

Guardianship and Conservatorship Program Regulations

509 DISCIPLINARY SANCTIONS

509.1 GUIDELINES FOR IMPOSING DISCIPLINARY SANCTIONS:

Following a determination that a CPGC has engaged in misconduct, disciplinary sanctions may be appropriate. Factors to be considered in imposing disciplinary sanctions, include:

1. Nature of the misconduct;
2. Potential or actual injury caused by the CPGC's misconduct;
3. The existence of aggravating or mitigating factors:
 - A. Aggravating factors include prior disciplinary action by the Board against the same CPGC, substantial experience as a CPGC, intentional, premeditated, knowing, grossly incompetent or grossly negligent act, bad faith or obstruction, dishonest or selfish motives, a pattern of misconduct, multiple offenses, failure to cooperate during the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, indifference to making restitution, and illegal conduct.
 - B. Mitigating factors include the absence of a prior disciplinary record, isolated incident not likely to recur, remoteness of misconduct, inexperience as a CPGC, implementation of remedial measures to mitigate harm or risk of harm, self-reported and voluntary admission of violation, timely good faith efforts to make restitution or rectify consequences of misconduct, and temporary circumstances outside of the CPGC's control.

509.2 TYPES OF DISCIPLINE

Upon a finding that a CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, or the guardian and conservator's fiduciary duty, or violating a court order, the Board may impose one or more of the following:

1. Revocation of certification;
2. Suspension of certification;
3. Prohibition Against Taking New Cases;
4. Reprimand;
5. Probation;
6. Other Disciplinary Sanctions as described in DR 509.7
7. Restitution.

509.3 REVOCATION OF CERTIFICATION

1. Applicability of Revocation: Revocation may be imposed when a professional guardian and conservator:
 - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, a court order, or the guardian and conservator's fiduciary duty; and was previously disciplined with a sanction, remedy or other remedial action by the Board, a court, or a judicial officer; or
 - b. Engages in any act of dishonesty, fraud, deception, conflict of interest, selfishness or misrepresentation that adversely reflects on the guardian and conservator's fitness to practice; or
 - c. Engages in gross incompetence, including but not limited to, case tracking, a pattern of late filings, accounting errors, delinquent or late payments of an individual subject to guardianship or conservatorship's or their conservatorship estate's financial obligations; or
 - d. Engages in conduct or misconduct that adversely impacts an individual subject to guardianship or conservatorship in a highly significant manner. "Highly significant" in this context, means, but is not limited to, a financial loss to an individual or their finances or estate that is greater than \$ 750.00, or results in any kind of direct physical harm, infirmity or adverse medical condition to such individual; or
 - e. Engages in conduct that constitutes any Washington felony or other crime involving dishonesty, abuse, neglect, or use of physical force that occurs either while performing duties as a guardian or conservator or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.
 - f. Engages in conduct that constitutes a crime relevant to the functions the individual assumes as guardian or conservator that occurs either while performing duties as a guardian or conservator or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.

2. Duties of CPGC upon revocation of certification. Upon receipt of the Supreme Court's order revoking the CPGC's certification, the CPGC will submit a complete list of all active guardianships and conservatorships in which the CPGC serves as the court-appointed guardian or conservator to AOC, and must immediately notify the superior court with authority over any of the CPGC's cases of the revocation. The CPGC shall ensure the timely transfer of any active guardianship and conservatorship cases to a new CPGC and cooperate with the court in this process. The CPGC shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional CPGC. If requirements aren't met the Board may file a motion for contempt of court with the Supreme Court.

509.4 SUSPENSION

1. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian or conservator may be imposed when a professional guardian and conservator:
 - a. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian or conservator may be imposed when a professional guardian and conservator: Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, a court order, or the guardian's fiduciary duty; or
 - b. Engages in conduct that occurs either while performing duties as a guardian or conservator or outside those duties, that meets the statutory elements of any Washington gross misdemeanor or misdemeanor, and which adversely reflects on the professional guardian and conservator's fitness to practice; or
 - c. Engages in ordinary negligence in the performance of their duties as a guardian. "Ordinary negligence" is defined in this context as a guardian and conservator's failure to exercise reasonable care in the performance of their professional duties.
 - d. Engages in conduct or misconduct that adversely impacts an individual subject to guardianship or conservatorship in a manner that is not "highly significant" as defined above.
 - e. Suspension may be imposed for conduct or misconduct that does not rise to the level of Revocation.

2. Term of Suspension. A suspension must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. Suspension does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing of declarations, etc.
3. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the suspension period. The request shall include a statement verifying that the conditions of the suspension have been met. With approval of the Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
4. Duties of CPGC upon suspension. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian or conservator and must immediately notify the superior court with authority over any of the CPGC's cases of the suspension. The CPGC shall ensure the timely transfer of any active guardianship or conservatorship cases to a new guardian or conservator and cooperate with the court in this process. The CPGC shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional guardian and conservator.

509.5 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

1. Definitions.

A. "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, or a verdict of guilty, unless the defendant affirmatively shows that the guilty plea or verdict was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted. Conviction does not include findings or verdicts that were disclosed at the time of application.

B. "Serious Crime" includes any:

- i. Felony;
- ii. Crime, a necessary element of which, as determined by its statutory or common law definition, includes any of the following:
 - a. Commission of an act of violence;
 - b. Interference with the administration of justice;
 - c. Perjury;
 - d. Fraudulent misrepresentation;

- e. Bribery;
 - f. Extortion;
 - g. Misappropriation;
 - h. Theft.
- ii. Attempt, or a conspiracy, or solicitation of another, to commit a “serious crime”.

2. Procedure upon Conviction.

If a CPGC is convicted of a felony or other serious crime involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator, or, is convicted of a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator, AOC must file with the Board a certified copy of the judgment and sentence that sets out such conviction. The Board shall decertify a professional guardian and conservator upon the conviction of such crimes, under either state or federal law, regardless whether such conviction is after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of any appeal.

AOC must also petition the Standards of Practice Committee Chair for an order suspending the respondent CPGC during the pendency of disciplinary proceedings.

The decertification shall be effective upon the filing of a certified copy of such conviction with the Board. The Board shall file the certified copy of the conviction with other Board records pertaining to the professional guardian’s certification. The Board shall provide written notice of the decertification to the professional guardian and conservator by certified mail, directed to the guardian and conservator’s last known address maintained by the AOC. The notice shall advise the professional guardian and conservator of the decertification and the reason(s) for the decertification. The notice shall further advise that if the professional guardian and conservator should not have been decertified by the Board, the professional guardian and conservator may file a petition requesting an administrative hearing. The petition shall set forth in detail the facts supporting the professional guardian and conservator’s claim that an administrative error has occurred and that the professional guardian and conservator has not been convicted of a felony, or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator. The petition must be signed by the professional guardian and conservator under penalty of perjury. The professional guardian and conservator must file the petition within 15 days of the date of mailing of the Board’s notice of decertification. Any petition not filed within 15 days shall be dismissed by the Board.

If a timely petition is filed by the professional guardian and conservator, the Board Chair shall appoint a three-person Review Panel to conduct a hearing on the petition. The sole issue before the Review Panel shall be to determine whether the professional guardian has been convicted of a felony, or of a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation about whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the professional guardian and conservator.

The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is approved, then the professional guardian and conservator shall be eligible for recertification, if the professional guardian and conservator shows proof of compliance with all other requirements for certification. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by first-class mail to the professional guardian and conservator. Any such order shall be final.

A. If a CPGC is convicted of a crime that is not a felony, a serious crime, or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator, the Standards of Practice Committee considers a report of the conviction in the same manner as any other report of possible misconduct by a CPGC

3. Petition. A petition to the Standards of Practice Committee for suspension under this rule must include a copy of any available document establishing the fact of conviction. AOC may also include additional facts, statements, arguments, affidavits, and documents in the petition. AOC must serve a copy of the petition on the respondent, and proof of service filed with the AOC.
4. Immediate Interim Suspension. If the crime of conviction is a felony or other serious crime or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator, the Standards of Practice Committee must enter an order immediately suspending the respondent's CPGC certification.
 - A. If suspended, the respondent must comply with DR 509.4.4.
 - B. Suspension under this rule occurs:
 - i. Whether the conviction was under a law of this state, any other state, or the United States;
 - ii. Whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and
 - ii. Regardless of the pendency of an appeal of the underlying conviction.

5. Duration of Interim Suspension. An interim suspension under this rule must terminate when the disciplinary proceedings in response to the complaint are fully completed or after appeal of the Standards of Practice Committee's decision.
6. Termination of Suspension.
 - A. Petition and Response. A respondent may at any time petition the Standards of Practice Committee to recommend termination of an interim suspension. AOC, through disciplinary counsel, may file a response to the petition.
 - B. Standards of Practice Committee Recommendation. If either party requests, the Standards of Practice Committee must hear oral arguments on the petition at a time and place and under terms as the Standards of Practice Committee Chair directs. The Standards of Practice Committee may recommend termination of a suspension only if the Committee makes an affirmative finding of good cause to do so. There is no right of appeal from a Standards of Practice Committee's decision regarding interim suspension.

509.6 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

1. Types of Interim Suspension.
 - A. Standards of Practice Committee Finding of Risk to Public. AOC may petition the Standards of Practice Committee for an order suspending the respondent CPGC during the pendency of any proceeding under these rules if: it appears that a respondent's continued practice as a CPGC poses a substantial threat of serious harm to the public.
 - B. Standards of Practice Committee Recommendation for Decertification. When the recommended sanction in a Complaint is decertification, AOC may file a petition for the respondent's suspension during the remainder of the proceedings.
 - C. Failure To Cooperate with Investigation. When any CPGC fails without good cause to comply with a request under DR 505.2.5 for information or documents, or with a subpoena issued under DR 504.6, AOC may petition the Standards of Practice Committee for an order suspending the CPGC pending compliance with the request or subpoena. If the CPGC complies with the request or subpoena, the Standards of Practice Committee may lift the suspension on terms the Standards of Practice Committee deems appropriate.

2. Procedure.

- A. **Petition.** A Petition to the Standards of Practice Committee under this rule must set forth the acts of the CPGC constituting grounds for interim suspension. The Petition may be supported by documents or affidavits. The AOC must serve the Petition on the Standards of Practice Committee and respondent CPGC.
- B. **Show Cause Order.** Upon filing of the Petition, the Standards of Practice Committee Chair orders the CPGC to appear in person or telephonically before the Standards of Practice Committee to show cause why the Petition for interim suspension should not be granted. This Show Cause Hearing cannot occur less than ten (10) days after service on the respondent of the Show Cause Order.
- C. **Answer to Petition.** The CPGC may answer the Petition. An Answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the Show Cause Hearing.
- D. **Filing of Answer.** Any Answer must be filed with the AOC within ten (10) days of receipt of the Show Cause Order.
- E. **Settlement Agreement.** At any time a respondent CPGC and Standards of Practice Committee may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime or a substantial threat of serious harm to the public. Settlement Agreements under this rule are public upon filing with the AOC, but the Standards of Practice Committee may order that supporting materials are confidential. The respondent may petition the Standards of Practice Committee to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Standards of Practice Committee may terminate the interim suspension.
- F. **Show Cause Hearing.** The respondent may appear before the Standards of Practice Committee at the hearing to show cause why the Petition for interim suspension should not be granted.
- G. **Application of Other Rules.** If the Standards of Practice Committee enters an interim order suspending the CPGC, the rules relating to suspended CPGCs, including DR 509.4, apply.

509.7 NOTIFICATION OF INTERIM SUSPENSION

Upon entry of an order for interim suspension, the AOC shall notify all superior court presiding judges, court administrators, and county clerks, the Social Security Administration, the Veteran's Administration and the Department of Social and Health Services of the interim suspension. The AOC shall also remove the respondent CPGC's name from all public AOC Web site lists of certified professional guardian and conservators.

509.8 PROHIBITION AGAINST TAKING NEW APPOINTMENTS

1. Applicability of Prohibition Against Taking New Appointments. A prohibition against taking new appointments may be imposed when a professional guardian and conservator:
 - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty; or
 - b. Engages in conduct or misconduct that occurs while performing duties as a guardian or conservator that adversely reflects on the professional guardian and conservator's fitness to practice.
2. Prohibition Against Taking New Appointments may be imposed for conduct or misconduct that does not rise to the level of Revocation.
3. Term of Prohibition Against Taking New Appointments. A prohibition against taking new appointments must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. A prohibition against taking new appointments does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing of declarations, etc.
4. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the prohibition against taking new appointment period. The request shall include a statement verifying that the conditions of the prohibition against taking new appointment have been met. With approval of the Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
5. Duties of CPGC upon being prohibited from accepting new appointment. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian or conservator and must immediately notify the superior court with authority over any of the CPGC's cases of the prohibition.

509.9 LETTER OF REPRIMAND

1. A letter of reprimand may be imposed when a professional guardian and conservator:
 - A. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty;
or
 - B. The guardian and conservator engages in conduct which does not rise to the level of a Revocation, Suspension or Prohibition Against Taking New Cases.

509.10 PROBATION

1. Probation is a remedy that will be imposed for a period of time that is not less than six months or more than one year in duration when a professional guardian fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders or the guardian's fiduciary duty. Probation shall consist primarily of a monitoring function that seeks to ensure the guardian and conservator:
 - A. Fully complies with any sanctions, remedies or other actions imposed by the Board, a court or a judicial officer; and
 - B. Fully complies with the duties, requirements or prohibitions in the Standards of Practice, Guardianship Program rules and regulations, Washington statutes, court orders, and guardian's fiduciary duty.
2. The Standards of Practice Committee Chair may appoint a suitable person to monitor the conditions of the probation are being met. Cooperation with a person so appointed is a condition of the probation. The guardian and conservator will be responsible for compensating the appointed monitor.
3. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.
4. Probation may be imposed in conjunction with any disciplinary action except Revocation.

509.11 OTHER DISCIPLINARY SANCTIONS

1. Upon a finding that a CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty, the Board may impose one or more of the following:
 - A. Limitation on practice;
 - B. Requirement that the CPGC attend specific education courses or training, including the initial mandatory training;
 - C. Alcohol or drug treatment;
 - D. Behavior modification classes;
 - E. Professional office practice or management advice and support to help the CPGC correct deficiencies and make decisions.
 - F. Periodic audits or reports;
 - G. Requirement that the CPGC work with a mentor, who is a practicing or retired CPGC or that the CPGC's work be supervised;
 - H. Other requirements consistent with the purposes of discipline;
2. The Board must specify the terms and requirements in writing.
3. Failure to comply with the terms and requirements may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the discipline.

509.12 RESTITUTION

1. Restitution defined: Restitution is the payment of the victim's out-of-pocket expenses directly related to the respondent's misconduct.
2. Restitution May Be Required. After a finding of misconduct, a respondent CPGC may be ordered to make restitution to persons financially injured by the respondent's conduct.
3. Payment of Restitution.
 - A. A respondent ordered to make restitution must do so within thirty (30) days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.

- B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if:
 - i. The respondent demonstrates in writing present inability to pay restitution; and
 - ii. The AOC consults with the person's owed restitution.
- 4. Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

509.13 COSTS AND FEES

- 1. Assessment. The Board's costs and fees may be assessed as provided in this rule against any respondent CPGC who is disciplined.
- 2. Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except fees as defined below, reasonably and necessarily incurred by the Board in the complete performance of its duties under these rules, whether incurred before or after the filing of a Complaint. Costs include, by way of illustration and not limitation:
 - A. Court reporter charges for attending and transcribing depositions or hearings;
 - B. Necessary travel expenses of the Hearing Officer, disciplinary counsel, AOC staff or witnesses;
 - C. Witness charges;
 - D. Costs of conducting an examination of books and records or an audit;
 - E. Costs incurred in supervising probation imposed under rule 509.5;
 - F. Telephone toll charges;
 - G. Costs for court records;
 - H. Costs for AOC staff professional services;
 - I. Costs of copying materials.
- 3. Fees defined. Fees assessed under this rule may be equal to the actual fees incurred by the AOC.

4. Statement of Costs and Fees.

- A. Content. A statement of costs and fees must state with particularity the nature and amount of the costs claimed and also state the fees requested.

An appropriate AOC staff member must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

- B. Service. The AOC serves a copy of the statement on the respondent.

5. Assessment Discretionary. Assessment of any or all costs and fees may be denied if it appears in the interests of justice to do so.

6. Payment of Costs and Fees.

- A. A respondent ordered to pay costs and fees must do so within thirty (30) days of the date on which the assessment becomes final, unless the order provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.

- B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and fees.