

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 07-

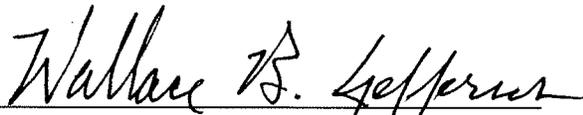
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ORDER APPROVING AMENDMENT TO RULE XIV OF THE RULES GOVERNING GUARDIANSHIP CERTIFICATION

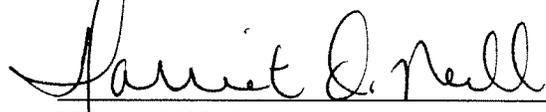
ORDERED that:

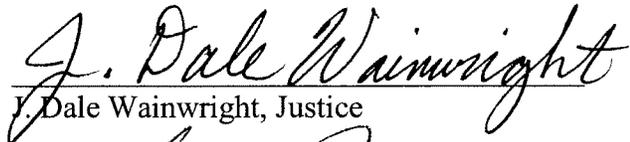
Pursuant to Texas Government Code sections 111.002 and 111.042(c), the Court approves the following amendment to Rule XIV of the Rules Governing Guardianship Certification, which relates to the provisional certification of guardians. The amendment adds a new subsection (g) stating that if a provisionally-certified guardian applies to be a certified guardian within one year of obtaining provisional certification, the applicant need not submit a new criminal history record with the application for full certification. The purpose of the amendment is described in the attached letter from Assistant General Counsel Katie Bond of the Office of Court Administration.

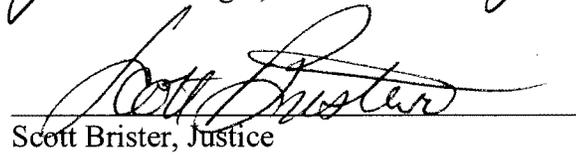
In Chambers, this 30th day of October, 2007 .


Wallace B. Jefferson, Chief Justice


Nathan L. Hecht, Justice

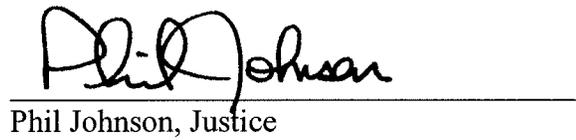

Harriet O'Neill, Justice

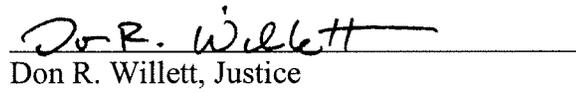

J. Dale Wainwright, Justice


Scott Brister, Justice

David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

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.
- (g) If a provisionally-certified guardian applies to be a certified guardian within one year of obtaining provisional certification, it will not be necessary for the applicant to submit a new criminal history record.



TEXAS GUARDIANSHIP CERTIFICATION BOARD

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CHAIR:
JUDGE GLADYS BURWELL
Galveston

VICE CHAIR:
LEAH COHEN
Austin

September 25, 2007

The Honorable Phil Johnson, Liaison
Guardianship Certification Board
Supreme Court of Texas
201 West 14th Street, 3rd Floor
Austin, TX 78701

The Honorable Nathan L. Hecht, Liaison
Supreme Court Advisory Committee
Supreme Court of Texas
201 West 14th Street, 3rd Floor
Austin, TX 78701

Re: Proposed Amendment to Rule XIV of the Rules Governing Guardianship Certification

Dear Justice Johnson and Justice Hecht:

With this letter, I am forwarding a copy of the Guardianship Certification Board's proposed amendment adding Rule XIV(g) to the provisional certification rules recently approved by the Supreme Court for the Guardianship Certification Program. The proposed amendment was mistakenly omitted from the proposed provisional certification rules when they were sent to the Court for approval in June 2007. Proposed Rule XIV(g) clarifies the criminal history requirements for provisionally-certified guardians who are applying for full certification; Rule XIV, showing the proposed addition of (g), is attached as Attachment A.

Background of Proposed Amendment

As you know, the Guardianship Certification Board (Board) developed proposed rules earlier this year to implement provisional certification pursuant to Senate Bill 506, which became effective April 25, 2007. Senate Bill 506 amended Chapter 111 of the TEXAS GOVERNMENT CODE to authorize the Board to establish qualifications and the Court to adopt rules for a provisional certification program – an apprenticeship-type program to allow new employees who do not have the requisite education or work experience for full certification to work under supervision while they are gaining the experience necessary to obtain certification.¹

¹ The provisional certification rules are part of the Rules Governing Guardianship Certification, which were approved by the Court on December 12, 2006. Senate Bill 506 addressed an issue that arose when the Rules were published for comment – that guardianship programs need to be able to provide on-the-job training to new

The provisional certification amendments were developed by a Board-appointed subcommittee comprised of Board members and several individuals representing different stakeholder groups. Proposed Rule XIV(g) was not part of the original proposal developed by the subcommittee; it was added to the proposed amendments by the Board at its May 18, 2007 meeting, when the Board voted to published the amendments for comment. Only one entity filed comments, and the comments did not address Proposed Rule XIV(g). The Board met on June 5, 2007 and voted to send the proposed amendments to the Court for approval. The Court approved the amendments on June 18, 2007.

As stated above, Proposed Rule XIV(g) was included in the version of the proposed amendments that was approved by the Board for comment on May 18. It was included in the version that was published for comment (*see* Attachment B to this letter) and also in the proposal that the Board considered on June 5 and voted to submit to the Court. However, due to an oversight on my part, Proposed Rule XIV(g) was not included in the proposed amendments sent to the Court for approval. I apologize for the omission and the resulting piecemeal submission to the Court.

Proposed Rule XIV(g)

Proposed Rule XIV(g) addresses criminal history requirements for certain provisionally-certified guardians who are applying for full certification. Recall that under the provisional certification rules approved by the Court in June, provisional certification is for individuals who meet all the requirements for full certification except the experience/education and examination requirements. Under Rule XIV(b), applicants for provisional certification must provide criminal history information as part of the application process.² Provisional certification expires after two years. When a provisionally-certified guardian gains sufficient experience to qualify for full certification, he or she must submit a new application and again provide criminal history information. *See* Rule VI(e) & (g).

All applicants – applicants for certification and for provisional certification – must provide the Board with their Texas and national (FBI) criminal history records obtained through a fingerprint search. The total cost of being fingerprinted and initiating the searches is \$48.95 – \$9.95 for fingerprinting, \$15.00 for the state search, and \$24.00 for the FBI search.³ The Department of Public Safety (DPS) retains the fingerprints that are submitted to it for state searches and will automatically notify the Board if and when a guardian is arrested in Texas after obtaining certification or provisional certification. When the provisionally-certified guardian applies for full certification, he or she must show, among other things, that there has been no criminal history in the intervening period. For state criminal history, this will be shown by the absence of notice to the Board from the DPS regarding a new state arrest. For national criminal

employees while the employees are providing guardianship services. Senate Bill 506 was introduced because Chapter 111 did not contemplate the provision of guardianship services in this manner.

² Under Rule XIV(b) and Rule VI, applicants must also be at least 21 years of age, have a high school diploma or equivalent, and provide information about liability in certain types of civil proceedings (e.g., fraud, misappropriation, theft).

³ As of October 1, 2007, the cost of an FBI search will be \$19.25. With this change, the total cost of being fingerprinted and initiating the searches will be \$44.20.

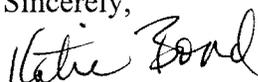
history, however, the FBI does not retain fingerprints. Thus, when the provisionally-certified guardian applies for full certification, he or she must initiate a new FBI search through the DPS. The only cost for this search is the FBI's fee – currently \$24.00 and \$19.25 as of October 1.

As stated above, provisional certification lasts two years. However, it is conceivable that a provisionally-certified guardian could become eligible for full certification before the two-year period expires. Thus, a provisionally-certified guardian who needed, e.g., only a few months of experience to be eligible for full certification would have to be fingerprinted twice – once for the provisional certification application and once for the certification application a few months later. Although the guardian would not need to pay for another DPS search since DPS retains the fingerprints, he or she would be required to initiate an FBI search, even though one had been performed just a few months earlier.

Proposed Rule XIV(g) addresses this situation. It provides that if a provisionally-certified guardian applies for certification within one year of obtaining provisional certification, he or she is not required to submit a new criminal history record. The Board proposes this exception to the criminal history requirements to reduce the cost of applying for full certification for provisionally-certified guardians who qualify and apply within their first year of provisional certification. As a practical matter, the exception will relieve the provisionally-certified guardians to whom it applies only of the requirement to obtain a new FBI search; the Board will still get state criminal history information because the DPS retains applicants' fingerprints and will notify the Board if a guardian is arrested. The Board and public remain protected by the DPS notice procedure and by the fact that the newly-certified guardian will be required to initiate a new FBI search when he or she renews certification two years later (and every two years thereafter).

The Board respectfully requests that the Supreme Court approve Proposed Rule XIV(g) to the Rules Governing Guardianship Certification. Please do not hesitate to contact me at 463-1461 if you have questions.

Sincerely,



Katie Bond

Assistant General Counsel, OCA

cc: Lisa Hobbs, General Counsel, Supreme Court of Texas
Jody Hughes, Rules Attorney, Supreme Court of Texas