

## Guardianship and Conservatorship Program Regulations

### **508 RESOLUTION WITH COMPLAINT**

#### **508.1 GENERAL PROCEDURE**

1. Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated apply directly.
2. Hearing Officer. The Board may appoint a Hearing Officer to conduct disciplinary proceedings under Sections 508 and 509, and recommend decisions to the Board. Hearing Officers shall be selected from a registry maintained by AOC staff listing qualified applicants with guardianship, litigation and judicial decision-making experience.

#### **508.2 COMMENCEMENT OF PROCEEDINGS**

1. Complaint.
  - A. Filing. After a preliminary finding of misconduct by the Standards of Practice Committee pursuant to DR 506, a Complaint may be filed by the Board with AOC.
  - B. Service. After the Complaint is filed, AOC must serve the Complaint, with a Notice to Answer, on the respondent CPGC.
  - C. Content. The Complaint must state the respondent CPGC's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct and the sanction sought. AOC must sign the Complaint.
  - D. Prior Discipline. Prior disciplinary action against the respondent may be described in the Complaint.
  - E. Amendment of Complaint. AOC may amend a Complaint at any time to add facts or charges. AOC shall serve an Amended Complaint on the respondent as provided in DR 508.3.1(B) with a Notice to Answer. A Respondent must answer the amendments to the complaint as described in DR 508.4.
2. Joinder. The Standards of Practice Committee may, in its discretion, consolidate alleged violations relating to two or more grievances against the same respondent in one Complaint, or may consolidate alleged violations against two or more respondents in one Complaint that relate to the same grievance or grievances.

### 508.3 NOTICE TO ANSWER

Content. The Notice to Answer must be substantially in the following form:

BEFORE THE STANDARDS OF PRACTICE COMMITTEE OF THE  
CERTIFIED PROFESSIONAL GUARDIANSHIP AND  
CONSERVATORSHIP BOARD

	)	
	)	
In Re:	)	NOTICE TO ANSWER
	)	
	)	

---

To: The above named CPGC:

AND TO: Respondent Attorney

1. You are hereby notified that a Complaint Regarding Disciplinary Action (hereinafter, "Complaint") has been filed against you with the Administrative Office of the Courts, a copy of which is served upon you with this Notice. Pursuant to DR 504.1, service is made by registered or certified mail to your address on file with the Administrative Office of the Courts. Service shall be deemed complete on the third day after mailing in accordance with Civil Rule 5(b)(2).

2. You must deliver or mail an original and one copy of your Answer to the Disciplinary Action **within 30 days of service (exclusive of the date of service)** to the Certified Professional Guardianship and Conservatorship Board, Administrative Office of the Courts, P.O. Box 41170, Olympia, WA 98504-1170. Electronic service or filing is not accepted without prior agreement.

3. Upon receipt of your Answer to Disciplinary Action, a Hearing Officer will be appointed to conduct all further proceedings. The Hearing Officer shall ensure that the parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing.

4. All disciplinary hearings shall be held within the State of Washington at such place and time as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, at the discretion of the Hearing Officer.

5. If you fail to answer within 30 days of the date of service of this Complaint, the Board may proceed to obtain an order of default against you pursuant to DR 508.5. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and you may not participate further in the proceedings unless the order of default is vacated under this regulation.

6. The Certified Professional Guardianship and Conservatorship Board Disciplinary Regulations govern all proceedings and may be found on the Washington Courts website at:

[Certified Professional Guardianship and Conservatorship Board Regulations](#)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Certified Professional Guardianship and Conservatorship Board

By \_\_\_\_\_

#### **508.4 ANSWER**

1. Time to Answer. Within thirty (30) days of service of the Complaint and Notice to Answer, the respondent CPGC must file and serve an Answer. Failure to file an Answer as required may result in the respondent forfeiting his or her opportunity to present a defense or engage in pre-hearing discovery.
2. Content. The Answer must contain:
  - A. A specific denial or admission of each fact or claim asserted in the Complaint;
  - B. A statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition;
  - C. Any mitigating factors as described in DR 509.1.3 (B); and
  - D. An address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.
3. Filing and Service. The Answer must be mailed to AOC.

#### **508.5 ENTRY OF DEFAULT**

1. Timing: If a certified professional guardian and conservator (CPGC), after being served with a notice to answer as provided in DR 508.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, the Board's attorney of record in the disciplinary proceeding may serve the CPGC with a written motion for an order of default.
2. Motion: The Board's attorney of record must serve the CPGC with a written motion for an order of default and a copy of this regulation at least five (5) days before entry of the order of default. The motion for an order of default must include the following:
  - A. The dates of filing and service of the notice to answer, formal complaint and any amendments to the complaint; and
  - B. The Board's attorney of record statement that the CPGC has not timely filed an answer as required by DR 508.4 and that the Board's attorney of record seeks an order of default under this regulation.
3. Entry of Order of Default: If the CPGC fails to file a written answer with the Administrative Office of the Courts (AOC) within twenty (20) days of service of the motion for entry of an order of default, the Hearing Officer, or if no Hearing Officer has been assigned, the chair of the Standards of Practice Committee, on proof of proper service of the motion, enters an order finding the CPGC in default.

4. Effect of Order of Default: Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the CPGC may not participate further in the proceedings unless the order of default is vacated under this regulation. The Board may proceed to resolve the case without further notice to, or hearing for the benefit of the CPGC.
5. Proceedings After Entry of an Order of Default.
6. Service: The AOC serves the order of default and a copy of this rule under DR 504.1.
7. Disciplinary Proceeding: Within sixty (60) days of the filing of the order of default, the Board must conduct a disciplinary proceeding to impose disciplinary action based on the allegations and violations established under DR 508.2.1. At the discretion of the Board, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. The attorney of record for the Board may present additional evidence including, but not limited to, requests for admission under DR 508.8 and depositions, affidavits, and declarations regardless of the witness's availability.
8. Motion To Vacate Order of Default: Within thirty (30) days after service of a default order, the CPGC may file a written motion requesting that the order be vacated, on the following grounds:
  - A. Mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
  - B. Erroneous proceedings against a CPGC, who was, at the time of the default, incapable of conducting a defense;
  - C. Newly discovered evidence that by due diligence could not have been previously discovered;
  - D. Fraud, misrepresentation, or other misconduct of an adverse party;
  - E. The order of default is void;
  - F. Unavoidable casualty or misfortune preventing the CPGC from defending;
  - G. Any other reason justifying relief from the operation of the default.
9. Burden of Proof: The CPGC bears the burden of proving the grounds for setting aside the default. If the CPGC proves that the default was entered as a result of a disability which made the CPGC incapable of conducting a defense, the default must be set aside.
10. Service and Contents of Motion: The motion must be filed and served under DR 504 and be accompanied by a copy of CPGC's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the CPGC's asserted defenses and any facts the

CPGC asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- A. The date on which the CPGC first learned of the entry of the order of default;
  - B. The grounds for setting aside the order of default; and
  - C. An offer of proof of the facts that the CPGC expects to establish if the order of default is vacated.
11. Response to Motion: Within ten (10) days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.
  12. Decision: The Hearing Officer decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the Hearing Officer may order a stay of proceedings not to exceed thirty (30) days. In granting a motion to vacate an order of default, the Hearing Officer has discretion to order appropriate conditions.
  13. Appeal of Denial of Motion: A CPGC may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the Hearing Officer's decision. The CPGC must file the notice of appeal within ten (10) days of service on the CPGC of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed thirty (30) days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.
  14. Decision To Vacate Is Not Subject to Interim Review: An order setting aside an order of default is not subject to interim review by the Board.

## **508.6 SCHEDULING**

1. All disciplinary hearings must be held in Washington State at such time and place as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, in the discretion of the Hearing Officer. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the Hearing Officer.
2. Scheduling Order. The Hearing Officer must enter an order setting the dates and places of hearings. This order will include any prehearing deadlines the Hearing Officer deems required by the complexity of the case, which may include witness lists, discovery dates, motions, and exhibits. The AOC shall ensure that all parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing, unless this time requirement is waived by all parties. Continuance. Either party may move for a continuance of the hearing date. The Hearing Officer has discretion to grant the motion for good cause shown.

## **508.7 MOTIONS**

Motions must be in writing and served on the opposing party. The Hearing Officer shall determine whether a response and reply is called for and the timing of any such response or reply. The Hearing Officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by telephone or other electronic means at the discretion of the Hearing Officer. A ruling on a written motion must be in writing and filed with the AOC.

## **508.8 DISCOVERY AND PREHEARING PROCEDURES**

1. General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.
2. Requests for Admission. After a Complaint is filed, the parties may request admissions under Civil Rule 36.
3. Other Discovery. After a Complaint is filed, the parties may obtain other discovery under the Superior Court Civil Rules only on motion and under terms and limitations the Hearing Officer deems just or on the parties' Settlement Agreement.
4. Exchange of Materials: The parties shall exchange witness lists and exhibits prior to the hearing, as directed by the Hearing Officer. Failure to comply with the case scheduling requirements as directed by the Hearing Officer may result in the exclusion of witnesses and evidence not timely identified.

## 508.9 PARTICIPATION AT DISCIPLINARY HEARING

1. Respondent CPGC Must Attend. A respondent CPGC given notice of a hearing must attend the hearing. If, after proper notice, the respondent fails to attend the hearing, the Hearing Officer:
  - A. May draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and
  - B. Must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:
    - i. The facts stated are within the witness's personal knowledge;
    - ii. The facts are set forth with particularity; and
    - iii. It shows affirmatively that the witness could testify competently to the stated facts.
2. Witnesses. Witnesses must testify under oath administered by the Hearing Officer. Testimony may also be submitted by deposition as permitted by Civil Rule 32.

Testimony must be recorded by a court reporter or, if allowed by the Disciplinary Committee, by digital or tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.
3. Subpoenas. Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearing or deposition. The subpoena shall be issued in the name of the Board and shall be signed and subscribed to by the party or the party's attorney of record. Subpoenas shall be served in the same manner as in civil cases in superior court. A failure to attend or produce as required by the subpoena shall be considered contempt of the Supreme Court. A motion to quash or modify the subpoena, on the grounds of unreasonableness or oppression, shall be decided by the Hearing Officer.



## **508.10 HEARINGS**

1. **Scope of the Hearings.** To limit the scope of hearings, parties may stipulate to specific facts, whether misconduct occurred, and/or disciplinary sanctions. The Hearing Officer may determine whether both facts surrounding the alleged misconduct and disciplinary sanctions shall be litigated at the same hearing, or whether they shall be addressed at separate hearings.
2. **Upon agreement by both parties, and approval by the Hearing Officer, hearings may be limited to the disciplinary sanction only.**
3. **Burden of Proof.** The Board has the burden of establishing an act of misconduct by a preponderance of the evidence.
4. **Proceeding Based on Criminal Conviction.** If a Complaint charges a respondent CPGC with an act of misconduct for which the respondent has been convicted in a criminal proceeding, a certified copy of the Judgement and Sentence is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.
5. **Rules of Evidence.** The rules of evidence shall be those set forth in Chapter 34.05 RCW, the Administrative Procedures Act.
6. **Prior Disciplinary Record.** The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the Hearing Officer files a decision.

## **508.11 DECISION OF HEARING OFFICER**

Within ninety (90) days after the proceedings are concluded, unless extended by agreement, the Hearing Officer should file with the parties a Decision in the form of findings of fact, conclusions of law, and order recommending disciplinary sanction.