

## Guardianship Mediation Draft Rule for Public Comment

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### 2 **7.1 Definitions**

3 (a) **Certified guardian** means a person who is certified by the Commission to provide  
4 guardianship services in this State.

5 (b) **Corporate fiduciary** has the meaning assigned by Section 1002.007 of the Estates Code.

6 (c) **Engaged in the business of providing guardianship services** means to perform, offer to  
7 perform, or advertise the performance of guardianship services for compensation.

8 (d) **Guardian** has the meaning assigned by Section 1002.012 of the Estates Code.

9 (e) **Guardianship program** means a corporation; partnership; firm; other business entity; local,  
10 county, or regional agency; or nonprofit entity that provides guardianship and related services to  
11 an incapacitated person or other person who needs assistance in making decisions concerning the  
12 person's own welfare or financial affairs. This definition does not apply to service-providers that  
13 provide guardianship services pursuant to a contract with the Health and Human Services  
14 Commission Office of Guardianship.

15 (f) **Guardianship services** means conducting, performing, or administering the duties and  
16 powers prescribed by the Estates Code or under a court order in a guardianship matter.

17 (g) **Incapacitated person** has the meaning assigned by Section 1002.017 of the Estates Code.

18 (h) **Code of Ethics and Minimum Standards for Guardianship Services** means the document  
19 titled "Code of Ethics and Minimum Standards for Guardianship Services" promulgated under  
20 Section 155.101 and Section 155.152 of the Government Code.

21 (i) **Mediator** means a person who mediates disputes arising under Title 3 of the Estates Code.

22 (j) **Mediation Trainer** means a person who trains Mediators.

23 (k)[(†)] **Private professional guardian** means a person, other than an attorney or a corporate  
24 fiduciary, who is engaged in the business of providing guardianship services.

25 (l)[(‡)] **Provisionally certified guardian** means a person who has received provisional  
26 certification to provide guardianship services in this State from the Commission.

27 (m)[(Ⓚ)] **Supervisor** means a certified guardian who has notified the Commission that he or she  
28 will be responsible for overseeing a provisionally certified guardian.

29 (n)[(†)] **Volunteer** means a person who renders guardianship services on behalf of a guardianship  
30 program or on behalf of the Health and Human Services Commission Office of Guardianship and  
31 who does not receive compensation that exceeds the authorized expenses that the person incurs  
32 in performing those services.

33 (o)[(Ⓜ)] **Ward** has the meaning assigned by Section 1002.030 of the Estates Code

1 **7.10 Guardianship Mediator Training Approval Process**

2 (a) A Mediation Trainer may seek the Commission’s approval of a guardianship mediation  
3 training course.

4 (b) The Mediator Trainer must submit to the Commission an application on a form prescribed  
5 by the Commission. The application must be accompanied by an outline and materials that  
6 describe the course objectives and content, describe the teaching methods to be used,  
7 identify the instructors and provide their credentials, indicate the time allotted to each  
8 segment, and provide the date and location of the course.

9 (c) To be approved, the training must consist of at least 24 hours of content covering mediation  
10 methods, goals, and techniques. The course content must also address the following:

11 (1) a survey of the law of guardianship;

12 (2) the purpose and nature of guardianship, including the typical interests at stake  
13 in a contested guardianship;

14 (3) practical and ethical considerations arising in typical guardianship mediation  
15 scenarios based upon case studies;

16 (4) alternatives to guardianship, including less restrictive support and services  
17 available for the prospective ward;

18 (5) matters relating to capacity of the prospective ward, including mediation of  
19 conflicts regarding an incapacity determination;

20 (6) issues of mediation confidentiality and the privacy interests of the parties to  
21 mediation;

22 (7) the ward’s bill of rights;

23 (8) the importance of involving the prospective ward and focusing mediation on  
24 the prospective ward;

1           (9) practical matters regarding a guardian’s responsibilities to conduct inventories,  
2           accountings, and reports on the ward’s estate, as well as other fiduciary duties;

3           and

4           (10) the role of the Mediator as an impartial facilitator in resolving contested  
5           matters.

6           (d) The Commission may approve a course provided by an alternative dispute resolution  
7           system or other dispute resolution organization as an approved guardianship mediation  
8           training course.

9           (e) Once a guardianship mediation training course is approved, the Commission will post the  
10          name of the course and its provider on the Commission’s website.

11          (f) A Mediator is encouraged to attend a guardianship mediation training course approved by  
12          the Commission, but attendance is not a required prerequisite to conduct a guardianship  
13          mediation. A court has discretion to refer a contested guardianship dispute to any  
14          Mediator, regardless of whether the Mediator has attended a guardianship mediation  
15          training course approved by the Commission.