mm/yyyy					
	Or	Equivalency Type								Date: mm/yyyy					
	College or University	Name and Location of School				Dates Attended				Degree		Major			
5. Work Experience (provide at least 10 years of experience. Attach separate sheet if necessary)	Start Date		Leave Date		Employer:				Location:						
	Mo	Yr	Mo	Yr											
	Current														
	Describe relevant experience:														
Start Date		Leave Date		Employer:				Location:							
Mo	Yr	Mo	Yr												
Describe relevant experience:															
Start Date		Leave Date		Employer:				Location:							
Mo	Yr	Mo	Yr												
Describe relevant experience:															
Start Date		Leave Date		Employer:				Location:							
Mo	Yr	Mo	Yr												
Describe relevant experience:															
6. Exams/ Certification	Texas Exam						Center for Guardianship Certification Exam								
	Passed? <input type="checkbox"/> Yes			Date Taken			Passed? <input type="checkbox"/> Yes			Date Taken					
	<input type="checkbox"/> No			Date Expect to Take			<input type="checkbox"/> No			Date Expect to Take					
CGC Registered Guardian: CGC Certification Date						In good standing? <input type="checkbox"/> Yes <input type="checkbox"/> No									

7. Have you ever been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to any felony or misdemeanor other than juvenile offenses or misdemeanor traffic offenses?

Note: Answer yes even if your plea resulted in a probation or deferred adjudication that was successfully completed and subsequently dismissed.

Driving While Intoxicated is NOT considered a traffic offense and should be reported.

No  Yes – Provide a certified copy of the charging instrument, judgment, and disposition, including dates, charges, court, court location, and any other pertinent information.

8. Have you ever been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion?

No  Yes – Provide details (attach separate sheet if necessary):

9. Have you ever been found civilly liable in an action, or settled a claim, involving allegations of fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion on your part?

No  Yes – Provide details (attach separate sheet if necessary):

I certify under penalty of perjury that the information provided in this application is true and correct. I have read and understand the Guardianship Certification Board's Rules Governing Guardianship Certification and Minimum Standards for Guardianship Services and agree to comply with the current and subsequent Rules and Minimum Standards. I understand that the fee submitted with this application is non-refundable. I understand that if I am certified, I will have a continuing obligation under Rule X(c) and (d) of the Rules Governing Guardianship Certification to notify the Board if there is a change in circumstances.

(Must be signed before a Notary Public) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**Mail:**

- 1) Your completed, signed, and notarized application form, and
- 2) A check or money order in the amount of \$25.00 payable to the Office of Court Administration to:

Office of Court Administration  
Guardianship Certification Board  
P.O. Box 12066  
Austin, Texas 78711-2066

**Hand Deliver:**

Alternatively, you may deliver your original application and fee to the Office of Court Administration, 205 West 14th Street, Suite 600, Austin, Texas.

**Faxed or e-mailed applications are not acceptable.**

TEXAS GUARDIANSHIP CERTIFICATION BOARD  
INSTRUCTION SHEET FOR CERTIFICATION APPLICATION FORM

1. To provide guardianship services in Texas, you must be certified if you are a private professional guardian, if you provide services to a ward of a private professional guardian or the Department of Aging and Disability Services, or if you provide services to a ward of a guardianship program on behalf of the program. If you are a volunteer for a guardianship program, or a family member or friend of the ward, you do not need to be certified.
2. To qualify for certification, you must be at least 21 years old and have a high school diploma or GED equivalent. You must have two years of relevant experience related to guardianship OR have a four-year degree in a field related to guardianship. You must also take and pass an exam on Texas guardianship law, and must take and pass the Center for Guardianship Certification (CGC), formerly know as the National Guardianship Foundation (NGF), Registered Guardian exam OR be currently certified by and in good standing with the CGC. The CGC administers both exams. For an exam schedule, locations, and registration information, please see the CGC's website: [www.guardianshipcert.org](http://www.guardianshipcert.org).
3. Complete the Certification Application Form. You may attach a resume, but you must fill out the form completely. Please provide sufficient detail to enable Board staff to determine the nature and extent of your work experience. Your completed application must be notarized.
4. You must provide the Board with your Texas and national criminal history records by having your fingerprints submitted to the Department of Public Safety (DPS). DPS will perform a Texas criminal history search and forward the fingerprints to the FBI for a national criminal history search. DPS has contracted with Fingerprint Applicant Services of Texas (FAST) to provide fingerprinting services. You may also be able to obtain fingerprinting services from local law enforcement officials. For a list of FAST locations and hours of operation, please visit [www.L1id.com](http://www.L1id.com). If you use FAST, you must schedule an appointment by visiting their website or calling 1-888-467-2080. When you go to the FAST location, you must take a FAST Pass, which is available on the Board's website, [www.courts.state.tx.us/gcb](http://www.courts.state.tx.us/gcb). If you do not use FAST, you must provide the Board's ORI Number (TX922180Z) to the entity that fingerprints you so that your search records reach the Board. The FAST charge for the fingerprinting service is \$9.95; the charge for a

Texas criminal history record search is \$15.00; and the charge for an FBI search is \$19.25, for a total of \$44.20. All fees are paid to FAST at the time your fingerprints are taken. The criminal history records resulting from both the Texas and national criminal history searches will be forwarded directly to the Board. **The Board will not process your application until it has received the results of the criminal history searches.** The Texas and national criminal history searches must be conducted no earlier than 90 days prior to the date you submit your application.

Applicants are required to self-report criminal history (see question #7), except juvenile and misdemeanor traffic offenses. If you are unsure if an offense is a traffic offense, it should be reported. The Board may require further information and review on any criminal history.

6. Mail your completed application and the \$25.00 application fee to:  
Office of Court Administration  
Guardianship Certification Board  
P.O. Box 12066  
Austin, Texas 78711-2066  
  
Alternatively, you may deliver your application and fee to 205 West 14th Street, Suite 600, Austin, Texas. Faxed or e-mailed applications are not acceptable.
7. Upon receipt, Board staff will review your application. You will be notified if it is complete or if any required information or documentation is missing. The Board reserves the right to request further information from you during the certification process.
8. You will be notified when your application for certification is approved or denied. If your application is denied, you will be informed of the reason(s) for denial and will have the right to appeal a denial of certification as set forth in Rule IX, Rules Governing Guardianship Certification.
9. Certification is valid for two years and may be suspended or revoked by the Board at any time for the reasons set forth in Rule XI, Rules Governing Guardianship Certification. You must apply for re-certification every two years. To re-certify, you must meet the requirements set forth in Rule VII, Rules Governing Guardianship Certification, including payment of a \$25.00 re-certification fee.



10. It is your responsibility to re-certify. You must file your application for re-certification at least 90 days before your certification expires. If you file your application for re-certification after this deadline but not later than 90 days after your certification expires, you must pay a late fee of \$75.00. Applications for re-certification received more than 90 days after expiration will not be processed, and you must begin the certification process anew.



**Guardianship Certification Board**  
 205 W. 14<sup>th</sup> Street, Suite 600, Tom C. Clark Bldg, Austin,  
 Texas 78701

<p><b>\$25.00</b>  <b>Application Fee</b>          Must accompany this          application</p>
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**Provisional Certification Application Form**

1. Name	Last	First	M.I.	Suffix	2. Date of Birth	mm/dd/yyyy
3. Address (both home and work addresses must be provided; check preference for Board-related mailings)	Home <input type="checkbox"/>	Street	City	State	Zip	Phone
	Work <input type="checkbox"/>	Street or P.O. Box	City	State	Zip	Phone
	Email Address			Other Phone (e.g., cell)		FAX
4. Education	High School	High School Name	High School Location	Graduation Date: mm/yyyy		
	Or		Equivalency Type	Date: mm/yyyy		
	College or University	Name and Location of School	Dates Attended		Degree	Major
			From	To		
			Mo	Yr	Mo	Yr
5. Work Experience (Provide your current employer and show 2-3 years work experience. Attach separate sheet if necessary.)	Start Date	Leave Date	Employer:		Location:	
	Mo	Yr	Mo	Yr		
	Current					
	Describe relevant experience:					
	Start Date	Leave Date	Employer:		Location:	
	Mo	Yr	Mo	Yr		
Describe relevant experience:						
Start Date	Leave Date	Employer:		Location:		
Mo	Yr	Mo	Yr			
Describe relevant experience:						
6. Under Board rules, a provisionally certified guardian may provide guardianship services <b>only under the supervision of a certified guardian supervisor</b> . My certified guardian supervisor is:						
Name	Last	First	M.I.	Suffix	Certification Number:	
Business						
Address	Street or P.O. Box	City	State	Zip	Phone	
Signature of Certified Guardian Supervisor:					Date: _____	
_____						

7. Have you ever been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to any felony or misdemeanor other than juvenile offenses or misdemeanor traffic offenses?

Note: Answer yes even if your plea resulted in a probation or deferred adjudication that was successfully completed and subsequently dismissed.

Driving While Intoxicated is NOT considered a traffic offense and should be reported.

No  Yes – Provide a certified copy of the charging instrument, judgment, and disposition, including dates, charges, court, court location, and any other pertinent information.

8. Have you ever been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion?

No  Yes – Provide details (attach separate sheet if necessary):

9. Have you ever been found civilly liable in an action, or settled a claim, involving allegations of fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion on your part?

No  Yes – Provide details (attach separate sheet if necessary):

I certify under penalty of perjury that the information provided in this application is true and correct. I have read and understand the Guardianship Certification Board's Rules Governing Guardianship Certification and Minimum Standards for Guardianship Services and agree to comply with the current and subsequent Rules and Minimum Standards. I understand that the fee submitted with this application is non-refundable. I understand that if I am certified, I will have a continuing obligation under Rule X(c) and (d) of the Rules Governing Guardianship Certification to notify the Board if there is a change in circumstances.

(Must be signed before a Notary Public) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**Mail:**

- 1) Your completed, signed, and notarized application form, and
- 2) A check or money order in the amount of \$25.00 payable to the Office of Court Administration to:

Office of Court Administration  
Guardianship Certification Board  
P.O. Box 12066  
Austin, Texas 78711-2066

**Hand Deliver:**

Alternatively, you may deliver your original application and fee to the Office of Court Administration, 205 West 14th Street, Suite 600, Austin, Texas.

**Faxed or e-mailed applications are not acceptable.**

TEXAS GUARDIANSHIP CERTIFICATION BOARD  
INSTRUCTION SHEET FOR APPLICATION FOR PROVISIONAL CERTIFICATION

1. To provide guardianship services in Texas, you must be certified if you are a private professional guardian, if you provide services to a ward of a private professional guardian or the Department of Aging and Disability Services, or if you are an individual providing services to a ward of a guardianship program on behalf of the program. If you are a volunteer for a guardianship program, or a family member or friend of the ward, you do not need to be certified.
2. If you do not meet the experience, education, or examination requirements for certification (have two years of relevant experience related to guardianship OR a four-year degree in a field related to guardianship AND pass an exam on Texas guardianship law and the National Guardianship Foundation Registered Guardian exam), you may qualify for provisional certification. To qualify for provisional certification, you must be at least 21 years old and have a high school diploma or GED equivalent. You must also meet certain criminal history and other requirements set out in Rule VI, Rules Governing Guardianship Certification. Under Board rules, if you are provisionally certified, you may provide guardianship services only under the supervision of a certified guardian supervisor.
3. Complete the Application for Provisional Certification. You may attach a resume, but you must fill out the form completely. Be sure to provide the requested information about your certified guardian supervisor and obtain that person's signature and certification number on the form. Sign your application in front of a notary public.

NOTE: While college education and relevant work experience are not required for provisional certification, the Board requests that you provide this information for its records.

4. You must provide the Board with your Texas and national criminal history records by having your fingerprints submitted to the Department of Public Safety (DPS). DPS will perform a Texas criminal history search and forward the fingerprints to the FBI for a national criminal history search. DPS has contracted with Fingerprint Applicant Services of Texas (FAST) to provide fingerprinting services. You may also be able to obtain fingerprinting services from local law enforcement officials. For a list of FAST locations and hours of operation, please visit [www.L1id.com](http://www.L1id.com). If you use FAST, you must schedule an appointment by visiting their website or calling 1-888-467-2080. When you go to the FAST location, you must take a FAST Pass, which is available on the Board's website,

[www.courts.state.tx.us/gcb](http://www.courts.state.tx.us/gcb). If you do not use FAST, you must provide the Board's ORI Number (TX922180Z) to the entity that fingerprints you so that your search records reach the Board. The FAST charge for the fingerprinting service is \$9.95; the charge for a Texas criminal history record search is \$15.00; and the charge for an FBI search is \$19.25, for a total of \$44.20. All fees are paid to FAST at the time your fingerprints are taken. The criminal history records resulting from both the Texas and national criminal history searches will be forwarded directly to the Board. **The Board will not process your application until it has received the results of the criminal history searches.** The Texas and national criminal history searches must be conducted no earlier than 90 days prior to the date you submit your application.

Applicants are required to self-report criminal history (see question #7), except juvenile and misdemeanor traffic offenses. If you are unsure if an offense is a traffic offense, it should be reported. The Board may require further information and review on any criminal history.

5. Mail your completed application for provisional certification and the \$25.00 application fee to:  
Office of Court Administration  
Guardianship Certification Board  
P.O. Box 12066  
Austin, Texas 78711-2066  
Alternatively, you may deliver your application and fee to 205 West 14th Street, Suite 600, Austin, Texas. Faxed or e-mailed applications are not acceptable.
6. Upon receipt, Board staff will review your application. You will be notified if it is complete, or if any required information or documentation is missing. The Board reserves the right to request further information from you during the provisional certification process.
7. You will be notified when your application for provisional certification is approved or denied. If your application is denied, you will be informed of the reason(s) for denial and will have the right to appeal a denial of provisional certification as set forth in Rule IX, Rules Governing Guardianship Certification.
8. Provisional certification is valid for two years. To continue providing guardianship services after expiration of your provisional certification, you must obtain certification by filing an application for certification and meeting the requirements set forth in Rule VI, Rules Governing Guardianship Certification, unless

you seek and the Board grants a waiver of the two year limit on your provisional certification.

9. Your provisional certification may be suspended or revoked by the Board at any time for the reasons set forth in Rule XI, Rules Governing Guardianship Certification.

# DRAFT

## STATE OF TEXAS

### RESOLUTION

of the

### TEXAS JUDICIAL COUNCIL

#### Criminal History Subject to Non-Disclosure

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Section 411.081(i) to add the Guardianship Certification Board (GCB) and county clerks to the list of entities who may receive criminal history reports even when the incident is subject to non-disclosure.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

The GCB received authority to obtain criminal history records during the 80th Legislature, R.S. (Senate Bill 505) by fingerprint search of both national records by the Federal Bureau of Investigation and Texas records by the Department of Public Safety. However, if an applicant to the GCB has a criminal history but has obtained an order of nondisclosure under Section 411.081, the GCB will not receive information about the criminal history covered by the order unless the GCB is included in the list of agencies in Section 411.081(i) that may receive such information.

County clerks need to be added to Section 411.081(i) because they can obtain criminal history information under Section 411.1386 in connection with the appointment of a guardian.

#### Purpose

This change is needed to allow the GCB and court clerks to have a complete criminal history on applicants for certification and potential guardians, respectively. This is particularly important if the crimes involved abuse, neglect, financial exploitation or moral turpitude.

# DRAFT

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

# DRAFT

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Persons Disqualified to Serve as Guardians

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 681 to add lack of required certification by the Guardianship Certification Board (GCB) to the list of reasons a person may not be appointed guardian.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Certain individuals who provide guardianship services must be certified by the GCB, as required by Probate Code Section 697B and Government Code Section 111.042(a).

Purpose

This change is needed to help enforce existing statutory requirements that a person who must be certified by the GCB may not be appointed as a guardian if s/he does not have the required certification.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council



# DRAFT

## STATE OF TEXAS

### RESOLUTION

of the

### TEXAS JUDICIAL COUNCIL

#### Enforcement Provisions

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Chapter 111 to to give the Guardianship Certification Board (GCB) authority and jurisdiction over individuals who are required by statute to be certified, but are not certified.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

Several statutory provisions require certain individuals who provide guardianship services to be certified by the GCB; i.e., Government Code Section 111.042 and Probate Code Sections 696, 696A and 697B. However, there are no provisions for the GCB to enforce the certification requirement.

The GCB intends to give non-certified guardians the opportunity to cure the violation by applying for certification. Enforcement remedies would be discretionary, not mandatory, and would include administrative penalties and injunctive relief. If an injunction were sought, venue would be discretionary in Travis County or in the county in which the non-certified guardian is serving. Appropriate courts with probate jurisdiction would be notified upon the issuance of an injunction, with the aim of providing for the best interests of the non-certified guardian's wards.

#### Purpose

This change is needed to enable the GCB to take action against those providing guardianship services without the required certification to ensure compliance with statutes.

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## STATE OF TEXAS

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Reporting Requirements for Private Professional Guardians, Local Guardianship Programs, the Department of Aging and Disability Services and County Clerks

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Chapter 111 and Probate Code Sections 697 and 697A to streamline reporting requirements, to eliminate duplicate reporting and to provide for consistent reporting dates for reports filed with the Guardianship Certification Board (GCB) by private professional guardians, local guardianship programs, the Department of Aging and Disability Services (DADS) and county clerks, and reports filed with county clerks by private professional guardians and local guardianship programs.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

Some entities are required by statute to report the same or similar information to more than one entity. Some reporting deadlines are January 31 and some are February 1. Some information would be added to required reports, and some reporting requirements would be eliminated.

#### Purpose

This change is needed to help reduce costs, provide better, more useful information to the GCB, and eliminate duplicate reporting. Benefits to each reporting entity:

DADS: the reporting due date would be consistent with all others.

Local Guardianship Programs: Each program would be required to prepare only one report to be filed with the GCB and county clerks. Adding an element that indicates in which county(ies) a program employee, volunteer or contractor provides or is authorized to provide guardianship services could reduce costs of

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criminal history background checks to the program, as well as providing the GCB with better information on counties where wards are served by certified guardians.

Private Professional Guardians: Some duplicative reporting is eliminated by requiring a copy of the application for certificate of registration.

County Clerks: Costs would be reduced by eliminating the need to submit information on local guardianship programs to the GCB. The reporting due date for information on private professional guardians would be consistent with all others.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
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## STATE OF TEXAS

### RESOLUTION

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### TEXAS JUDICIAL COUNCIL

#### Appointment of Private Professional Guardians

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 696 to require private professional guardians to comply with both the registration requirements in Probate Code 697 and the certification requirements in Probate Code 697B.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

Probate Code Section 696 states that a private professional guardian may not be appointed if s/he has not met the registration requirements of Probate Code 697 or is not certified as required by Probate Code 697B. Changing the conjunction separating the two subsections from “or” to “and” would clearly show that both requirements must be met.

#### Purpose

This change is needed to clarify that both elements of Probate Code 681 - registration with the county clerk and certification by the GCB - are required in order for a private professional guardian to be appointed.

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#### Reduction of Criminal History Check Requirements

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 698 and Government Code Section 411.1386 to eliminate the requirement for county clerks to perform a criminal history background check if the person subject to the check is certified by the Guardianship Certification Board (GCB).

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

There is an interim legislative charge to examine criminal history background check requirements, including licensed professionals, to determine best practices, develop cross-agency standards, make recommendations to reduce costs and streamline the process.

County clerks are required to obtain criminal history records for those serving as guardians, proposed guardians, and local guardianship program employees and volunteers who provide guardianship services to the program's wards. This requirement does not apply to family members, attorneys, and individuals who are or will be providing guardianship services to wards of the Department of Aging and Disability Services (DADS).

The GCB and also obtain criminal history information. The GCB obtains criminal history information on applicants for certification. DADS obtains pre-employment criminal history searches for employees in its guardianship program; and beginning September 1, 2008, the GCB will have access to these results when the DADS employee applies for certification.

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The proposal to amend Probate Code Section 698 and Government Code Section 411.1386 will eliminate the redundant requirement for county clerks to perform a criminal history background check if the person subject to the check is certified by the GCB.

## Purpose

This change is needed to help reduce costs for local guardianship programs, DADS and county clerks. It would eliminate some of the financial burden on programs and would save time and effort for county clerks if the requirement for clerks to obtain criminal history background checks on certified guardians was eliminated.

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## STATE OF TEXAS

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#### Immediate Suspension of Certification Under Certain Circumstances

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Chapter 111 by adding the ability to immediately suspend a certified guardian's certification under certain circumstances.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

#### Background

A guardian may be removed immediately without hearing under Probate Code Section 761, if, for example, the court finds upon clear and convincing evidence given under oath that the guardian treated a ward "cruelly." However, Chapter 111 of the Government Code does not authorize the Guardianship Certification Board (GCB) to immediately suspend a guardian's certification if a guardian treats a ward cruelly or commits other egregious acts.

Under the proposal, a guardian's certification would be immediately suspended if the GCB determined that the continued practice of the certified guardian would constitute a continuing and imminent threat to the public welfare. The amendment would include due process protections. For example, the GCB or a three-member committee would make the determination to immediately suspend certification without notice to the certified guardian and would simultaneously institute procedures to convene a hearing. The preliminary hearing would take place within fourteen days of the suspension, and a final hearing would take place within 60 days of suspension. The amendment would also include statutory authority to provide notice of the suspension to the courts with probate jurisdiction where the guardian's wards are located, and also to private professional guardians, local guardianship programs or the Department of Aging and Disability Services, if the certified guardian is providing services to wards of one of those entities.



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This notice will permit the courts and other entities receiving notice to take action to protect the wards under existing statutes while the guardian's certification is suspended.

Purpose

This change is needed to allow the GCB to immediately suspend a certified guardian's certification if the guardian is endangering his or her ward.

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Guardianship Certification Board  
Standing Board Committees

Rules Committee

Don Ford, Chair  
Carol Dabner  
Phil Grant  
Marlane Meyer

Minimum Standards Committee

Garth Corbett, Chair  
Dr. Raymond Costello  
Susan Eason  
Patti Turner