



## 2. STATEMENT OF FACTS

2.1 On or about June 28, 2010, the Board opened a grievance, CPGB No. 2010-017, based on Ms. Cain's failure to respond to requests for information about the results of the DR 520 Audit of her cases. In July 2009, the Board began an audit of all certified professional guardians of their cases to ensure the timeliness of filing of certain reports. Each month a number of guardians were randomly chosen for auditing. The guardian would be notified of his/her selection and requested to send in a case list.

2.2 Ms. Cain was randomly selected for audit in September 2009. Ms. Cain did not respond to the request to provide a case list. In early April 2010, the AOC Guardian Program Coordinator, Deborah Jameson, examined Ms. Cain's cases on SCOMIS, the court's case management system. All of Ms. Cain's cases were in Kitsap County. There were questions about the timeliness of several reports, but Ms. Cain did not provide any explanation regarding the apparent late filings.

2.3 Ms. Cain and the Kitsap County Superior Court Presiding Judge were notified of the fact that a grievance had been opened regarding the apparent late filings and lack of response. The court sent a letter with information about the late filings and noted that the guardian filed the required documents beyond the deadlines established by the court, requiring multiple settings on the court's monthly Guardianship Delinquency Calendar to ensure eventual compliance. The court also confirmed that reports were filed late in the 6 cases.

2.3.1 Kitsap County Superior Court Case No. 07-4-00167-0, inventory and personal care plan were due on 11/29/08 and were filed on 4/8/10. Annual accounting was due 11/20/09 and filed on 4/9/10.

2.3.2 Kitsap County Superior Court Case No. 08-4-00513-4, inventory and personal care plan were due on 1/3/09 and were filed on 4/22/10. Court appointed successor guardians, but denied a motion to change venue to Thurston County until Ms. Cain

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filed the initial care plan and inventory. Ms. Cain's late filing delayed the venue change by about a month.

2.3.3 Kitsap County Superior Court Case No. 07-4-00216-1, inventory and personal care plan were due on 11/29/08 and were filed on 4/8/10. Annual accounting was due 11/20/09 and filed report on 4/9/10.

2.3.4 Kitsap County Superior Court Case No. 08-4-00647-5, inventory and personal care plan were due 2/14/09 and were filed on 4/24/09. An Order dismissing the guardianship was entered on 2/12/10 and the guardian directed to file a final accounting within 60 days, but has not as of October 21, 2010.

2.3.5 Kitsap County Superior Court Case No. 05-4-00548-2, inventory and personal care plan were due on 11/29/08 and were filed on 4/8/10. The incapacitated person died on 2/20/09 and the final report was due 5/20/09 and was filed on 11/25/09.

2.3.6 Kitsap County Superior Court Case No. 08-4-00174-1, inventory and personal care plan were due on 8/2/08 and were filed on 4/24/09. The annual accounting was due on 8/2/09 and was filed on 11/25/09.

2.4 On August 12, 2010, Ms. Cain responded in writing to the questions regarding the late filings. Ms. Cain noted that she had moved to a new home, had health issues and other personal matters happen. She admitted that the reports had been filed late. She said that she would file her reports on time in the future and apologized for the late filings.

### 3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.1 through 2.4, Ms. Cain's conduct constitutes grounds for discipline pursuant to 401.1 and 401.3, which provides in pertinent part:

**SOP 401.1** The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person. When a question exists between the standards and a statute, timely direction shall be sought from the court. If a guardian is aware of a court order of the court in a specific case which may lead to a conflict with these regulations, the guardian shall disclose this to the court.

**SOP 401.3** The guardian shall provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

3.2 Based on the facts and violations set forth above, Ms. Cain's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

**GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board**

...

(2) Duties and Powers.

...

(viii) Grievances and Discipline. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

**DR 503** A professional guardian may be subject to disciplinary action for any of the following:

**DR 503.1** Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

**DR 503.13** Failing to cooperate during the course of an investigation as required by the Board's regulations.

**4. AGGRAVATING AND MITIGATING FACTORS**

Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating factors in determining the sanctions to be imposed.

**4.1 Aggravating Factors.** Pattern of conduct

**4.2 Mitigating Factors.** Absence of prior disciplinary record, absence of dishonesty, or selfish motive.

**5. PRIOR RECORD OF DISCIPLINE**

Ms. Cain has no prior record of discipline with the Board.

## 6. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on Ms. Cain for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

**6.1 Letter of reprimand.** The Board hereby imposes a letter of reprimand on Ms. Cain.

This Agreement constitutes the letter of reprimand and shall be placed in the Board's disciplinary files for Ms. Cain. A letter of reprimand is generally appropriate when a guardian engages in professional misconduct that causes injury to a party, the public, or the legal system or causes interference with a legal proceeding.

**6.2 Audit.** All of Ms. Cain's cases will be audited six months after the adoption of this Agreement to ensure compliance with filing deadlines for the following reports/petitions: Inventory, Personal Care Plan, Petition re Disbursements, Bond, Annual Report, Petition re Settlement of Estate. If Ms. Cain is not in compliance on all of her cases, the Board may require another audit within a year after this Agreement is adopted.

**6.3 Probation.** Ms. Cain shall be under probation for a period of not less than six months to ensure her compliance with the duties, standards and requirements for a professional guardian. If Ms. Cain complies with the duties, standards and requirements of a professional guardian for six months, the probation will be lifted. If not, the probation period may be continued for another period not to exceed six months or the Board may take further disciplinary action.

**6.4 Case Tracking System.** Ms. Cain shall create and implement a unified tracking system for all guardianships which will prevent any future missed or late filings of reports as well as

providing better case management. Ms. Cain will demonstrate to the SOPC that the tracking system has been created and is adequate.

**6.5 Contingency Plan.** Ms. Cain shall create a contingency plan to ensure that if she is unable to prepare reports, file reports, attend to clients, etc. due to medical or personal issues, another qualified guardian will be prepared to stand in for her. Ms. Cain will describe the plan in sufficient detail to the SOPC so that the SOPC can judge if the plan is adequate.

## **7. VIOLATION OF AGREEMENT**

**7.1** Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, not filing timely reports, failing to create a case management system, and failing to create a contingency plan.

**7.2** In the event of an alleged breach of this Agreement, the Board will issue a Complaint pursuant to its Disciplinary Regulations, providing notice and an opportunity for a hearing to the certified professional guardian alleged to be in breach of the Agreement. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

**7.3** This Agreement is binding as a statement of all known facts relating to the conduct of Ms. Cain, but any additional existing acts may be proven in any subsequent disciplinary proceedings.

## **8. NOTICE**

This Agreement shall be retained by the AOC in Ms. Cain's disciplinary file. This Agreement shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

## **9. ENTIRE AGREEMENT**

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

## **10. SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

## **11. LAWS GOVERNING**

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.

## **12. RIGHT TO COUNSEL**

Ms. Cain acknowledges that she has the right to counsel for representation in this disciplinary matter, at her own expense, as set forth in Disciplinary Regulation 509.1.

## **13. PRESENTATION OF AGREEMENT TO THE BOARD**

Ms. Cain understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Ms. Cain waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation. The SOPC reserves the right to withdraw this offer of settlement at any time prior to the presentation to the Board.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:

Wanda K. Cain  
Wanda Cain, CPG #10490

Feb 28, 2011  
Date

Darlene Piper  
Darlene Piper  
Attorney for Wanda Cain  
WSBA # 24244

3/3/11  
Date

**APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS**

18 DAY OF March, 2010.

Honorable Christopher Wickham  
Chair, Certified Professional Guardian Board