

Certified Professional Guardian Board

Meeting Minutes

January 12, 2009

SeaTac Office Center, 18000 International Blvd., SeaTac, WA

CHAIR

Judge Kimberley Prochnau

MEMBERS PRESENT

Robin Balsam
Gary Beagle
Ree Ah Bloedow
Dr. Ruth Craven
Nancy Dapper
Judge M. Karlynn Haberly
John Jardine
Chris Neil
Lori Petersen
Winsor Schmidt
Judge Chris Wickham
Sharon York

MEMBERS ABSENT

None

VISITORS

Leesa Camerota, CPG, Capitol Guardianship Services & UWEO Guardianship Certificate Program
Ken Curry, CPG, Your Advocates & Washington Association of Professional Guardians (WAPG)
Sylvia Curry, CPG, Your Advocates
J.R. Hardman, CPG, attorney
Michael L. Johnson, CPG, attorney
David Lord, Disability Rights Washington (DRW)
Clifton Messerschmidt, CPG, Able Guardianship Svcs.
Glenda Voller, CPG, Montlake Guardianship & Trustee Svcs, LLC

STAFF

Sharon Eckholm
Deborah Jameson

CALL TO ORDER

Judge Prochnau called the meeting to order and asked the attending guests to introduce themselves.

BOARD BUSINESS

1. Approval of Minutes

A motion was made and seconded to approve the minutes as presented for the November 3, 2008 Board meeting. The motion passed.

2. Chair Report

Judge Prochnau indicated her appreciation for being asked to serve as Chair of the Board, recognized Judge Van Deren's accomplishments as former Chair, and announced the following Board member appointments: Judge Wickham, Vice-Chair; Robin Balsam, SOPC Chair; Sharon York, Parliamentarian.

3. Advance Distribution of Minutes

In an effort to expedite release of information regarding the Board meetings, the Board will post *proposed* minutes approved by the Chair for advance distribution. Every effort will be made to post *proposed* minutes within two weeks following the Board meeting.

4. Report on Guardianship Sessions at Judicial, Administrator and Clerk Conferences

Sharon Eckholm, AOC Liaison to the Board, reported on AOC's development of proposed best practices for guardianship case management to be presented at the Spring Judicial, Administrator and Clerk's conferences.

DISCIPLINARY REGULATION (DR) 520

Judge Prochnau introduced the next two agenda items related to Disciplinary Regulation (DR) 520. The first topic for discussion is the process and implementation of DR 520, which was adopted by the Board at the November 3, 2008 meeting. Following the process and implementation discussion, the Board will entertain any motion to rescind the Board's vote on DR 520 taken at the November 3, 2008 meeting.

1. Disciplinary Regulation (DR) 520 – Process & Implementation

In order to hear from each Board member, Judge Prochnau indicated that after some introductory comments from the Standards of Practice Committee (SOPC), and Guardian Investigator, Deborah Jameson, she would like to go around the room and provide each Board member an opportunity to comment.

Judge Prochnau indicated that the SOPC is still studying how to best implement DR 520 and that no final proposal has been adopted. Once SOPC adopts a final proposal, it will be presented to the Board for discussion at a future meeting.

Judge Prochnau asked Robin Balsam to present a summary of the SOPC's initial draft proposal and Ms. Balsam summarized it as follows:

In creating the pool of guardians for the random selection process, a weighted process accorded to percentage of guardians in eastern and western Washington will be used. Separate pools for eastern and western Washington will be created and of the

guardians selected, 15% guardians will be chosen from the eastern pool and 85% from the western pool.

The lists of assigned cases for the selected guardians will be pulled from SCOMIS and sent to each assigned guardian requesting review for accuracy and return of any corrections and updates.

Ten percent of each guardian's cases or a minimum of five cases (whichever number is higher) will be randomly selected and reviewed for failure to file or late filings of required reports. A report of the case filings review will be provided to the SOPC.

The SOPC will review the case filing reports and take action consistent with guidelines to be developed by the SOPC and presented to the Board for discussion at a later meeting. The following proposed guidelines were discussed at the most recent SOPC meeting:

- (1) If there is a single late filing, the SOPC will take no action;
- (2) If there are more than one late filing, the number of late filings and the degree of lateness will be reviewed for appropriate action;
- (3) If there is a failure to file, the guardian will be notified and asked to rectify the failure within 30 days.
 - (a) If the failure is rectified and the court has not taken any action against the guardian, the SOPC will take no action.
 - (b) If the failure is not rectified, a grievance will be opened and the court will be notified. Possible sanctions include: Board monitoring of cases for a period of time, and/or restriction on taking new cases.

In the event a grievance is opened, the grievance does not become public unless and until it is resolved by an Agreement Regarding Discipline. (Note: grievances with the guardian and grievant names redacted are subject to public disclosure once the grievance is resolved).

Ms. Balsam indicated that in proposing this process for implementation of DR 520, the SOPC's hope is that late filings will have been corrected prior to the random review, and that if deficiencies are discovered, the guardian will immediately take corrective action.

Judge Prochnau mentioned that the SOPC did not yet have a recommendation on the look-back period for DR 520 audits, but that the original suggestion was a look-back period of six months.

Guardian Investigator, Deborah Jameson, was asked to provide an overview of the types of activities for review that may be discovered from reviewing SCOMIS. Ms. Jameson first clarified that SCOMIS entries provide flags for further inquiry and that a determination of any deficiency would have to be confirmed by further investigation. SCOMIS entries may flag the following deficiencies or violations:

- Late filing of reports
- PCP
- Inventory
- Annual/Final
- Designation of Standby Guardian (no date requirement)
- Notices of Changes of Circumstances/Address/Death
- Failure to comply with court order to file bond or receipt of blocked account
- Failure to file proper pleadings to sell property of IP
- Guardian self-petitioned (potential conflict of interest)
- Non-certified agency appointed as guardian instead of CPG
- Same GAL appointed in all cases (potential conflict of interest)

Judge Prochnau then went around the room and asked each Board member to provide comments.

Board members in favor of DR 520, emphasized the Board's duty to monitor guardians' compliance with the standards of practice in order to protect the incapacitated person. The random audits described in DR 520 are clearly within the Board's enabling authority, General Rule 23(c)(1)(ix), to investigate to determine whether a professional guardian has violated any statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. DR 520 addresses the public's concern that guardians are not acting in accordance with standards of practice and exposing the vulnerable public to harm. By auditing guardians' filings, the public's confidence may be restored that professional guardians are meeting or exceeding expectations. The direction the Board is taking by adopting DR 520 is consistent with regulation of guardians in other states. The Board would be remiss not to actively monitor guardians in this area.

This extended discussion of the implementation of DR 520 is needed so that the reasoning behind the regulation can be fully expressed. The matters outlined for review are the minimum standards of practice for guardians. The review is not meant to accord the Board the status of the "super guardian", but is a way to ensure guardians meet basic expectations. There has been a lot of discussion as to why the Board is getting involved in what the superior courts should be doing and are capable of doing, but the fact is that the courts are not able to assign guardianship matters sufficient priority to monitor them in a timely manner. The results from the WSBA Elder Law Section Guardianship Task Force survey show that a high percentage of counties are doing little or no guardianship monitoring, which is also echoed by the Superior Court Judges Association-Guardianship & Probate Committee in supporting DR 520.

Board members opposed to DR 520, recognize that though it is extremely important to protect the incapacitated persons, it is not within the Board's scope of authority to proactively review court filings. The Board was established as a certifying body to ensure professional guardians meet the education and experience requirements for certification, and though disciplinary action is appropriate in certain matters brought forward by grievance, the Board should refer matters related to the guardianship proceeding back to the courts and let them handle it first. Courts in each county may address deficiencies in guardianships in different ways and the Board should continue

to follow its process in forwarding any complaint or grievance to the court with jurisdiction over the guardianship.

Many of the comments received are directed to the process under DR 520, and the need for clarity as to what the Board will be looking for and parameters for taking action. SCOMIS has historically been an inefficient way to retrieve information and there is a concern the guardian will be required to expend the time and resources, or request their attorney follow-up, to provide comprehensive information about the status of filings in a case. Still to be determined is what constitutes a violation, how "late" is defined, and who will end up paying the cost of providing case information in response to the audit. These questions need to be answered before moving forward with the audits.

At the conclusion of the Board member comments, a member of the audience praised the King County's practice of issuing a case schedule containing reporting deadlines as very helpful to guardians. In addition, it was noted that the newly adopted Pattern Guardianship Forms on the AOC website provides a model Order Appointing guardian which contains the reporting requirements and other duties of the guardian. [See <http://www.courts.wa.gov/forms/>] There was also a comment proposing a voluntary 100% disclosure format that would encourage guardians to disclose any late filings in exchange for no discipline on the matter.

2. Disciplinary Regulation (DR) 520 – Motion to Rescind Board Vote on DR 520

Judge Prochnau asked Sharon York, recently appointed Board Parliamentarian, to review the procedure for the proposed motion to rescind the Board's vote on DR 520 taken at the November 3, 2008 meeting. Ms. York reported that consistent with Robert's Rules of Procedure, any Board member may make the motion to rescind, and discussion and vote would proceed according to general motion practice. Concern was raised that a motion to rescind Board action is not appropriate in regards to the Board's action to adopt DR 520, and that the Board's more specific process for adoption and repeal of regulations contained in chapter 600 of the Board's regulations supersedes Robert's Rules of Order. After a brief discussion, Judge Prochnau indicated she would allow the motion to rescind to be made as it is consistent with parliamentary procedure and with the notice provided on the agenda. Whether additional Board action must be taken following the vote on the motion to rescind will be addressed at that time.

Board Member Chris Neil made a motion to rescind the Board's vote on DR 520 taken at the November 3, 2008 meeting. The motion was seconded. Prior to receiving Board member comment, Judge Prochnau invited a representative from the audience to comment for those opposed to DR 520, and a representative for those in favor of DR 520.

Comments in favor of DR 520 suggested that a guardian's late filing or failure to file required reports is indicative that there are other problems with the management of the guardianship which necessitates the need for some leadership in active monitoring. The real concern in the community is that consistent monitoring of guardians occurs, and the Board's action under DR 520 is the first step to determine if there is a problem and to work with the profession to address it.

Comments in opposition to DR 520 suggested that the proposition that there is no oversight and monitoring of guardians is not true. Guardianship matters are one of the easiest matters in which to draw the court's attention to a concern, for example, simply writing a letter of concern to the court results in a hearing. Late reports are not an indication that there are other problems with a guardian's practices. The Board should not be reviewing matters appropriately before the court.

Each Board member was offered an opportunity to comment on the motion. The following is a summary of Board member comments:

In support of the motion to rescind, it was noted that from the comments received it does not appear that the guardian community objects to the intent behind DR 520, but that the process envisioned is not the right tool to address the perceived concern. The appropriate process may be to amend GR 23 then adopt implementing regulations. It is agreed that the Board is here to protect the incapacitated persons, but the process for adopting this regulation happened too quickly without detailing how it will be implemented. The Board's regulations currently require that grievances first be forwarded to the court for action. The Board should step back to develop the process and take advantage of this opportunity to education guardians and the courts.

In opposition to the motion to rescind, it was emphasized that the language contained in DR 520 is really straight-forward and an appropriate review action to be taken by the Board. The Board should be the watchdog for the incapacitated persons and is responsible for regulating professional guardians. The public perception is that the profession is not being regulated. Not all counties have the tools in place to ensure reliable monitoring. The Board's responsibility is to ensure guardians practice according to the fiduciary standards. The process proposed should consider minimizing the burden on CPGs, but it still needs to be done. DR 520 is a modest effort in that regard.

Following receipt of all comments, Judge Prochnau called for the vote on the motion to rescind the Board's vote on DR 520 taken at the November 3, 2008 meeting. The vote resulted in a tie-vote: six in favor of rescission of the Board's action, and six opposed. Where there is a tie-vote the Chair is required to vote. Judge Prochnau voted in opposition to the motion to rescind. The motion failed on a vote of six in favor to rescind, and seven opposed. Disciplinary Regulation (DR) 520 remains effective as adopted on November 3, 2008.

Washington Association of Professional Guardians (WAPG)

Ken Curry, WAPG President, was invited to share a practice experience by a CPG. Mr. Curry related his experience with the newly discovered family of an incapacitated person after the IP had passed away. The narrative of Mr. Curry's experience was included in the Board meeting materials and is attached to the Minutes.

Committee Reports

1. Standards of Practice Committee

(a) Request for Board Recommendation on Decertification pursuant to Agreement Regarding Discipline in CPGB No. 2007-009

The Board was updated regarding the requirements under the ARD, including agreed decertification by the guardian. There being no discussion, a motion was made and seconded to recommend to the Supreme Court that the guardian be decertified, pursuant to the ARD. The motion passed. Nancy Dapper and Sharon York abstained.

(b) Presentation of Agreement Regarding Discipline in CPGB No. 2008-015

The Agreement Regarding Discipline was presented in resolution of the allegations of the guardian's failure to timely file reports and failure to keep time records to substantiate his entitlement to fees. The ARD requires the guardian to prepare final reports and file notice of withdrawal in his cases by January 31, 2009, and then accept decertification. There being no discussion, a motion was made and seconded to approve the ARD as presented. The motion passed.

2. Education Committee

(a) Committee Report

Gary Beagle, Committee Chair, reported that the Committee met in November and reviewed the role of the Committee; discussed the need for criteria to approve non-live continuing education; agreed to fully implement CER 207 allowing staff determinations on CE requests for approval; approved updated forms; and discussed the need to review the UWEO Guardianship Certificate Program for potential continuing education credit. The Committee will meet again in February.

(b) UWEO Guardianship Certificate Program

Mr. Beagle and Ms. Jameson reported on the progress of the UWEO program. The last instruction sessions began with a wrap-up of guardianship of the estate, and focused on practice ethics, including diffusing difficult situations and conflict resolution, and guardianship alternatives. Leesa Camerota informed the Board that the review of this first certificate program revealed that restructuring of the three courses for the September, 2009, program might result in a more meaningful presentation. The next program begins March 13, 2009. The Board will schedule a February teleconference meeting to consider pending applications for certification.

3. Ethics Committee

(a) Ethics Advisory Opinion Request 2008-001

At the November 3, 2008, Board meeting, the Board directed the Committee not to address requests where there is a lack of specificity to particular factual circumstances. The Committee determined that request 2008-001 does not present a specific factual situation and the court has since amended its orders to resolve the issue of a court monitor's access to confidential records. A motion was made and seconded to close this request. The motion passed.

(b) Draft Proposed Amended Regulations 301.2 and 302.2

The Committee directed staff to draft proposed amended regulations consistent with the Board's requirements for ethics advisory opinion requests set forth above. A motion was made and seconded to post for comment proposed amended regulations 301.2 and 302.2, as presented. The motion passed.

Closed Session

The Board adjourned to closed session at approximately 12:40 p.m. to consider applications for certification.

Open Session

The Board reconvened in open session at approximately 12:55 p.m. and took the following action:

Action on Applications:

(1) Individual motions for conditional approval* of each of the following applications for certification passed, abstentions noted:

Lynda F. Clark (Sharon York abstained)
Cynthia C. Doolin (Gary Beagle and Sharon York abstained)
Amanda R. Witthauer (Sharon York abstained)

* Conditional approval is granted pending successful completion of the mandatory training and absent any intervening disqualifying events.

(2) Individual motions for denial of each of the following applications for certification passed:

Cherylyn L. Kozlak
Jutta U. Mead

(3) Motion to approve the requests for voluntary surrender of the following certifications passed:

Lori Anaya, CPG#5312
Regina Desfachelles, CPG#10335
Eric Desfachelles, CPG#10336

Adjourn

Judge Prochnau adjourned the meeting at approximately 1:00 p.m.

Respectfully submitted,

Judge Prochnau
Sharon Eckholm

Board Approved: 3-09-09

CPG Practice Experience:

Your Advocates – A Veteran Honored

One of my first appointments nearly ten years ago was a gentleman in a medically induced coma with no chance of recovery from a major stroke. The hospital wanted someone to relieve them of their liability from removing life support. Having recently completed Guardian training I was keenly aware of the substitute judgment and best interest requirements for medical decisions.

My new client had been estranged from his wife and son for nearly 40 years, both of whom lived out of state. I was able to contact them both to learn what he would want for his end of life decisions. He was described essentially as a fighter and would want every chance to stay alive. So that is what we did: full code with all life support retained. We advised the court and also received permission to change from full code if the situation warranted.

Over the next few weeks his heart stopped on a couple of times and then one day it stopped once and they resuscitated him, twenty minutes later it stopped again and they resuscitated him and called me. They describe the situation and asked for permission to not resuscitate if it stopped again. I made the decision that he was telling us that he was ready to move on to his next life.

As all Guardians try to do in their first 90 days of appointment, I tried to muster all of his assets. They were limited to a couple of uncashed pay checks and some belongings. The latter took an order to show cause against the Landlord to look through them and the Court Commissioner chastising the Landlord to just let the Guardian do his job. We didn't find much that was useful and nothing of value. A driver's license was the main thing. I had been told by his family that he was a Veteran but there was no DD 214.

Cremation was approved by the family and his ashes were ready for inurnment in the Veteran's Cemetery. But they wouldn't take him without proof. I had the approximate dates of service and branch of service from his estranged wife but he was of the generation of Veteran's that were given service numbers and not matched to Social Security Numbers because a fire destroyed thousands of Veteran records. The work began.

The local VA field investigator couldn't help without the DD 214 or a service number. My next contact was Congressman Adam Smith's office. They had done this for other Veteran's so they began the process of securing Veteran status. Several months later, I was in Riverside, CA and the Veteran's Cemetery for my Mother's inurnment and made contact with a clerk there who had received the Congressional request. In a quick conversation, I introduced myself and told her what I was there for and she said she could have it in a couple of days. I said I was there for my Mother's services but would be in the area for a couple of days. She said come back after the services and she would have the information. And she did.

With confirmation of Veteran status, the Veteran's Cemetery accepted my client. Now we plan a service. It is always great to have family at these services but the only one who could come was the estranged son. My client had a couple of friends from work who wanted to come to the service and they were invited. The day of the service we were gathering in the line to go to the service. I was visiting with my client's friends who were also Veterans, who had never met his son, and a yellow Volkswagen drove up. Knowing that my client's son was a County Sheriff in another state I turned around to continue the conversation. My client's friends stopped talking and just looked behind me whispering "he looks just like his Father". We all greeted each other and I pulled out the driver's license and gave it to his son. His wife looked over his shoulder wanting to know what he would look like when he was older. It was the only picture he had of his Father. We all then went to the service and the son held his Father's drivers license in his hand through the entire service just looking at it. The American Flag was presented to the son as is traditional in Veteran services. After the service, the son gave the Flag to one of my client's friends who said he would fly it regularly to honor his Father.

How much did I get from many hours of work? A couple of hundred dollars and a great deal of satisfaction that a Veteran had been properly honored and at least in death reconnected to family and friends.