

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

AGREEMENT FOR LOCAL GUARDIANSHIP PROGRAM

THIS AGREEMENT, is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, hereinafter called "**County**," and **Brazos Bend Guardianship Services**, a non-profit social service agency serving Fort Bend County residents, hereinafter referred to as "**BBGS**," to provide assistance to disabled and incapacitated adults and their families in Fort Bend County, Texas.

WITNESSETH:

WHEREAS, Chapter 101 of the TEXAS GOVERNMENT CODE requires the clerk to collect a supplemental court-initiated guardianship fee of \$20 for cases filed under Chapter 118 of the TEXAS PROBATE CODE; and,

WHEREAS, Chapter 118 of the TEXAS PROBATE CODE requires the supplemental court-initiated guardianship fee of \$20 to be deposited in a court-initiated guardianship fund in the county treasury and may be used only to supplement, rather than supplant, other available county funds used to fund local guardianship programs that provide guardians for indigent incapacitated persons who do not have family members suitable and willing to serve as guardians; and,

WHEREAS, BBGS provides a local guardianship program that provides assistance to disabled and incapacitated adults and their families with legal guardianship, money management and related alternatives and corporate guardian services; and,

WHEREAS, the Commissioners' Court of Fort Bend County finds that it is in the public interest and serves the general welfare of the community to provide funding from the court-initiated guardianship fund to BBGS to provide services to disabled and incapacitated adults and their families as described herein; and,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties herein named, it is hereby agreed as follows:

ARTICLE I.
INCORPORATION OF PREAMBLE

The parties affirm that all of the matters set forth in the preamble are true and correct and hereby incorporate said preamble as a material part of this Agreement.

ARTICLE II.
SERVICES

2.01 BBGS shall provide assistance to disabled and incapacitated adults and their families with legal guardianship, money management and related alternatives. BBGS shall provide a local guardianship program in which BBGS is legally appointed through a court initiated guardianship process to serve as the guardian for indigent incapacitated persons who do not have family members suitable and willing to serve as guardians, also known as "Corporate Guardian."

- 2.02 BBGS shall comply and perform services in strict compliance with the Rules for Governing Guardianship Certification, attached hereto as Exhibit A incorporated by reference as if set forth herein verbatim for all purposes, and Minimum Standards for Guardianship Services attached hereto as Exhibit B incorporated by reference as if set forth herein verbatim for all purposes.

ARTICLE III.
CONSIDERATION

- 3.01 As consideration for this Agreement, County will annually reimburse BBGS an amount not to exceed the amount of the supplemental court-initiated guardianship fee collected during the previous fiscal year, payable in monthly installments.
- 3.02 BBGS shall submit invoices describing in detail the expenses incurred by BBGS providing the services described herein prior the County's processing of any reimbursement.
- 3.03 County will make reimbursement to BBGS within thirty (30) calendar days after receipt of an approved invoice.

ARTICLE IV.
TERM

- 4.01 This Agreement shall be effective on **October 1, 2012** and shall terminate at the option of either County or BBGS upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
- 4.02 The termination of the Agreement will be effective upon the last day of the month in which the expiration of the thirty (30) day period occurs.

ARTICLE V.
ASSIGNMENT

BBGS WILL NOT, IN WHOLE OR IN PART, TRANSFER, ASSIGN, ALL OR ANY PORTION, ABANDON, OR OTHERWISE DISPOSE OF ITS RIGHTS UNDER THIS AGREEMENT, WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF COMMISSIONERS' COURT.

ARTICLE VI.
NOTICE

- 6.01 Any notice required or permitted hereunder to be given, shall be given by registered or certified United States Mail, return receipt requested, postage prepaid, addressed to:

To County:

Fort Bend County
301 Jackson, 7th Floor
Richmond, Texas 77469
Attn: County Judge
Phone (281) 341-8608
Fax: (281) 341-8609

To BBGS:

Brazos Bend Guardianship Services
Attn: Kirk Monroe, Executive Director
10435 Greenbough, Suite 200
Stafford, Texas 77477
Phone 281-207-2320
Fax 281-207-2301

With Copies To:
Fort Bend County Attorney:
301 Jackson Street, Suite 621
Richmond, Texas 77469
Phone: (281) 341-4555
Fax: (281) 341-4557

- 6.02 Notice will be considered given and completed upon deposit of notice in the U.S. Mail.
- 6.03 Notwithstanding anything to the contrary herein contained, County is not precluded from giving actual notice to BBGS in any manner.
- 6.04 Any change to BBGS addresses will be in writing, signed by BBGS, and will be delivered to the Commissioners' Court of the County.

ARTICLE VII.
INDEMINIFICATION

- 7.01 **BBGS EXPRESSLY AGREES TO INDEMNIFY AND HOLD COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS "COUNTY"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS AND RELATED EXPENSES IN ANY MANNER WHATSOEVER, ARISING OUT OF THE SERVICES AND ALL EVENTS AND/OR ACTIVITIES OF BBGS, ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- 7.02 **BBGS WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF BBGS.**

ARTICLE VIII.
INSURANCE

BBGS shall, prior to performing services and for the duration of term of this Agreement, keep in full force and effect a policy of general liability insurance of not less than \$1,000,000.00 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. BBGS shall have its insurer issue a certificate describing the terms of the policy and stating that the policy is amended to provide that the insurer shall not cancel or reduce the insurance without first giving the County ten (10) days prior written notice. BBGS shall submit a copy of the Certificate of Liability to Fort Bend County Risk Management Department for review. The policy shall contain a clause that the insurer will not cancel or reduce the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available. Annually thereafter on renewal of the policy, BBGS shall have its insurer issue a new certificate confirming renewal of the policy and that it remains in effect, including the provision requiring the above notice to the County, and send a copy of the renewal certificate to the County. Failure of BBGS to provide the appropriate insurance information shall invalidate this Agreement.

ARTICLE IX.
MISCELLANEOUS

- 9.01 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 9.02 Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.
- 9.03 No member, official, or employee of County shall be personally liable to BBGS or any successor in interest, in the event of any default or breach by County or for any amount which may become due to BBGS, its successors, or on any obligations under the terms of this Agreement.
- 9.04 This Agreement shall be governed by the laws of the State of Texas. Venue for all purposes is the County of Fort Bend, Texas.

ARTICLE X.
BBGS' REPRESENTATIONS AND ACKNOWLEDGEMENTS

- 10.01 BBGS warrants and represents unto County that:
 - A. BBGS is a duly organized and existing legal entity, in good standing in the state of Texas;
 - B. BBGS has full right and authority to execute, deliver and perform this Agreement;
 - C. The person executing this Agreement on behalf of BBGS was authorized to do so;
 - D. That prior to County's execution of this Agreement, BBGS will deliver to County satisfactory evidence of the person executing this Agreements authority to execute this Agreement on behalf of BBGS.

ARTICLE XI
ENTIRE AGREEMENT

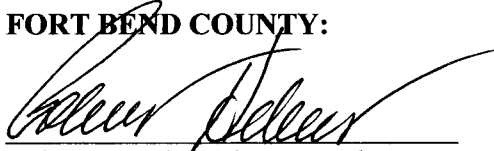
- 11.01 This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the County, acting through its Commissioners Court, and BBGS.
- 11.02 BBGS hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- 11.03 Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

EXECUTION PAGE TO FOLLOW

ARTICLE XII.
EXECUTION

IN TESTIMONY AND WITNESS OF WHICH this Agreement has been executed in duplicate originals as follows:

FORT BEND COUNTY:



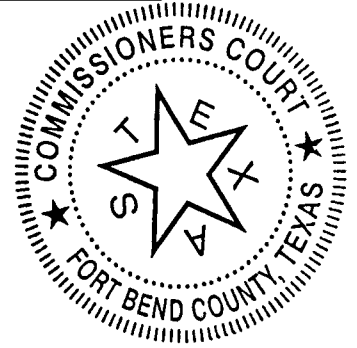
Robert E. Hebert, County Judge

Date: 9-25-2012

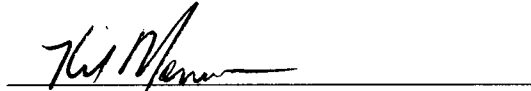
ATTEST:



Dianne Wilson, County Clerk



BRAZOS BEND GUARDIANSHIP SERVICES

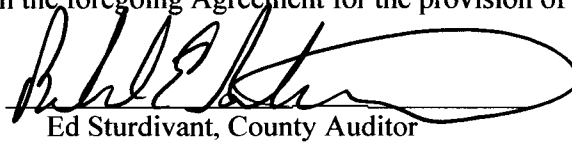


Kirk Monroe, Executive Director

Date: 9/7/12

Auditor Certificate

I hereby certify that funds in the amount of \$ Limited to Chapter 101 fees are available to pay the County's obligation within the foregoing Agreement for the provision of Services.


Ed Sturdivant, County Auditor

**Attachment: Exhibit A: Rules for Governing Guardianship Certification
Exhibit B: Minimum Standards for Guardianship Services**

RULES GOVERNING GUARDIANSHIP CERTIFICATION
Including Amendments Through January 5, 2009

I. PURPOSE

The purpose of these rules is to provide a mechanism to certify individuals who provide guardianship services in Texas and to ensure that these individuals meet minimum qualifications, have a minimum level of knowledge and perform their responsibilities in a professional and competent manner.

II. DEFINITIONS

- (a) "Attest" means to confirm as true under oath.
- (b) "Board" means the Guardianship Certification Board.
- (c) "Certified guardian" means a person who is certified to provide guardianship services in this state by the Guardianship Certification Board.
- (d) "Corporate fiduciary" has the meaning assigned by Section 601 of the Texas Probate Code.
- (e) "Director" means the director of the Guardianship Certification Board.
- (f) "Engaged in the business of providing guardianship services" means to perform, offer to perform, or advertise the performance of guardianship services for compensation.
- (g) "Guardian" has the meaning assigned by Section 601 of the Texas Probate Code.
- (h) "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.
- (i) "Guardianship services" means conducting, performing, or administering such duties or powers as prescribed by the Texas Probate Code or under a court order in a guardianship matter.
- (j) "Incapacitated person" has the meaning assigned by Section 601 of the Texas Probate Code.
- (k) "Minimum Standards for Guardianship Services" means the Minimum Standards for Guardianship Services promulgated under Section 111.041 of the Texas Government Code.
- (l) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.
- (m) "Provisionally-certified guardian" means a person who has received provisional certification to provide guardianship services in this state from the Guardianship Certification Board.
- (n) "Review Committee" means a committee appointed by the Chair of the Board to review the denial of an application for certification, provisional certification, or re-certification or to review a petition that has been filed with the Board to initiate disciplinary action against a certified guardian.
- (o) "Supervisor" means a certified guardian who has notified the Board that he or she will be responsible for overseeing an applicant for provisional certification.

- (p) "Volunteer" means a person who renders guardianship services on behalf of a guardianship program and who does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.
- (q) "Ward" has the meaning assigned by Section 601 of the Texas Probate Code.

III. CERTIFICATION AND RE-CERTIFICATION

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

IV. DUTIES OF THE BOARD

The Board shall develop or oversee the following:

- (a) Approval of the application process used for guardian certification, provisional certification, and re-certification.
- (b) Determination as to whether applicants have met the requirements for certification, provisional certification, or re-certification.
- (c) Approval of training and continuing education courses related to meeting certification or re-certification requirements.

- (d) Approval of waivers or modification of specific certification requirements for good cause.
- (e) Establishment of criteria relative to denial, suspension or revocation of certification.
- (f) Determination of all requests for review of denials of certification, provisional certification, and re-certification.
- (g) Review and determination of all complaints submitted to the Board regarding the conduct of certified guardians and provisionally-certified guardians.
- (h) Maintenance of all appropriate records relative to certification.

V. APPLICATION PROCEDURE

- (a) **Application Forms.** Applications for certification, provisional certification, and re-certification shall be made in writing on forms provided by the Board. In appropriate circumstances, the Board may require the applicant to submit information in addition to that called for on the application forms.
- (b) **Fees.** All fees connected with certification and re-certification shall be set by the Board with the approval of the Supreme Court and are non-refundable. A schedule of fees shall be published on the Board's web site.
 - 1) **Application Fee.** Each applicant must submit a non-refundable application fee along with the completed application form. No application will be processed until the application fee has been paid. However, an employee of the Texas Department of Aging and Disability Services who is applying for a certificate to provide guardianship services to a ward of the department is exempt from payment of the application fee.
 - 2) **Examination Fee.** Each applicant must submit a non-refundable examination fee to take the examination approved by the Board that affirms competency in Texas guardianship matters. The fee must be paid by the date established in the examination schedule.
 - 3) **Re-certification Fee.** Each application for re-certification must be accompanied by a non-refundable re-certification fee. However, an employee of the Texas Department of Aging and Disability Services who is applying for re-certification to provide guardianship services to a ward of the department is exempt from payment of the re-certification fee. No re-certification application may be processed until the re-certification fee, if applicable, has been paid.
 - 4) **Late Fee.** Each late application for re-certification must be accompanied by a non-refundable late fee.
- (c) **Application Procedures.** Upon receipt of a completed application form, Board staff shall review and accept the application if:
 - 1) the application form has been completed;
 - 2) the applicant meets the requirements for certification or provisional certification; and
 - 3) the appropriate application fee has been paid.
- (d) **Application for Re-certification.** Certification shall expire on the second anniversary of the date the certificate is issued. Re-certification shall expire every two years

thereafter on the same day and month of the original certification. Applications for re-certification accompanied by the appropriate fee must be filed at least ninety (90) days before the certification expires; applications filed after this deadline but within ninety (90) days after the certification expires will be subject to a late fee. Re-certification applications filed more than ninety (90) days after the certification expires shall be denied and the certification process must begin anew.

- (e) Application for Provisional Certification. In addition to the other information required on the application form, an applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.
- (f) Expiration of Certification. Upon expiration of a certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

VI. REQUIREMENTS FOR CERTIFICATION

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

- (a) Be at least twenty-one (21) years of age;
- (b) Be a high school graduate or possess the GED equivalent;
- (c) Have two years of relevant work experience related to guardianship or the following educational or training requirements:
 - 1) a minimum of a bachelors degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship, including but not limited to medical, mental health and mental retardation, law, business, accounting, social work, sociology, psychology, human services, protective services, and criminal justice fields, or
 - 2) completion of a course curriculum or training specifically related to guardianship approved by the Board;
- (d) Meet one of the following criteria:
 - 1) have successfully completed an examination approved by the Board covering Texas law and procedure related to guardianship, and any other examination required and approved by the Board testing knowledge of guardianship issues, or
 - 2) be currently certified by and in good standing with the National Guardianship Foundation and have successfully completed an exam approved by the Board covering Texas law and procedure related to guardianship issues;
- (e) Attest under penalty of perjury as to whether he or she has ever been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041

(abandoning or endangering a child), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code; and

- (f) Attest under penalty of perjury as to whether he or she:
 - 1) has ever been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion;
 - 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 or suspended in Texas or any other jurisdiction requiring certification, registration or licensure to provide guardianship services.
- (g) Provide the Board with his or her Texas and national criminal history records by having his or her fingerprints submitted to the Texas Department of Public Safety (DPS), to be used by DPS for a Texas criminal history search and forwarded to the Federal Bureau of Investigation for a national criminal history search. The criminal history records resulting from both the Texas and national criminal history searches will then be forwarded to the Board. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the application is submitted.
- (h) If the applicant has ever been adjudged guilty of or pleaded no contest to any crime described in Section VI(e) above, or been relieved of guardian responsibilities, been found civilly liable, settled a claim, or been denied certification or had certification revoked or suspended as described under Section VI(f)(1), (2) or (3) above, the applicant must describe with particularity the circumstances and provide any related documentation requested by the Board.

VII. REQUIREMENTS FOR RE-CERTIFICATION

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

- (a) The certified guardian must comply with subsections (e), (f), and (g) of Section VI (relating to Requirements for Certification) of these rules.
- (b) Continuing Education. During each two year certification period, the certified guardian must complete at least six hours per year of continuing education and guardianship training by completing a course that has been approved by the Board under Section XIII (relating to Approval of Continuing Education). The six hours shall include a minimum of one hour of ethics. The above two-year continuing education requirement must also include a minimum of one hour of legislative update.
 - 1) Continuing education must be earned to satisfy the requirements prior to the expiration of the certificate. The certified guardian must list on the application for re-certification the dates, locations, sponsors, number of regular credits and number of ethics credits earned for sufficient continuing education courses to

satisfy this requirement. Nothing herein shall be deemed to waive late fees under Section V.

- 2) A certified guardian may carry forward for the following year's requirement up to two hours of continuing education earned in excess of the minimum six hours, but ethics hours may not be carried forward.
- 3) The certified guardian must obtain documentation of attendance or completion of a continuing education activity from the sponsoring entity and submit the documentation to the Board along with the certified guardian's application for re-certification.
- 4) A certified guardian may also earn continuing education credit by speaking at a seminar, teaching a course or authoring a book or article and obtaining approval for this activity under Section XIII (relating to Approval of Continuing Education).

VIII. BOARD DETERMINATION

If the applicant has complied with the application process, the Board shall grant certification, provisional certification, or recertification unless denial is made in accordance with Section IX. The Board may conduct further investigation or require additional information from the applicant or other sources. In appropriate circumstances, the Board may grant or deny certification, provisional certification, and re-certification based on the further information it receives.

IX. REVIEW AND APPEAL OF CERTIFICATION DENIAL

- (a) Denial. The Board may deny an application for certification, provisional certification, or re-certification only if the applicant fails to meet the standards set forth in Section VI (relating to Requirements for Certification), Section VII (relating to Requirements for Re-Certification), or Section XIV (relating to Provisional Certification), as applicable, or if the applicant has met any of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria). The Board must furnish to the applicant a written statement that includes the reason(s) for denying the application.
- (b) Review of denial. Within fifteen (15) days after receipt of notice that the Board has denied an application for certification, provisional certification, or re-certification, the applicant may petition the Board for review of the denial. If a petition for review is timely received, the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.
- (c) Response; Failure to Submit Response. At the same time the Director notifies the Board Chair of the denial, the Director will notify the applicant in writing that the applicant may submit a written response to the denial within fifteen (15) days of

receipt of the notice. If the applicant fails to submit a written response within the required time, absent good cause such failure constitutes a default, and the review shall be dismissed without further action by the Review Committee or the Board.

- (d) **Review and Recommendation by Review Committee.** The Review Committee Chair will schedule at least one meeting to review the denial and response. Additional meetings may be held as deemed necessary. While the Review Committee may seek additional information in its discretion, it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Board staff and applicant. The recommendation of the Review Committee must be in writing and must be furnished to the applicant at the same time it is furnished to the Board.
- (e) **Hearing.** If the Review Committee recommends denial of the application for certification, provisional certification, or re-certification, the applicant may request a hearing. Such request must be made not less than fifteen (15) days after the date the applicant receives a copy of the Review Committee's recommendation.
 - 1) **Hearing Date and Location.** If the applicant timely requests a hearing, the date and location of the hearing will be determined by the Board. The hearing must be held within one hundred twenty (120) days after the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.
 - 2) **Notice of Hearing; Requirements.** The Board shall give notice of the hearing to the applicant. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the reasons the application was denied.
 - 3) **Costs of Attending Hearing.** The applicant is responsible for applicant's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the applicant's behalf.
 - 4) **Applicant's Rights at Hearing.** At the hearing, the applicant will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The applicant may be represented by legal counsel at the hearing.
 - 5) **Conduct of the Hearing; Burden of Proof.** The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the applicant to show why the denial of the application was erroneous. The burden of proof shall be by a preponderance of the evidence.
 - 6) **Board Counsel.** The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
 - 7) **Board Action.** The Board will act by majority vote of Board members attending the meeting.
- (f) **Default.** If the applicant fails to appear at the hearing:
 - 1) upon proof that notice of the hearing was given to applicant, the Board may proceed in the applicant's absence on a default basis; and

- 2) the factual allegations in the denial of the application may be deemed admitted.
- (g) Final Decision. The Board shall notify the applicant in writing of its decision not more than forty-five (45) days after the conclusion of the hearing.
- (h) Applicability of section. This section does not apply to a disciplinary action resulting from a complaint filed and processed under Section XII (relating to Complaints; Disciplinary Procedure).

X. RESPONSIBILITIES OF THE CERTIFIED GUARDIAN; REPORTING REQUIREMENTS

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

- (g) In addition to the information required in subsection (f), not later than January 31 of each year, each private professional guardian must provide to the Board the following information for the preceding year:
- 1) for each guardianship in which the private professional guardian served as a guardian, the name of the ward and the docket number and court having jurisdiction of the guardianship;
 - 2) the aggregate fair market value of the property of all wards that was managed by the private professional guardian;
 - 3) whether the private professional guardian was removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and
 - 4) reaffirmation of subsections (e) and (f) of Section VI (relating to Requirements for Certification) of these rules.
- (h) Information that must be submitted under subsections (f) and (g) must be submitted on appropriate forms and in the manner determined by the Board.

XI. DISCIPLINARY CRITERIA

- (a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has:
- 1) Failed to comply with any of these rules;
 - 2) Failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;
 - 3) Failed to pay any applicable fee established by the Board;
 - 4) Failed to meet the requirements for certification, provisional certification, or re-certification established by the Board;
 - 5) Falsely represented or misstated any material fact to the Board;
 - 6) Been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - 7) Been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.
 - 8) Been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.

- 9) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.
 - 10) Failed to notify the Board of a violation of any of the provisions set forth in subsections (e) and (f) of Section VI (relating to Requirements for Certification).
 - 11) Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.
- (b) The Board may suspend or revoke certification or provisional certification if the certificate was granted:
- 1) Contrary to these rules and the requirements for certification set forth in Section VI (relating to Requirements for Certification) or the requirements for Provisional Certification set forth in Section XIV (relating to Provisional Certification); or
 - 2) To an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Board.
- (c) 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 may request an extension of time to file an Answer. The request must be made in writing before the expiration of the fifteen (15) day period. For good cause shown, the Review Committee or its designee may extend the Respondent's time to answer for such period as it may determine, but in no event shall the extension exceed thirty (30) days.
 - 2) Failure to Submit Answer. If the Respondent fails to submit an Answer within the required time, absent good cause shown, such failure will constitute default, and all facts alleged in the Petition may be taken as true. If the Review Committee believes that such default has occurred, it will recommend to the Board whether any sanctions should be imposed. Absent good cause for the failure to timely submit an Answer, the Board shall enter an order of default and determine any sanctions to be imposed.
- (f) Review and Recommendation by Review Committee.
- 1) Review by Review Committee. The Review Committee Chair will schedule at least one meeting to review the Petition and Answer, if any. Additional meetings may be held as deemed necessary by the Review Committee. The Review Committee may seek additional information in its discretion, but it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Petitioner and Respondent.
 - 2) Review Committee's Recommendation. If the Review Committee does not request additional information from the Petitioner or Respondent, the Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. If the Review Committee requests additional information, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within fifteen (15) days after the date it receives or should have received the additional information. The Review Committee's recommendation must be in writing and furnished to the Respondent at the same time it is furnished to the Board.
- (g) 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.

XIII. APPROVAL OF CONTINUING EDUCATION

- (a) A continuing education activity must be an organized program of learning dealing with matters that are directly related to the guardianship profession, the services guardians provide, and the legal process involved in guardianship proceedings. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified guardian and the certified guardian's impact on the judicial process and the public. In this Section XIII, the term "certified guardian" includes a provisionally-certified guardian.
- (b) Subject to the requirements contained in Section VII(b) (relating to Requirements for Re-Certification), continuing education activities should include one or more of the following subjects:
 - 1) guardianships;
 - 2) trust administration;
 - 3) powers of attorney;
 - 4) mental or physical health or geriatric health;
 - 5) ethics for guardians, including cooperation with lawyers, judges and fellow guardians and courtesy to all litigants;
 - 6) Texas statutes, rules and case law relevant to the guardianship profession;
 - 7) the role and responsibilities of the certified guardian under the Texas Probate Code, rules adopted by the Supreme Court relating to guardianship certification and the Minimum Standards for the Provision of Guardianship Services adopted by the Board; and
 - 8) management issues, including financial planning and accounting.
- (c) The following do not qualify as continuing education activities under these rules:
 - 1) attendance or participation at professional or association business meetings, general sessions or policy making sessions;
 - 2) service on a committee or council or as an officer in a professional organization;
 - 3) activities completed to satisfy the requirements of a disciplinary action; and
 - 4) any activity completed as ordered by a judicial officer.
- (d) The Board will publish on its web site a list of courses that are approved by the Board as continuing education activities. Any such activities that are used by a certified guardian to satisfy the requirements of Section VII(b) must meet the requirements of subsections (a) and (b) above.
- (e) Continuing education activities conducted by entities that have not been approved by the Board may be approved by the Board upon written request for approval made by a certified guardian.
 - 1) The request for approval must be made on a form provided by the Board and must include a sample brochure or course outline that describes the content of the program, identifies the presenters, indicates the time devoted to each subject and the date and location of the program.
 - 2) The request for approval will be reviewed and approved or denied by the Director. A certified guardian may appeal the Director's denial of a request for approval by

submitting a written appeal to the Board within fifteen (15) days of notification of the denial.

- 3) The Board shall review the denial at its next regularly scheduled meeting. The requesting guardian must be notified of the Board's decision not less than fifteen (15) days after the Board's decision.
- (f) A certified guardian may request up to six hours of continuing education credit during each 2-year certification period for teaching courses, speaking at seminars, or authoring books or articles related to the subject matter specified in Section XIII(b). The certified guardian must submit an application for teaching credit on a form provided by the Board. Credit for preparation and presentation may be provided on the basis of hour-for-hour credit for each hour spent preparing the article or book or making the presentation.

XIV. PROVISIONAL CERTIFICATION

- (a) Application for Provisional Certification. An individual who does not meet the requirements for certification in Section VI(c) or (d) may apply for provisional certification in writing on the forms provided by the Board.
- (b) Requirements for Provisional Certification. To be eligible for provisional certification, an applicant must meet all requirements in Section VI other than those listed in (c) and (d). Provisional certification shall expire on the second anniversary of the date the certificate is issued.
- (c) Responsibilities of Provisionally-Certified Guardian.
 - 1) A provisionally-certified guardian may provide guardianship services in this state only under the supervision of a certified guardian supervisor.
 - 2) A provisionally-certified guardian must comply with these rules and with the Minimum Standards for Guardianship Services.
 - 3) Change of Name or Address. A provisionally-certified guardian shall notify the Board in writing of any change in name or business name, business or home physical address, or business or home telephone number within thirty (30) days of any change.
 - 4) Notice to Board. A provisionally-certified guardian shall immediately notify the Board if:
 - A. the provisionally-certified guardian obtains a different supervisor;
 - B. the provisionally-certified guardian is indicted, formally charged, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication to any offense listed in Section VI(e);
 - C. any of the proceedings listed in Section VI(f) is initiated;
 - D. events or circumstances would require any changes to the attestation required by Section VI(f); or
 - E. the provisionally-certified guardian is removed as a guardian under Section 761 of the Texas Probate Code.

- 5) Documents Filed with Court. Each document prepared by or on behalf of a provisionally-certified guardian and filed with a court shall include the provisionally-certified guardian's certification number and the name and certification number of his or her supervisor.
 - 6) A provisionally-certified guardian must comply with the continuing education requirements in Section VII(b).
- (d) Responsibilities of Supervisor.
- 1) A supervisor shall:
 - A. assume primary responsibility for guiding the provisionally-certified guardian's work and for supervising, generally and directly, as necessary, the quality of the provisionally-certified guardian's work;
 - B. meet with each provisionally-certified guardian at least once every two weeks, with at least one of these meetings being face-to-face each month;
 - C. assist the provisionally-certified guardian in activities to the extent the supervisor considers it necessary and appropriate;
 - D. ensure the provisionally-certified guardian is familiar with the provisions of these rules and the Minimum Standards for Guardianship Services; and
 - E. monitor the provisionally-certified guardian's compliance with these rules and the Minimum Standards for Guardianship Services.
 - 2) A supervisor may not supervise more provisionally-certified guardians than a reasonably prudent supervisor operating under substantially similar circumstances would supervise at one time.
 - 3) A supervisor whose certification expires, is revoked, or is suspended may not continue as a supervisor and must notify all provisionally-certified guardians under that person's supervision that the person may not continue as a supervisor.
 - 4) A supervisor shall immediately notify the Board, or cause notice to be sent to the Board, if the supervisor ceases to supervise a provisionally-certified guardian.
- (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.

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 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 and the Respondent may not bind the Board to any resolution of a complaint pending before the Board. If the Complainant and the Respondent are able to resolve some or all of the issues, the Board may consider this fact, and the terms of the agreement, in determining what action, if any, to take on the complaint.
 - 2) Participation of Board Member. The Board Chair may appoint one or more Board members or staff to attend the Settlement Conference. The Board representative shall attend the Settlement Conference and participate in the proceedings in good faith and in an effort to resolve the dispute within the parameters of any instructions received from the Board.
 - 3) Review of Settlement by Board. In the event a settlement of some or all of the disputed issues is reached during the Settlement Conference, the Board shall review the terms of the settlement at the next regularly-scheduled Board meeting.
 - (A) Upon review of the settlement, the Board may:
 - (i) Accept the settlement terms;
 - (ii) Reject the settlement terms and restore all proceedings on the complaint to the status quo as it existed immediately prior to the Settlement Conference; or
 - (iii) Refer the matter for further negotiation.
 - (B) The Director shall notify all parties of any action taken by the Board.
- (f) Use of Mediator in Settlement Conference.

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

MINIMUM STANDARDS FOR GUARDIANSHIP SERVICES

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MINIMUM STANDARDS FOR THE PROVISION OF GUARDIANSHIP SERVICES

Preamble

The purpose of these Minimum Standards for the Provision of Guardianship Services (Minimum Standards) is to protect the interests of incapacitated persons in Texas by ensuring that certified guardians and guardianship programs provide guardianship services in a professional and competent manner. These standards are promulgated by the Texas Guardianship Certification Board (Board) and the Texas Supreme Court pursuant to Section 111.041 of the Texas Government Code.

The National Guardianship Association (NGA) Standards of Practice were of great assistance in the development of these Minimum Standards, and the organization and form of the Minimum Standards generally follows that of the NGA Standards of Practice. For some standards and definitions, the Board adopted different language in the Minimum Standards to be consistent with Texas law and Texas experience. For example, NGA Standard 6 on Informed Consent and Standard 14 on Decision Making About Medical Treatment have been substantially modified, and NGA Standard 15 on Decision Making About Withholding and Withdrawal of Medical Treatment has been abbreviated and incorporated within Minimum Standard 14. The NGA Standards of Practice are available at <http://www.guardianship.org>. Pursuant to Section 531.124(b) of the Texas Government Code, the Guardianship Advisory Board reviewed and commented on the Minimum Standards.

Standard 1

Applicability

These Minimum Standards apply to the provision of guardianship services by certified guardians, guardianship programs, and the Texas Department of Aging and Disability Services.

Standard 2

Relationship with the Court

- I. Guardianships are established through a legal process and are subject to the supervision of the Court.
- II. The guardianship court order determines the authority and the limitations of the guardian.
- III. The guardian shall know the extent of the powers granted by the Court and shall not act beyond those powers.
- IV. The guardian shall clarify with the Court any questions about the meaning of the order or directions from the Court before taking action based on the order or directions.
- V. The guardian shall obtain court authorization for actions that are subject to court approval.
- VI. The guardian shall submit reports regarding the status of the guardianship to the Court as ordered by the Court or required by the Texas Probate Code, but not less often than annually.

AS AMENDED – 1/19/07

- VII. All payments to the guardian from the assets of the ward shall follow applicable federal or Texas statutes, rules, and requirements and are subject to review by the Court.

Standard 3

Relationship with the Ward

- I. The guardian shall maintain a professional relationship with the ward, the ward's family, and the ward's friends.
- II. The guardian may not engage in sexual relations with a ward.

Standard 4

Relationship with Family Members and Friends of the Ward

- I. The guardian shall recognize the value of family and friends to the quality of life of the ward. The guardian shall encourage and support the ward in maintaining contact with family members and friends when doing so benefits the ward.
- II. The guardian shall assist the ward in maintaining or reestablishing relationships with family and friends, except when doing so would not be of benefit to the ward.
- III. When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval and in compliance with the Texas Probate Code, to obtain assets (particularly those with sentimental value).
- IV. The guardian shall make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward. Subject to court approval, the present needs of a ward, if not covered by other property, may have priority over preservation of designated property.
- V. The guardian may maintain communication with the ward's family and friends regarding significant occurrences that affect the ward when that communication would benefit the ward.
- VI. The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the ward. The guardian may request and consider family input when making medical decisions.

Standard 5

Relationship with Other Professionals and Providers of Service to the Ward

- I. The guardian shall treat all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the ward.
- II. The guardian shall develop and stay current with the services, providers, facilities, and community resources to ensure that the ward receives high-quality services from the most appropriate provider.

- III. The guardian shall coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. A guardian shall not provide direct services to the ward for compensation unless a written contract approved by the court authorizes the provision of such services.
- IV. The guardian shall engage the services of professionals (such as attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward and in compliance with the Texas Probate Code.

Standard 6

Informed Consent

- I. The guardian shall enable the ward to exercise the ward's right to make informed consent decisions to the greatest extent of the ward's capacity and ability.
- II. The guardian, standing in the place of the ward who lacks capacity, shall access the same information that would have been given to the ward if the ward had capacity in order to make informed substituted judgments on behalf of the ward.
- III. The guardian shall make a good faith effort to determine whether the ward has previously stated any preferences before making any decisions on the ward's behalf and then follow these preferences unless doing so would adversely affect the ward or the ward's estate.
- IV. The guardian may make decisions that are contrary to the known preferences of the ward when following the wishes of the ward would adversely affect the ward.

Standard 7

Standards for Decision-Making

- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent.
- II. **SUBSTITUTED JUDGMENT**
 - A. Substituted Judgment is the principle of decision-making that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the ward would have made when competent.
 - B. Substituted Judgment promotes the underlying values of self-determination and well-being of the ward.
 - C. Substituted Judgment is not used when following the ward's wishes would cause substantial harm to the ward or when the guardian cannot establish the ward's prior wishes.
- III. **BEST INTEREST OF THE WARD**
 - A. Best Interest is the standard of decision-making the guardian should use when the ward has never had capacity or when the ward's wishes cannot be determined.

AS AMENDED – 1/19/07

- B. The Best Interest standard requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the ward.
- C. The Best Interest standard is used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.
- D. Best Interest decisions include consideration of the ward's current and previously expressed wishes.

Standard 8

Least Restrictive Alternative

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the needs of the ward while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the ward and maintaining the ward's protection and safety.
- III. The following guidelines apply in the determination of the least restrictive alternative:
 - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
 - B. The guardian shall make a good faith effort to know the ward's preferences.
 - C. The guardian shall consider assessments of the ward's needs as determined by specialists. This may include an independent assessment of the ward's functional ability, the ward's health status, and the ward's care needs.

Standard 9

Self-Determination of the Ward

- I. The guardian shall provide the ward with every opportunity to exercise those rights that the ward might be capable of exercising as they relate to the care of the ward's person.
- II. The guardian shall encourage the development or maintenance of maximum self-reliance and independence of the ward.
- III. The guardian shall advocate for individualized planning and the least restrictive alternative on behalf of the ward.

Standard 10

Duties Regarding Diversity and Personal Preference of the Ward

The guardian shall make a good faith effort to determine the extent to which the ward identifies with particular ethnic, religious, gender, cultural, and personal values and to make decisions consistent with these values in the best interest of the ward.

Standard 11

Confidentiality

- I. Subject to state and federal law, the guardian shall keep the affairs of the ward confidential.
- II. The guardian shall respect the ward's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed in the best interest of the ward.

Standard 12

Duties of the Guardian of the Person

The guardian of the person shall have the following duties and obligations to the ward unless the order of appointment provides otherwise:

- A. To see that the ward is living in the most appropriate environment that addresses the ward's wishes and needs.
 - 1. The guardian shall authorize moving a ward to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the ward, and serves the overall best interest of the ward.
 - 2. When the guardian considers involuntary or long-term placement of the ward in an institutional setting, the bases of the decision shall be to minimize the risk of substantial harm to the ward, to obtain the most appropriate placement possible, and to secure the best treatment for the ward.
- B. To ensure that provision is made for the support, care, comfort, health, and maintenance of the ward.
- C. To make reasonable efforts to secure for the ward medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the ward's potential for self-reliance and independence.
- D. To seek specific judicial authority when the dissolution of a marriage or another extraordinary circumstance is being addressed.
- E. To file with the Court, on a timely basis but not less often than annually, all reports required by the Texas Probate Code or as ordered by the Court.

- F. To petition the Court for modification or termination of the guardianship when the ward's capacity is partially or completely restored.

Standard 13

Guardian of the Person: Initial and Ongoing Responsibilities

- I. After appointment, the guardian shall:
 - A. Address all issues of the ward that require immediate action.
 - B. Meet with the ward as soon after the appointment as is feasible. At the first meeting, to the extent possible given the ward's capacity to comprehend and communicate, the guardian shall:
 - 1. Communicate to the ward the role of the guardian;
 - 2. Explain the rights retained by the ward;
 - 3. Assess the ward's physical and social situation, the ward's educational, vocational, and recreational needs, the ward's preferences, and the support systems available to the ward; and
 - 4. Attempt to gather any missing necessary information regarding the ward.
 - C. Notify relevant agencies and individuals of the appointment of a guardian and complete the intake process by documenting:
 - 1. Physician's evaluation.
 - 2. Psychological or neuropsychological evaluation, if appropriate
 - 3. An inventory of advance directives: Such statements of intent would include, but are not limited to, powers of attorney, living wills, and organ donation statements.
- II. The guardian shall obtain all public benefits for which the ward is eligible.
- III. The guardian shall establish and maintain contact with the guardian of the estate or other fiduciary of the ward, where appropriate.
- IV. The guardian shall develop and monitor a written guardianship plan setting forth short-term and long-term goals for meeting the ward's needs that are addressed in the guardianship order.
 - A. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward.
 - B. The plan must also address whether the ward's finances and budget are in line with the services the ward needs and are flexible enough to deal with the changing status of the ward.

- C. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.
 - D. The plan must be based on a multidisciplinary functional assessment.
 - E. The plan must be updated no less often than annually.
- V. The guardian shall maintain a separate file for each ward. The file must include, at a minimum, the following information and documents:
- A. The ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
 - B. All legal documents involving the ward;
 - C. Advance directives;
 - D. A list of key contacts;
 - E. A list of service providers, contact information, a description of services provided to the ward, and progress/status reports;
 - F. A list of all over-the-counter and prescribed medication the ward is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication;
 - G. Documentation of all ward and collateral contacts, including the date, time, and activity;
 - H. Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward;
 - I. The guardianship plan;
 - J. An inventory, if required;
 - K. Assessments regarding the ward's past and present medical, psychological, and social functioning;
 - L. Documentation of the ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and
 - M. A photograph of the ward.
- VI. The guardian shall visit the ward consistent with the requirements of A through F below and in compliance with the Court's order, but not less often than monthly.
- A. The guardian shall assess the ward's physical appearance and condition and assess the appropriateness of the ward's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological,

educational, direct services, and health and personal care needs as well as the need for any additional services.

- B. The guardian shall maintain substantive communication with service providers, caregivers, court visitors, and others attending to the ward.
- C. The guardian shall make a good faith effort to participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the ward.
- D. The guardian shall require that each service provider develop an appropriate service plan for the ward and must take appropriate action to ensure that the service plans are being implemented.
- E. The guardian shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the ward at the place of residence and at any program site to ascertain that the care plan is being properly followed.
- F. The guardian shall advocate on behalf of the ward with staff in an institutional setting and other residential placements. The guardian shall assess the overall quality of services provided to the ward, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.

Standard 14

Decision-Making About Medical Treatment

- I. The guardian shall promote, monitor, and maintain the ward's health and well-being.
- II. The guardian shall ensure that all reasonably available medical care necessary for the ward is provided.
- III. The guardian shall make a good faith effort to determine whether the ward, before becoming incapacitated, executed any advance directives, such as a living will, a durable power of attorney, or any other specific written or oral declaration of intent. On finding such documents, the guardian shall consider the ward's wishes in the decision-making process.
- IV. The guardian shall make decisions about withholding or withdrawing medical treatment in accordance with the above provisions unless restricted by the order appointing the guardian.
- V. Subject to available local and financial resources, the guardian shall explore treatment options in medical interventions posing a significant risk to the ward.

Standard 15

Conflict of Interest: Ancillary and Support Services

- I. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the

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guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward.

- II. Unless authorized by court order, the guardian, other than the Department of Aging and Disability Services and guardianship programs, shall not directly provide housing, medical, or other direct services to the ward.
 - A. The guardian shall coordinate and assure the provision of all necessary services to the ward rather than providing those services directly.
 - B. To ensure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian shall be independent from all service providers.
- III. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the Court.
- IV. The guardian shall not solicit or accept incentives from service providers.
- V. The guardian shall consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.

Standard 16

Duties of the Guardian of the Estate

- I. The guardian of the estate shall maintain and manage the ward's estate as a prudent person would manage the person's own property consistent with a fiduciary's duties and responsibilities set forth in the Texas Probate Code.
- II. The guardian shall supervise all income and disbursements of the estate in accordance with the Texas Probate Code.
- III. The guardian shall manage the estate only for the benefit of the ward.
- IV. The guardian shall safeguard estate assets by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- V. The guardian shall keep estate money separate from the guardian's personal money.
- VI. The guardian shall keep the money of individual estates separate.
- VII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the ward and shall defend against actions that would result in a loss of estate assets in compliance with the Texas Probate Code.
- VIII. The guardian shall employ prudent accounting procedures when managing the estate.

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- IX. The guardian shall determine if a will exists and, for estate planning purposes only, may request that a copy be provided to the Court for in camera inspection under Section 865A of the Texas Probate Code.
- X. The guardian shall manage the estate as a prudent person would manage the person's own property and in compliance with the Texas Probate Code.

Standard 17

Guardian of the Estate: Initial and Ongoing Responsibilities

- I. With the proper authority, the initial steps after appointment as guardian are as follows:
 - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
 - B. The guardian shall meet with the ward as soon after the appointment as feasible. At the first meeting the guardian shall:
 - 1. Communicate to the ward the role of the guardian;
 - 2. Outline the rights retained by the ward and the grievance procedures available;
 - 3. Assess the previously and currently expressed wishes of the ward and evaluate them based on current acuity; and
 - 4. Attempt to gather from the ward any necessary information regarding the estate.
- II. The guardian shall prepare a financial plan and budget that correspond with the care plan for the ward. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the ward.
- III. The guardian shall post and maintain a bond with surety sufficient for the protection of the estate unless the guardian is exempt from bond by law.
- IV. The guardian shall obtain all public benefits for which the ward is eligible.
- V. The guardian must thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VI. The guardian must prepare an inventory of the ward's property in compliance with the Texas Probate Code and as otherwise ordered by the Court.
- VII. All accountings shall contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period in compliance with the Texas Probate Code and as otherwise ordered by the Court. All accountings must be complete, accurate, and understandable.
- VIII. The guardian shall oversee the disposition of the ward's assets to qualify the ward for any public benefits program.

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- IX. On the termination of the guardianship or the death of the ward, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the Court.
- X. The guardian shall monitor the personal trust account of the institution-based ward.
- XI. The guardian shall, when appropriate, open a burial account and make funeral arrangements for the ward.

Standard 18

Property Management

- I. The guardian may not sell, encumber, convey, or otherwise transfer property of the ward, or an interest in that property, without judicial authority.
- II. The guardian shall obtain an independent appraisal of real and personal property whenever ordered by the Court.
- III. The guardian shall provide for insurance coverage, as appropriate, for property in the estate.

Standard 19

Conflict of Interest: Estate, Financial, and Business Services

- I. The guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that might be perceived as self-serving or adverse to the position or best interest of the ward. Governmental entities and guardianship programs providing multiple services shall maintain an arm's-length relationship between those services.
- II. The guardian shall not commingle personal or program funds with the funds of the ward.
- III. The guardian shall not sell, encumber, convey, or otherwise transfer the ward's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
- IV. The guardian shall not sell or otherwise convey to the ward property from any of the parties noted above.
- V. The guardian shall not loan, give, or use the ward's income or assets to support or benefit other individuals directly or indirectly unless specific prior court approval is obtained.
- VI. The guardian shall not borrow funds from, or lend funds to, the ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the Court.

- VII. The guardian shall not profit from any transactions made on behalf of the ward's estate at the expense of the estate, nor shall the guardian compete with the estate, unless authorized to do so by the Court.

Standard 20

Modification and Termination of the Guardianship

The guardian may seek modification or termination of the guardianship in the following circumstances pursuant to the Texas Probate Code:

- A. When it appears that the ward has developed or regained capacity in areas in which he or she was found incapacitated by the Court.
- B. When less restrictive alternatives exist.
- C. When the ward expresses the desire to challenge the necessity of all or part of the guardianship.
- D. When the ward has died.

Standard 21

Management of Multiple Guardianship Cases

The guardian shall limit the guardianship caseload to a size that allows the guardian to accurately and adequately provide care, supervise, and protect each ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.

Standard 22

Quality Assurance

The guardian shall make a good faith effort to provide quality in the services the guardian delivers and to develop a quality assurance program to that end.

Definitions

ADVANCE DIRECTIVE – Has the meaning assigned by Section 166.002 of the Texas Health and Safety Code.

ADVOCATE - To assist, defend, or plead in favor of another.

BEST INTEREST - The course of action taken to maximize what is best for a ward. It includes consideration of the least intrusive, most normalizing, and least restrictive alternative possible given the needs and limitations of the ward.

CONFLICT OF INTEREST - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another.

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CORPORATE FIDUCIARY - Has the meaning assigned by Section 601 of the Texas Probate Code.

COURT OR PROBATE COURT - Has the meaning assigned by Section 601 of the Texas Probate Code.

DIRECT SERVICES - Services on behalf of a ward, including medical and nursing care, respite and hospice care, case management, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

ESTATE - Has the meaning assigned by Section 601 of the Texas Probate Code.

FIDUCIARY - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

FUNCTIONAL ASSESSMENT - A procedure to measure and document on multiple dimensions the functional capacity, including the ability to fully understand and make decisions, to plan and undertake courses of action, and to evaluate the outcome of such courses of action, and the general well-being of an individual.

GUARDIAN – Has the meaning assigned by Section 601. For the purpose of these Minimum Standards, the term also includes Certified Guardians.

Certified Guardian – A person who is certified to provide guardianship services in this state by the Guardianship Certification Board.

Engaged in the business of providing guardianship services – To perform, offer to perform, or advertise the performance of guardianship services for compensation.

Guardian of the Estate - A person or entity appointed by the Court who has the powers and duties listed in Section 768 of the Texas Probate Code or as ordered by the Court.

Guardian of the Person - A person or entity appointed by the Court who has the powers and duties listed in Section 767 of the Texas Probate Code or as ordered by the Court.

Guardianship Program – A local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

Guardianship Services – Conducting, performing, or administering such duties or powers as prescribed by the Texas Probate Code or under a court order in a guardianship matter.

Private Professional Guardian - A person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

INCAPACITATED PERSON - Has the meaning assigned by Section 601 of the Texas Probate Code.

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INFORMED CONSENT – A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc..

LEAST RESTRICTIVE ALTERNATIVE - A mechanism, course of action, or environment that allows the ward to live, learn, and work in a setting that places as few limits as possible on the ward's rights and personal freedoms as appropriate to meet the needs of the ward.

SELF-DETERMINATION - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

SOCIAL SERVICES - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

SUBSTITUTED JUDGMENT - The principle of decision-making that requires implementation of the course of action that comports with the individual ward's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

WARD - Has the meaning assigned by Section 601 of the Texas Probate Code.