

# **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 that since the Board did not have jurisdiction to consider the matter, a letter should not be sent. 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.