Faulk, Camilla

From: Michael Johnson [hardmanjohnson@gmail.com]
Sent: Wednesday, April 30, 2008 4:43 PM
To: Faulk, Camilla
Subject: Comments re GR 23
Attachments: COMMENTS RE GR 23.doc

Please see attached Word file for comments.

Thank you.

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April 30, 2008

COMMENTS REGARDING CHANGES TO
COURT RULE GR 23
PROPOSED BY CERTIFIED PROFESSIONAL GUARDIAN BOARD

To Whom It May Concern:

I am an attorney practicing in guardianship law for nearly 10 years representing guardians of mostly indigent wards, and am also a certified professional guardian. I believe I was certified after one of the initial trainings for this program. At present, I have one case which pays the minimum $ 175.00 per month, and 3 other *pro bono* cases. Recently, I became a member of the "reactivated" Washington Association of Professional Guardians (WAPG), and though I do not speak for that organization, members I have spoken to are very concerned with both the scope and degree of regulation by the CPG Board and the little influence they have in the process of rule-making and self-regulation and enforcement. I understand that considerable time was expended in considering these rule changes, and I do not intend to disparage the efforts of the members of the Board with my comments.

Limiting the percentage of CPGs on the Board is wholly inappropriate. Indeed, it should go in the other direction and its composition ought to be mostly, with the exception of a judge or commissioner or two, of CPGs. There are broader issues concerning the purpose of the board and the scope of its authority which need further examination before any further rules are set down in GR 23. My comments, though using the composition of the Board as a jumping off point, are therefore more general in nature.

First, I am concerned with the duplicative nature of many of the functions of the Board. Guardians (whether CPGs or not) are already under supervision of the courts in which they appear. Adequate remedies exist to redress guardianship wrongdoing as it is occurring or after the fact, including emergency injunctive relief and protection orders under the vulnerable adults act. Moreover, the supervising court may appoint a guardian ad litem or special master at any time for almost any purpose to protect the best interests of the ward and the ward's integrity of personhood and rights to property.

Expanding the role of the Board to include investigations and sanctions against guardians should be limited not expansive. For example, the proposal that the authority of the Board should be

expanded to a mere instance of violation of statute, which could be as simple a failing to file a document in court on time (otherwise harmless error under RCW 4.36.240) is simply not

necessary and encourages duplicative proceedings, duplicative expense, and potentially conflicting results.

A CPG is not only faced with the possibility of duplicative sanctions (by the court and the Board) and expense, but also confronts what I call the presumption of guardian wrongdoing. The role of the courts and the Board should provide affirmative help and assistance to guardians in their responsibilities. Yet each amendment of the rule seems to rely not on assistance but on this presumption: "Guardians will engage in wrongdoing unless [x] rule is adopted." I am not sure how this approach will encourage guardians to apply for the program or continue in the program.

Of course, the presumption of wrongdoing was reinforced based on the news articles in the Seattle Times. This series of articles was written like a John Grisham novel and fell short from being a complete and accurate portrayal of events. But more importantly, it appears many of those concerned with guardianships believe, and continue to believe, the facts were all true as reported. New rules should not be adopted as an over-reaction to news media reports. Guardians, judicial officers, and the Board should focus on fixing deficiencies in the judicial system or the statutes, and streamlining procedures, rather than giving the presumption of wrongdoing so much weight.

The time has come to reconsider the powers granted to the Board. I have no doubt that the powers conferred in GR 23(c)(2)(i) through (vii) are in keeping with the intent of creating the Board. However, the powers remaining powers contained in GR 23(c)(2)(viii) ("Grievances and Discipline"; GR 23(c)(2)(ix) "Investigation"; and GR 23(c)(2)(x) "Authority to Conduct Hearings" need serious reconsideration with respect to the scope of power already conferred under the rule. It is thus reasonable to put on hold any amendments until questions about the broader powers of the Board are fully addressed.

Respectfully submitted,

/s/
Michael L. Johnson, J.D., C.P.G.