

Guardianship Program Rules

511 Hearing

511.1 Board Representation: AOC staff or other person, including counsel appointed by the Chair, shall represent the Board.

511.2 Where Held: 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, in the discretion of the Hearing Officer.

511.3 Date of Hearing: 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.

511.4 Postponements/Continuances: The Hearing Officer may grant a postponement or continuance of any hearing. An application for a continuance or postponement by a party shall be supported by affidavit and shall be served and filed at least seven (7) days prior to the scheduled hearing, unless such time is shortened by the Hearing Officer.

511.5 Entry of Default

511.5.1 Timing: If a certified professional guardian (guardian), after being served with a notice to answer as provided in Reg. 510.4, 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 guardian with a written motion for an order of default.

511.5.2 Motion: The Board's attorney of record must serve the guardian 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 guardian has not timely filed an answer as required by Reg. 510.4 and that the Board's attorney of record seeks an order of default under this regulation.

511.5.3 Entry of Order of Default: If the guardian 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 Standard of Practice Committee, on proof of proper service of the motion, enters an order finding the guardian in default.

511.5.4 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 guardian may not participate further in the proceedings unless the order of default is vacated under this regulation.

511.6 Proceedings After Entry of an Order of Default.

511.6.1 Service: The AOC serves the order of default and a copy of this rule under regulation 510.4.2.

511.6.2 No Further Notices: After entry of an order of default, no further notices must be served on the guardian except for copies of the decisions of the hearing officer or the Board.

511.6.3 Disciplinary Proceeding: Within 60 days of the filing of the order of default, the hearing officer or the Board must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or 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 regulation 511.10.0 and depositions, affidavits, and declarations regardless of the witness's availability.

511.7 Setting Aside Default

511.7.1 Motion To Vacate Order of Default: A guardian may move to vacate the order of default and any decision of the hearing officer or Board arising from the default on the following grounds:

- a) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
- b) erroneous proceedings against a guardian, 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 guardian from defending; or

g) any other reason justifying relief from the operation of the default.

511.7.2 Time: The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the guardian's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

511.7.3 Burden of Proof: The guardian bears the burden of proving the grounds for setting aside the default. If the guardian proves that the default was entered as a result of a disability which made the guardian incapable of conducting a defense, the default must be set aside.

511.7.4 Service and Contents of Motion: The motion must be filed and served under regulation 510.4.3 and 510.4.4 and be accompanied by a copy of guardian's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the guardian's asserted defenses and any facts that guardian asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- a) the date on which the guardian 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 guardian expects to establish if the order of default is vacated.

511.7.5 Response to Motion: Within ten days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.

511.7.6 Decision: The hearing officer decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chair of the Board assigns a hearing officer to decide the motion. Pending a ruling on the motion, the hearing officer may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer has discretion to order appropriate conditions.

511.7.7 Appeal of Denial of Motion: A guardian 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 guardian must file the notice of appeal within ten days of service on the guardian 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 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

511.7.8 Decision To Vacate Is Not Subject to Interim Review: An order setting aside an order of default is not subject to interim review.

511.8 Protective Orders: To protect a compelling privacy or safety interest of a grievant, witness, third party, or professional guardian, the Hearing Officer may, upon motion and finding that such privacy or safety interests outweigh the public interest in access to the record, issue a protective order prohibiting the public disclosure of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Said order shall state with particularity the information prohibited from disclosure. Agreement of the parties alone does not constitute a sufficient basis for granting a protective order. The hearing on a motion for a protective order shall occur as soon as possible in order to not delay the proceedings.

511.9 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.

511.10 Discovery: The parties shall have the following discovery rights, limited only to the extent the Hearing Officer deems just:

511.10.1 Admissions from a party under Superior Court Civil Rule (CR) 36.

511.10.2 Depositions of another party or witness under Superior Court Civil Rule (CR) 30.

511.10.3 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' stipulation.

511.11 Testimony: Testimony may be live or taken electronically via telephone, video, or other means at the discretion of the Hearing Officer. Hearings shall be electronically recorded and testimony may be presented through depositions. Witnesses shall testify under oath administered by the Hearing Officer.

511.12 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.

511.13 Cooperation: It shall be the duty of the professional guardian and the Board's counsel to timely respond to all requests or directions of the Hearing Officer. Upon a party's failure to do so, the Hearing Officer may recommend to the Board that the professional guardian be decertified for non-compliance with the disciplinary process. Such failure may constitute a separate violation of these regulations. The Hearing Officer may dismiss the complaint with prejudice upon failure of the Board's counsel to timely respond to requests or directions of the Hearing Officer.

511.14 Standard of Proof: The Board bears the burden of establishing misconduct warranting disciplinary action by a preponderance of the evidence in all cases. (Adopted 11-14-11)

511.15 Rules of Evidence: The rules of evidence shall be those set forth in chapter 34.05 RCW, the Administrative Procedure Act.

511.16 Civil Rules as Reference: The Civil Rules of the Superior Court shall be referred to as a guide in any matter not covered by these regulations. The Hearing Officer shall determine the applicability and shall decide the procedure to be used.

511.17 Witness Fees: Witnesses shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by RCW 2.40 and RCW 5.56.010, except that the AOC shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The party issuing a subpoena shall pay the fees, allowances, and cost of producing records required to be produced by subpoena.

511.18 Findings, Conclusions, and Recommendation: Within twenty (20) days after the hearing, the Hearing Officer shall file with the AOC written findings of fact, conclusions of law, and recommendations to the Board for action. The AOC shall mail copies to the parties.