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NO. 88513-3

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF:

LORI A. PETERSEN,
CPG No. 9713.

RESPONSE TO MOTION TO
SUPPLEMENT THE RECORD
WITH ADDITIONAL
EVIDENCE; & MOTION TO
RECONSIDER OCTOBER 8,
2013, ORDER GRANTING
MOTION TO STRIKE

I. IDENTITY OF RESPONDING PARTY

Petitioner, the Certified Professional Guardianship Board (“Board”), responds to Respondent Lori Petersen’s Motion to Supplement the Record with Additional Evidence; and Motion to Reconsider October 8, 2013, Order Granting Motion to Strike.

II. STATEMENT OF RELIEF SOUGHT

The Board respectfully requests that this Court deny all of Ms. Petersen’s requested relief.

III. FACTS RELEVANT TO MOTION

This motion represents Ms. Petersen’s third attempt to place before this Court evidence that is not of record. Like her previous attempts, Ms. Petersen’s request is without merit and, indeed, suggests a desire to further argue the merits of this case beyond the briefing allowed for by the rules. This Court should reject this request.

Ms. Petersen first placed material from outside the record before this Court as Appendix A to her opening brief. The Board's response brief noted this fact, and asked that this Court "reject consideration of this extra-record material out of hand." Br. of Respondent Certified Professional Guardianship Board at 36. The Board refrained from moving to strike that document, instead explaining its irrelevance to this case in the Board's Response Brief.

Ms. Petersen next attempted to improperly place extra-record material before this Court in the form of Appendix A to her Reply Brief. The Board moved to strike that document, as well as the sole reference to it in Ms. Petersen's Reply Brief. Motion to Strike Evidence Not of Record. This Court granted the Board's motion at the direction of the assignment Justice. Letter from Ronald R. Carpenter to Counsel (October 8, 2013). A redacted version of Ms. Petersen's Reply Brief was substituted for her original reply brief, redacting Appendix A and the footnote that referenced it. (Redacted) Reply Br. of Lori Petersen.

Ms. Petersen now asks this Court to supplement the record by adding two documents to the record. The first is the very same document that this Court ordered stricken on October 8, a letter attached as Appendix A to Ms. Petersen's original Reply Brief. That document consists of a letter from the Department of Social and Health Services to

Heidi Peterson. The letter is dated after the Board decision at issue in this case and concerned a different adult family home than the one involved in this case. Heidi Peterson, no relation to Lori Petersen, is the owner of three adult family homes, one of which housed Ms. Petersen's wards throughout most of the time period relevant to this case. Ms. Petersen's wards, however, did not reside in the home at issue in that letter, but in a different adult family home under the same ownership. See Ms. Petersen's original Reply Br., Appendix A at 1 (identifying the facility at issue as located on Fleming Place in Spokane) and Reply Br. at 14 (noting that the wards were housed not at Fleming Place but in Colbert, Washington).¹ The second document Ms. Petersen now asks be added to the record is also dated after the Board decision at issue in this case and also does not involve the adult family home at issue in this case. It is a more recent letter from the Department of Social and Health Services to Heidi Peterson, concerning administrative discipline regarding the same adult family home as did the letter that this Court previously struck as an attachment to Ms. Petersen's Reply Brief.

IV. ARGUMENT

This Court has, in substance, already rejected the arguments that Ms. Petersen offers in support of her third attempt to supplement the

¹ A third ward discussed in the record, E.R., resided neither at Fleming Place nor in Colbert, but at a third location on Gary Lane in Spokane. Ex. 5.

record. The two documents at issue, Appendix A to Ms. Petersen's original Reply Brief and the letter appended to Ms. Petersen's present motion, concern administrative actions taken by the Department of Social and Health Services regarding the same group home. This Court has already excluded such irrelevant material, and it should do so again.

Ms. Petersen contends that the extra-record materials satisfy the requirements of RAP 9.11 for supplementing the record because, she alleges, they are relevant to the quality of care provided to Ms. Petersen's wards. But neither of the letters Ms. Petersen seeks to add to the record relate to the adult family home at which her wards were housed. As noted above, they relate to a different facility under the same ownership, and nothing in those letters suggest that they relate to the care of any of Ms. Petersen's wards at issue in this case. Moreover, they were written after the Board reached its decision in this case, and accordingly could not have had any bearing upon the decision the Board was called upon to make, at the time they made it. *See Keenan v. Empl. Sec. Dep't*, 81 Wn. App. 391, 396, 914 P.2d 1191 (1996). Neither of the letters set forth more than minimal information concerning the facts to which they relate, and accordingly they suggest no relationship to the facts of this case.

The legal argument Ms. Petersen offers in support of her motion misconstrues the nature of the complaint filed before the Board. The

charges against Ms. Petersen related to her performance of her duties as a certified professional guardian for J.S. and D.S., not to the conduct of others. The Board found that Ms. Petersen violated several Standards of Practice for professional guardians. *See* Respondent's Br. at 18-25 (discussing the particular Standards of Practice Ms. Petersen was found to have violated). At no point does Ms. Petersen so much as mention the Standards of Practice the Board found her to have violated, much less show how her new evidence is relevant to those standards. The issues relate to Ms. Petersen's duties, and not to the quality of care at a different facility owned by Heidi Peterson.

The letters are accordingly irrelevant. In the language of the rule, they are not "needed to fairly resolve the issues on review," and would not "probably change the decision being reviewed." RAP 9.11 (1) and (2). Ms. Petersen offers no cogent basis upon which this Court could conclude that "it would be inequitable to decide the case solely on the evidence already taken" before the Board. RAP 9.11 (6). Indeed, if it was inequitable to decide the case without letters like these, sent well after the Board entered its decision and regarding a different adult family home, there is no obvious limit as to extra-record materials that Ms. Petersen could seek to add to the record.

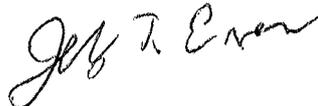
In order to supplement the record, Ms. Petersen would need to satisfy all six of the criteria of RAP 9.11. *In re Recall Against Feetham*, 149 Wn.2d 860, 872-73, 72 P.3d 741 (2003). She does not, and her motion is without merit. This Court should reject her thinly veiled effort to offer additional argument after the close of briefing.

V. CONCLUSION

For these reasons, this Court should deny Ms. Petersen's motion to supplement the record and should similarly deny Ms. Petersen's motion to reconsider its order of October 8, 2013, granting the Board's motion to strike.

RESPECTFULLY SUBMITTED this 25th day of October, 2013.

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CERTIFICATE OF SERVICE

I certify that I caused to be served a true and copy of the foregoing document via electronic mail and first class U.S. Mail, postage paid upon the following:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of October 2013, at Olympia, WA.


KRISTIN D. JENSEN
Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Jensen, Kristin (ATG)
Cc: Even, Jeff (ATG); Standifer, Chad (ATG); Baluyut, Jeanette (ATG); 'nfallis@helsell.com'; 'mwimmer@helsell.com'
Subject: RE: 88513-3, In re Lori A. Petersen;

Rec'd 10-25-13

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From: Jensen, Kristin (ATG) [mailto:KristinJ@ATG.WA.GOV]
Sent: Friday, October 25, 2013 11:44 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Even, Jeff (ATG); Standifer, Chad (ATG); Baluyut, Jeanette (ATG); 'nfallis@helsell.com'; 'mwimmer@helsell.com'
Subject: 88513-3, In re Lori A. Petersen;

Sent on behalf of Jeffrey T. Even, WSBA #20367, Office ID #91087

Dear Clerk:

Attached for filing in the above-noted case, please find the Response to Motion to Supplement the Record.

Respectfully,

Kristin

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