

**Request for Comments on Proposed Amendments  
To Rules Governing Guardianship Certification  
Guardianship Certification Board**

The Guardianship Certification Board (Board) requests comments on the following proposed amendments to Rules XI, XII and XV of the Rules Governing Guardianship Certification. Proposed amendments to each of these Rules were published for public comment on November 16, 2011. Those amendments are identified by a double underline. Additional proposed amendments are single underlined. Comments will be accepted on all proposed changes to the above-referenced Rules.

The proposed amendments to Rule XI add to the remedies available to the Board in a disciplinary action. Issuance of a public or private reprimand is added in Rule XI(a). New section (f) permits probation of a suspension or revocation under certain conditions, and describes the consequences of non-compliance with the conditions of a probated disciplinary action. Suspensions under Texas Family Code Chapter 232 may not be probated, as stated in new section (e).

Amendments are proposed to Rule XII overall. Three changes are proposed to Rule XII(f)(1). The first eliminates the requirement for a copy of the Rules to be provided to the Respondent in a disciplinary action, because they are readily available online. (Instructions to access the Rules Governing Guardianship Certification, as well as the Minimum Standards for Guardianship Services, will be provided as needed.) The second requires notification to the designated certified guardian supervisor when the Respondent is a provisionally certified guardian, and the third proposed change requires that the Petitioner be provided with any materials submitted by the Respondent in response to a complaint, except those which are confidential or exempt from disclosure. Proposed amendments to sections (g), (h) and (i) clarify

the procedures at each phase of a disciplinary action: the Review Committee, the Board meeting and the formal hearing, if any. New section (q) allows changes to the scheduling of Review Committee and Board meetings and formal hearings upon notice to the parties.

The proposed amendments to Rule XV change references from Complainant to Petitioner to be consistent with references in other Rules. These non-substantive changes are the only ones proposed to Rule XV.

Comments must be submitted in writing by 5:00 p.m. on March 16, 2012 to Lesley Ondrechen, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711-2066, or [lesley.ondrechen@txcourts.gov](mailto:lesley.ondrechen@txcourts.gov). The Board will consider the proposed amendments and any comments received at a meeting on April 27, 2012.

## **XI. DISCIPLINARY CRITERIA**

- (a) The Board may deny, suspend or revoke certification or provisional certification, issue a public or private reprimand, 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 recertification 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 guilty or no contest in return for a grant of deferred adjudication to ~~a offenses referenced in Rule VI(e) 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 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~~ Rule 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~~ Rule VI (relating to Requirements for Certification) or the requirements for Provisional Certification set forth in ~~Section~~ Rule 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~~ Rule 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~~ Rule XII.

- (e) Notwithstanding any other provision, suspension of certification or provisional certification pursuant to Texas Family Code Chapter 232 may not be probated.
- (f) Suspension or revocation of certification or provisional certification may be probated. The Board may impose conditions upon a probated suspension or revocation. Failure to strictly comply with all conditions of a probated suspension or revocation is grounds for imposition of the original disciplinary action of suspension or revocation. The Director shall notify the certified or provisionally-certified guardian and the Chair of any alleged failure to comply within ten (10) days of the date on which the Director becomes aware of the alleged failure to comply. The Board will review the non-compliance at its next regularly scheduled quarterly meeting. The Director will notify the certified or provisionally-certified guardian in writing of the meeting date and time. Absent good cause, the original disciplinary action will be imposed by the Board. The Director will notify the certified or provisionally-certified guardian of the Board's decision in writing within ten (10) days of the Board meeting.

## **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. A document given to the Board in support of or in response to a complaint, including the Petition to initiate disciplinary proceedings, is subject to disclosure to the public unless it is confidential or exempt from disclosure under law.
- (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~~ Rule 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.
- (d) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection (c) of this ~~section~~ rule, 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 (c) of this ~~section~~ rule, the Board Chair shall notify the Director that the Petition will not be considered. The Petitioner may re-file an amended Petition.
- (e) Review Committee. Once a Petition is determined to conform to the requirements of subsection (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.

(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. If Respondent is a provisionally-certified guardian, all communication regarding the disciplinary procedure will be copied to his or her designated certified guardian supervisor. 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. The Director will forward to Petitioner the answer and all supporting materials filed by Respondent, except for materials which are confidential or exempt from disclosure under law.
- 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~~ disciplinary action 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~~ proceed and take action as described in sections (h) and (i).

(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 first meeting must take place not more than forty-five (45) days after the earlier of: (a) the Director receives an Answer; or (b) the deadline to file an Answer has passed. 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; Additional Information. 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)~~ ten (10) days after the Review Committee ~~receives the~~ meets to consider the Petition and Answer, if any. ~~If 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 ("deadline").~~ If additional information is requested, the Review Committee will at that time schedule a meeting to be held within fifteen (15) days after the deadline for providing the additional information. Any additional material submitted by Petitioner or Respondent will be provided to the opposing party by the Director, except for

materials which are confidential or exempt from disclosure under law. The Review Committee's recommendation must be in writing and furnished to the Petitioner and 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.
  - 4) Petitioner and Respondent may have an attorney to advise them during the Review Committee meeting(s). The attorneys may also attend by telephone, but must be available to attend at the times and in the manner instructed by the Director. Attorneys - other than attorneys for the Board - may not participate during the presentation of evidence, questioning or cross-examination of witnesses or parties, and review of documents presented. The Review Committee may allow a summary statement to be made by Petitioner and Respondent, and may set a time limit for such statements. If Petitioner or Respondent has an attorney present and wishes to have his or her attorney make the summary statement on his or her behalf, the Review Committee may allow the attorney to do so.
- (h) Hearing Board Action on Review Committee's Recommendation for Dismissal.
- 1) If the Review Committee recommends dismissal and the Board accepts the recommendation, the Director, within ten (10) days, will send written notification of the recommendation to Petitioner and Respondent of this action.
  - 2) If the Review Committee recommends dismissal and the Board does not accept the recommendation, a formal hearing will be scheduled. The Director, within ten (10) days, will send notice to Petitioner and Respondent that the Board did not accept the Review Committee's recommendation of dismissal and that a formal hearing is scheduled, with the date, time, and location of the formal hearing.
- ~~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.~~
- (i) Board Action When Review Committee Recommends Disciplinary Action.
- 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. A recommendation by the Review Committee for disciplinary action must specify the Rules and/or Minimum Standards which were violated and specify the disciplinary action recommended. The Director, within ten (10) days, will send written notification to Petitioner and Respondent of the recommendation for disciplinary action.
  - 2) If the Board accepts the recommendation of the Review Committee, it will adopt and impose the recommendation. If the Board does not adopt the recommendation of the Review Committee, a formal hearing will be scheduled.

- 3) The Respondent may request a formal hearing. The request must be submitted to the Director in writing not later than fifteen (15) days after Respondent receives the written notification of the recommendation for disciplinary action. If Respondent makes a timely request, a formal hearing will be scheduled.
- 4) If Respondent fails to timely request a formal hearing, the Director will notify the Chair and the Review Committee. The recommendation will be acted upon by the Board at its next regularly scheduled quarterly meeting. The Director will notify Petitioner and Respondent of the meeting date, time and location. If Respondent appears at the meeting, he or she may give testimony only regarding good cause for failure to timely request a formal hearing; the Board will not address the substance of the complaint. The Board will schedule a formal hearing if it determines there is good cause for the Respondent's failure to timely request it.
- 5) Scheduling of Hearings. In addition to the circumstances described in this section, the Board in its discretion may schedule a formal hearing. The date, time and location of the hearing will be determined by the Board or its designee. Generally, hearings will be scheduled to coincide with the Board's regularly scheduled quarterly meetings. The hearing must be held within one hundred twenty (120) days of the request for a formal hearing or the meeting dates described in subsections (2) and (3), above.
- ~~2) 6) 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, if any. The Board must also provide the Respondent a copy of the Review Committee's recommendation.~~
- ~~3) 7) Costs of Attending Relating to Hearing. The Respondent Each party is responsible for Respondent's his or her costs of preparing for and attending the hearing, including any costs associated with witnesses called on the Respondent's either party's behalf. The Petitioner is responsible for Petitioner's costs of preparing for and attending the hearing. The Board does not have subpoena powers to compel attendance of witnesses. Witnesses who appear on behalf of Petitioner or Respondent must do so voluntarily.~~
- ~~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) 8) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Petitioner, Respondent, and any attorney representing Petitioner or Respondent may attend the hearing in person or by telephone, but must be available to participate at the times and in the manner instructed by the Director. Formal rules of evidence and procedure will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be by a preponderance of the evidence. 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. The Board or counsel for the Board will examine and cross-examine witnesses. The Board may consider any~~

documents submitted by Petitioner and Respondent. The Board shall allow both Petitioner and Respondent to make a brief summary statement at the conclusion of the testimony and presentation of evidence. The Board shall set a time limit for the summary statements. If Petitioner or Respondent has an attorney, and wishes to have the attorney make the summary statement on his or her behalf, the Board may allow them to do so.

- ~~6)~~ 9) 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)~~ 10) Board Action. The Board will act by majority vote of Board members attending the ~~meeting~~ hearing.
- (j) Board Decision at Hearing. The Board shall notify the Respondent and the Petitioner in writing of its decision not more than ~~forty five (45)~~ fifteen (15) 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.
- ~~(i)~~ (k) Default. If the Respondent fails to appear at the Review Committee, Board meeting or hearing:
  - 1) upon proof that notice of the Review Committee or Board meeting or 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.
- ~~(h)~~ (l) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- ~~(g)~~ (m) 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. Correspondence and notices sent to the Respondent by the Director on behalf of the Board will be sent to the last address on file with the Board.
- ~~(m)~~ (n) Correspondence and notices are not required to be sent by certified mail to the Petitioner if the Petitioner is a Board member.
- ~~(n)~~ (o) Parties and any attorney representing a party may elect in writing to receive correspondence and notices by electronic means.
- ~~(o)~~ (p) If a party has notified the Director in writing that he or she is represented by counsel, correspondence and notices will be sent to the party and to the attorney representing the party.
- ~~(q)~~ For good cause shown, the Board, the Review Committee or their designee may cancel or re-schedule meetings or formal hearings. The Director will notify the Petitioner and Respondent in writing should this occur.

## **XV. ALTERNATIVE DISPUTE RESOLUTION**

- (a) Policy. The Board encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures. By doing so, the Board does not waive immunity from suit or sovereign immunity under the Eleventh Amendment to the United States Constitution.
- (b) Initiation of Settlement Conference. At any time after the filing of a complaint against a certified guardian or provisionally certified guardian, and before the Board

- has conducted a hearing on the complaint, the Director may initiate a Settlement Conference. The Director may initiate the Settlement Conference on the Director's own motion or on the request of any party; however, Settlement Conferences are completely voluntary. All parties must agree before a Settlement Conference can be convened.
- (c) Parties to Settlement Conference. The ~~Complainant~~ Petitioner and Respondent are the parties in a Settlement Conference. The Board (through one or more Board members, staff, or counsel) may also participate as a party in a Settlement Conference at the sole option of the Board Chair. A party may be represented by counsel.
  - (d) Purpose of Settlement Conference. A Settlement Conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary proceeding or to reach agreement about how to handle disputed matters. The parties may use a mediator for the Settlement Conference pursuant to (f) below or conduct the Settlement Conference without a mediator.
  - (e) Power to Settle in Settlement Conference.
    - 1) Does Not Bind Board. The ~~Complainant~~ Petitioner and the Respondent may not bind the Board to any resolution of a complaint pending before the Board. If the ~~Complainant~~ Petitioner and the Respondent are able to resolve some or all of the issues, the Board may consider this fact, and the terms of the agreement, in determining what action, if any, to take on the complaint.
    - 2) Participation of Board Member. The Board Chair may appoint one or more Board members or staff to attend the Settlement Conference. The Board representative shall attend the Settlement Conference and participate in the proceedings in good faith and in an effort to resolve the dispute within the parameters of any instructions received from the Board.
    - 3) Review of Settlement by Board. In the event a settlement of some or all of the disputed issues is reached during the Settlement Conference, the Board shall review the terms of the settlement at the next regularly-scheduled Board meeting.
      - (A) Upon review of the settlement, the Board may:
        - (i) Accept the settlement terms;
        - (ii) Reject the settlement terms and restore all proceedings on the complaint to the status quo as it existed immediately prior to the Settlement Conference; or
        - (iii) Refer the matter for further negotiation.
      - (B) The Director shall notify all parties of any action taken by the Board.
  - (f) Use of Mediator in Settlement Conference.
    - 1) Agreement of Parties. The parties may agree to retain a mediator to assist with the Settlement Conference. Parties who wish to explore this option will be given a reasonable time to do so by the Chair.
      - (A) The parties shall notify the Chair in writing of their agreement to retain a mediator. That notice must include: the name, address, and telephone number of the mediator selected, a statement that the parties have entered into an agreement with the mediator as to the rate and method of his or her compensation, and an affirmation that the mediator is qualified to serve as described herein.

- (B) Upon receipt of a properly-filed notice that complies with this subsection, the Chair will enter an order referring the case to the mediator.
- 2) Appointment if No Agreement. If the parties do not agree to a mediator, the Chair may appoint an individual to serve as mediator in the Settlement Conference. If any party objects promptly and with good cause to the mediator appointed, the Chair will appoint another qualified individual to serve as mediator. An objection will be considered prompt if it is received by the Director within ten (10) days of the date of the order appointing the mediator.
  - 3) Qualifications of Mediator. An individual appointed to serve as a mediator under (1) or (2) above must meet the qualifications set forth in Section 154.052, Texas Civil Practice and Remedies Code. Pursuant to Section 154.052(c), an individual who has served as a probate judge in Texas may be appointed to serve as a mediator.
- (g) Payment of Costs. The Board shall not pay any fees or costs associated with the Settlement Conference unless good cause is shown and the Board and the Office of Court Administration agree to do so prior to the Settlement Conference.
- (h) Confidentiality of Communications. All communications in the Settlement Conference between or among the parties, and between each party and the mediator, if any, are confidential under the same terms as provided in Section 154.053(b) and (c) of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceeding. Notes taken during the Settlement Conference by the parties and the mediator shall be destroyed at the end of the process.
- (i) Time Frame for Settlement Conference and Schedule for Disciplinary Action. A Settlement Conference is not intended to delay the process, including the hearing of the action, except by order of the Chair. Deadlines and settings in the disciplinary action may be extended only by motion to, and order of, the Chair.
- (j) Agreement to be Memorialized.
- 1) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the Settlement Conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential if there is no requirement of law to the contrary.
  - 2) Any part of an agreement that may affect the disposition of the disciplinary action (such as agreements concerning relevant facts) must be filed in the record of the disciplinary action.
  - 3) Whether a final written agreement reached through a Settlement Conference is subject to or excepted from required disclosure, or is confidential, will be determined in accordance with applicable law.
- (k) Conduct of Mediator. If the parties use a mediator for the Settlement Conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Board matters discussed with the parties in the Settlement Conference. The mediator will report to

- the Board in writing whether the Settlement Conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.
- (l) Required Filings. Any request for the appointment of a mediator, any objection to the referral of the matter to a Settlement Conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the Settlement Conference must be filed with the GCB.
  - (m) Other Disputes. Where appropriate and feasible, the Board will attempt to resolve other disputes in which the Board is a party using alternative dispute resolution procedures in lieu of litigation.