

IN THE SUPREME COURT OF TEXAS

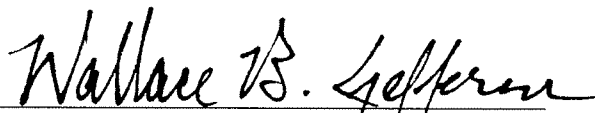
Misc. Docket No. 08- 9081

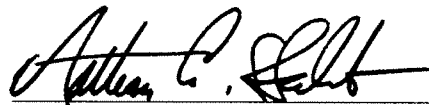
ORDER APPROVING AMENDMENT TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

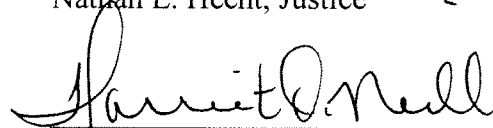
ORDERED that:


Pursuant to Texas Government Code sections 111.002 and 111.042(c), the Rules Governing Guardianship Certification are hereby amended by the addition of Rule XV, which addresses a voluntary alternative dispute resolution program adopted by the Guardianship Certification Board. The purpose of Rule XV is further described in the attached letter from Assistant General Counsel Katie Bond of the Office of Court Administration.

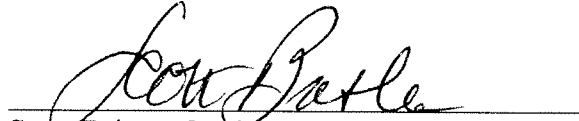
In Chambers, this 16th day of June, 2008.



Wallace B. Jefferson, Chief Justice

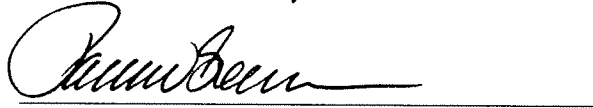

Nathan L. Hecht, Justice

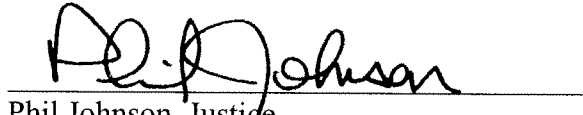

Harriet O'Neill, Justice

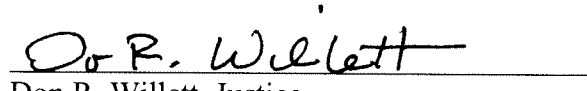

Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

RULES GOVERNING GUARDIANSHIP CERTIFICATION

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.



TEXAS GUARDIANSHIP CERTIFICATION BOARD

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

CHAIR:
JUDGE GLADYS BURWELL
Galveston

VICE CHAIR:
LEAH COHEN
Austin

May 30, 2008

The Honorable Phil Johnson, Liaison
Guardianship Certification Board
Supreme Court of Texas
201 West 14th Street, 3rd Floor
Austin, TX 78701

The Honorable Nathan L. Hecht, Liaison
Supreme Court Advisory Committee
Supreme Court of Texas
201 West 14th Street, 3rd Floor
Austin, TX 78701

Re: Proposed Addition of Alternative Dispute Resolution Rules to the Rules
Governing Guardianship Certification

Dear Justice Johnson and Justice Hecht:

On behalf of the Guardianship Certification Board (Board), I am forwarding a copy of proposed Rule XV of the Rules Governing Guardianship Certification for approval by the Supreme Court under Section 111.002 of the TEXAS GOVERNMENT CODE. The proposed rule encourages the use of alternative dispute resolution procedures to assist in the resolution of disputes under the Board's jurisdiction. Proposed Rule XV is attached as Attachment A.

Background

Section 111.019 of the TEXAS GOVERNMENT CODE requires the Board to develop and implement a policy to encourage the use of appropriate alternative dispute resolution (ADR) procedures to assist in the resolution of disputes under the Board's jurisdiction. The statute also requires that the procedures must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

The Board initially considered adopting a "policy" – the term used in the statute – rather than a rule, which requires Court approval. However, as the Board considered what should be included in such a policy, it determined that it wanted to develop specific procedures that parties to disputes would be required to follow rather than a general policy encouraging ADR. Because

the “policy” would contain procedural requirements, the Board determined that it would be more appropriate to include such procedures in a rule.

The Board’s Rules Committee developed the proposed rule based on SOAH’s Guidelines for the Use of Alternative Dispute Resolution by Texas State Agencies and also on the Court Reporter Certification Board’s ADR policy. The Board considered the proposed rule at its February 1, 2008 public meeting and voted to publish it for comments. Two persons filed comments – one commenter agreed with the proposed rule, and one pointed out that the rule did not state that parties are permitted to have attorneys in an ADR proceeding. The Board met on May 2, 2008, revised the proposed rule to clarify that parties could have attorneys, and voted to submit the proposal to the Court for approval.

Proposed Rule XV

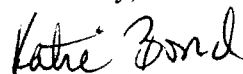
The key feature of the proposed rule is that alternative dispute resolution is completely voluntary; all parties must agree to participate in the process. Another important aspect of the proposal is that any settlement agreement reached by the parties must be approved by the Board. The rule also provides:

- By its terms, the rule applies to contested disciplinary matters within the Board’s jurisdiction. It also states the Board’s intention to use ADR procedures, where appropriate and feasible, to attempt to resolve other disputes in which the Board is involved. (Proposed Rule XV(a), (b), and (m))
- The Complainant and Respondent (the certified guardian) are the parties in a settlement conference under the rule and may be represented by counsel. The Board Chair may appoint one or more Board members or staff to participate as well. (Proposed Rule XV(c), (e)(2))
- The parties may use a mediator (but they are not required to do so). (Proposed Rule XV(f))
- A mediator must have received the training required by Section 154.052 of the Texas Civil Practice and Remedies Code for impartial third parties, or must have served as a probate judge in Texas. (Proposed Rule XV(f)(3))
- All communications between or among the parties, and between each party and the mediator, are confidential under the same terms as set forth Section 154.053(b) and (c) of the Civil Practice and Remedies Code. (Proposed Rule XV(h))
- Any agreement reached must be reduced to writing and provided to the Board for approval. The Board may (1) accept the settlement terms, (2) reject the terms and restore the complaint proceedings to the *status quo* as it existed immediately prior to the settlement conference, or (3) refer the matter for further negotiation. (Proposed Rule XV(e)(3)(A), (j)(1))

- Whether a final written agreement is subject to disclosure will be determined by applicable law, including Rule 12 of the Rules of Judicial Administration. (Proposed Rule XV(j)(3))

The Board respectfully requests that the Supreme Court approve the addition of proposed Rule XV to the Rules Governing Guardianship Certification. Please do not hesitate to contact me at 463-1461 if you have questions.

Sincerely,



Katie Bond

Assistant General Counsel, OCA

cc: ✓ Alice McAfee, General Counsel, Supreme Court of Texas
Jody Hughes, Rules Attorney, Supreme Court of Texas

ATTACHMENT A

PROPOSED RULE XV
RULES GOVERNING GUARDIANSHIP CERTIFICATION

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