

**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, February 3, 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 10:02 a.m., Friday, February 3, 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; Jillian Stengle, Investigator; Chris Nelson, Licensing Specialist; Socorro Herrera, Administrative Assistant; and Veena Mohan, Assistant Attorney General.

Molly Pela, Chair of the Complaint Review Committee of the Court Reporters Certification Advisory Board, and Rhonda Hughey, member of the Complaint Review Committee of the Process Server Certification Advisory Board, attended by telephone conference call.

Agenda Item III, Opening Remarks.

Judge Hamilton deferred his remarks until the end of the meeting.

Jeff Rinard, Certification Division Director gave a status update on the JBCC and the Certification Division, including the guardianship compliance project, the licensed court interpreter exams scheduled for later in the month, and the annual reporting by guardians, guardianship programs and county clerks.

Agenda Item IV, Approval of Prior Meeting Minutes.

The November 4, 2016 minutes were approved.

Agenda Item V, Approval of JBCC Disciplinary Action, by Default, and Issuance of Final Orders by JBCC from Complaints Considered on November 4, 2016.

Court Reporters Certification:

A. In the Matter of Susan Maienschein, Cause No. 66-CSR-2016

This item was issued as a default order. Ms. Maienschein 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 with the following terms and conditions:

- Complete, within one year of the date of the Final Order, 2.5 hours of continuing education in addition to the ten hours required for renewal of certification.

After discussion, the motion carried.

Process Server Certification:

B. In the Matter of Frankie Dial, Cause No. 55-PS-2016

C. In the Matter of Scott Haley, Cause No. 61-PS-2016

D. In the Matter of Andrew Espinosa, Cause No. 72-PS-2016

These items were taken up as a block, and were issued as default orders. The Respondents did not respond to the letters notifying them 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 for each cause: to issue a letter of reprimand to each Respondent 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.

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

Court Reporters Complaint Review Committee – December 9, 2016

A. In the Matter of Roxanne Wiltshire, Cause No. 21-CSR-2016

Ms. Mohan summarized the facts of the case, advising there appears to be a credibility issue. She reported the Complaint Review Committee found no violations and recommended dismissal of this complaint. Ms. Pela had no further information to provide. There being no discussion, and upon proper motion and second, the complaint was dismissed.

B. In the Matter of Jan Worsham, Cause No. 88-CSR-2016

Ms. Mohan summarized the facts of the case, advising there appears to be a credibility issue. She noted that the Respondent retired in 2012 and allowed her certification to expire on December 31, 2015. The Committee found no violations and recommended dismissal of this complaint. A motion was made and seconded to dismiss the complaint. There was no discussion, and the motion carried.

Process Server Complaint Review Committee – December 8, 2016

C. In the Matter of Gary L. Thornton, Cause No. 73-PS-2016

Ms. Mohan summarized the complaint, which involved an alleged false affidavit in support of a motion for substituted service in a federal lawsuit. Ms. Mohan reported the Committee recommended dismissal, noting that if the JBCC has jurisdiction over this case, which involves service for a federal case, it should be dismissed because the issue is one of credibility. Ms. Hughey had no further comment. Mr. Gibson noted the Commission's position has been that it regulates process servers who are serving process in state courts in Texas.

A motion was made and seconded to dismiss the complaint for lack of jurisdiction. There being no further discussion, the complaint was dismissed.

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

Court Reporters Complaint Review Committee – December 9, 2016

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

Ms. Mohan summarized the complaint, which alleges Respondent did not respond to Complainant's letter. The Respondent acknowledges her oversight and did respond.

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 issue a private reprimand. The motion carried.

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

Ms. Mohan summarized the complaint, which alleges the Respondent did not timely file transcripts, did not include a certification page on one of the transcripts she prepared, did not maintain contact with the Complainant, failed to update her contact information with the Commission, and failed to respond to the Investigator. Respondent acknowledged late submission of transcripts, but did not respond to the other allegations. Ms. Mohan noted the Respondent's certification expired on December 31, 2016, but that she is eligible for late renewal through December 31, 2017.

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 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 in good standing.

Following further discussion, a motion was made and seconded to adopt the findings of the Committee to impose the recommended sanctions with the terms and conditions previously stated, with removal of the phrase "in good standing" from the final condition. Ms. Pela addressed the Commission regarding the Committee's discussion of the matter. There being no further discussion, the motion carried.

To accommodate those who attended by telephone conference call, Agenda Item VII.F was taken up out of order.

F. In the Matter of Troy Richardson, Cause No. 76-PS-2016
Respondent Richardson appeared by telephone conference call. The Chair reminded all present that this is not an evidentiary hearing.

Ms. Mohan summarized the complaint. Mr. Richardson was not certified to serve process at the time of the actions described in the complaint; Investigator Stengle determined the Respondent served process in nine cases after his certification expired on December 31, 2014. A cease and desist order was issued in December 2016.

Mr. Richardson answered questions from Ms. Hughey and from the Commissioners, stating he thought he was a deputy because he was a certified process server. He also stated he believed that he was re-certified for three more years because he completed an orientation course in 2014. Following discussion, including comments from Ms. Hughey, and upon proper motion and second, the Commission found violations as stated.

After further discussion, a motion was made and seconded to assess an administrative penalty of \$500 for each of the nine instances in which Mr. Richardson served process after his certification expired for a total of \$4,500. In addition, Mr. Richardson cannot renew or otherwise obtain certification to serve process until he pays the administrative penalty. The motion failed.

A motion was then made and seconded to adopt the sanctions as recommended, but modify the administrative penalty to \$1,000.00. There was no further discussion and the motion carried. An amending motion was made and

seconded clarifying the Respondent cannot renew or otherwise be certified until the administrative penalty is paid, and that it must be paid within one year of the Final Order. The motion carried.

The Commission recessed at 11:10 a.m. and reconvened at 11:20 a.m.

To accommodate those who attended by telephone conference call, Agenda Item IX was taken up out of order.

Agenda Item IX, Request for Reconsideration on Denial of Process Server Application from Applicant Jerrod R. McBride

Mr. McBride participated by telephone conference call. The Commission went into closed session at 11:21 a.m. The closed session was concluded at 11:40 a.m., and the Commission reconvened in open session at 11:41 a.m.

A motion was made and seconded to approve the denial of Mr. McBride's application. After discussion, the motion carried. Chairman Hamilton clarified for the applicant that the Commission had affirmed the staff denial.

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

Process Servers Complaint Review Committee – December 8, 2016

C. In the Matter of Raymond Casas, Cause No. 16-PS-2016

Ms. Mohan summarized the complaint, which alleges Respondent's business card contained statements contrary to the Process Servers Code of Ethics.

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 issue a letter of reprimand with the following terms and conditions:

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

The motion carried.

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

Ms. Mohan summarized the complaint, which alleges the Respondent did not serve the correct copy of the summons 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 terms and conditions:

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

E. In the Matter of James Lee Bryant, Cause No. 68-PS-2016
Ms. Mohan summarized the complaint, which alleged a lack of communication between the Respondent and the Complainant, and failure to provide an affidavit requested by the Complainant when the Respondent represented that he would provide it. Upon proper motion and second, the Commission found the violations as stated. A motion was made and seconded to issue a letter of reprimand. There being no discussion, the motion carried.

Agenda Item VIII, Administrative Dismissal of Complaints.

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

- A. In the Matter of Cause No. 80-CRF-2016
- B. In the Matter of Cause No. 01-CSR-2017
- C. In the Matter of Cause No. 10-CSR-2017
- D. In the Matter of Cause No. 03-CSR-2017

Process Server Certification

- E. In the Matter of Cause No. 84-PS-2016
- F. In the Matter of Cause No. 85-PS-2016
- G. In the Matter of Cause No. 04-PS-2017
- H. In the Matter of Cause No. 13-PS-2017
- I. In the Matter of Cause No. 69-000-2016

Guardianship Certification

- J. In the Matter of Cause No. 18-CG-2016
- K. In the Matter of Cause No. 19-CG-2016
- L. In the Matter of Cause No. 29-CG-2016

Licensed Court Interpreters

- M. In the Matter of Cause No. 25-000-2016

Agenda Item X, Administrative Matters Relating to the JBCC

A. Guardianship Compliance Project Update

Mr. Rinard gave a report on the status of the project, noting that reviews are

being conducted in eighteen courts in eleven counties. 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. Guardianship Advisory Board - Items Referred by Commission

1. **Establishing limits on number of wards per guardian**
Under the current Code of Ethics and Minimum Standards, a certified guardian is required to report to the Commission if he or she has 50 or more wards. A recommendation to lower the number of wards to 40 remains under discussion by the Advisory Board

2. **Disclosure of Bill of Rights to Wards**
Senator Zaffirini contacted the Commission staff regarding this matter. It has been addressed as a frequently asked question on the Guardianship Certification portion of the Commission's website.

3. **Update to the JBCC Administrative Dismissal Policy**
Mr. Rinard presented the Advisory Board's recommendations to add the following items that are not within the Commission's jurisdiction to the Administrative Dismissal Policy, Guardianship Certification Program, section 4)c)i):
 - the complaint is filed against an individual not licensed or certified by the JBCC
 - the complaint alleges criminal conduct
 - the complaint concerns matters approved or addressed by the court
 - the complaint relates to decisions made by medical personnel

After discussion, and upon proper motion and second, the recommended changes were adopted.

C. Court Reporters - Update on the Code of Professional Conduct

Mr. Rinard reported that the Code of Professional Conduct Committee has completed its proposed revisions. The matter is going to the full Advisory Board. Its recommendations will be presented to the Commission. Following a public comment period and consideration of comments received, the Commission will then send the proposed Code of Professional Conduct to the Supreme Court for approval.

D. Licensing Database Replacement Update

Mr. Rinard stated that implementation is about six months away, and noted the new database will include guardianship registrations.

E. Update on re-appointments to Commission and Advisory Boards for Terms

Expiring February 2017

Mr. Rinard reported that Judge Sid Harle, Judge Migdalia Lopez and Mark Blenden were re-appointed. The following appointments were made to the Advisory Boards:

Court Reporters Certification

Deborah Hamon and Kim Tindall were re-appointed.

Guardianship Certification

Toni Rhodes Glover was re-appointed; Jamie MacLean was re-designated as presiding officer of the Advisory Board.

Process Server Certification

Patrick Dyer was re-designated as presiding officer of the Advisory Board; Melissa K. Perez was appointed.

Licensed Court Interpreters

Cynthia de Peña was re-appointed. Melissa Fischer was re-designated as presiding officer of the Advisory Board.

F. JBCC Meeting Dates

1. The next meeting is scheduled for May 5, 2017.

Agenda Item XI, Public Comment

Public comment was received from Susan Perry Miller from Texas Deposition Reporters Association and from Alex Jones of the Health & Human Services Commission Office of Guardianship, expressing their gratitude for the work of the Commission.

Agenda Item XII, Closing Remarks from Chair

The Chair did not make a report, but thanked the Commission and its staff for the work they do.

Agenda Item XIII, Adjournment

The meeting was adjourned at 12:10 p.m.



Judge Lee Hamilton, Chair

5-5-17

Date