

# IN THE SUPREME COURT OF TEXAS

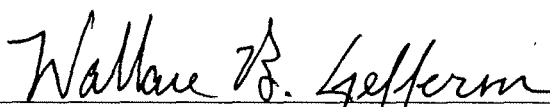
Misc. Docket No. 109049

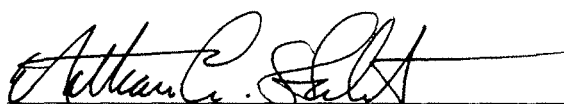
## ORDER APPROVING AMENDMENTS TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

**ORDERED** that:

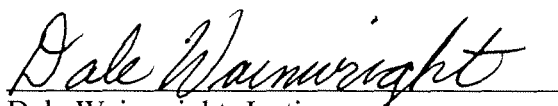
Pursuant to sections 111.002, 111.042(c), and 111.0421(c) of the Texas Government Code, Rules III, V, VI, VII, IX, X, XI, XII, XIII, and XIV of the Rules Governing Guardianship Certification are amended, and Rule XVI of the Rules Governing Guardianship Certification is added, as follows.

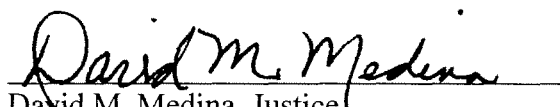
In Chambers, this 6th day of April, 2010.

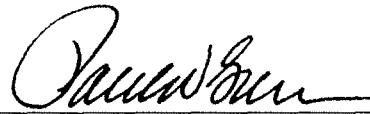
  
Wallace B. Jefferson, Chief Justice

  
Nathan L. Hecht, Justice

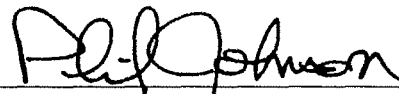
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Harriet O'Neill, Justice

  
Dale Wainwright, Justice

  
David M. Medina, Justice



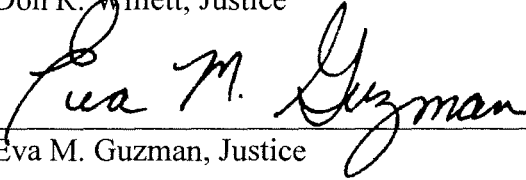
Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice



Eva M. Guzman, Justice

## AMENDMENTS TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

### 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) A certified guardian may use the designation "TxCG" to indicate that the guardian is certified by the Board. Provisionally-certified guardians may not use such designation.

### 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.
- (b) Fees. All fees connected with certification and re-certification shall be set by the Board with the approval of the Supreme Court and are non-refundable. A schedule of fees shall be published on the Board's web site.
  - 1) Application Fee. Each applicant must submit a non-refundable application fee along with the completed application form. No application will be processed until the application fee has been paid. However, an employee of the Texas Department of Aging and Disability Services who is applying for a certificate to

- provide guardianship services to a ward of the department is exempt from payment of the application fee.
- 2) Examination Fee. Each applicant must submit a non-refundable examination fee to take the examination approved by the Board that affirms competency in Texas guardianship matters. The fee must be paid by the date established in the examination schedule.
  - 3) Re-certification Fee. Each application for re-certification must be accompanied by a non-refundable re-certification fee. However, an employee of the Texas Department of Aging and Disability Services who is applying for re-certification to provide guardianship services to a ward of the department is exempt from payment of the re-certification fee. No re-certification application may be processed until the re-certification fee, if applicable, has been paid.
  - 4) Late Fee. Each late application for re-certification must be accompanied by a non-refundable late fee.
- (c) Application Procedures.
- 1) Upon receipt of a completed application form, Board staff shall review and accept the application if:
    - A. the application form has been completed;
    - B. the applicant meets the requirements for certification or provisional certification; and
    - C. the appropriate application fee has been paid.
  - 2) An applicant must complete the requirements for certification or provisional certification within twelve (12) months of submitting the application form.
- (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. For purposes of this rule, if an application is filed by mail or courier receipted delivery, it shall be deemed filed on the date it is deposited with the United States Postal Service or courier service as indicated by the postmark or courier receipt.
- (e) Refusal to Accept Application for Re-certification. Notwithstanding (c) above, the Board shall refuse to accept a certified guardian's application for re-certification if the Board receives notice of child support arrearages in accordance with Section 232.0135 of the Texas Family Code. Upon receipt of further notice under Section 232.0135 that the arrearages have been satisfied, the Board shall accept an application for re-certification, subject to the filing requirements and fees contained in these rules.
- (f) 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.
- (fg) Expiration of Certification. Upon expiration, denial of renewal, suspension, or revocation of a certified or provisionally-certified guardian's certification, the

guardian must immediately provide written notice of the expiration, nonrenewal, suspension, or revocation 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.

## VI. REQUIREMENTS FOR CERTIFICATION

To qualify for certification, the applicant must pay all required fees, comply with the application procedures herein, and must:

- (a) Be at least twenty-one (21) years of age;
- (b) Be a high school graduate or possess the GED equivalent;
- (c) Have two years of relevant work experience related to guardianship or the following educational or training requirements:
  - 1) a minimum of a bachelors degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship, including but not limited to medical, mental health and mental retardation, law, business, accounting, social work, sociology, psychology, human services, protective services, and criminal justice fields, or
  - 2) completion of a course curriculum or training specifically related to guardianship approved by the Board;
- (d) Meet one of the following criteria:
  - 1) have successfully completed an examination approved by the Board covering Texas law and procedure related to guardianship, and any other examination required and approved by the Board testing knowledge of guardianship issues, or
  - 2) be currently certified by and in good standing with the National Guardianship Foundation and have successfully completed an exam approved by the Board covering Texas law and procedure related to guardianship issues;
- (e) Attest under penalty of perjury as to whether he or she has ever been adjudged guilty of or entered a plea of guilty or no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code; and
- (f) Attest under penalty of perjury as to whether he or she:
  - 1) has ever been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
  - 2) has ever been found civilly liable ~~in an action,~~ or settled a claim in an action, including but not limited to a surcharge action, involving that involved allegations of fraud, misrepresentation, material omission, misappropriation, ~~moral turpitude,~~ theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion on the applicant's part; or

- 3) has ever been denied certification or had his or her certification revoked or suspended in Texas or any other jurisdiction requiring certification, registration or licensure to provide guardianship services.
- (g) Provide the Board with his or her Texas and national criminal history records by having his or her fingerprints submitted to the Texas Department of Public Safety (DPS), to be used by DPS for a Texas criminal history search and forwarded to the Federal Bureau of Investigation for a national criminal history search. The criminal history records resulting from both the Texas and national criminal history searches will then be forwarded to the Board. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the application is submitted.
- (h) If the applicant has ever been adjudged guilty of or pleaded guilty or no contest to any crime described in Section VI(e) above, or been relieved of guardian responsibilities, been found civilly liable, settled a claim, or been denied certification or had certification revoked or suspended as described under Section VI(f)(1), (2) or (3) above, the applicant must describe with particularity the circumstances and provide any related documentation requested by the Board.

## VII. REQUIREMENTS FOR RE-CERTIFICATION

To be eligible for re-certification, the certified guardian must pay all required fees, apply within the required time, and meet the following requirements:

- (a) The certified guardian must comply with subsections (e), (f), and (g) of Section VI (relating to Requirements for Certification) of these rules.
- (b) Continuing Education. During each two year certification period, the certified guardian must complete at least ~~six~~ twelve hours ~~per year~~ of continuing education and guardianship training by completing a course that has been approved by the Board under Section XIII (relating to Approval of Continuing Education). The ~~six~~ twelve hours shall include a minimum of ~~one hour~~ two hours of ethics. ~~The above two year continuing education requirement must also include a minimum of~~ and one hour of legislative update.
  - 1) Continuing education must be earned to satisfy the requirements prior to the expiration of the certificate. The certified guardian must list on the application for re-certification the dates, locations, sponsors, number of regular credits and number of ethics credits earned for sufficient continuing education courses to satisfy this requirement. Nothing herein shall be deemed to waive late fees under Section V.
  - 2) A certified guardian may carry forward for the following year's requirement up to two hours of continuing education earned in excess of the minimum six hours, but ethics hours may not be carried forward.
  - 3) The certified guardian must obtain documentation of attendance or completion of a continuing education activity from the sponsoring entity and submit the documentation to the Board along with the certified guardian's application for re-certification.
  - 4) A certified guardian may also earn continuing education credit by speaking at a seminar, teaching a course or authoring a book or article and obtaining approval for this activity under Section XIII (relating to Approval of Continuing Education

## 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), 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.
- (c) Response; Failure to Submit Response. At the same time the Director notifies the Board Chair of the denial, the Director will notify the applicant in writing that the applicant may submit a written response to the denial within fifteen (15) days of receipt of the notice. If the applicant fails to submit a written response within the required time, absent good cause such failure constitutes a default, and the review shall be dismissed without further action by the Review Committee or the Board.
- (d) Review and Recommendation by Review Committee. The Review Committee Chair will schedule at least one meeting to review the denial and response. Additional meetings may be held as deemed necessary. The applicant may attend the Review Committee's meetings in person or by telephone. If the applicant requests to attend by telephone, he or she must be available to participate at the times and in the manner instructed by the Director. While the Review Committee may seek additional information in its discretion, it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Board staff and applicant. The recommendation of the Review Committee must be in writing and must be furnished to the applicant at the same time it is furnished to the Board.
- (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.
  - 1) Hearing Date and Location. If the applicant timely requests a hearing, the date and location of the hearing will be determined by the Board. The hearing must be held within one hundred twenty (120) days after the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.

- 2) Notice of Hearing; Requirements. The Board shall give notice of the hearing to the applicant. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the reasons the application was denied.
  - 3) Costs of Attending Hearing. The applicant is responsible for applicant's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the applicant's behalf.
  - 4) Applicant's Rights at Hearing. At the hearing, the applicant will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The applicant may be represented by legal counsel at the hearing.
  - 5) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the applicant to show why the denial of the application was erroneous. The burden of proof shall be by a preponderance of the evidence.
  - 6) Board Counsel. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
  - 7) Board Action. The Board will act by majority vote of Board members attending the meeting.
- (f) Default. If the applicant fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to applicant, the Board may proceed in the applicant's absence on a default basis; and
  - 2) the factual allegations in the denial of the application may be deemed admitted.
- (g) Final Decision. The Board shall notify the applicant in writing of its decision not more than forty-five (45) days after the conclusion of the hearing.
- (h) Applicability of section. This section does not apply to a disciplinary action resulting from a complaint filed and processed under Section XII (relating to Complaints; Disciplinary Procedure).

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

- (a) Standards and Rules. A certified guardian must comply with these rules and with the Minimum Standards for the Provision of Guardianship Services.
- (b) Response. A certified guardian must respond to requests for information from the Board or the Director pertaining to renewal of certification, complaints alleging misconduct by the certified guardian, investigative inquiries by the Board or Director, and any audits or reviews of the certified guardian's practice. The certified guardian must respond to such requests for information within the time prescribed in the request. Such times must not be unreasonably short.
- (c) Change of Name or Address. A 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.
- (d) Notice to Board. A certified guardian shall immediately notify the Board if:
  - 1) the 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);



- 2) any of the proceedings listed in Section VI(f) is initiated;
  - 3) events or circumstances would require any changes to the attestation required by Section VI(f); or
  - 4) the guardian is removed as a guardian under Section 761 of the Texas Probate Code.
- (e) 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.
- (f) Not later than January 31 of each year, each ~~private professional guardian and~~ guardianship program must provide to the Board the following information for the preceding year:
- 1) the number of wards served by the guardianship program reported by county in which the application to create a guardianship for the ward is filed, and the total number of wards served by the ~~private professional guardian or~~ guardianship program, as applicable;
  - 2) the name, business address, and business telephone number of each individual employed by or volunteering or contracting with the guardianship program to provide guardianship services to a ward or proposed ward of the program;
  - 3) the name of each county in which an individual described in (2) above provides or is authorized to provide guardianship services;
  - 2) 4) the total amount of money received from the State of Texas for the provision of guardianship services; and
  - 3) 5) the total amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.
- (g) ~~In addition to the information required in subsection (f), a~~ Not later than January 31 of each year, each private professional guardian must provide to the Board the following information for the preceding year:
- 1) the number of wards served by the private professional guardian reported by county in which the application to create a guardianship for a ward is filed and the total number of wards served by the private professional guardian, including the name of the ward and the docket number and court having jurisdiction of the guardianship;
  - 2) the aggregate fair market value of the property of all wards that was managed by the private professional guardian;
  - 3) the name, business address, and business telephone number of each individual who provides guardianship services to a ward of a private professional guardian on behalf of the private professional guardian;
  - 4) the total amount of money received from the State of Texas for the provision of guardianship services;
  - 5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources;
  - 3) 6) whether the private professional guardian was removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the

- circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; ~~and~~
- 4) 7) reaffirmation of subsections (e) and (f) of Section VI (relating to Requirements for Certification) of these rules; and
  - 8) a copy of the private professional guardian's application for a certificate of registration with each county clerk required by Section 697(a) of the Probate Code.
- (h) Information that must be submitted under subsections (f) and (g) must be submitted on appropriate forms and in the manner determined by the Board.

## XI. DISCIPLINARY CRITERIA

- (a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has:
- 1) Failed to comply with any of these rules;
  - 2) Failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;
  - 3) Failed to pay any applicable fee established by the Board;
  - 4) Failed to meet the requirements for certification, provisional certification, or re-certification established by the Board;
  - 5) Falsely represented or misstated any material fact to the Board;
  - 6) Been adjudged guilty of or entered a plea of guilty or no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
  - 7) Been found civilly liable ~~in an action~~ or settled a claim in an action, including but not limited to a surcharge action, that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.
  - 8) Been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.
  - 9) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.
  - 10) Failed to notify the Board of a violation of any of the provisions set forth in subsections (e) and (f) of Section VI (relating to Requirements for Certification).
  - 11) Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.
- (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) The Board shall suspend certification or provisional certification pursuant to the provisions of Texas Family Code Section 232.011 upon receipt of a final order issued under Texas Family Code Chapter 232.
- (d) 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, and except for suspension of certification or provisional certification pursuant to Texas Family Code Chapter 232, 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”).
- (b) Information Subject to Disclosure. A document given to the Board in support of or response to a complaint, including the Petition to initiate disciplinary proceedings, is subject to disclosure to the public unless it is confidential or exempt from disclosure under law.
- ~~(b)~~(c) Content of the Petition. The Petition must be submitted to the Board in writing and must include:
  - 1) The name and pertinent contact information of the Petitioner and the Respondent;
  - 2) An allegation of the existence of one or more of the disciplinary criteria set forth in Section XI (relating to Disciplinary Criteria);
  - 3) An adequate factual basis for the allegation(s); and
  - 4) Any necessary documentation or other supporting materials or information.
- ~~(e)~~(d) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Director shall notify the Petitioner that the Petition will not be considered. If a Petition filed by the Director does not conform to the requirements of subsection ~~(b)~~(c) of this section, the Board Chair shall notify the Director that the Petition will not be considered. The Petitioner may re-file an amended Petition.
- ~~(d)~~(e) Review Committee. Once a Petition is determined to conform to the requirements of subsection ~~(b)~~(c), 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.
- ~~(e)~~(f) Notice; Answer.
  - 1) Notice to Respondent. At the same time the Director notifies the Board Chair, the Director will also inform the Respondent in writing that a Petition has been submitted, provide the Respondent with a copy of the Petition, including all supporting materials, as well as a copy of these Rules, and direct that the

Respondent submit a written Answer to the Petition, to be received by the Board within fifteen (15) days after the Respondent's receipt of the notice. Respondent may request an extension of time to file an Answer. The request must be made in writing before the expiration of the fifteen (15) day period. For good cause shown, the Review Committee or its designee may extend the Respondent's time to answer for such period as it may determine, but in no event shall the extension exceed thirty (30) days.

- 2) Failure to Submit Answer. If the Respondent fails to submit an Answer within the required time, absent good cause shown, such failure will constitute default, and all facts alleged in the Petition may be taken as true. If the Review Committee believes that such default has occurred, it will recommend to the Board whether any sanctions should be imposed. Absent good cause for the failure to timely submit an Answer, the Board shall enter an order of default and determine any sanctions to be imposed.

~~(f)~~(g) Review and Recommendation by Review Committee.

- 1) Review by Review Committee. The Review Committee Chair will schedule at least one meeting to review the Petition and Answer, if any. Additional meetings may be held as deemed necessary by the Review Committee. The Review Committee may seek additional information in its discretion, but it has no obligation to do so. The Review Committee is not an investigatory body and will generally render its recommendation to the Board based on the submissions of the Petitioner and Respondent.
- 2) Review Committee's Recommendation. If the Review Committee does not request additional information from the Petitioner or Respondent, the Review Committee must make a recommendation to the Board within thirty (30) days after the Review Committee receives the Answer. If the Review Committee requests additional information, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within fifteen (15) days after the date it receives or should have received the additional information. The Review Committee's recommendation must be in writing and furnished to the Respondent at the same time it is furnished to the Board.
- 3) The Petitioner and Respondent may attend the Review Committee's meetings in person or by telephone. If the Petitioner or Respondent requests to attend by telephone, he or she must be available to participate at the times and in the manner instructed by the Director.

~~(g)~~(h) Hearing. If the Review Committee recommends disciplinary action, or if the Board does not adopt a recommendation from the Review Committee to dismiss the Petition, the Respondent may request a hearing. The request must be made no later than fifteen (15) days after the date the Respondent receives the Review Committee's recommendation, or within fifteen (15) days of notice that the Board has rejected the Review Committee's recommendation to dismiss the Petition.

- 1) Hearing Date and Location. If the Respondent timely requests a hearing, the date and location of the hearing will be determined by the Board or its designee. The hearing must be held within one hundred twenty (120) days from the date the Board receives a timely request for hearing, unless the Board extends the hearing date for good cause.

- 2) Notice of Hearing; Requirements. The Board shall give notice of the hearing to the Petitioner and the Respondent. The notice must include a statement of the time, place, and nature of the hearing; a reference to the particular sections of the statutes and rules involved; and a short statement of the disciplinary action recommended. The Board must also provide the Respondent a copy of the Review Committee's recommendation.
  - 3) Costs of Attending Hearing. The Respondent is responsible for Respondent's costs of preparing for and attending the hearing, including any costs associated with witnesses called on the Respondent's behalf. The Petitioner is responsible for Petitioner's costs of preparing for and attending the hearing.
  - 4) Respondent's Rights at Hearing. At the hearing, the Respondent will be permitted to testify; present evidence; respond to questions from the Board; and examine and cross-examine witnesses who are also present. The Respondent may be represented by legal counsel at the hearing.
  - 5) Conduct of the Hearing; Burden of Proof. The Board may establish rules for the conduct of the hearing. Formal rules of evidence will not apply. Testimony of witnesses must be given under penalty of perjury. The burden of proof shall be on the Petitioner to show why disciplinary action should be imposed. The burden of proof shall be by a preponderance of the evidence.
  - 6) Board Counsel. The General Counsel of the Office of Court Administration or the General Counsel's designee shall serve as counsel to the Board.
  - 7) Board Action. The Board will act by majority vote of Board members attending the meeting.
- ~~(h)~~(i) Default. If the Respondent fails to appear at the hearing:
- 1) upon proof that notice of the hearing was given to Respondent, the Board may proceed in the Respondent's absence on a default basis; and
  - 2) the factual allegations in the Petition may be deemed admitted.
- ~~(j)~~(j) Board Decision. The Board shall notify the Respondent and the Petitioner in writing of its decision not more than forty-five (45) days after the conclusion of the hearing. The written notification shall include an explanation of the basis for the decision and the Board's decision as to any disciplinary action to be imposed, including reprimand, suspension, revocation, or other disciplinary action.
- ~~(k)~~(k) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- ~~(l)~~(l) Correspondence. All correspondence and notices herein sent by or to the Petitioner or Respondent should be made by regular and certified mail to ensure receipt of the item served.

### **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.
- (b) Subject to the requirements contained in Section VII(b) (relating to Requirements for Re-Certification), continuing education activities should include one or more of the following subjects:
  - 1) guardianships;
  - 2) trust administration;
  - 3) powers of attorney;
  - 4) mental or physical health or geriatric health;
  - 5) ethics for guardians, including cooperation with lawyers, judges and fellow guardians and courtesy to all litigants;
  - 6) Texas statutes, rules and case law relevant to the guardianship profession;
  - 7) the role and responsibilities of the certified guardian under the Texas Probate Code, rules adopted by the Supreme Court relating to guardianship certification and the Minimum Standards for the Provision of Guardianship Services adopted by the Board; and
  - 8) management issues, including financial planning and accounting.
- (c) The following do not qualify as continuing education activities under these rules:
  - 1) attendance or participation at professional or association business meetings, general sessions or policy making sessions;
  - 2) service on a committee or council or as an officer in a professional organization;
  - 3) activities completed to satisfy the requirements of a disciplinary action; and
  - 4) any activity completed as ordered by a judicial officer.
- (d) The Board will publish on its web site a list of courses that are approved by the Board as continuing education activities. Any such activities that are used by a certified guardian to satisfy the requirements of Section VII(b) must meet the requirements of subsections (a) and (b) above.
- (e) Continuing education activities ~~conducted by entities~~ that have not been approved by the Board may be approved by the Board upon written request for approval made by a certified guardian.
  - 1) The request for approval must be made on a form provided by the Board and must include a sample brochure or course outline that describes the content of the program, identifies the presenters, indicates the time devoted to each subject and the date and location of the program.
  - 2) The request for approval will be reviewed and approved or denied by the Director. A certified guardian may appeal the Director's denial of a request for approval by submitting a written appeal to the Board within fifteen (15) days of notification of the denial.

- 3) The Board shall review the denial at its next regularly scheduled meeting. The requesting guardian must be notified of the Board's decision not less than fifteen (15) days after the Board's decision.
- (f) A certified guardian may request up to six hours of continuing education credit during each 2-year certification period for teaching courses, speaking at seminars, or authoring books or articles related to the subject matter specified in Section XIII(b). The certified guardian must submit an application for teaching credit on a form provided by the Board. Credit for preparation and presentation may be provided on the basis of hour-for-hour credit for each hour spent preparing the article or book or making the presentation.

#### **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 with each provisionally-certified guardian at least once every two weeks, with at least one of these meetings being face-to-face each month;
  - 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.
- 5) A supervisor may not:
  - A. be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to a person whom he or she is supervising; or
  - B. be an employee of or under the employment supervision of a person whom he or she is supervising.
- (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.



## XVI. CONSEQUENCES OF CRIMINAL OFFENSES

(a) In determining whether to deny an application for certification or provisional certification under Rule VI(e), refuse to re-certify a certified guardian under Rule VII(a), or discipline a certified or provisionally-certified guardian under Rule XI(a)(6), the Board shall consider the following factors:

- 1) The nature and seriousness of the crime;
- 2) The relationship of the crime to the provision of guardianship services;
- 3) The extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- 4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified guardian.

(b) In determining the fitness to perform the duties and discharge the responsibilities of a certified guardian, the Board shall consider, in addition to the factors listed in section (a):

- 1) The extent and nature of the person's past criminal activity;
- 2) The age of the person when the crime was committed;
- 3) The amount of time that has elapsed since the person's last criminal activity;
- 4) The conduct and work activity of the person before and after the criminal activity;
- 5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- 6) Other evidence of the person's fitness, including, but not limited to, letters of recommendation.