

IN THE SUPREME COURT OF TEXAS

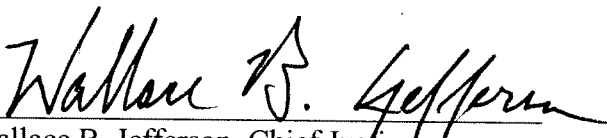
Misc. Docket No. ~~09-~~ 9003


ORDER APPROVING AMENDMENTS TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

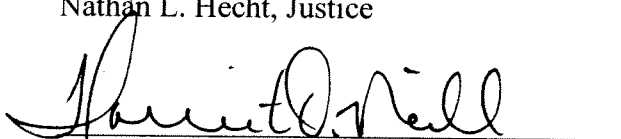
ORDERED that:

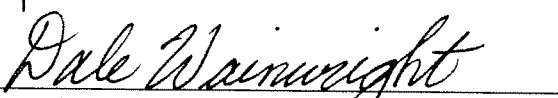
Pursuant to sections 111.002 and 111.042(c) of the Texas Government Code, Rules VI, XI, XII, and XIV of the Rules Governing Guardianship Certification are hereby amended as follows.


In Chambers, this 5th day of January, 2009.

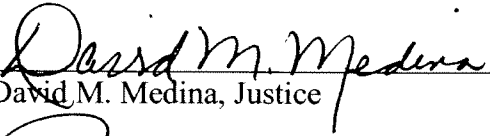

Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice

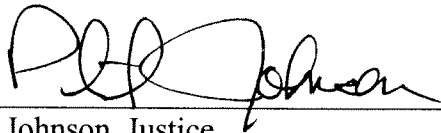

Harriet O'Neill, Justice

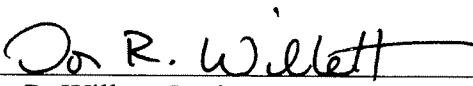

J. Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

Amendments to Rules Governing Guardianship Certification

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 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), ~~22.07~~ 22.05 (deadly conduct), ~~22.08~~ 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:
 - a) has ever been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion; or
 - 2) has ever been found civilly liable in an action, or settled a claim, involving allegations of fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, 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 no contest to any crime described in Section VI(e) above, or been relieved of guardian responsibilities, been found civilly liable, or settled a claim, or been denied certification or had certification revoked or suspended as described under Section VI(f)(1), ~~or (2) or (3)~~ above, the applicant must describe with particularity the circumstances and provide any related documentation requested 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 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), ~~22.07~~ 22.05 (deadly conduct), ~~22.08~~ 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - 7) Been found civilly liable in an 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) 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”).
- (b) 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.
- (c) Initial Review of Petition. If a Petition filed by a person other than the Director does not conform to the requirements of subsection (b) 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) 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) Review Committee. Once a Petition is determined to conform to the requirements of subsection (b), 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) 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) 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. The recommendation of the Review Committee must be in writing and must be furnished to the Respondent at the same time it is furnished to the Board. However, if the Review Committee requests additional information from the Petitioner or Respondent, the Review Committee may allow up to thirty (30) days to provide the additional information and must make a recommendation to the Board within its recommendation is due 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.
- (g) 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.
- 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) 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.
- (i) 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.
- (j) Publication. The Board may publish or otherwise provide public notice of the final result of any disciplinary proceeding or action.
- (k) 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.

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, 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.
- (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.