

Guardianship and Conservatorship Program Regulations

507 RESOLUTION WITHOUT COMPLAINT

Grievances not dismissed can be resolved without the filing of a complaint, through the following non-exhaustive methods: An advisory letter (DR 507.1), an Agreement Regarding Discipline (DR 507.2), or voluntary surrender in lieu of discipline (DR 507.3).

507.1 ADVISORY LETTER

An advisory letter may be issued when a complaint is not warranted, but it is appropriate to caution a respondent CPGC concerning his or her conduct. An advisory letter is not confidential and may be subject to a public records request, but will not be posted to the Board's public website. An advisory letter does not constitute a finding of misconduct, is not a sanction, and is not a disciplinary action. An advisory letter may be issued to notify a certified professional guardian and conservator that:

1. While there is insufficient evidence to support disciplinary action, the Standards of Practice Committee believes that continuation of the activities that led to the investigation may result in further Board action against a respondent certified professional guardian and conservator;
2. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or
3. While a certified professional guardian and conservator has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Standards of Practice Committee believes that repetition of the activities that led to the investigation may result in further Standards of Practice Committee action against a CPGC.

507.2 AGREEMENT REGARDING DISCIPLINE

1. Requirements. Any disciplinary matter or proceeding may be resolved by an Agreement Regarding Discipline at any time. The Agreement Regarding Discipline must be signed by the respondent CPGC and AOC, and approved by the Standards of Practice Committee and the Board. An Agreement Regarding Discipline is a finding of misconduct, is a sanction and is subject to public disclosure

2. Form. An Agreement Regarding Discipline:
 - A. Must provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Standards of Practice Committee to form an opinion as to the propriety of the proposed resolution, including aggravating and mitigating factors considered, so as to make the Agreement Regarding Discipline useful in any subsequent disciplinary proceeding against the respondent CPGC;

 - B. Must set forth the respondent's prior disciplinary record;

 - C. Must state that the Agreement Regarding Discipline is not binding on the Standards of Practice Committee as a final statement of facts about the respondent's conduct until approved by the Certified Professional Guardianship and Conservatorship Board, and that additional facts may be proved in a subsequent disciplinary proceeding;

 - D. Must fix the amount of costs and expenses, if any, to be paid by the respondent;

 - E. May impose terms and conditions and any other appropriate provisions

3. Conditional Approval. The Standards of Practice Committee's approval is conditional, as all Agreements Regarding Discipline must be submitted to the Board for their final approval. The Board's decision on whether to approve an Agreement Regarding Discipline shall be reflected in Board minutes.

4. Response. Upon receipt of a proposed Agreement Regarding Discipline, the respondent CPGC must respond in writing within thirty (30) days to the proposed Agreement Regarding Discipline. The 180 day clock is tolled during the time the Board is awaiting the CPGC's response to a proposed Agreement Regarding Discipline. The CPGC may:

- E. Agree to and sign the Agreement Regarding Discipline;
- F. Propose changes to the Agreement Regarding Discipline;
- G. Reject the Agreement Regarding Discipline and request a hearing;
- H. Voluntarily surrender certification in lieu of further disciplinary proceedings.

507.3 VOLUNTARY SURRENDER, IN LIEU of FURTHER DISCIPLINARY PROCEEDINGS

1. Grounds. A respondent CPGC who desires not to contest or defend against allegations of misconduct may, at any time, voluntarily surrender his or her certification as a CPGC in lieu of further disciplinary proceedings.
2. Process. The respondent first notifies the AOC that the respondent intends to submit a voluntary surrender request and asks AOC, to prepare a statement of alleged misconduct and a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may surrender their license by submitting to AOC a signed voluntary surrender, sworn to or affirmed under oath and notarized. The signed voluntary surrender must include the following to be accepted for filing:
 - A. AOC's statement of the alleged misconduct, and either: 1) an admission of that misconduct; or 2) a statement that while not admitting the misconduct the respondent agrees not to contest the facts on which the misconduct is based;
 - B. An acknowledgement that the voluntary surrender may be permanent, including the statement, "I understand that my voluntary surrender may be permanent and that any future application by me for reinstatement as a CPGC will consider the circumstances around the voluntary surrender including resolution of the pending disciplinary action."

- C. A list of all guardian and conservator appointments;
 - D. The completion of the steps stated in Regulation 708 regarding Retirement or Resignation and Termination of Certification;
 - E. A statement that when applying for any employment as a fiduciary, the respondent agrees to disclose the voluntary surrender in response to any question regarding disciplinary action or the status of the respondent's certification;
 - F. A statement that the respondent agrees to pay any restitution or additional costs and expenses as may be requested by the Standards of Practice Committee, and attaches payment for costs as described in DR 507.3.5; and
 - G. A statement that when the voluntary surrender becomes effective, the respondent will be subject to all restrictions that apply to a CPGC whose certification has been revoked.
3. Public Filing. Upon receipt of a voluntary surrender in lieu of discipline meeting the requirements set forth above, AOC shall file it as a public record of the Standards of Practice Committee. AOC will also notify the superior courts and all other agencies from which the CPGC receives appointments of the voluntary surrender.
4. Effect. A voluntary surrender in lieu of discipline meeting the requirements set forth above, under this rule is effective upon its filing with the AOC and completion of the steps required under Regulation 708 Voluntary Surrender. All disciplinary proceedings against the respondent terminate. However, the Board has the discretion to continue any investigations deemed appropriate under the circumstances to create a sufficient record of the respondent's actions for consideration in the event the respondent seeks certification at a later time, unless the respondent agrees not to seek recertification as part of the voluntary surrender in lieu of discipline.

5. Costs and Expenses.

- A. With the voluntary surrender, the respondent may be required to pay all actual costs for which AOC provides documentation.
- B. If additional proceedings are pending at the time respondent serves the notice of intent to voluntarily surrender, AOC, through disciplinary counsel, may also file a claim under DR 509.13 for costs and expenses for that proceeding.

6. Review of Costs, Expenses. Any claims for costs and expenses not resolved by agreement between the AOC and the respondent may be submitted at any time including after the voluntary surrender, to the Standards of Practice Committee in writing, for the determination of appropriate costs and expenses.

507.4 PROCEDURE IF RESOLUTION NOT REACHED WITHIN 180 DAYS OF GRIEVANCE RECEIPT PLUS TOLLED PERIODS

507.4.1 If the grievance cannot be resolved within one hundred eighty days plus any tolled periods, the Board shall notify the CPGC.

507.4.2 The CPGC may propose a resolution of the grievance with facts and/or arguments.

507.4.3 The Board may accept the proposed resolution or determine that an additional ninety days are needed to review the grievance.

507.4.4 If the Board has not resolved the grievance within the additional ninety days the CPGC may:

- (a) File a motion for a superior court order to compel the Board to resolve the grievance within a reasonable time; or
- (b) Move for the superior court to resolve the grievance instead of being resolved by the Board