

Certified Professional Guardian Board

Meeting Minutes

June 14, 2010

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

CHAIR

Judge Kimberley Prochnau

MEMBERS PRESENT

Robin Balsam

Gary Beagle

Dr. Ruth Craven

Nancy Dapper

John Jardine

Chris Neil

Emily Rogers

Prof. Winsor Schmidt

Judge Robert Swisher

Comm. Joseph Valente

Judge Chris Wickham

MEMBERS ABSENT

Ree Ah Bloedow

Judge James Lawler

VISITORS

Pam Privette

Tom Goldsmith

Dan Smerken

Summer Gallagher

Kellie Derum

Carol Converse

Brenda Morales

Carrie Shirk

Glenda Voller

Michael Johnson

Scott Malavotte

Ken Curry

Carol Sloan

STAFF

Deborah Jameson

CALL TO ORDER

Judge Prochnau called the meeting to order and had the Board members introduce themselves.

BOARD BUSINESS

1. CHAIR REPORT

a. Judge Prochnau welcomed the new Board member, Emily Rogers. Judge Prochnau informed the Board that Ms. Rogers is the Self-Advocacy Coordinator for the Arc of Washington and that she has a Bachelor of Science degree from Central Washington University. Ms. Rogers brings a welcome set of skills to the Board.

b. Judge Prochnau asked for Board members to volunteer to attend the last session of this UWEO guardian Certificate Program and act as the “judge” when the students present their annual reports. Gary Beagle volunteered.

c. Judge Prochnau noted that June 15 is World Elder Abuse Day. Gary Beagle said that it is a day to raise awareness of the financial and physical exploitation of elders. In Clark County members of the local government, department heads of law enforcement, members of the Clark County Vulnerable Adult Task Force, and other area leaders were planning on serving dinner to seniors and talking to them about abuse issues.

d. At its April Long-Term Planning Meeting, the Board talked about supporting local courts in developing monitoring programs. SCOMIS, the court’s case management system can be used for monitoring and there will be a demonstration of SCOMIS at the SCJA Guardianship and Probate Committee’s September meeting. Board members are welcome to attend.

e. Judge Prochnau reported that she met with the Supreme Court on June 3, 2010. She said that she gave an overview of the Board’s actions, including the UWEO program, the DR 520 Audit, and the revision of regulations. Justice Alexander, who attended the Presiding Judges’ Conference with Jeff Hall, said that Washington is one of the leaders in the field of guardianships.

The Court asked questions re guardian fees—how fees were reviewed and how the courts could best provide oversight. Judge Prochnau indicated to the Court that it was an issue that the Board would look into.

f. Judge Prochnau reported that GR 23 has been approved by the Supreme Court and will be effective September 1, 2010.

2. APPROVAL OF MINUTES

A motion was made and seconded to approve the minutes as presented for the Board meeting held on May 10, 2010. The motion passed.¹

3. CPG PRACTICE EXPERIENCE. Pam Privette provided the CPG practice experience. Ms. Privette has been a CPG since 2001 and came with a background in business and was an accountant by trade and has experience with cases involving financial exploitation.

¹ Except in the event of a tie vote, the Chair does not vote on any motions before the Board.

Ms. Privette said that she uses the courts as needed for vulnerable adult protection orders or other orders to protect the incapacitated person. She also uses administrative hearings to obtain restitution.

4. COMMITTEE REPORTS

Standards of Practice Committee

a. **DR 520 Audit Report** Comm. Valente reported that the DR 520 Audit was nearly complete. He said that for guardians with compliance problems there were a few themes. One was for the guardian to blame the attorney and not take responsibility to ensure that documents were timely filed. Another was to blame lateness on accident, injury, etc. and not take responsibility for having a contingency plan.

Comm. Valente noted that the majority of guardians were already in compliance or brought their cases into compliance prior to being audited. He said that the many problems were *de minimus*, but in some cases a guardian could be significantly out of compliance with filing reports in a county.

The audit process resulted in finding out about some other issues, for example guardians failing to send copies of pleadings to the incapacitated person. Comm. Valente suggested that the Board should consider its next monitoring project.

Winsor Schmidt noted that while a sample of cases saves time and has a deterrent effect, looking at 100% of the cases increases validity. He mentioned that the audit could look at not just whether reports were filed on time, but on the accuracy of the reports.

Comm. Valente said that the DR 520 Audit process had value, especially for those guardians without a calendaring system. The Board talked about compiling results by county and perhaps having a presentation at Spring Conference.

Others on the board noted that the Board's contribution to guardianship practice has been in setting policy, not in acting as a sheriff and that the Board should help put into place guardian monitoring policies rather than do the monitoring itself. It was also noted that the additional burden of monitoring regulations could cause some guardians to opt out of practice.

The Board decided that discussion about additional monitoring should be tabled until the results are complete.

b. **Proposed Admin Regulation 003.3.1** Comm. Valente noted that many comments were received about the proposed regulation. He explained the two competing interests: transparency and Washington's policy on disclosure versus a CPG's interest in not having dismissed grievances be public because it could impact their business.

There was a motion and second to approve the change to Administrative Regulation 003.3.1 as follows:

Dismissed grievances shall be disclosed upon written request using established procedures for inspection, copying, and disclosure with identifying information about the grievant, incapacitated person, and professional guardian and/or agency redacted. A request for dismissed grievances shall cover a specified time period of not less than 12 months.²

Discussion: There was some discussion about how a request for information on a specific guardian would be handled under the regulation--the requestor would be told only about any disciplinary sanctions. It was noted that the SOPC is now creating summaries of dismissed grievances with identifying information removed and that these summaries will be available to the public.

The Board voted on the motion to approve the changes to Administrative Regulation 003.3.1 and the motion passed.

Education Committee

a. Gary Beagle reported on the proposed changes to the Continuing Education Regulations that would set a ratio of preparation time to teaching time and would allow AOC staff to approve credit for participation and teaching subject to the Committee's later review. A motion was made and seconded to approve giving notice of amendments to Continuing Education Regulations 203, 206, and 207 as follows:

203.5.1 An active Guardian teaching in an approved education activity shall receive credit on the basis of one credit for each hour or part of an hour actually spent by such Guardian ~~in attendance at and teaching in a presentation of such activity.~~ Additionally, an active Guardian teaching in such an activity ~~shall~~ may also be awarded further credit for preparation time in the ratio of three (3) hours of preparation time to one hour of teaching time up to a maximum of nine (9) hours. The ratio of two to one will be applied to teaching presentations of less than one hour. An active guardian may earn credit only once for teaching in the same accredited course, regardless of the number of times the course is presented. ~~on the basis of one credit as defined in Section 201.3 for each hour actually spent in preparation time, provided that in no event shall more than 10 hours of credit be awarded for the preparation of one hour or less of actual presentation.~~

203.5.2 An active Guardian participating in an approved educational activity shall receive credit on the basis of one credit for each hour actually spent by such Guardian ~~in attendance at a presentation of~~ participating in such activity. Additionally, an active Guardian participating in such an activity ~~shall~~ may also be awarded further credit on the basis of one credit for each hour actually spent in preparation time as defined in Section 201.8, provided that in no event shall more than five hours of credit be awarded for such preparation time in any one such continuing education activity. An active guardian may earn credit only once for participating in the same accredited course, regardless of the number of times the course is presented.

206.1 To facilitate the orderly and prompt administration of GR 23 and these regulations,

² Within the regulation, additions are indicated by underlining and deletions indicated by strikethroughs.
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and to expedite the processes of course approval, teaching and participation credits, and the interpretation of these regulations, the staff of the Administrative Office of the Courts may act on behalf of the Committee under GR 23 and these regulations. Any adverse determinations and all questions of interpretation of these regulations by the staff shall be subject to review by the Committee upon written application by person adversely affected.

207.1 Staff of the AOC shall, in accordance with regulations 204 and 206, respond in writing to all written requests for course approval, teaching and participation credits, and interpretation of the continuing education regulations of GR 23. The staff may seek a determination of the Committee before making such response. At each meeting of the Committee, the staff shall report on all determinations made since the last meeting of the Committee.³

There was no discussion. The Board voted and the motion carried. The regulations will be posted for comment.

b. Gary Beagle reported that the UWEO Guardian Certificate Program started its 4th class on March 10 and those students will be finishing in August. He said that they have strong educational backgrounds and come from 11 counties. He mentioned that 59 students have completed the program.

Mr. Beagle mentioned that the Education Committee will begin talking to the UW about the next contract for classes. The current contract expires in August 2011.

Regulations Committee

Chris Neil reported that the Regulations Committee has been working on revisions to the Standards of Practice since November 2009. He said that the group first re-organized the SOPs and created new section headings, and then the group looked at the content of the SOPs. The new material in the SOPs generally comes from the National Guardianship Association Standards of Practice. The group tried to streamline the SOPs and make them more usable. There are more bright line rules and fewer aspirational standards. The plan is to have the Board address the SOPs at its September meeting.

Applications Committee

a. Robin Balsam reported that some applicants have had difficulty with fingerprint checks—the Washington State Patrol may approve the fingerprints, but the FBI rejects them. There is no current guidance about how many times an applicant needs to submit fingerprints and Ms. Balsam reported that the Applications Committee plans to seek FBI approval 2 times and then have the FBI do a background check based on birth date. The Board agreed with the policy.

b. Ms. Balsam reported on the proposed adoption of Application Regulation 103.2.6 and

³ Within the regulation, additions are indicated by underlining and deletions indicated by strikethroughs.

informed the Board that the Committee had considered language requiring background checks of anyone coming into contact with the incapacitated person, but the majority of the Committee agreed on background checks only for employees. With the adoption of this regulation, solo guardians will be making similar declarations as agency guardians about conducting background checks on employees.

A motion was made and seconded to approve giving notice of adoption of Application Regulation 103.2.6 as follows:

103.2.6 Submit declaration under penalty of perjury, that the guardian will take steps to ensure the guardian's employees who come into contact with the person or estate of an incapacitated person have passed a criminal history check prior to having contact with the incapacitated person or incapacitated person's estate.⁴

Discussion: The Board noted that the regulation is simply a declaration that a guardian will take steps to ensure background checks and that it is not a requirement to conduct background checks. The suggestion was made to have the Regulations Committee consider whether there needs to be further regulations.

The Board voted on the motion and it passed. The regulation will be posted for public comment.

Ethics Advisory Committee

Judge Wickham reported that the Committee had received a request for an advisory opinion. The issue was about how in some counties, guardians can present reports ex parte or by mail. This can save time and money to the incapacitated person's estate, but it does not allow the incapacitated person to be present at a hearing and participate. The requestor wanted direction about what a guardian should do. The Committee was divided as to whether this was a request for an ethical opinion or legal opinion.

The Board discussed the reasons for issuing an opinion: the requestor had a valid concern—incapacitated persons have a right to notice, both legally and ethically; fees are an issue in guardianship cases; and some process and guidance is necessary if hearings are conducted ex parte.

The Board also discussed reasons for not issuing an opinion: the guardian could seek prior permission from the court not to give notice; this was a case-by-case decision and there could not be a general opinion; and the decision should be made by the guardian's legal counsel.

A motion was made and seconded to have the Ethics Advisory Committee draft an opinion. The motion carried.

5. PROGRESS TOWARDS 2011 GOALS

⁴ Within the regulation, additions are indicated by underlining and deletions indicated by strikethroughs.

Nancy Dapper went through the 2011 Goals that were established at the CPG Board Long-Term Planning Meeting. She noted that the Education Committee was continuing to assess the UWEO program for quality, that the SOPC would complete the audit and any new audit would be discussed at a future meeting, and that the changes to the SOPs would be discussed in September. There was a suggestion that a survey was needed to determine why students who completed the UWEO program did not choose to become CPGs and that the Board needs to discuss how to recruit new CPGs.

6. EXECUTIVE SESSION

The Board adjourned to executive session to consider applications, disciplinary matters, the appeals panel recommendation, and decertifications.

7. OPEN SESSION

The Board reconvened in open session and took the following action:

a. Motion made and seconded for conditional approval⁵ of each of the following applications for certification:

Jonathan Berliner	CPG #11230
Perry EauClaire	CPG #11236

The motion passed. Staff was directed to include a paragraph about conflict of interest in providing certain direct services in all conditional approval letters.

b. Motion made and seconded for approval of the application for certification as a professional guardian agency of Reliable Enterprises. The motion passed. Staff was directed to include a paragraph about conflict of interest in providing certain direct services in the letter notifying the agency of approval.

c. Motion made and seconded to approve decertification of the following certified professional guardians for non-compliance with continuing education requirements:

Terry Gunn	CPG #10705
Melissa Gibbons	CPG # 10775

The motion passed.

d. Motion made and seconded to adopt the recommendation of the SOPC and file a complaint in CPGB No. 2009-006. The motion passed.

e. Motion made and seconded to rescind the Board's May vote to fine Kelly Hope \$50.00 for filing her Errors and Omissions Insurance Declaration late. The motion passed.

⁵ Conditional approval is granted pending successful completion of the mandatory training and absent any intervening disqualifying events.

f. Motion made and seconded to approve the Appeals Panel recommendations to deny the application of Debbie McCabe-McRae. The motion passed.

Adjourn

Judge Prochnau adjourned the meeting at approximately 1:00 pm

Respectfully submitted,

Judge Prochnau
Deborah Jameson

Board Approved: September 13, 2010