

# IN THE SUPREME COURT OF TEXAS

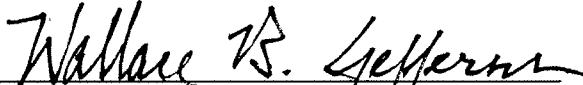
Misc. Docket No. 07- 9098

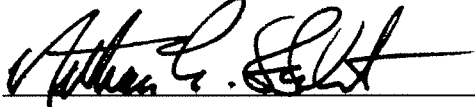
## ORDER APPROVING AMENDMENTS TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

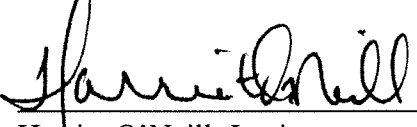
**ORDERED** that:

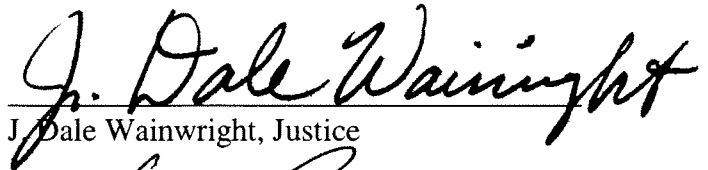
Pursuant to Texas Government Code sections 111.002 and 111.042(c), the Court approves the following amendments to the Rules Governing Guardianship Certification, originally promulgated in Miscellaneous Docket No. 06-9165 (Dec. 12, 2006). These amendments relate to the provisional certification of guardians as authorized by the Legislature through amendments to Government Code Chapter 111 that took effect April 25, 2007.


In Chambers, this 18<sup>th</sup> day of June, 2007.

  
Wallace B. Jefferson, Chief Justice


  
Nathan L. Hecht, Justice

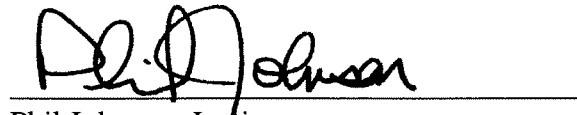
  
Harriet O'Neill, Justice


  
J. Dale Wainwright, Justice

  
Scott Brister, Justice

David M. Medina, Justice

  
Paul W. Green, Justice

  
Phil Johnson, Justice

  
Don R. Willett, Justice

## II. DEFINITIONS

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- (m) “Provisionally-certified guardian” means a person who has received provisional certification to provide guardianship services in this state from the Guardianship Certification Board.
- (mn) “Review Committee” means a committee appointed by the Chair of the Board to review the denial of an application for certification, provisional certification, or re-certification or to review a petition that has been filed with the Board to initiate disciplinary action against a certified guardian.
- (o) “Supervisor” means a certified guardian who has notified the Board that he or she will be responsible for overseeing an applicant for provisional certification.
- (np) “Volunteer” means a person who renders guardianship services on behalf of a guardianship program and who does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.
- (oq) “Ward” has the meaning assigned by Section 601 of the Texas Probate Code.

## III. CERTIFICATION AND RE-CERTIFICATION

- (a) To provide guardianship services in this state, the following individuals must be certified by the Board pursuant to Section 111.042, Texas Government Code:
  - (1) an individual who is a private professional guardian;
  - (2) an individual who will provide guardianship services to a ward of a private professional guardian or the Texas Department of Aging and Disability Services on the guardian’s or department’s behalf; and
  - (3) an individual, other than a volunteer, who will provide guardianship services to a ward of a guardianship program on the program’s behalf.
- (b) Notwithstanding subsection (a), an individual who must be certified but does not meet the requirements for certification under Section VI(c) or (d) of these rules may provide guardianship services in this state if the person obtains provisional certification pursuant to Section XIV.
- (bc) Notwithstanding any other provision of these rules:
  - 1) pursuant to section 696B of the Texas Probate Code, a family member or friend of an incapacitated person is not required to be certified under these rules to serve as the person’s guardian, and
  - 2) an employee of the United States Veterans Administration appointed to serve as a guardian for an incapacitated person under section 601(14)(C) of the Texas Probate Code is not required to be certified under these rules to serve as the person’s guardian.
- (ed) The Board shall certify all individuals in accordance with these rules. Criteria not rationally related to the performance of guardianship services shall not be used to deny certification.
- (de) Upon certification, the individual will be issued a certificate, which will be valid for two years according to the provisions of Section V(d). New certificates will be issued for successive two-year periods upon timely and satisfactory completion of the re-certification process.

#### IV. DUTIES OF THE BOARD

The Board shall develop or oversee the following:

- (a) Approval of the application process used for guardian certification, provisional certification, and re-certification.
- (b) Determination as to whether applicants have met the requirements for certification, provisional certification, or re-certification.
- (c) Approval of training and continuing education courses related to meeting certification or re-certification requirements.
- (d) Approval of waivers or modification of specific certification requirements for good cause.
- (e) Establishment of criteria relative to denial, suspension or revocation of certification.
- (f) Determination of all requests for review of denials of certification, provisional certification, and re-certification.
- (g) Review and determination of all complaints submitted to the Board regarding the conduct of certified guardians and provisionally-certified guardians.
- (h) Maintenance of all appropriate records relative to certification.

#### V. APPLICATION PROCEDURE

- (a) Application Forms. Applications for certification, provisional certification, and re-certification shall be made in writing on forms provided by the Board. In appropriate circumstances, the Board may require the applicant to submit information in addition to that called for on the application forms.

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- (c) Application Procedures. Upon receipt of a completed application form, Board staff shall review and accept the application if:
  - (1) the application form has been completed;
  - (2) the applicant meets the requirements for certification or provisional certification; and
  - (3) the appropriate application fee has been paid.
- (d) Application for Re-certification. Certification shall expire on the second anniversary of the date the certificate is issued. Re-certification shall expire every two years thereafter on the same day and month of the original certification. Applications for re-certification accompanied by the appropriate fee must be filed at least ninety (90) days before the certification expires; applications filed after this deadline but within ninety (90) days after the certification expires will be subject to a late fee. Re-certification applications filed more than ninety (90) days after the certification expires shall be denied and the certification process must begin anew.
- (e) Application for Provisional Certification. In addition to the other information required on the application form, an applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.
- (e)f) Expiration of Certification. Upon expiration of a certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate

Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

### VIII. BOARD DETERMINATION

If the applicant has complied with the application process, the Board shall grant certification, provisional certification, or recertification unless denial is made in accordance with Section IX. The Board may conduct further investigation or require additional information from the applicant or other sources. In appropriate circumstances, the Board may grant or deny certification, provisional certification, and re-certification based on the further information it receives.

### IX. REVIEW AND APPEAL OF CERTIFICATION DENIAL

(a) Denial. The Board may deny an application for certification, provisional certification, or re-certification only if the applicant fails to meet the standards set forth in Section VI (relating to Requirements for Certification), or Section VII (relating to Requirements for Re-Certification), or Section XIV (relating to Provisional Certification), as applicable, or if the applicant has met any of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria). The Board must furnish to the applicant a written statement that includes the reason(s) for denying the application.

(b) Review of denial. Within fifteen (15) days after receipt of notice that the Board has denied an application for certification, provisional certification, or re-certification, the applicant may petition the Board for review of the denial. If a petition for review is timely received, the Director will notify the Board Chair, who will appoint three Board members to a Review Committee to address the petition. The Board Chair shall also designate one of the Review Committee members to be Review Committee Chair. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Review Committee. The Review Committee will act by majority vote.

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(e) Hearing. If the Review Committee recommends denial of the application for certification, provisional certification, or re-certification, the applicant may request a hearing. Such request must be made not less than fifteen (15) days after the date the applicant receives a copy of the Review Committee's recommendation.

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### X. RESPONSIBILITIES OF THE CERTIFIED GUARDIAN; REPORTING REQUIREMENTS

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(e) ~~Copy of Certification to Court. A certified guardian shall file a copy of the guardian's certification in each cause in which the guardian is appointed. Documents Filed with Court. Each document prepared by or on behalf of a certified guardian and filed with a court shall include the certified guardian's certification number.~~

## **XI. DISCIPLINARY CRITERIA**

- (a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, or certified guardian, or provisionally-certified guardian has:

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- (4) Failed to meet the requirements for certification, provisional certification, or recertification established by the Board;

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- (b) The Board may suspend or revoke certification or provisional certification if the certificate was granted:
- (1) Contrary to these rules and the requirements for certification set forth in Section VI (relating to Requirements for Certification) or the requirements for Provisional Certification set forth in Section XIV (relating to Provisional Certification); or
  - (2) To an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Board.
- (c) Denial of an application for certification, provisional certification, or recertification shall be in accordance with Section IX. Except for denial of certification, provisional certification, or recertification, actions by the Board under this section shall be taken in accordance with the procedures set out in Section XII.

## **XII. COMPLAINTS; DISCIPLINARY PROCEDURE**

- (a) Initiation of Process. Any person ("Petitioner"), including the Director, may petition the Board to initiate disciplinary procedures against a certified guardian or provisionally-certified guardian ("Respondent").

## **XIII. APPROVAL OF CONTINUING EDUCATION**

- (a) A continuing education activity must be an organized program of learning dealing with matters that are directly related to the guardianship profession, the services guardians provide, and the legal process involved in guardianship proceedings. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified guardian and the certified guardian's impact on the judicial process and the public. In this Section XIII, the term "certified guardian" includes a provisionally-certified guardian.

## **XIV. PROVISIONAL CERTIFICATION**

- (a) Application for Provisional Certification. An individual who does not meet the requirements for certification in Section VI(c) or (d) may apply for provisional certification in writing on the forms provided by the Board.
- (b) Requirements for Provisional Certification. To be eligible for provisional certification, an applicant must meet all requirements in Section VI other than those listed in (c) and (d). Provisional certification shall expire on the second anniversary of the date the certificate is issued.
- (c) Responsibilities of Provisionally-Certified Guardian.
- (1) A provisionally-certified guardian may provide guardianship services in this state only under the supervision of a certified guardian supervisor.
  - (2) A provisionally-certified guardian must comply with these rules and with the Minimum Standards for Guardianship Services.
  - (3) Change of Name or Address. A provisionally-certified guardian shall notify the Board in writing of any change in name or business name, business or home physical address, or business or home telephone number within thirty (30) days of any change.

- (4) Notice to Board. A provisionally-certified guardian shall immediately notify the Board if:
  - A. the provisionally-certified guardian obtains a different supervisor;
  - B. the provisionally-certified guardian is indicted, formally charged, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication to any offense listed in Section VI(e);
  - C. any of the proceedings listed in Section VI(f) is initiated;
  - D. events or circumstances would require any changes to the attestation required by Section VI(f); or
  - E. the provisionally-certified guardian is removed as a guardian under Section 761 of the Texas Probate Code.
- (5) Documents Filed with Court. Each document prepared by or on behalf of a provisionally-certified guardian and filed with a court shall include the provisionally-certified guardian's certification number and the name and certification number of his or her supervisor.
- (6) A provisionally-certified guardian must comply with the continuing education requirements in Section VII(b).
- (d) Responsibilities of Supervisor.
  - (1) A supervisor shall:
    - A. assume primary responsibility for guiding the provisionally-certified guardian's work and for supervising, generally and directly, as necessary, the quality of the provisionally-certified guardian's work;
    - B. meet face-to-face with each provisionally-certified guardian at least once every two weeks;
    - C. assist the provisionally-certified guardian in activities to the extent the supervisor considers it necessary and appropriate;
    - D. ensure the provisionally-certified guardian is familiar with the provisions of these rules and the Minimum Standards for Guardianship Services; and
    - E. monitor the provisionally-certified guardian's compliance with these rules and the Minimum Standards for Guardianship Services.
  - (2) A supervisor may not supervise more provisionally-certified guardians than a reasonably prudent supervisor operating under substantially similar circumstances would supervise at one time.
  - (3) A supervisor whose certification expires, is revoked, or is suspended may not continue as a supervisor and must notify all provisionally-certified guardians under that person's supervision that the person may not continue as a supervisor.
  - (4) A supervisor shall immediately notify the Board, or cause notice to be sent to the Board, if the supervisor ceases to supervise a provisionally-certified guardian.
- (e) Prohibition on Representation as a Certified Guardian. The supervisor and provisionally-certified guardian may not state, represent, or imply that the provisionally-certified guardian is a certified guardian.
- (f) Expiration of Provisional Certification. A provisionally-certified guardian may be provisionally certified for only one two-year period unless a waiver is approved by the Board. Upon expiration of a provisionally-certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to section 693 of the Texas Probate Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.