

**JUDICIAL BRANCH CERTIFICATION COMMISSION
MINUTES OF THE MEETING**

Third Court of Appeals
Price Daniel Sr. Building
209 W. 14th Street, Room 101
Austin, Texas 78701
Friday, May 5, 2017
(10:00 a.m. Until Adjournment)

The meeting of the Judicial Branch Certification Commission (JBCC or Commission) was called to order by Judge Lee Hamilton, Chair, at 10:01 a.m., Friday, May 5, 2017. Members present were Judge Lee Hamilton, Chair; Judge Migdalia Lopez; Judge Polly Spencer; Velma Arellano; Mark Blenden; Judge Sid Harle; Don Ford; Ann Murray Moore; and Judge Ben Woodward.

Staff members present were Jeff Rinard, Certification Division Director; Scott Gibson, JBCC General Counsel; Michele Henricks, Compliance Manager; Lesley Ondrechen, Licensing Manager; Tyees Holcombe, Judicial Regulatory Assistant; Jilian Stengle, Investigator; Chris Nelson, Licensing Specialist; Socorro Herrera, Administrative Assistant; and Veena Mohan, Assistant Attorney General.

Jamie MacLean, Chair of the Complaint Review Committee of the Guardianship Certification Advisory Board, Robin Cooksey, member of the Complaint Review Committee of the Court Reporter Certification Advisory Board, and Justiss Rasberry, member of the Complaint Review Committee of the Process Server Certification Advisory Board, attended in person.

Agenda Item III, Opening Remarks.

Judge Hamilton commented on the pending legislation of interest to the four professions regulated by the Commission. He commended the Advisory Board and Complaint Review Committee members on their work for the Commission.

Jeff Rinard, Certification Division Director gave a status update on the JBCC and the Certification Division, including the licensed court interpreter exams, and training presented by the Department of Public Safety that he and several staff members attended.

Agenda Item IV, Approval of Prior Meeting Minutes.

The February 3, 2017 minutes were approved.

Agenda Item V, Approval of JBCC Disciplinary Action, by Default, and Issuance of Final Orders by JBCC from Complaints Considered on February 3, 2017.

Court Reporters Certification:

A. In the Matter of Kendra Thibodeaux, Cause No. 82-CSR-2016

This item was issued as a default order. Ms. Thibodeaux did not respond to the letter notifying her of the recommended sanction and did not appear at this meeting. A motion was made and seconded to adopt the factual findings, legal conclusions and sanction approved at the last meeting: to issue a private reprimand.

After discussion, the motion carried.

B. In the Matter of Jennifer (Wilson) Scarborough, Cause No. 02-CSR-2017

This item was issued as a default order. Ms. Scarborough did not respond to the letter notifying her of the recommended sanction and did not appear at this meeting. A motion was made and seconded to adopt the factual findings, legal conclusions and sanction approved at the last meeting: to suspend Respondent's certification for twelve months, with the suspension fully probated, and to impose an administrative penalty of \$500.00 with following terms and conditions:

- Respondent must complete 2.5 hours of continuing education in Rules and Ethics within twelve months from the effective date of the Final Order. This continuing education requirement is in addition to the ten hours of continuing education required for renewal of certification.
- The administrative penalty must be paid within twelve months of the effective date of the Final Order.
- Respondent must not commit any violations within the probated suspension period.
- The Final Order takes effect upon the latter of:
 - a. the date of the Final Order; or
 - b. the date the Respondent becomes certified.

After discussion, the motion carried.

Process Server Certification:

C. In the Matter of John P. Stahl, Cause No. 65-PS-2016

This item was issued as a default order. The Respondent did not respond to the letter notifying him of the recommended sanction and did not appear at this meeting. After discussion, a motion was made and seconded to adopt the factual findings, legal conclusions and sanctions as set forth in Exhibit 1: to issue a letter of reprimand with the following terms and conditions:

- Re-take the seven-hour precertification civil process service education course, as approved by the Commission, within six months of the date of the Final Order.

Following discussion, the motion carried.

D. In the Matter of James Lee Bryant, Cause No. 68-PS-2016

This item was issued as a default order. The Respondent did not reply to the letter notifying him of the recommended sanction and did not appear at this meeting. After discussion, a motion was made and seconded to adopt the factual findings, legal conclusions and sanctions approved at the last meeting: to issue a letter of reprimand. There being no discussion, the motion carried.

E. In the Matter of Troy Richardson, Cause No. 76-PS-2016

Ms. Henricks noted for the record that Respondent's attorney had advised she planned to attend by telephone. Ms. Henricks further noted that calling instructions had been sent to the Respondent and his attorney, but neither one had joined the conference call.

Thelma Clardy, Respondent's attorney, responded to the letter notifying Mr. Richardson of the recommended sanction three days past the twenty-day deadline. Ms. Clardy sent a second letter requesting a change to the recommended sanction, approximately one month after the deadline to respond. There is no exception in statute or rule to the twenty-day deadline.

A motion was made and seconded to adopt the factual findings, legal conclusions and sanctions approved at the last meeting: assess an administrative penalty in the amount of \$1,000.00, due within one year of the date of the Final Order, with the following condition:

- Respondent cannot renew or otherwise obtain certification as a process server until the administrative penalty is paid.

After discussion, the motion carried.

**Agenda Item VI, Advisory Board Complaint Review Committee and Staff
Recommendations to Dismiss Complaints.**

Court Reporters Complaint Review Committee – March 24, 2017

A. In the Matter of Francheska Duffy, Cause No. 17-CSR-2017

Complainant Bradley Miller attended by conference call. Ms. Mohan summarized the facts of the case, noting that only one allegation – unresponsiveness to Complainant's emails – is within the Commission's jurisdiction. She reported the Complaint Review Committee found no violations and recommended dismissal of this complaint. Ms. Cooksey advised that the Complaint Review Committee found no violations after reviewing documents provided and hearing from both the Respondent and the Complainant at the Complaint Review Committee. After discussion, and upon proper motion and second, the complaint was dismissed.

Process Server Complaint Review Committee – March 23, 2017

B. In the Matter of Sharon McBride, Cause No. 14-PS-2017

Ms. Mohan summarized the complaint, which alleged improper service and an

incorrect date on the return of service. Ms. Mohan reported the Committee recommended dismissal, noting that the Complaint Review Committee found no violations. A motion was made and seconded to dismiss the complaint. There being no further discussion, the complaint was dismissed.

C. In the Matter of Matt Miller, Cause No. 18-PS-2017

Ms. Mohan summarized the complaint, which involved the veracity of two affidavits in support of a motion for substituted service. Ms. Mohan reported the Committee recommended dismissal, because the issue is one of credibility, with both parties providing evidence to support their claims. There was no discussion. Upon proper motion and second, the complaint was dismissed.

D. In the Matter of Donnie Moreland, Cause No. 19-PS-2017

Ms. Mohan summarized the complaint, which involved an alleged false affidavit of service. She noted that Respondent's certification expired on November 30, 2014, and that complaint was filed approximately eight years after the alleged date of service. Ms. Mohan reported the Committee recommended dismissal, because the issue is one of credibility; neither party provided evidence to support their claims. Upon proper motion and second, and there being no discussion, the complaint was dismissed.

Agenda Item VII, Process Servers Certification

A. In the Matter of Sharon Jackson, Cause No. 36-PS-2017

Ms. Mohan reported that the Respondent has now provided the documents requested. The Complainant has withdrawn the complaint. There being no discussion, and upon proper motion and second, the complaint was dismissed.

Agenda Item VIII, Advisory Board Complaint Review Committee
Recommendations for Disciplinary Action

Court Reporters Complaint Review Committee – March 24, 2017

A. In the Matter of Carla Davis, Cause No. 16-CSR-2017

Complainant Cynthia Parker attended by conference call. Chairman Hamilton clarified that this meeting is not a hearing; the Commission is acting upon recommendations from the Complaint Review Committees.

Ms. Mohan summarized the complaint, which alleges Respondent did not timely submit deposition transcripts and did not respond to requests for transcripts. Following discussion, and upon proper motion and second, the Commission found violations as stated. After further discussion, a motion was made and seconded to issue a public reprimand, to assess an administrative penalty of \$500 with the following terms and conditions:

- Respondent must complete two hours of continuing education in Rules and Ethics within twelve months from the effective date of the Final Order.

This continuing education requirement is in addition to the ten hours of continuing education required for renewal of certification.

- The administrative penalty must be paid within twelve months of the effective date of the Final Order.

There being no further discussion, the motion carried.

Process Servers Complaint Review Committee – March 23, 2017

B. In the Matter of Joretha Eggleton, Cause No. 07-PS-2017

Ms. Mohan summarized the complaint, which alleges Respondent failed to timely return service documents, including an affidavit listing service attempts, and alleges Respondent was unresponsive to requests for status updates.

Ms. Mohan noted that Respondent's certification will expire on June 30, 2017. The Complaint Review Committee's recommendation has two prongs:

1. If Respondent has renewed her certification by the next Commission meeting set for August 4, 2017: issue a letter of reprimand, with the condition that Respondent complete the process server orientation course within six months of the date of the Final Order.
2. If Respondent has not renewed her certification by the next Commission meeting on August 4, 2017: assess an administrative penalty of \$500, due within one year of the issuance of the date of the Final Order.

Following discussion, and upon proper motion and second, the Commission found violations as stated. There being no further discussion, a motion was made and seconded to adopt the recommendation of the Complaint Review Committee. The motion carried.

C. In the Matter of Jamie Lively, Cause No. 08-PS-2017

Ms. Mohan summarized the complaint, which alleges the Respondent did not conduct service, did not return service documents to the Complainant, accepted payment without completing service, was unresponsive to Complainant, and failed to update contact information with the Commission.

Following discussion, and upon proper motion and second, the Commission found violations as stated. Upon proper motion and second, the Commission voted to issue a letter of reprimand with the following condition:

- complete the process server orientation course within six months of the date of the Final Order.

D. In the Matter of Brandon Harlee, Cause No. 15-PS-2017

Ms. Mohan summarized the complaint, which alleged the Respondent failed to conduct service and was unresponsive to requests for status updates, including a refund of fees paid. The Respondent acknowledges he did not complete service

in this matter. Upon proper motion and second, the Commission found the violations as stated. A motion was made and seconded to issue a letter of reprimand and to assess an administrative penalty of \$250 with the following conditions:

- the administrative penalty must be paid within one year of the issuance of the Final Order; and
- Respondent must re-take the seven-hour orientation course for process servers within six months of the issuance of the Final Order.

There being no discussion, the motion carried.

Guardians Complaint Review Committee - January 13, 2017

Ms. Mohan advised the Commission that the following two items were investigated by Guardianship Compliance Auditor Kim Bennink.

Commissioner Ford requested a conference with the Commission's general counsel. The Commission convened in executive session at 10:51 a.m., and reconvened in public session at 11:12 a.m.

To accommodate those who appeared by conference call, item VIII.F was taken up out of order.

F. In the Matter of Sundra Spears, Cause No. 12-CG-2017

Respondent Sundra Spears and her attorney, Martha Failing, attended by conference call. Judge Spencer recused herself from deliberation and voting on this matter. Chairman Hamilton reminded those present that this is not an evidentiary hearing; the Commission is acting on the recommendation of the Complaint Review Committee.

Ms. Mohan summarized the complaint, which alleged 52 violations involving multiple wards. The violations fall into four categories:

- Respondent failed to file annual reports with the court
- Respondent failed to file annual accountings with the court
- Respondent failed to visit wards
- Respondent misused interest accrued on funds of ward (interest does not accrue to the benefit of a ward's estate)

The recommendation of the Complaint Review Committee is to suspend Respondent's certification for a period of five years, to be fully probated with the following conditions:

- Respondent must complete 12 hours of continuing education within one year of the date of the Final Order; this requirement is in addition to the 12 hours required to renew her certification; and

- Respondent must not commit any violations during the term of her probated suspension.

If Respondent does not comply with the terms of the probated suspension, the Committee recommended that Respondent's certification be revoked, and that an administrative penalty of \$5,000 be assessed. The administrative penalty must be paid within five years of the Final Order.

Ms. Failing addressed the Commission, stating that all matters alleged in the complaint have been addressed. Ms. Failing advised the Commission that Ms. Spears does not intend to renew her guardianship certification and that she will not accept any new appointments as guardian. Ms. Failing later stated that Ms. Spears intends to surrender her guardianship certification.

Ms. Failing answered questions from the Commissioners. Mr. MacLean addressed the Commission regarding the Committee's recommendation. He noted that the recommendation of the Committee, had the members been aware of Ms. Spears' intention to surrender her certification, would have been to only assess an administrative penalty.

Following discussion, a motion was made and seconded to refer the matter back to the Complaint Review Committee for recommended action in light of new information provided at this meeting. The motion carried. Chairman Hamilton requested that Ms. Failing formally notify the JBCC staff of her client's intention to resign her guardianship certification.

E. In the Matter of Art Guzman, Cause No. 11-CG-2017

Ms. Mohan summarized the complaint, which alleged 40 violations involving multiple wards. The violations include non-payment of bond premiums, failure to file annual reports with the court, failure to file annual accountings with the court, and failure to visit wards.

Mr. Guzman's certification is currently expired. The Complaint Review Committee made two recommendations:

1. If certification remains expired:
 - Respondent is ineligible to renew for a period of five years
 - an administrative penalty of \$250 for each violation, for a total of \$10,000, is assessed. The administrative penalty must be paid within five years of the date of the Final Order.
2. If certification is renewed:
 - Respondent's certification is suspended for a period of five years, with the suspension fully probated, under the following conditions:

- Respondent must complete 12 hours of continuing education within the first year of the renewal date; this requirement is in addition to the 12 hours required to renew his certification;
- Within three months of the date of the Final Order, Respondent must provide proof and documentation to the Commission that he has obtained the required surety bond for each guardianship;
- Respondent must not commit any violations during the term of his probated suspension.

If Respondent does not comply with the terms of the probated suspension, an administrative penalty of \$10,000 will be assessed. The administrative penalty must be paid within five years of the date of the Final Order.

After discussion, and upon proper motion and second, the Commission found the violations as stated. A motion was made to adopt the recommendation if Respondent's certification remains expired; there was no second. After discussion, an amended motion was made:

- if Respondent's certification remains expired:
 - he is ineligible to renew for five years from the date of the Final Order; and
 - an administrative penalty of \$10,000, due within five years of the date the Final Order is issued, will be assessed
- if Respondent certification is renewed as of the date the Final Order is issued:
 - Certification will be suspended for five years from the date of the Final Order; and
 - an administrative penalty of \$10,000 will be assessed, and must be paid within five years of the date the Final Order is issued.

The motion was seconded. After further discussion, the motion carried.

The meeting was adjourned at 11:48 a.m., and reconvened at 12:20 p.m.

Agenda Item IX, Administrative Dismissal of Complaints.

Court Reporters Certification

A. In the Matter of Cause No. 86-CRF-2016

Ms. Mohan advised the Commission that agenda items IX.A and X.D involve the same complaint. Ms. Mohan summarized the complaint, which involves inaccuracies in the record. Upon proper motion and second, the Commission ratified the administrative dismissal.

Ms. Mohan then presented the Complainant's request for reconsideration of the administrative dismissal (agenda item X.D). After discussion, and upon proper motion and second, the Commission denied the request for reconsideration.

D. In the Matter of Cause No. 24-CSR-2017

Ms. Mohan noted that agenda item IX.D and X.E involve the same complaint. The underlying issue is inaccuracies in the record. Upon proper motion and second, the Commission ratified the administrative dismissal.

The Commission then considered the request for reconsideration of the administrative dismissal (agenda item X.E). Following discussion, and upon proper motion and second, the request was denied.

Following a brief summary of each case by Ms. Mohan, and upon proper motion and second, the Commission ratified administrative dismissal of the following matters:

Court Reporters Certification

B. In the Matter of Cause No. 09-CSR-2017

C. In the Matter of Cause No. 23-CSR-2017

Process Server Certification

E. In the Matter of Cause No. 05-PS-2017

F. In the Matter of Cause No. 38-PS-2017

Guardianship Certification

G. In the Matter of Cause No. 81-CG-2016

Agenda Item X, Request for Reconsideration on Administrative Dismissal of Complaints

Items D. and E. were heard during the previous agenda item.

Court Reporters Certification

A. In the Matter of Cause No. 01-CSR-2017

This matter involves inaccuracies in the record, which is not within the Commission's jurisdiction. Following discussion, and upon proper motion and second, the request for reconsideration was denied.

B. In the Matter of Cause No. 10-CSR-2017

The underlying issue in this complaint is inaccuracies in the record, which is not within the Commission's jurisdiction. There being no discussion, and upon proper motion and second, the request for reconsideration was denied.

C. In the Matter of Cause No. 03-CSR-2017

Complainant had requested a copy of the court reporter's audio recording of a hearing. However, documentation provided by the Complainant showed she had waived having a record taken. There was no discussion. Upon proper motion

and second, the Commission denied the request for reconsideration.

Agenda Item XI, Request for Reconsideration on Denial of Process Server Application from Applicant Kengee Ford

The Commission convened in executive session at 12:34 p.m., and reconvened in public session at 12:46 p.m.

A motion was made and seconded to deny the request for reconsideration. There was no further discussion, and the motion carried.

Agenda Item XII, Administrative Matters Relating to the JBCC

A. Guardianship Compliance Project Update

Mr. Rinard gave a report on the status of the project, noting that the reviews include twenty-one courts in fourteen counties. He will be visiting two more counties next week to discussion inclusion in the project.

He updated the Commission on various aspects of the project, including proposed legislation (Senate Bill 667) that makes it permanent and applicable to all courts. Mr. Rinard also reported on proposed legislation relating to regulation of guardianship programs.

B. Legislative Update Relating to the JBCC

1. Guardianship Compliance Program

Mr. Rinard summarized the main components of Senate Bill 667 that would implement a statewide compliance program. He noted the bill had passed out of the House committee.

2. Guardianship Registration

Mr. Rinard summarized Senate Bill 1096, which creates a statewide guardianship registry. The registry would help to track the status of all guardianship, and training would be provided to newly appointed guardians.

C. Update on the Development of the Court Reporter Code of Professional Conduct

Mr. Rinard noted there has been a great deal of interest in this item, particularly relating to the recommendation to remove the "1/3 rule" from the proposed new Code of Ethics, which will replace the existing Code of Professional Conduct. Mr. Rinard asked the Commission to consider posting the proposed code for a thirty-day public comment period. If any new information is received through public comment, it will be reviewed by the Court Reporter Certification Advisory Board before public comments are presented to the Commission.

Chairman Hamilton called for public comment on this item.

Craig Enoch, representing Texas Deposition Reporters Association (TexDRA); Lorie Schnoor, the Texas Court Reporters Association (TCRA) liaison to the JBCC; Monica Guzman, president of TCRA; David Ross, a retired court reporter and a member of TexDRA; Susan Perry Miller, president of TexDRA; and Janice McMoran, member of TCRA and TexDRA provided comment on both sides of the issue.

After discussion, Mr. Gibson recommended that if nothing new or different is received relating to the proposed Code of Ethics, the comments be presented to the Commission at its next meeting. There being no objections, the Commission directed staff to post the request for public comment on the JBCC website for a period of thirty days.

D. Licensing Database Replacement Update

Mr. Rinard discussed the online capability of the new system, which will allow initial application, exam registration and renewals online for all four professions. The replacement database should be completed by August.

E. JBCC Meeting Dates

1. Next JBCC Meeting - August 4, 2017

2. Proposed JBCC Meeting dates for FY 2018

The Commission agreed to the following meeting dates for the coming fiscal year:

November 3, 2017
February 2, 2018
May 4, 2018
August 3, 2018

Agenda Item XIII, Public Comment

Chairman Hamilton thanked those who appeared to speak regarding the proposed Court Reporter Code of Ethics. There was no other public comment.

Agenda Item XIV, Closing Remarks from the Chair

The Chair had no closing remarks.

Agenda Item XV, Adjournment

The meeting was adjourned at 1:15 p.m.



Judge Lee Hamilton, Chair



Date