

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 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. No more than 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 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.

(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.

[Adopted effective January 25, 2000; amended effective April 30, 2002; amended effective April 1, 2003; September 1, 2004, amended effective January 13, 2009; amended effective September 1, 2010]
