

# Minutes

## Certified Professional Guardianship Board

Monday, September 8, 2014 (8:00 a.m. – 9:00 a.m.)

Telephone Conference

### Proposed Meeting Minutes

#### Members Present

Judge James Lawler, Chair  
Judge Robert Swisher, Vice-Chair  
Commission Rachele Anderson  
Mr. Gary Beagle  
Ms. Rosslyn Bethmann  
Dr. Barbara Cochran  
Ms. Nancy Dapper  
Mr. Andrew Heinz  
Mr. William Jaback  
Ms. Emily Rogers  
Judge Sally Olsen  
Ms. Carol Sloan  
Mr. Gerald Tarutis

#### Staff

Ms. Shirley Bondon  
Ms. Carla Montejo  
Ms. Sally Rees  
Ms. Kim Rood

#### 1. Call to Order

Judge Lawler called the meeting to order at 8:05 a.m.

#### 2. Welcome and Introductions

Judge Lawler welcomed Board members and members of the public to the meeting.

#### 3. Approval of Minutes

Judge Lawler asked for changes or corrections to the August 11<sup>th</sup>, 2014 proposed minutes. There were no changes or corrections.

**Motion:** *A motion was made and seconded to approve minutes from the August 11<sup>th</sup>, 2014 meeting. The motion passed.*

#### 4. Chair's Report

Attorney Philip Talmadge sent a letter to the Supreme Court on behalf of the Washington Association of Professional Guardians (WAPG) proposing two revisions to General Rule (GR) 23. The first revision would increase the number of certified professional guardians serving on the Board. The second revision requires that the Board, not staff, perform the initial screening of all grievances. In addition, Talmadge requested a revision to General Rule (GR) 31.1, clarifying that grievance and investigative materials pertaining to it are deemed confidential and not public records, unless the Board's initial assessment of the grievance results in discipline or in a recommendation of a hearing or possible discipline. At which point, the grievance and attendant investigative materials could be made public.

**5. Executive Session (Closed to the public)**

**6. Reconvene and Vote on Executive Session Discussion (Open to Public)**

**Applications Committee**  
**Individual Applications**

**Motion:** *A motion was made and seconded to approve Ronda Hill's application. The motion passed.*

**Motion:** *A motion was made and seconded to approve Kristi Hunziker's application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Cathy Silins' application. The motion passed.*

**Motion:** *A motion was made and seconded to table voting on Annemieke Van Der WerfPrice's application until the October board meeting, pending receipt of additional information. The motion passed.*

**Motion:** *A motion was made and seconded to approve the Appeal's Panel decision to deny Julie Anna Gardiner's appeal of the Board's denial of her application for certification. The motion was passed.*

**7. Wrap Up and Adjourn**

Meeting was adjourned at 9:00 a.m. The next Board meeting will be an in person held on Monday, October 20<sup>th</sup>, 2014 at the SeaTac Office Center, 18000 International Blvd., Suite 1106, SeaTac, WA.

**Recap of Motions from September 8<sup>th</sup>, 2014 Meeting**

<b>Motion Summary</b>	<b>Status</b>
<b>Motion:</b> <i>A motion was made and seconded to approve minutes from the August 11<sup>th</sup>, 2014 meeting. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve Ronda Hill's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve Kristi Hunziker's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Cathy Silins' application. The motion passed.</i>	Passed

<p><b>Motion:</b> <i>A motion was made and seconded to table voting on Annemieke Van Der WerfPrice's application until the October board meeting, pending receipt of additional information. The motion passed.</i></p>	<p>Passed</p>
<p><b>Motion:</b> <i>A motion was made and seconded to approve the Appeal's Panel decision to deny Julie Anna Gardiner's appeal of the Board's denial of her application for certification. The motion passed.</i></p>	<p>Passed</p>

Action Items	Status
<p><i>None at this time.</i></p>	

Proposed

# Petersen Complaint

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE  
DISCIPLINARY PROCEEDING  
AGAINST:

Lori A. Petersen,  
Certified Professional  
Guardian No. 9713,  
  
Petitioner.

NO. 88513-3

**ORDER DENYING MOTION  
TO EXTEND TIME TO FILE  
MOTION FOR  
RECONSIDERATION**

An opinion was filed in this matter on July 3, 2014, and a "MOTION FOR RECONSIDERATION" was untimely filed by the Petitioner on July 24, 2014. The Court having considered the Petitioner's "MOTION TO EXTEND TIME TO FILE MOTION FOR RECONSIDERATION" filed on July 25, 2014, now, therefore, the following order is entered.

IT IS ORDERED:

That the Petitioner's motion to extend time to file motion for reconsideration is denied.

DATED at Olympia, Washington this 19<sup>th</sup> day of September, 2014.

For the Court

Filed  
Washington State Supreme Court

SEP 19 2014

Ronald R. Carpenter  
Clerk

Madsen, C.J.  
CHIEF JUSTICE

697/30

SEP 25 2014 *JB*

Ronald R. Carpenter  
Clerk

# THE SUPREME COURT OF WASHINGTON

In the Matter of the Disciplinary Proceeding  
Against:

LORI A. PETERSEN, Certified Professional  
Guardian No. 9713,

Petitioner.

)  
) **CERTIFICATE OF FINALITY**  
)  
)

NO. 88513-3

\_\_\_\_\_  
  
This is to certify that the opinion of the Supreme Court of the State of Washington, filed on July 3, 2014, is now final, the Court on September 19, 2014, having issued an Order Denying Motion to Extend Time to File Motion for Reconsideration.

Pursuant to Rule of Appellate Procedure 14.4 and 14.3, costs are taxed as follows: No cost bills having been timely filed, costs are deemed waived.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 25<sup>th</sup> day of September, 2014.

*Ronald R. Carpenter*

Ronald R. Carpenter  
Clerk of the Supreme Court  
State of Washington

cc: Chad Corwyn Standifer  
Jeffrey Todd Even  
Michael L. Olver  
Reporter of Decisions

*158/34*

# Correspondence

TALMADGE/FITZPATRICK PLLC  
2775 HARBOR AVENUE SW  
THIRD FLOOR, SUITE C  
SEATTLE, WASHINGTON 98126  
(206) 574-6661 (206) 575-1397 FAX

July 16, 2014



Barbara A. Madsen, Chief Justice  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: Certified Professional Guardian Board

Dear Chief Justice Madsen:

I am writing to you on behalf of the Washington Association of Professional Guardians (“WAPG”) concerning guardian representation on the Certified Professional Guardian Board (“CPGB”), the judicial branch agency created by GR 23 to certify and discipline professional guardians. WAPG is the professional association that represents a significant number of Washington’s certified professional guardians.

WAPG is concerned about appointments to the CPGB from two standpoints. First, the number of certified professional guardians on the Board. Second, the experience and qualifications for appointees.

First, under GR 23(c), the Supreme Court is the appointing authority for the CPGB and its officers. At present, the CPGB consists of 13 members, only 2 of whom are practicing professional guardians. While under GR 23(c)(1)(i), no more than one-third of the CPGB membership may be professional guardians, 2 of the 13 members does not constitute sufficient guardian representation on the CPGB to permit that board to have a representative group of professional guardians given the ethnic, gender, large organization/individual, and geographic diversity in the profession.

This concern about representation on the CPGB is particularly acute given its disciplinary function and the need to appreciate how professional guardians perform their services when the CPGB makes its disciplinary decisions.

To draw an analogy, in the case of the Commission on Judicial Conduct or the Washington State Bar Association’s Disciplinary

July 16, 2014  
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Committee, while public members constitute a majority on both bodies, strong representation is given to judges and attorneys respectively.

A second WAPG concern is the pool of prospective persons from which the Court makes appointments. In seeking Board applicants, for example, the Board's June 2013 Letter of Interest to Serve indicated: "Experience related to guardianship is preferred, but not required."

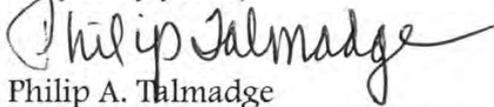
WAPG is also concerned that the Board's staff has actually recommended the rejection of Board applicants who have guardianship-related experience. For example, on July 17, 2013, Board staff wrote a letter to the WSBA Board of Governors commenting on attorney applicants to the Board suggesting that one applicant was unqualified because of an alleged conflict of interest having represented several guardians in disciplinary matters. That staff member expressed the apparent Board position "that representing professional guardians poses a conflict for anyone serving as a Board member..."

Given the CPGB's obligation under GR 23(c)(2)(ii) to establish standards of practice for professional guardians, the need for Board members experienced in addressing professional guardian issues is vital. WAPG fears that the CPGB screening process too often excludes applicants knowledgeable about professional guardian standards of practice and disciplinary procedures.

WAPG requests that as you and the Court consider appointments to the CPGB, you will consider WAPG's concerns referenced herein and consider the addition of professional guardians and other individuals experienced in guardianship issues to its membership.

Thank you for your attention to these issues. WAPG stands ready to provide you and the Court such additional information about professional guardians as you may require.

Very truly yours,

  
Philip A. Talmadge

cc: Glenda Voller, CPG, President of WAPG

The Supreme Court  
State of Washington

BARBARA A. MADSEN  
CHIEF JUSTICE  
TEMPLE OF JUSTICE  
POST OFFICE BOX 40929  
OLYMPIA, WASHINGTON  
98504-0929



(360) 357-2037  
FAX (360) 357-2085  
E-MAIL J\_B.MADSEN@COURTS.WA.GOV

July 30, 2014

Phillip A. Talmadge  
Talmadge/Fitzpatrick PLLC  
2775 Harbor Avenue SW, Suite C  
Seattle, WA 98126

Re: Certified Professional Guardian Board

Dear Mr. Talmadge:

Thank you for your July 16, 2014 letter regarding the Certified Professional Guardian Board. As you have noted, the composition of the board is governed, in part, by GR 23. If you, or the Washington Association of Professional Guardians, wish to prepare an amendment to the rules regarding the number of professional guardians designated to serve, the Supreme Court Rules Committee will take up the proposal.

As to the qualifications of the specific appointees, I will gladly share with my colleagues your concern that the board needs more members who possess knowledge and experience with standards of practice and disciplinary procedures. Thank you for your interest and suggestions.

As to the action of the board in writing to the Washington State Bar Association about a particular nominee, the court has made inquiries and is satisfied with the information we received surrounding that decision. The court is confident that the Certified Professional Guardian Board leadership understands its mission and authority, though constructive comment, such as yours, is always welcomed and considered. We appreciate your input and kind offer of additional information

Sincerely,

A handwritten signature in cursive script that reads "Barbara A. Madsen".

Barbara A. Madsen  
Chief Justice

c w/enc: Justices  
Shirley Bondon, AOC

TALMADGE/FITZPATRICK PLLC  
2775 HARBOR AVENUE SW  
THIRD FLOOR, SUITE C  
SEATTLE, WASHINGTON 98126  
(206) 574-6661 (206) 575-1397 FAX

August 20, 2014

Barbara A. Madsen, Chief Justice  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929



Re: GR 23 Amendments

Dear Chief Justice Madsen:

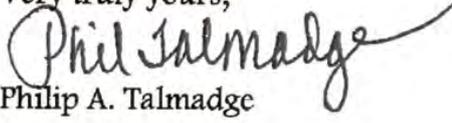
The Washington Association of Professional Guardians (“WAPG”) is a professional membership association representing over 100 certified professional guardians in Washington. Its goal is to establish and maintain the highest standards and practices for the profession. Professional guardians have diverse practices and experience. Some guardians work in large guardianship agencies and some work as individuals or in small agencies. Some guardians practice primarily in metropolitan areas, and others in rural settings. Some have a background in finance and accounting, and others in social work and nursing. Regardless of background or experience, guardians are valuable resources to the courts and the Certified Professional Guardianship Board (“Board”).

At your invitation, in your letter of July 30, 2014, WAPG has prepared the attached GR 9 submission for amendments to GR 23 and 31.1 regarding the number of professional guardians designated to serve on the Board for the Supreme Court Rules Committee, the qualification of Board appointees, and the confidentiality of any unsubstantiated grievances against a guardian.

WAPG appreciates the Court’s consideration of its GR 9 submission, as well as other steps that can be taken to advance the progress on guardian practice and professionalism.

August 20, 2014  
Page 2 of 2

Very truly yours,

  
Philip A. Talmadge

cc: Glenda Voller, CPG, President WAPG  
Judge James Lawler, Chair CPGB

WAPG GR 9 Memorandum-Amendments to GR 23 and 31.1

A. Proposed Rules of Change

The Washington Association of Professional Guardians (“WAPG”), a state-wide organization of licensed professional guardians, seeks changes to GR 23 and GR 31.1. See attached.

B. Spokespersons

The principal spokesperson for WAPG is its president:

Glenda Voller, CPG  
c/o Montlake Guardianship & Trustee Services, LLC  
117 East Louisa Street  
PMB 421  
Seattle, WA 98102  
(206) 860-1300  
[Gvoller\\_Seattle@msn.com](mailto:Gvoller_Seattle@msn.com)

The Court may also contact Steve Lindstrom, its government affairs representative at:

Stephen R. Lindstrom  
Merlin Advocates, LLC  
P.O. Box 4248  
Olympia, WA 98501  
(360) 280-6200

Email: [s@lindstrom.cc](mailto:s@lindstrom.cc)

and Philip Talmadge, its legal counsel, at:

Talmadge/Fitzpatrick  
2775 Harbor Ave SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661  
[Phil@tal-fitzlaw.com](mailto:Phil@tal-fitzlaw.com)

C. Purpose of Rules Changes

(1) GR 23

The changes to GR 23 proposed by WAPG are designed to clarify the representation of certified professional guardians on the Certified Professional Guardian Board (“Board”), and the experience of potential Board appointees. They also address the procedures employed by the Board to initially evaluate grievances it receives.

Presently, the Board's membership in GR 23 is fluid. Up to one-third of the members may be professional guardians. Further, there is no requirement that prospective Board members have experience in guardianship practice or procedures. In fact, the Board has taken the position at times that such experience affirmatively *disqualifies* prospective appointees from Board service.

WAPG believes that professional guardians are presently under-represented on the Board. Such under-representation means that the Board is deprived of the real world perspective of practicing guardians in addressing critical certification and disciplinary issues. Such under-representation is simply unfair to certified professional guardians who, if subject to possible discipline, should be judged by persons with appropriate experience in their guardian activities. By analogy, in other settings involving judicial branch professional discipline, the professionals are better represented. *See, e.g.* Wash Const. art IV, § 31 (Commission on Judicial Conduct – 9 members with 3 judges, 2 lawyers, and 4 lay persons); ELC 2.3 (Disciplinary Board for attorneys – at least 10 lawyers and 3 lay members).

Additionally, the Board's staff has determined that prospective appointees with actual experience in guardianship practices and procedures should be disqualified from Board appointment. WAPG believes that experience is not a disqualifying attribute, but rather should be an affirmative requirement for Board service because such a background enables the prospective appointee to quickly be a contributing member of the Board.

Finally, WAPG has a concern that the Board's initial decision to screen grievances to determine if such grievances have possible merit, either justifying discipline or hearing by the Board on possible discipline, is being undertaken by Board staff rather than the Board itself. The rule change proposed by WAPG clarifies that this is a Board, not staff, function.

## (2) GR 31.1

With regard to GR 31.1, WAPG is concerned that the existing rule makes any grievance, and investigative materials concerning it, no matter how insubstantial or frivolous the grievance, a public record once the Board's investigation is concluded. That is patently unfair to certified professional guardians who are exonerated by the Board's initial assessment of a grievance.

The amendments to GR 31.1 proposed by WAPG clarify that the grievance and investigative materials pertaining to it are deemed confidential and not public records, unless the Board's initial assessment of the grievance results in discipline or in a recommendation of a hearing on possible discipline. At that point, the grievance and attendant investigative materials are appropriately matters of public record.

This rule change is again analogous to the treatment of records of judicial and attorney disciplinary grievances. *See*, Wash. Const. art. IV, § 31 ("Whenever the commission receives a complaint against a judge or justice, it shall first conduct

proceedings for the purpose of determining whether sufficient reason exists for conducting a hearing or hearings to deal with the accusations. These initial proceedings shall be confidential, unless confidentiality is waived by the judge or justice, but all subsequent proceedings conducted by the commission shall be open to members of the public.”); ELC 3.1, 3.2 (confidentiality of bar grievance materials).

D. Hearing

WAPG believes a public hearing on these proposed rules changes would be useful in order to provide the Court’s Rules Committee necessary input on the justification for these rules changes.

E. Expedited Consideration

WAPG does not request expedited consideration of these rules changes.

**GR 23**  
**Rule for Certifying Professional Guardians**

**(a) Purpose and Scope.** This rule establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.

**(b) Jurisdiction.** All professional guardians who practice in the state of Washington are subject to these rules and regulations. Jurisdiction shall continue whether or not the professional guardian retains certification under this rule, and regardless of the professional guardian's residence.

**(c) Certified Professional Guardian Board.**

*(1) Establishment.*

(i) **Membership.** The Supreme Court shall appoint a Certified Professional Guardian Board ("Board") of [+15] [-12 or more] members. The Board shall include representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships with experience [+ with demonstrated experience in guardianship practice and procedures]. [- No more than one-third] [+ One-third] of the Board membership shall be practicing professional guardians.

(ii) **Terms.** The term for a member of the Board shall be three years. No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

(iii) **Leadership.** The Supreme Court shall designate the Chair of the Board. The Board shall designate the Vice-Chair, who shall serve in the absence of or at the request of the Chair.

(iv) **Vacancies.** Any vacancy occurring in the terms of office of Board members shall be filled for the unexpired term.

*(2) Duties and Powers.*

(i) **Applications.** The Board shall process applications for professional guardian certification under this rule. The Board may delay or deny certification if an applicant fails to provide required basic or supplemental information.

(ii) Standards of Practice. The Board shall adopt and implement policies or regulations setting forth minimum standards of practice which professional guardians shall meet.

(iii) Training Program. The Board shall adopt and implement regulations establishing a professional guardian training program.

(iv) Examination. The Board may adopt and implement regulations governing the preparation and administration of certification examinations.

(v) Recommendation of Certification. The Board may recommend certification to the Supreme Court. The Supreme Court shall review the Board's recommendation and enter an appropriate order.

(vi) Denial of Certification. The Board may deny certification. If the Board denies certification, it shall notify an applicant in writing of the basis for denial of certification and inform the applicant of the appeal process.

(vii) Continuing Education. The Board may adopt and implement regulations for continuing education.

(viii) Grievances and Disciplinary Sanctions. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

(ix) Investigation. [+ The Board staff shall transmit any grievance received to the Board that must then decide if an investigation is warranted.] The Board may investigate to determine whether an applicant for certification meets the certification requirements established in this rule. The Board may also 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.

(x) Authority to Conduct Hearings. The Board may adopt regulations pertaining to the orderly conduct of hearings.

a) Subpoenas. The Chair of the Board, Hearing Officer, or a party's attorney shall have the power to issue subpoenas.

b) Orders. The Chair or Hearing Officer may make such pre-hearing or other orders as are necessary for the orderly conduct of any hearing.

c) **Enforcement.** The Board may refer a Subpoena or order to the Supreme Court for enforcement.

(xi) **Disclosure of Records.** The Board may adopt regulations pertaining to the disclosure of records in the Board's possession.

(xii) **Meetings.** The Board shall hold meetings as determined to be necessary by the chair. Meetings of the Board will be open to the public except for executive session, review panel, or disciplinary meetings prior to filing of a disciplinary complaint.

(xiii) **Fees.** The Board shall establish and collect fees in such amounts as are necessary to support the duties and responsibilities of the Board.

(3) **Board Expenses.** Board members shall not be compensated for their services. Consistent with the Office of Financial Management rules, Board members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid pursuant to a budget submitted to and approved by the Supreme Court. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray Board expenses.

(4) **Agency.** Hearing officers are agents of the Board and are accorded rights of such agency.

(5) **Immunity from Liability.** The Board, its members, or agents, including duly appointed hearing officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

(6) **Conflict of Interest.** A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. [+ Having experience in guardianship practice and procedures alone is not a conflict of interest.]

(7) **Leave of Absence.** The Board may adopt regulations specifying that a Board member who is the subject of a disciplinary investigation by the Board must take a leave of absence from the Board. A Board member may not continue to serve as a member of the Board if the Board or Supreme Court has imposed a final disciplinary sanction on the Board member.

(8) **Administration.** The Administrative Office of the Courts (AOC) shall provide administrative support to the Board and may contract with agencies or organizations to carry out the Board's administrative functions.

**(d) Certification Requirements.** Applicants, Certified Professional Guardians, and Certified Agencies shall comply with the provisions of Chapter 11.88 and 11.92 RCW. In addition, individuals and agencies must meet the following requirements.

(1) *Individual Certification.* The following requirements apply to applicants and do not apply to currently certified professional guardians, except as stated in subsection (d)(1)(vii). An individual applicant shall:

(i) Be at least 18 years of age;

(ii) Be of sound mind;

(iii) Have no felony or misdemeanor convictions involving moral turpitude;

(iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship services, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship services, or a Masters, J.D., Ph.D., or equivalent advanced degree from an accredited institution and at least one year experience working in a discipline pertinent to the provision of guardianship services;

(v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship services and must include decision-making or the use of independent judgment for the benefit of others, not limited to incapacitated persons, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

(vi) Have completed the mandatory certification training.

(vii) Applicants enrolled in the mandatory certification training on September 12, 2008, and who satisfactorily complete that training, shall meet the certification requirements existing on that date, or the date the applicant submitted a complete application for certification, whichever date is earlier, and not the requirements set forth in this rule.

(2) *Agency Certification.* Agencies must meet the following additional requirements:

(i) All officers and directors of the corporation must meet the qualifications of Chapter 11.88.020 RCW for guardians;

(ii) Each agency shall have at least two (2) individuals in the agency certified as professional guardians, whose residence or principal place of business is in Washington State and who are so designated in minutes or a resolution from the Board of Directors; and

(iii) Each agency shall file and maintain in every guardianship court file a current designation of each certified professional guardian with final decision-making authority for the incapacitated person or their estate.

(3) *Training Program and Examination.* Applicants must satisfy the Board's training program and examination requirements.

(4) *Insurance Coverage.* In addition to the bonding requirements of Chapter 11.88 RCW, applicants must be insured or bonded at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

(5) *Financial Responsibility.* Applicants must provide proof of ability to respond to damages resulting from acts or omissions in the performance of services as a guardian. Proof of financial responsibility shall be in such form and in such amount as the Board may prescribe by regulation.

(6) *Application Under Oath.* Applicants must execute and file with the Board an approved application under oath.

(7) *Application Fees.* Applicants must pay fees as the Board may require by regulation.

(8) *Disclosure.* An applicant for certified professional guardian or certified agency shall disclose upon application:

(i) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(ii) A court finding that the applicant has violated its duties as a fiduciary, or committed a felony or any crime involving moral turpitude;

(iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(iv) Pending or final licensing or disciplinary board actions or findings of violations;

(v) The existence of a judgment against the applicant within the preceding eight years in any civil action;

(vi) Whether the applicant has filed for bankruptcy within the last seven years. Disclosure of a bankruptcy filing within the past seven years may require the applicant or guardian to provide a personal credit report from a recognized credit reporting bureau satisfactory to the Board;

(vii) The existence of a judgment against the applicant or any corporation, partnership or limited liability corporation for which the applicant was a managing partner, controlling member or majority shareholder within the preceding eight years in any civil action.

(9) *Denial of Certification.* The Board may deny certification of an individual or agency based on any of the following criteria:

(i) Failure to satisfy certification requirements provided in section (d) of this rule;

(ii) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(iii) A court finding that the applicant has violated its fiduciary duties or committed a felony or any crime involving moral turpitude;

(iv) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(v) Pending or final licensing or disciplinary board actions or findings of violations;

(vi) A Board determination based on specific findings that the applicant lacks the requisite moral character or is otherwise unqualified to practice as a professional guardian;

(vii) A Board determination based on specific findings that the applicant's financial responsibility background is unsatisfactory.

(10) *Designation/Title.* An individual certified under this rule may use the initials "CPG" following the individual's name to indicate status as "Certified Professional Guardian." An agency certified under this rule may indicate that it is a "Certified Professional Guardian Agency" by using the initials "CPGA" after its name. An individual or agency may not use the term "certified professional guardian" or "certified professional guardian agency" as part of a business name.

**(e) Guardian Disclosure Requirements.**

(1) A Certified Professional Guardian or Certified Agency shall disclose to the Board in writing within 30 days of occurrence:

(i) The existence of a judgment against the professional guardian arising from the professional guardian's performance of services as a fiduciary;

(ii) A court finding that the professional guardian violated its fiduciary duties, or committed a felony or any crime involving moral turpitude;

(iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;

(iv) Pending licensing or disciplinary actions related to fiduciary responsibilities or final licensing or disciplinary actions resulting in findings of violations;

(v) Residential or business moves or changes in employment; and

(vi) Names of Certified Professional Guardians they employ or who leave their employ.

(2) Not later than June 30 of each year, each professional guardian and guardian agency shall complete and submit an annual disclosure statement providing information required by the Board.

**(f) Regulations.** The Board shall adopt regulations to implement this rule.

**(g) Personal Identification Number.** The Board shall establish an identification numbering system for professional guardians. The Personal Identification Number shall be included with the professional guardian's signature on documents filed with the court.

**(h) Ethics Advisory Opinions.**

(1) The Board may issue written ethics advisory opinions to inform and advise Certified Professional Guardians and Certified Agencies of their ethical obligations.

(2) Any Certified Professional Guardian or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian or Certified Agency.

(3) The Board shall publish opinions issued pursuant to this rule in electronic or paper format. The identity of the person requesting an opinion is confidential and not public information.

**(i) Existing Law Unchanged.** This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to, Title 11 RCW.

## GR 31.1 – Access to Administrative Records

### *GENERAL PRINCIPLES*

**(a) Policy and Purpose.** Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to administrative records. A presumption of access applies to the judiciary's administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

**(b) Overview of Public Access to Judicial Records.** There are three categories of judicial records.

- (1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.
- (2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of "administrative records" is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (l) of this rule.
- (3) Chambers records are records that are controlled and maintained by a judge's chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

### *PROCEDURES FOR ADMINISTRATIVE RECORDS*

**(c) Procedures for Records Requests.**

- (1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and must require that requests for access be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.
- (2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.
- (3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt, but for courts that convene infrequently no more than 30 calendar days, from the date of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this rule, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.
- (4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.
- (5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

- (6) **EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS.** If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.
- (7) **RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY.** A court or judicial agency may deny a records request if it determines that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of judicial officers, staff, family members of judicial officers or staff, or any other person; or fulfilling the request may assist criminal activity.

**(d) Review of Records Decision.**

- (1) **NOTICE OF REVIEW PROCEDURES.** The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.
- (2) **DEADLINE FOR SEEKING INTERNAL REVIEW.** A record requester's petition under section (d)(3) seeking internal review of a public records officer's decision must be submitted within 90 days of the public records officer's decision.
- (3) **INTERNAL REVIEW WITHIN COURT OR AGENCY.** Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding

shall be held within five working days, but for courts that convene infrequently no more than 30 calendar days, from the date the court or agency receives the request for review. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) **EXTERNAL REVIEW.** Upon the exhaustion of remedies under section (d)(3), a record requester aggrieved by a court or agency decision may obtain further review by choosing between the two alternatives set forth in subsections (i) and (ii) of this section (d)(4).

(i) **REVIEW VIA CIVIL ACTION IN COURT.** The requesting person may use a judicial writ of mandamus, prohibition, or certiorari to file a civil action in superior court challenging the records decision.

(ii) **INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE DECISION MAKER.** The requesting person may seek informal review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. The decision resulting from the informal review proceeding may be further reviewed in superior court pursuant to a writ of mandamus, prohibition, or certiorari. Decisions made by a judge under this subsection (ii) are part of the judicial function.

(iii) **DEADLINE FOR SEEKING EXTERNAL REVIEW.** A request for external review must be submitted within 30 days of the issuance of the court or judicial agency's final decision under section (d)(3).

(e) **Monetary Awards Not Allowed.** Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

**(f) Persons Who Are Subjects of Records.**

- (1) Unless otherwise required or prohibited by law, a court or judicial agency has the option of notifying a person named in a record or to whom a record specifically pertains, that access to the record has been requested.
- (2) A person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker under sections (c) and (d).
- (3) If a court or judicial agency decides to allow access to a requested record, a person who is named in that record, or to whom the record specifically pertains, has a right to initiate review under subsections (d)(3)-(4) or to participate as a party to any review initiated by a requester under subsections (d)(3)-(4). If either the record subject or the record requester objects to informal review under subsection (d)(4)(ii), such alternative shall not be available. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

**(g) Court and Judicial Agency Rules.** Each court may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

**(h) Charging of Fees.**

- (1) A fee may not be charged to view administrative records.
- (2) A fee may be charged for the photocopying or scanning of administrative records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.
- (3) The court or judicial agency may require a deposit in an amount not to exceed the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

- (4) A fee not to exceed \$30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.
- (5) A court or judicial agency may require prepayment of fees.

#### ***APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS***

This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record.

##### **(i) Definitions.**

- (1) "Access" means the ability to view or obtain a copy of an administrative record.
- (2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.
- (3) "Court record" is defined in GR 31.
- (4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).
- (5) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.
- (5) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes metadata for electronic administrative records.
- (6) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or

combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

**(j) Administrative Records—General Right of Access.** Court and judicial agency administrative records are open to public access unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the judiciary's administrative records, access is also exempt or prohibited under this rule. To the extent that an ambiguity exists as to whether records access would be exempt or prohibited under this rule or other enumerated sources, responders and reviewing authorities shall be guided by the Public Records Act, Chapter 42.56 RCW, in making interpretations under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

**(k) Entities Subject to Rule.**

- (1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial branch agencies:
  - (i) All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;
  - (ii) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees; and
  - (iii) All subgroups of the entities listed in this section (k)(1).
- (2) This rule applies to the Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense.
- (3) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by [a proposed General Rule 12.4, pending before the Supreme Court].

- (4) A judicial officer is not a court or judicial agency.
- (5) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.
- (6) A person or entity entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

**(I) Exemptions.** In addition to exemptions referred to in section (j), the following categories of administrative records are exempt from public access:

- (1) Requests for judicial ethics opinions;
- (2) Minutes of meetings held exclusively among judges, along with any staff;
- (3) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies to a record only while a final decision is pending on the issue that is being addressed in that record; once the final decision has been made, the record is no longer covered by this exemption. For purposes of documents related to budget negotiations with a budgetary authority, the "final decision" is the decision by the budgetary authority to adopt the budget for that year or biennium.
- (4) Evaluations and recommendations concerning candidates seeking appointment or employment within a court or judicial agency;
- (5) Personal identifying information, including individuals' home contact information, Social Security numbers, driver's license numbers, and identification/security photographs;

- (6) Documents related to an attorney's request for a trial or appellate court defense expert, investigator, or other services, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or other service provider, and the invoicing of the expert, investigator or other service provider during the pendency of the case in any court. Payment records are not exempt, provided that they do not include medical records, attorney work product, information protected by attorney-client privilege, information sealed by a court, or otherwise exempt information;
- (7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt [+ if the result of the investigation is a recommendation for a hearing or imposition of discipline].
- (8) [Reserved];
- (9) Family court mediation files; and
- (10) Juvenile court probation social files.
- (11) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans, the disclosure of which would have a substantial likelihood of threatening the security of a judicial facility or any individual's safety.
- (12) The following records of the Certified Professional Guardian Board:
  - (i) Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process. Investigative records related to a grievance become open to public inspection once the investigation is completed. [+ if the investigation results in a decision to deny the application, or the investigation results in a recommendation that discipline be imposed or a hearing be held by the Board on possible discipline.]

- (ii) Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.
- (iii) A grievance shall be open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. [+ if the result of the grievance is a recommendation that discipline be imposed or a Board hearing on possible discipline be held.]The name of the professional guardian or agency shall not be redacted from the grievance. [+ if the result of the grievance is a recommendation that discipline be imposed or a Board hearing on possible discipline be held].

#### ***CHAMBERS RECORDS***

**(m) Chambers Records.** Chambers records are not administrative records and are not subject to disclosure.

- (1) “Chambers record” means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. “Chambers staff” means a judicial officer’s law clerk and any other staff when providing support directly to the judicial officer at chambers.
- (2) Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

#### ***IMPLEMENTATION AND EFFECTIVE DATE***

**(n) Best Practices.** Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

**(o) Effective Date of Rule.**

- (1) This rule will go into effect on a future date to be determined by the Supreme Court based upon a recommendation from the Board for Judicial Administration. The rule will apply to records that are created on or after that date.
- (2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.

TALMADGE/FITZPATRICK PLLC  
2775 HARBOR AVENUE SW  
THIRD FLOOR, SUITE C  
SEATTLE, WASHINGTON 98126  
(206) 574-6661 (206) 575-1397 FAX

October 3, 2014



Justice Charles W. Johnson  
Chair, Supreme Court Rules Committee  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: WAPG GR 9 Submission

Dear Justice Johnson:

I am following up on a GR 9 submission for possible changes to GR 23 and GR 31.1 attached to a letter that I sent to Chief Justice on August 20, 2014. I believe that the letter, with the GR 9 submission, was forwarded to you as the Supreme Court's Rules Committee chair.

If it was not clear from that earlier letter, the Washington Association of Professional Guardians ("WAPG") is requesting that the Rules Committee vote at its upcoming October 2014 meeting to publish WAPG's proposed changes to GR 23 and GR 31.1 for public comment.

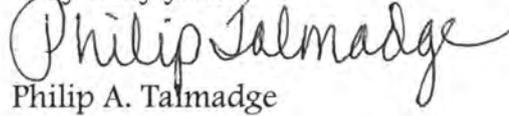
WAPG's desire for the three proposed rules changes identified in its GR 9 submission should not be viewed by the Rules Committee as a veiled criticism of the Certified Professional Guardianship Board or its chair, Judge James Lawler. Rather WAPG's efforts are designed to improve the Board's procedures and to allow the Board to secure added insights on guardianship practice from practicing professional guardians.

Further, the Rules Committee should not perceive the WAPG GR 9 submission as an effort to circumvent the CPGB. WAPG has sought to bring these concerns, among others, to the attention of the CPGB by letter and in person. WAPG representatives met with the CPGB at its October 14, 2013 meeting. The CPGB promised further consultation with WAPG on operating procedures of the Board. WAPG remains hopeful that the CPGB will follow through on this promise.

October 3, 2014  
Page 2 of 2

WAPG is fully committed to the highest possible standards of professionalism for guardians and their strict enforcement. WAPG believes its proposed changes to GR 23 and GR 31.1 will advance those goals. Please do not hesitate to advise if you or the Rules Committee have questions regarding the foregoing or require further information from WAPG.

Very truly yours,

  
Philip A. Talmadge

cc: Glenda Voller, CPG  
Judge James Lawler  
Nan Sullins

## **Bondon, Shirley**

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**From:** Velategui, Carlos <Carlos.Velategui@kingcounty.gov>  
**Sent:** Wednesday, September 10, 2014 12:02 PM  
**To:** Bondon, Shirley  
**Subject:** Dismissal of Guardianships due to lack of available Guardians.

I am a Commissioner sitting in the Ex Parte department of the King County Superior Court. I have been hearing Guardianship petitions for 17 of my 28 years as a Commissioner. I speak with many Commissioners around the state, with many CPG's and their lawyers and many Pro Se litigants. Anecdotally I am concerned for the development of the dismissal of Guardianship petitions I and others see.

I hope this email to you will provide information that will enable you, if it is in your arena of interest or function, to deal with the increasing number of Guardianship Petitions I see that require dismissal because no guardian whether CPG, Family member or concerned friend or neighbor can be found to act as a Guardian. I can only give you my anecdotal observations of the reasons for this dilemma. I do not believe I am the only Judicial Officer in the state with this problem. Again anecdotally this seems to be a problem in King County and many other counties in the state.

It appears that some of the concern of CPG's, family members and friends or neighbors and Lawyers for those persons is that the cases of Raven, Peterson as well as the low rate of reimbursement or the fact that no source of funds is available to pay for the guardians service and act as a disincentive. As well, it appears that CPG's are concerned about the fact that complaints often leave them subject to review by two different processes, the Courts having oversight of the Guardianships and the CPG Board or even perhaps the OPG having oversight of the CPG's.

It would appear that perhaps a coordinated collection of the dismissals from around the state to verify what seems to be a growing trend would be appropriate. As of a few weeks ago I and the other Commissioners serving in this County have begun to try and collect the cases as they come in to get a better handle on the number of such cases. I heard from one lawyer today that she has a client with 25 cases that she will be withdrawing from and she expects that for many of them it is likely that she will not be able to find a successor Guardian.

Thank you for any assistance you might be able to suggest to us on how this matter might be addressed. Once I have some input from you I will discuss the issue with the commissioners around the state by listserve and perhaps the Judges that do not have commissioners who handle the Guardianship matters.

Commissioner Carlos Velategui  
King County Superior Court

# Grievance Updates

## CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES

Status as of 6/30/14

<b>Grievances</b>	<b>June</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Opened	5	19	42	25	3	70
Closed	3	8	4	6	1	11
Pending		11	38	19	2	59
			<b>Total all yrs pending</b>			<b>70</b>

<b>Resolution</b>	<b>June</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Dismissal - Administrative						-
Dismissal - No actionable conduct	1	1	3	6	1	10
Dismissal - No jurisdiction	2	7	1			1
Admonishment						
Reprimand						
Suspension						
Decertification						
Administrative Decertification						
Other						
	3	8	4	6	1	11
			<b>Total all yrs closed</b>			<b>19</b>

<b>All Grievances Opened/Closed</b>	<b>June</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	
Total Opened	5	19	57	49	45	
Total Closed	6	19	30	31	20	
Total Pending EOY		70	70	43	25	

**CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES**

Status as of 7/31/14

<b>Grievances</b>	<b>July</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Opened	7	26	42	25	3	70
Closed	1	9	4	8	1	13
Pending		17	38	17	2	57
			<b>Total pending</b>			74

<b>Resolution</b>	<b>July</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Dismissal - Administrative				2		2
Dismissal - No actionable conduct		2	3	6	1	10
Dismissal - No jurisdiction	1	7	1			1
Admonishment						
Reprimand						
Suspension						
Decertification						
Administrative Decertification						
Other						
	1	9	4	8	1	13
			<b>Total closed YTD</b>			22

<b>All Grievances Opened/Closed</b>	<b>July</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	
Opened	7	26	57	49	45	
Closed - all years	3	22	30	31	20	
Pending - all years		74	70	43	25	

## CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES

Status as of 8/31/14

<b>Grievances</b>	<b>Aug</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Opened	11	37	42	25	3	70
Closed	3	13	5	8	1	14
Pending		24	37	17	2	56
			<b>Total pending</b>			80

<b>Resolution</b>	<b>Aug</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Dismissal - Administrative				2		2
Dismissal - No actionable conduct		2	4	6	1	11
Dismissal - No jurisdiction	3	11	1			1
Admonishment						
Reprimand						
Suspension						
Decertification						
Administrative Decertification						
Other						
	3	13	5	8	1	14
			<b>Total closed YTD</b>			27

<b>All Grievances Opened/Closed</b>	<b>Aug</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	
Opened	11	37	57	49	45	
Closed - all years	4	27	30	31	20	
Pending - all years		80	70	43	25	

**CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES**

Status as of 9/30/14

<b>Grievances</b>	<b>Sep</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Opened	9	46	42	25	3	70
Closed	3	16	5	10	1	16
Pending		30	37	15	2	54
			<b>Total pending</b>			84

<b>Resolution</b>	<b>Sep</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>Total</b>
Dismissal - Administrative				2		2
Dismissal - No actionable conduct	2	4	4	8	1	13
Dismissal - No jurisdiction	1	12	1			1
Admonishment						
Reprimand						
Suspension						
Decertification						
Administrative Decertification						
Other						
	3	16	5	10	1	16
			<b>Total closed YTD</b>			32

<b>All Grievances Opened/Closed</b>	<b>Sep</b>	<b>YTD</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	
Opened	9	46	57	49	45	
Closed - all years	4	32	30	31	20	
Pending - all years		84	70	43	25	

# Draft Recusal Procedure



August 1, 2014

TO: Certified Professional Guardianship Board  
FROM: Shirley Bondon, Manager, Office of Guardianship and Elder Services  
RE: Conflicts of Interest/Recusal Process

**Background**

During the June 9, 2014 Board meeting, staff was directed to draft a recusal process for Board review. Before drafting, staff reviewed current Board rules and regulations. Although, conflicts of interest are addressed in General Rule 23 and Disciplinary Regulation 500, provided in pertinent part below. These references do not address the full spectrum of conflicts of interest in relationship to the duties of members of the Board.

General Rule 23<sup>1</sup>

“GR 23 (6) Conflict of Interest. A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.”

Disciplinary Regulation 500<sup>2</sup>

507.1 The Conflicts Review Committee (CRC) shall have three members appointed by the Board Chair, who shall also designate the committee chair. CRC members may not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.

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<sup>1</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr23](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr23)

<sup>2</sup> [http://www.courts.wa.gov/programs\\_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500](http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500)

507.2 The Administrative Office of the Courts (AOC) shall transmit any grievance against a Board member to the CRC. The CRC shall perform the duties that would otherwise be performed by the Standards of Practice Committee (SOPC) under these regulations and AOC shall report to the CRC on any such grievance.

507.3 The CRC may also recommend to the Board Chair that the Board member under investigation be placed on a leave of absence from the Board during its investigation. The CRC will consider the nature of the allegations against the Board member, the available evidence regarding those allegations and the importance of maintaining public trust and confidence in the Board in making its recommendation to the Board Chair. The CRC may make such a recommendation at any time during its investigation and review of the grievance. Except as otherwise set forth in these regulations, the Board Chair shall have the sole discretion to decide whether the Board member should take a leave of absence from the Board and when the Board member may return to the Board.

507.4 If the Board files a complaint against a Board member, the Board member shall take a leave of absence from the Board until the conclusion of the disciplinary proceeding.

507.5 Consistent with the Office of Financial Management rules, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

509.1.3 A former member of the Board who is also a licensed attorney in Washington shall not represent a professional guardian in proceedings under the Board's regulations until after two (2) years have elapsed following expiration of the Board member's term of office.

512.4.4 Disqualification: The Hearing Officer and all Board members who served on the SOPC are disqualified from participating in the Board's review of the Hearing Officer's decision and from participating in the Board's vote on the matter."

In addition, staff reviewed the Model Code of Ethics for Members of Regulatory Boards for the Licensed Professions<sup>3</sup> that the Board discussed during its June 9, 2014 meeting; Advisory Opinion 96-09<sup>4</sup> prepared by the Washington State Executive Ethics Board, which includes Model Rules for Executive Branch Boards/Commission addressing conflicts of interest and recusal; a memorandum<sup>5</sup> from the Director of the United States

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<sup>3</sup> <http://www.fclb.org/Portals/7/CodeOfEthics.pdf>

<sup>4</sup> <http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updated%20Opinions/updated%20Advop%2096-09A.htm>

<sup>5</sup> <http://www.oge.gov/OGE-Advisories/Legal-Advisories/99x8--Recusal-Obligation-and-Screening-Arrangements/>

Office of Government Ethics regarding Recusal Obligation and Screening Arrangements for executive branch employees; and policies for other governmental bodies. Similar opinions or rules were not located for Judicial Branch boards and commissions.

**Recommendation:**

Staff submits the following proposed policy for Board review:

**Proposed Conflict of Interest Policy**

**A. Introduction**

The Certified Professional Guardianship Board is committed to providing a fair, ethical and accountable environment for the conduct of its internal operations, and the management of its regulatory functions.

Being aware of and managing conflicts of interest are essential for good governance and the integrity of decision-making. It is essential that members understand that their role on the Board and its committees is to represent the interests of the Board and to act in the public interest.

A conflict of interest exists when it is likely that a Board member could be influenced or perceived to be influenced, by a personal interest when carrying out their public duty. Conflicts of interest can be actual, perceived or potential.

A conflict of interest is defined as having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of a Board member's duties to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner.

An actual conflict of interest involves a direct conflict between a member's Board duties and responsibilities and existing private interests. A perceived or apparent conflict of interest can exist where a reasonable person could perceive that a member's private interest could improperly influence the performance of his or her duties, whether or not this is in fact the case. A potential conflict of interest arises where a member has private interests that could conflict with his or her public duties in the future.

Board members must make public (and recuse themselves from) any actual, perceived and potential conflict of interest to ensure the integrity of the Board and all of its decisions.

***Disclosure and recusal*** are important tools to avoid actual, perceived or potential conflict of interest. Board members must not overuse recusal as an excuse to avoid

conflict in exercising their full responsibilities. The appointment of Board members who will likely need to consistently recuse should be avoided.

## **B. Types of Conflict of Interest**

A private or personal interest may be either pecuniary or non-pecuniary, and includes the personal, professional and business interests of the person and the individuals with whom he or she associates (relative, partner, friend, associate or colleague).

**Personal conflicts** are those actions that may ultimately have a personal or professional consequence that is a direct or indirect effect of a decision or action. No decisions should be made solely to advance the personal benefit of Board members. Some examples of personal conflict include:

- 1) **Personal gain:** Will this decision affect the Board member's personal life in any direct way?
- 2) **Sexual favors:** Will this behavior affect the Board member's position unfairly?
- 3) **Influence:** Will this behavior affect the Board member's position unfairly? Will it result in unwarranted privileges or exemptions?
- 4) **Effects on personal relationship:** Will there be an effect on the Board member's current, past or future personal and professional relationship(s), including memberships and or status in associations or professional organizations.
- 5) **Benefits to those who have a relationship with the Board member:** No decision should be made solely to effect the personal or financial gain of anyone with whom the Board member has a personal or professional relationship.
- 6) **Gift received:** Acceptance of any gift should be perceived as a bribe to influence present or future considerations.

**Financial conflicts** are those in which a Board member or those with whom he or she has a personal or professional relationship, may benefit financially, or be perceived as benefitting financially, from decisions by or the influence of the Board member. Money does not have to change hands for an interest to be financial. A financial interest includes, tangible and intangible assets and benefits. Some examples of financial conflicts include:

- 1) **Employment Gain:** These may include opportunities for consulting, speaking teaching, etc. Employment during and subsequent to Board membership should not appear to be relating to any Board matters.

- 2) **Financial Gain: Effects on the Board member's business.** Decisions and actions must not affect the future financial position of the Board member's business. Contractual and creditor relationships also apply here.
- 3) **Outside Activities:** These may include present employment, investment, and/or business opportunities.
- 4) **Recruitment of other professionals or clients into business opportunities:** Extreme care must be exercised to be certain no actual or perceived leverage of authority with the Board position is used in this area.

### C. Public Duty

All Board members have a duty to always put the public interest above their own personal or private interests when carrying out official Board duties. Determining public interest in a particular situation can be complex, but on a practical level a Board member's public duty can best be fulfilled by focusing on the Board's duty to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner; and identifying any form of conflict of interest that arises and ensuring that it is managed effectively.

### D. Competing Interests

At times, members may have multiple roles: in addition to their role with the Board, they may have a principal job in which they are employed by a government agency or a private sector organization. They may be self-employed. They may serve in another public sector or community-based role, such as being a member of a committee or statutory body. They may also serve in a professional organization or association.

In their role as Board member they may have access to confidential information that may be useful or of benefit to their work in one or more of their other roles. The risk in this situation is that there may be a temptation to use the information improperly, or to give advantage to the second organization, or create bias or prejudicial treatment of another group or person.

These conflicts are described as **competing interests** or a **conflict of duty**. These situations should be treated in the same way as potential conflicts of interest, that is, to ensure that decisions are made, and are seen to be made, on proper grounds, for the legitimate reason of protecting the public.

### E. Participating in Proceedings

There are generally two main categories of proceedings in which Board members commonly face issues of conflict of interest and bias — quasi-judicial proceedings and quasi-legislative proceedings.

Generally, in quasi-judicial proceedings (grievances and complaints) impartiality due to financial conflict of interest or personal interest is impermissible because an unbiased, impartial decision-maker is essential to due process. However, in quasi-legislative proceedings (rulemaking) ethical guidelines for personal or even financial bias may be less strict depending upon the particular facts and circumstances involved.

### *“Quasi-Judicial Proceedings”*

Examples of quasi-judicial proceedings include certification decisions, disciplinary hearings, individual appeals from administrative decisions, and most grant awards. In such cases, no "legal bias" or personal, financial or familial interest is allowed. To avoid these types of conflicts, generally a Board member must refrain from participating in the discussion or voting on the matter.

What constitutes "legal bias" is a matter of law and is more appropriately determined on a fact-specific, case-by-case basis by the Board. According to court decisions, however, legal bias may include preconceptions about facts, policy, law, or a person, group or object.

### *“Quasi-Legislative Proceedings”*

In quasi-legislative matters, (like most rulemaking) Board members should not participate in voting or discussion of matters that involve their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by Board members. Moreover, they should recuse themselves when their impartiality might reasonably be questioned due to their personal relationship with a participant in the proceeding. In such circumstances, general personal affiliations with organizations or groups will normally not preclude a Board member from participating in discussion or voting unless the organization itself is petitioning the Board directly regarding the matter. Depending upon the particular facts of (1) the relationship between the organization and the Board member and (2) the role the organization is playing in relation to issues before the Board, ethical requirements may vary greatly — from requiring that the Board member need only disclose his relationship to the full Board, to requiring that the Board remove himself entirely from the proceeding.

## **F. Managing Conflicts of Interest**

### **What is recusal?**

Generally, recusal involves disassociation with the matter at hand. The Board member would not participate in the discussion or the deliberations, make recommendations, give advice, consider findings, or in any other way assume responsibility for or attempt to influence the decision-making process. This is different from abstaining, where one participates fully in the matter, but does not vote.

## **What should a Board member do to properly recuse?**

In order to instill confidence in the process, recusal should occur in public and on the record. In some situations, the Board member may choose to leave the room, but generally recusal followed by appropriate inaction is sufficient.

### **Rule #1**

(1) When a Board member is beneficially interested, directly or indirectly, in a contract or grant that may be made by, through or is under the supervision of the Board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract or grant, the member shall:

(a) Recuse him or herself from the Board discussion regarding the specific contract or grant;

(b) Recuse him or herself from the Board vote on the specific contract or grant;  
and

(c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific contract or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1), "any other person" has a beneficial interest in a contract or grant when the other person bids or otherwise seeks to be awarded the contract or grant.

### **EXAMPLE:**

The Certified Professional Guardian Board includes representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; court staff including judicial officers; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships. A Board member is employed by a company that performs surveys. The Board is in the process of selecting a contractor to survey professional guardians. The company that employs a member of the Board is interested in the contract.

The Board member may use his or her general expertise regarding the performance of surveys, but the member is prohibited from participating in the Board's discussion and analysis implementing the criteria for selecting a contractor, and is prohibited from participating in the Board's vote to select a contractor.

## **EXAMPLE:**

The Certified Professional Guardianship Board contracts with King Software to provide computer systems for tracking disciplinary cases. King Software's contract with the Board is almost expired and the Board plans to seek bids from software companies for the next contract period. The Board issues a request for bids to various software companies who offer suitable software, including Medsoft, Inc.

Approximately nine months ago, one Board member worked for Medsoft, Inc. and received compensation from that company. The Board member subsequently left Medsoft, Inc. and went to work for the state. The Board member is not required to recuse herself from selecting a contractor for the Board's disciplinary tracking system because Medsoft did not have a beneficial interest in the Board's contract until it bid on the contract.

Therefore, Medsoft was not a person beneficially interested in the contract when the Board member received the compensation, but the Board members should disclose his or her former relationship with Medsoft. However, if the Board member received delayed compensation from Medsoft after it bid on the contract, that he or she had already earned, this is probably not a conflict of interest, but still should be disclosed. If the Board member continues to work for Medsoft the Board member would be required to disclose the relationship and to recuse himself or herself from the Board's specific discussion and the vote awarding the contract.

## **Rule #2**

(1) When a member of the Board, either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the board, the member shall:

- (a) Recuse him or herself from the Board discussion regarding the specific transaction;
- (b) Recuse him or herself from the Board vote on the specific transaction; and
- (c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the Board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, grievance or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of Board action; or

(ii) Is one to which the Board is or will be a party; or

(iii) Is one in which the Board has a direct and substantial proprietary interest.

(b) "Transaction involving the Board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the Board that is the basis for the claim, case, or lawsuit. Rulemaking is not a "transaction involving the Board."

(4) "Board action" means any action on the part of the Board including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A certification, grant, payment, award, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

#### **EXAMPLE:**

The Certified Professional Guardianship Board disciplines certified professional guardians in Washington State. The Board is conducting an investigation involving the guardianship services provided by a guardianship agency. One of the members of the Board sits on the board of directors for that agency or represents the agency in other matters. The member must recuse him or herself from any Board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the agency's guardianship services.

The Certified Professional Guardian Board certifies professional guardians in Washington State. The Board is reviewing an application for certification of an individual who is a relative, partner, friend, associate, or colleague of a member of the Board. The member must recuse him or herself from any review, discussion or deliberation regarding the application for certification.

#### **Rule #3**

If recusal occurs pursuant to model rule #1 or #2, the member of the Board shall disclose to the public the reasons for his or her recusal from any Board action whenever recusal occurs. The Board staff shall record each recusal and the basis for the recusal.

#### **G. Summary**

Considering the guidance provided above, Board members should:

- a. Fully disclose their relationships with any and all individuals and organizations when matters involving those entities come before the board;

- b. Avoid participating in quasi-legislative matters involving their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by other Board members;
- c. Not participate in rulemaking when the organization in which they have a personal interest is the petitioner for the rule in question; and
- d. Not participate in grievances and complaints or other quasi-judicial proceedings involving individuals and organizations with which they are personally interested or where their impartiality might reasonably be questioned as a result of their association with those entities.