

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 08- **9031**

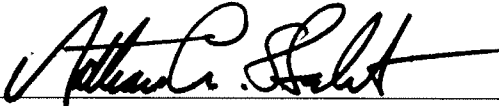
**ORDER APPROVING AMENDMENTS TO RULE XI(a)
OF RULES GOVERNING GUARDIANSHIP CERTIFICATION**

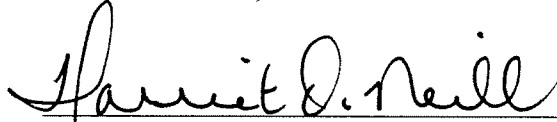
ORDERED that:

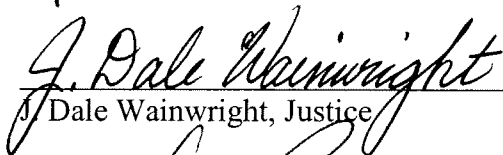
Pursuant to Texas Government Code sections 111.002 and 111.042(c), the Court approves the following amendments to Rule XI(a) of the Rules Governing Guardianship Certification, originally promulgated in Miscellaneous Docket No. 06-9165 (Dec. 12, 2006). The purpose of the amendments is described in the attached letter from Assistant General Counsel Katie Bond of the Office of Court Administration.


In Chambers, this 18th day of March, 2008.

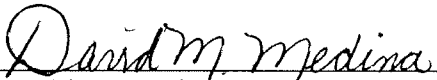

Wallace B. Jefferson, Chief Justice


Nathan L. Hecht, Justice

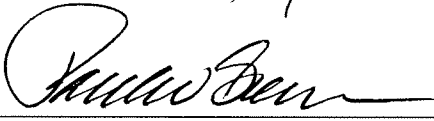

Harriet O'Neill, Justice


Dale Wainwright, Justice

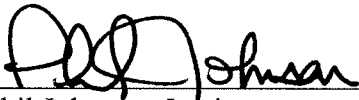

Scott Brister, Justice



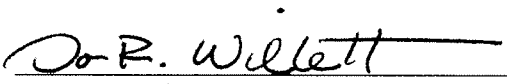
David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

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;
 - 56) 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 (deadly conduct), 22.08 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - 67) 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;
 - 78) 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;
 - 89) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party;
 - 910) 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);
or
 - 101) Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.



TEXAS GUARDIANSHIP CERTIFICATION BOARD

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P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
JUDGE GLADYS BURWELL
Galveston

VICE CHAIR:
LEAH COHEN
Austin

February 27, 2008

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 of Rule XI(a) 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 to Rule XI(a) of the Rules Governing Guardianship Certification for approval by the Supreme Court under TEXAS GOVERNMENT CODE Chapter 111. The amendment adds making false statements or misstatements of material fact to the list of grounds in Rule XI(a) for denying an application for certification or provisional certification. Rule XI, showing the proposed addition of new (a)(5), is attached as Attachment A.

Update on Board Activities

In June 2007, the Guardianship Certification Board (Board) began certifying guardians and provisional guardians pursuant to Section 111.042 in order to meet the September 1, 2007 legislative deadline for guardians to be certified.¹ Rule VI of the Rules Governing Guardianship Certification requires, among other things, that applicants must pass an examination to be certified. The entity that administers the examination for the Board gave the exam nine times before September 1 to facilitate certification of guardians by the deadline; going forward, the exam will be offered at least three times each year. As expected, the Board received many applications for certification as September 1 drew near; as also expected, the volume of

¹ Recall that provisional certification was added to Chapter 111 by the 80th Legislative Session so that individuals who do not meet the education and experience qualifications for full certification may provide guardianship services under the supervision of a certified guardian for a limited period of time while becoming qualified for certification.

applications has decreased substantially since that time. As of the date of this letter, the Board has certified 168 guardians and 54 provisionally-certified guardians.

Proposed Amendment of Rule XI(a)

Rules VI and XIV contain the requirements for certification and provisional certification, respectively. Rule VI requires applicants for full certification to meet certain requirements regarding education, work experience, criminal history, and liability in certain civil proceedings.² Under Rule XIV, applicants for provisional certification are not required to meet the education or experience requirements but must comply with the criminal history and civil liability requirements. Applicants must provide information about these matters on their applications so the Board can determine whether they comply with the requirements. In the course of processing applications, the Board's staff discovered that the current rules do not expressly authorize the Board to deny an application for certification or provisional certification when an applicant provides false information or makes material misstatements of fact on the application. Rule XI lists the criteria for denying certification and disciplining individuals who have been certified. Rule XI(b)(2) includes making false representations or misstatements of material fact as a criterion for *revocation* or *suspension* of an individual's certification or provisional certification, but the rule does not include *denial* of an application in the list of actions the Board may take. In contrast, Rule XI(a) includes *denial* in the list of actions the Board may take but does not include false representations or misstatements of material fact in the grounds for those actions. The proposed amendment adds false representation and misstatement of material fact to the grounds for denying an application in Rule XI(a).

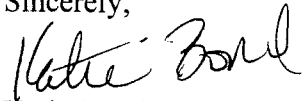
The Board considered the proposed amendment at its October 26, 2007 meeting and voted to publish it for comments. One person filed comments and suggested a minor change in the wording of the amendment. The Board met on February 1, 2008, revised the proposed amendment as suggested by the commenter, and voted to submit the proposal to the Court for approval.

The proposed amendment to Rule XI(a) closes an unintended gap in the Board's ability to enforce the certification requirements set out in the rules. The Board does not have staff to investigate applicants and must therefore rely on the information provided by the applicants themselves. If an applicant makes false statements and the Board happens to find out about it before the applicant is certified, the Board wants to have clear authority to deny the application, especially given the vulnerability of the citizens that the certification program was established to protect.

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

² Rule VI requires that applicants not have been convicted of a felony, crime of moral turpitude, or any offense listed in the rule (e.g., sexual assault; injury to a child, elderly individual, or disabled individual; misapplication of fiduciary property); removed as a guardian; found civilly liable for such actions as fraud, misappropriation, or theft; or found liable in a subrogation action.

Sincerely,

A handwritten signature in black ink that reads "Katie Bond". The signature is written in a cursive style with a large, looped "K" and a long, sweeping "B".

Katie Bond

Assistant General Counsel, OCA

cc: Alice McAfee, General Counsel, Supreme Court of Texas
Jody Hughes, Rules Attorney, Supreme Court of Texas

**PROPOSED AMENDMENT TO RULE XI(a)
RULES GOVERNING GUARDIANSHIP CERTIFICATION**

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;
 - ~~5~~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 (deadly conduct), 22.08 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
 - ~~6~~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.
 - ~~7~~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.
 - ~~8~~9) Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.
 - ~~9~~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).
 - ~~10~~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.