

CERTIFIED PROFESSIONAL GUARDIAN BOARD

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| In the matter of: |) | CPGB No. 2010-025, 2011-005, and 2011-010 |
| |) | |
| Sharon Nielson, CPG No.10082 |) | Disciplinary Proceeding Complaint |
| |) | (DR 510) |
| |) | |
| Respondent |) | |

Pursuant to General Rule 23 (GR 23) and the Disciplinary Regulations for Certified Professional Guardians, the Certified Professional Guardian Board (hereinafter “Board”) alleges violations of the Disciplinary Regulations (DR) by Sharon Nielson as follows:

1. Jurisdiction

1.1 At all times relevant herein, Ms. Nielson was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No.10082. Ms. Nielson was certified on January 7, 2004.¹

1.2 The Certified Professional Guardian Board is responsible for reviewing any allegation that a certified professional guardian or certified professional guardianship agency has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. Pursuant to its Disciplinary Regulations, the Board may impose discipline, sanctions, costs and other remedies

¹ Ms. Nielson was decertified on June 17, 2011 for failure to comply with continuing education regulations.

upon a finding of violation, or may recommend that the Washington Supreme Court impose discipline, sanctions and costs, when the recommendation is for suspension or decertification of the certified professional guardian or agency.

2. Background Facts

2.1 On or about October 14, 2010, the Board opened a grievance, CPGB No. 2010-025, based on the results of the Disciplinary Regulations (DR) 520 Audit. Ms. Nielson's cases (five at that time) were audited in February 2010 and all of the cases had instances of prior non-compliance with reports being filed an average of 54 days late. Ms. Nielson acknowledged that reports were filed late or had not been filed. Her explanations were that she was unable to obtain needed information or thought that a report was a two-year report, not an annual report.

2.2 In May 2010, the SOPC requested that Ms. Nielson explain her case management system or calendaring system and how she would improve it to prevent future late filings. Ms. Nielson did not respond with this information despite three requests. The grievance was opened in October 2010 and the Superior Courts of Skagit, Whatcom, and Snohomish counties were notified.

2.3 On November 18, 2010, Ms. Nielson sent a letter to the courts and to the Board stating that she had been ill with heart disease and depressed. She said that her clients and their care had not been neglected. She said that she was getting all of her cases reassigned and would not be doing guardian work in the future. The Board received a copy of a letter from the Skagit County Superior Court informing Ms. Nielson that if she did not correct deficiencies in three of her cases by December 31, 2010, the court would order her to appear. The court entered orders for her to appear on January 4, 2011.

2.4 On or about February 7, 2011, the Board opened a second grievance, CPGB No. 2011-005, against Ms. Nielson based on allegations in Skagit County case #10-4-00081-0. Ms. Nielson had been appointed as the guardian of the estate on May 7, 2010. She resigned and a successor guardian was appointed on September 3, 2010. Ms. Nielson has not had a final report approved or been discharged by the court as required by RCW 11.92.053. The court in Skagit County ordered Ms. Nielson to reimburse the guardianship estate a total of \$9,755.37 based on discrepancies in accounts, fees paid prior to approval, unaccounted for funds, overdraft fees, and costs of the successor guardian.

2.5 In Skagit County case #10-4-00081-0, Ms. Nielson was required to post a bond of \$250,000 because the incapacitated person's estate was valued at \$750,000, which included real property valued at \$500,000. Pursuant to Regulation 117, all certified professional guardians are required to carry Errors and Omissions insurance if they have 25 or more cases or manage more than \$500,000 in countable assets, which includes real property. A guardian who has previously been exempt from the insurance requirements is required to file a declaration within fifteen days of the change in status stating how she will meet the errors and omissions insurance requirements. Ms. Nielson did not file any such declaration and had stated in February 2010 that she was exempt from the errors and omissions insurance requirement despite being the guardian in the above case where there were assets in excess of \$500,000.

2.6 On or about March 15, 2011, the Board opened a grievance, CPGB No. 2011-010, based on allegations that Ms. Nielson had not responded to court requests to file pleadings in two cases: Skagit County cases #06-4-00317-9 and #09-4-00021-2.

2.7 In Skagit County case #06-4-00317-9, Ms. Nielson did not file the annual report that was due on June 21, 2010. The court entered an order to show cause to appear on January 4, 2011.

Ms. Nielson did not appear. The court noted a hearing to remove the guardian and appoint the standby guardian as successor guardian. The standby guardian had attempted to step in, but could not reach Ms. Nielson by phone or mail and could not obtain information.

2.8 In Skagit County case #09-4-00021-2, Ms. Nielson was removed as the guardian on January 21, 2011. Ms. Nielson failed to file reports during the period from March 13, 2009 to January 21, 2011 and did not turn over guardianship records to the successor guardian.

3. Violations of Regulations

3.1 Based on the facts set forth in paragraphs 2.1 to 2.4 and 2.6 to 2.8, Ms. Nielson's conduct constitutes grounds for discipline pursuant to Standards of Practice 401.1, 401.3 and 408, which provide 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.

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

SOP 408 Applicable Law. The guardian shall perform duties and discharge obligations in accordance with current Washington law governing the certification of guardian. In each guardianship, the guardian shall comply with the requirements of the court that made the appointment.

3.2 Based on the facts set forth in paragraphs 2.4, Ms. Nielson's conduct constitutes grounds for discipline pursuant to Standards of Practice 403.3 and 406, which provide in pertinent part:

SOP 403.3 All compensation for the services of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court.

SOP 406 Financial Management The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest.

3.3 Based on the facts set forth in paragraphs 2.5, Ms. Nielson's conduct constitutes grounds for discipline pursuant to Application Regulations 117.6.2 and 117.7.1, which provide in pertinent part:

117.6.2 A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

117.7.1 Failure to comply with this regulation in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

3.4 Based on the facts and violations set forth above, Ms. Nielson'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 503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

DR 503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

DR 503.9 Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.

DR 503.11 Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.

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

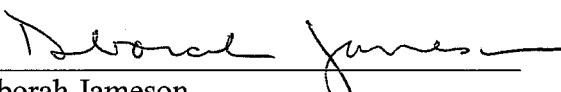
4. Request for Disciplinary Action and Sanctions

Based on the foregoing, it is requested that Respondent be found in violation of the regulations cited above and that disciplinary sanctions, remedies, and costs, including attorney fees and other provable expenses, be imposed on respondent in accordance with the Disciplinary Regulations.

DATED this 19th day of August, 2011.

Certified Professional Guardian Board

By:


Deborah Jameson
Guardian Program Coordinator