

SUBJECT: Requiring attorneys in guardianship proceedings to be certified

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Schofield

1 nay — Rinaldi

0 absent

SENATE VOTE: On final passage, May 20 — 30-0

WITNESSES: No public hearing

BACKGROUND: Estates Code, sec. 1054.201 requires an attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, to be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure.

DIGEST: SB 37 would require an attorney representing any person's interests in a guardianship proceeding to be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure. The bill also would require the state bar to provide a course of instruction for attorneys who represent any person's interests in guardianship cases.

The bill would take effect September 1, 2017, and would apply only to guardianship proceedings filed on or after the effective date.

SUPPORTERS SAY: SB 37 would increase the quality of legal representation in guardianship cases. Currently, most attorneys participating in these cases are required to complete a four-hour certification course prepared by the State Bar of Texas on guardianship and alternatives to guardianship. However, the existing certification requirements apply only to attorneys for an applicant

for guardianship and court-appointed attorneys in guardianship proceedings. Because the certification requirements do not apply to attorneys representing interested parties intervening in the litigation, those attorneys may not be sufficiently familiar with guardianship law, which can negatively affect the efficiency of the proceedings.

The bill would not burden attorneys with excessive certification requirements because attorneys in Texas already are required to complete 15 hours of continuing legal education each year. The four hours of training for a certification under the bill would count toward the continuing legal education requirement.

SB 37 would not be overly demanding on the number of attorneys available because even in more sparsely populated counties, there are enough certified attorneys to represent the applicant, the respondent, and to serve as an ad litem in every guardianship case. It would not be difficult for certified attorneys' pools to also cover the smaller subset of cases in which a third party intervened.

**OPPONENTS
SAY:**

SB 37 would burden attorneys with an extra level of certification and would limit the pool of available attorneys for guardianship proceedings. The bill could make it more difficult for an intervening third party to find attorney services. This would be an unnecessary expansion of regulation and government.