

**Certified Professional Guardian Board
Meeting Minutes
June 18, 2011
Red Lion Hotel, Olympia, WA**

CHAIR

Judge Christopher Wickham

MEMBERS ABSENT

Judge James Lawler

MEMBERS PRESENT

Robin Balsam

Gary Beagle

Dr. Barbara Cochrane

William Jaback

Chris Neil

Emily Rogers

Prof. Winsor Schmidt

Carol Sloan

Comm. Joseph Valente

Judge Kimberley Prochnau

Nancy Dapper

Judge Robert Swisher

STAFF

Deborah Jameson

FACILITATOR

Myra Downing

VISITORS

Shirley Bondon

Tom Goldsmith

Dan Smerken

Tom O'Brien

CALL TO ORDER

Judge Wickham called the meeting to order at 9:05 am

1. CULTURAL COMPETENCE DISCUSSION

Myra Downing facilitated a further discussion with the Board about cultural competency. The initial discussion was about cultural competency for guardians as they relate to the incapacitated person. The Board discussed that the initial meeting with the incapacitated person and his/her family or friends was likely to be expansive in order to learn about the client. There is a need to verify the facts of the case and any collateral information because the information obtained by the Guardian ad Litem could be incomplete or incorrect. It was important to be mindful of the parameters of court culture and how the information relevant in the court process may not be what is most relevant to the person involved in a court matter.

The Board discussed some of the differences that come up in guardianship cases—regional, religious, class, death and dying issues, diet, family and residence. The discussion then turned to how to foster cultural diversity and some of the ideas were:

- to assure that the cultural diversity standards of practice were upheld and, perhaps, expanded,
- to seek change in court reporting forms so that the forms required a guardian to report how he/she was addressing the incapacitated person's culture—specifically the personal care plan,
- to consider using a Values History form like the OPG program does,
- to educate guardians on cultural competency issues, and
- to increase the diversity of the Board's membership.

The Board developed the following specific action items:

1. The Education Committee will develop a specific proposal regarding cultural competency training, including changing the current practice of awarding credits based on person, estate, general, and ethics, be changed to a module approach. The approach should

also focus on training on the Standards of Practice and the Substituted Judgment decision standard.

2. The Education Committee will look into fee waivers and scholarships for the mandatory UWEO program.
3. AOC staff will look into and report on the possibility of changing pattern forms to include information that reflects the guardian's analysis of cultural issues.
4. AOC staff will look into and report on how the Values History form could be a required form for all CPGs to file.
5. AOC staff will look into and report on what kind of changes to the statute might be needed to ensure that all guardians addressed incapacitated person's cultural issues.
6. The Board will be more aggressive in seeking diversity among its members.

2. GAO REPORT- In September 2010, the General Accounting Office (GAO) issued a report on Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors. The report highlighted problems in these areas—1) state courts failing to adequately screen potential guardians, appointing individuals with criminal convictions and/or significant personal financial problems; 2) state courts failing to oversee guardians after appointment, allowing the abuse of vulnerable adults and their assets; and 3) state courts failing to communicate with federal agencies about abusive guardians, which in some cases enabled the guardians to continue to receive and manage benefits.

Two Washington cases were included in the report. In both cases, the guardians were disciplined by the Board.

In one case, the report noted that the guardian continues to serve as a guardian and is a representative payee for social security, Office of Personnel Management, and VA benefits. The allegations involved the guardian failing to visit the incapacitated person for a period of eight months, being nine months delinquent in filing the personal care plan and inventory, and having tax liens filed against her personally.

In the other case, the allegations involved guardianship reporting violations, including failures to notify the court of change of circumstances and a lack of a calendaring system. The court limited the guardian's ability to take cases until the guardian came into full compliance. The guardian corrected the problems and is currently serving as a guardian and representative payee.

Some of the recommendations that came out of the report that are relevant to Washington are:

1. Periodically conduct background checks on current guardians
2. Require guardians to report regarding their personal credit
3. Perform periodic credit checks and consider whether someone who has outstanding liens is an appropriate guardian
4. Develop a method for notifying federal and relevant state agencies of guardian discipline
5. Testing

The Board discussed the GAO Report and its recommendations and developed the following action items:

1. The Applications Committee will develop regulations regarding conducting personal credit checks, periodic background checks for certified professional guardians, information required in bankruptcy matters, and the ability to be bonded.
2. The SOPC and AOC staff will develop for the web site a description of the disciplinary process and how grievances are handled. The focus is on giving members of the public a transparent description of the process.
3. AOC staff will review the facts of the Washington cases listed in the GAO Report and, if appropriate, develop a response to the facts.

A motion was made and seconded to appoint a committee to develop a plan for a structured public hearing to be held by the end of the year focusing on current strengths of the guardianship program and ways in which it can be improved and to empower the committee to contact legislators regarding the Board's willingness to cooperate with any hearings set up by the legislators on guardianship issues. The motion passed. The committee will be composed of Judge Wickham, Judge Prochnau, Gary Beagle, and Nancy Dapper.

3. FUNCTION AND STRUCTURE OF THE BOARD: Judge Wickham led the Board in a discussion about the function and structure of the Board in light of budget cuts and the Supreme Court's consideration of restructuring boards and commissions. The discussion focused first on the functions of the Board, which included:

- Establishing a criteria for CPGs and reviewing applications
- Establishing minimal standards of practice
- Processing grievances and disciplining guardians
- Approving/denying applicants for certification
- Providing ethics advisory opinions
- Approving continuing education credits
- Contracting with the UWEO for the mandatory guardian training
- Reviewing guardians on an annual basis for errors and omissions and removal from cases
- Responding to national and state reports
- Serving as a clearinghouse for legislation
- Responding to questions and concerns from the Supreme Court
- Assuring the quality of care for incapacitated persons
- Assuring public safety and trust
- Deterring behavior and providing rehabilitation
- Auditing guardians
- Providing oversight across the state

The discussion next turned to how else those functions might be accomplished, perhaps by another agency or entity, including the Supreme Court, superior courts, the Department of Licensing, the Washington State Bar, the Department of Social and Health Services, etc. One concern that would need to be addressed is whether there is a separation of powers issue in having guardians, who are empowered by courts, regulated by the executive branch. The consensus was that the Board plays a critical role as an arm of the judicial branch in managing

guardians and reviewing and recommending changes to guardianship practice that no other entity can do as well.

The Board then discussed what core functions of the board could be done differently. One suggestion was to have an annual face to face meeting and periodic phone calls. Concerns were raised about the philosophical and difficult decisions the Board makes and how those are conversations best held face to face. Another concern was ensuring that members of the public had access to meetings.

The Board talked about downsizing from its current fourteen members to some other number. At a past meeting, the Board had discussed downsizing to twelve members. Members with experience on other boards agreed that ten to fourteen members seemed to work well and provide enough support for the committee structure. There was a concern about the composition of the Board and proportionality of membership. The members felt like the Board had become more efficient and that the committees were working effectively.

4. CONFLICT OF INTEREST:

The Regulations Committee chair brought the issue of a guardian providing services other than guardianship services to a client when the guardian has an ownership interest in the entity providing the "other" services. The question was whether that should be permitted, and if so, under what conditions. Should there be a bright line rule?

The current standard of practice states that when a guardian provides compensated services other than guardianship services to the incapacitated person, it shall be considered a potential conflict of interest and be fully disclosed. The standard of practice that will be effective January 31, 2012 states that a guardian shall not directly provide services, but some direct services may be approved by the court provided permission is given in advance of providing the services.

A motion was made and seconded to table any discussion regarding amending the standards of practice regarding conflicts of interest for one year. Discussion: Some members on the Board did not want to amend the standards of practice before they were even implemented given the thorough job that was done in the revision. Other members wanted a bright line that would prohibit any services other than guardianship services. Others thought that an ethics advisory opinion might be helpful.

The Board entered into executive session to discuss the specific facts regarding the conflicts of interest question. The Board came back into open session and the motion to table any discussion was withdrawn.

A motion was made and seconded to have the Regulations Committee look at the Standards of Practice conflicts of interest rules and report back to the Board with a proposal. The motion passed.

5. BOARD'S RELATIONSHIP TO THE COURTS: Issue: Who should enforce the Standards of Practice? The CPG Board? Courts? Administrative agencies? Some local courts have independent grievance procedures and the court may investigate a matter and evaluate the guardian's conduct using the Standards of Practice as a reference point. The Board discussed the matter and decided that no action was necessary.

The Board then discussed the grievance process in terms of how the local courts deal with a grievance sent from the Standards of Practice Committee. The Board would like the letter that goes to the local court to provide more guidance about filing the grievance, actions the court can take, and the process.

ADJOURN

The next Board meeting will be a telephone conference call on July 11, 2011. Judge Wickham adjourned the meeting at approximately 2:30 pm.

ACTION ITEMS

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2. The Education Committee will look into fee waivers and scholarships for the mandatory UWEO program.
3. AOC staff will look into and report on the possibility of changing pattern forms to include information that reflects the guardian's analysis of cultural issues.
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5. AOC staff will look into and report on what kind of changes to the statute might be needed to ensure that all guardians addressed incapacitated person's cultural issues.
6. The Board will be more aggressive in seeking diversity among its members.
7. The Applications Committee will develop regulations regarding conducting personal credit checks, periodic background checks for certified professional guardians, information required in bankruptcy matters, and the ability to be bonded.
8. The SOPC and AOC staff will develop for the web site a description of the disciplinary process and how grievances are handled. The focus is on giving members of the public a transparent description of the process.
9. AOC staff will review the facts of the Washington cases listed in the GAO Report and, if appropriate, develop a response to the facts.
10. A committee of the board will develop a plan for a structured public hearing to be held by the end of the year focusing on current strengths of the guardianship program and ways in which it can be improved.
11. The Regulations Committee will look at the Standards of Practice conflicts of interest rules and report back to the Board with a proposal on possibly amending them.

12. AOC staff will work with the Chair to refine the letter that accompanies grievances sent to local courts.

Respectfully submitted,

Judge Wickham
Deborah Jameson

Board Approved: August 8, 2011