



Erin Rumsey, *Untitled*

**The Certified Professional Guardian Board
Annual Report 2008**



Larry Mills, *Untitled*

The Certified Professional Guardian Board and the Administrative Office of the Courts gratefully thank Neighborhood Center of the Arts for allowing us to showcase the beautiful creations of its talented artists.

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The Certified Professional Guardian Board was established in 2000 and operates under the authority of the Washington State Supreme Court. The Board regulates the certification of professional guardians. Any court-appointed guardian who charges fees in three or more guardianship cases must be certified as a professional guardian (RCW 11.88.008). The Board does not regulate the conduct of non-professional guardians, trustees, attorneys in fact, guardians ad litem or other fiduciaries. All regulations and standards adopted by the Board are located on the Board's website at: <http://www.courts.wa.gov/programs/orgs/guardian/>

The Certified Professional Guardian Board is composed of judicial officers, attorneys, professional guardians, and other representatives with expertise in guardianship issues. Administrative support to the Board is provided by the Administrative Office of the Courts (AOC).

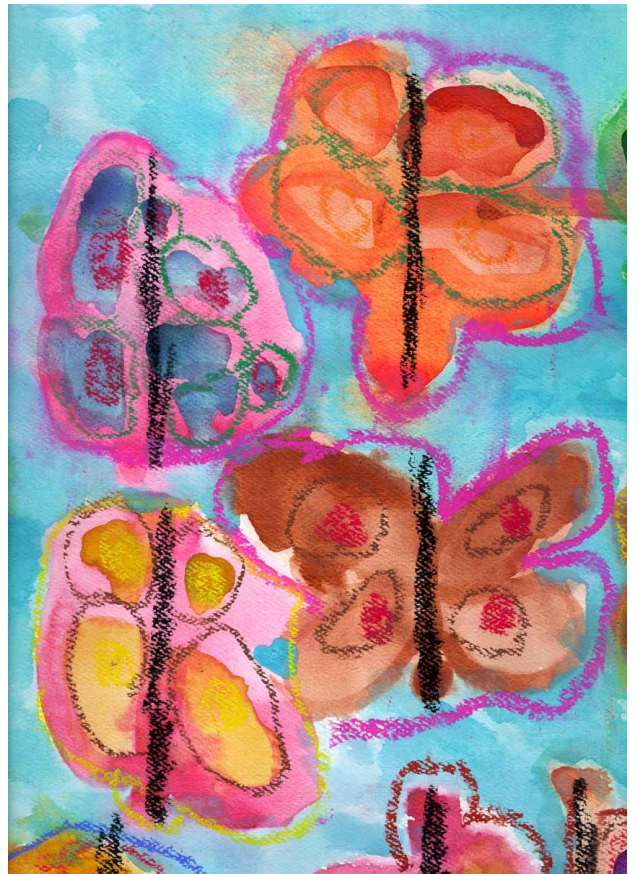
The Board's duties include: approving applicants for certification, implementing and approving mandatory training, adopting and ensuring compliance with standards of practice and other regulations, reviewing and investigating grievances, holding disciplinary hearings, imposing disciplinary sanctions, and adopting ethics opinions to guide professional guardians in their practice.

Letter from the Chair

It is with a great deal of respect for the people who have dedicated themselves to the care and protection of incapacitated persons that I introduce the Certified Professional Guardian Board's 2008 Annual Report. Certified Professional Guardians (CPGs) work tirelessly and without fanfare to provide the best care and protection for their clients. Not only do guardians work hard to serve their incapacitated clients, but many also work to improve the profession by volunteering their time in training and certification programs.

The legislature and Supreme Court created the Board in response to a need for greater oversight of guardians appointed by Washington courts to make personal and financial decisions for people who cannot do so for themselves. It has been my honor and pleasure to serve as Board Chair. Members of the Board include nationally known experts in the field of guardianship practice, law and nursing; members of organizations advocating for the rights and protection of vulnerable adults; judicial officers; professional guardians; and lawyers. The Board has worked hard to establish ethical standards and educational requirements to better serve and protect incapacitated persons.

The process presents constant new challenges and opportunities for improvement. The Board's efforts in 2008 included implementation of the certification training program through the University of Washington, and improved monitoring practices by the Board. The Board also



Barbie Wilkins, *Butterflies*

serves as a clearinghouse for information on best practices in the area of guardianship for guardians, lawyers, and the courts.

The Board looks forward to the challenge of meeting the expectations of Washington's citizens to protect the most vulnerable when they are subject to court orders appointing a certified professional guardian.

*Kimberley Prochnau
Chair, Certified Professional Guardian Board*



Katie McClay, *Flowers*

CERTIFICATION TRAINING FOR PROFESSIONAL GUARDIANS RAISED TO A HIGHER LEVEL

One of this year's highlights was the advent of the University of Washington Educational Outreach (UWEO) Guardianship Certificate Program, developed in collaboration between the Board and the UWEO. Beginning in 2008, all new applicants for professional guardian certification are required to complete the UWEO Guardianship Certificate Program.

To develop the curriculum for this unique certificate program, the UWEO convened an Advisory Group composed of the Education Committee of the Board, UW educators, community advocates, and other experts experienced in working with incapacitated persons. Once the curriculum was developed, UW course developers consulted with the Advisory Group to create lesson plans for the three program courses: (1) Guardian of the Person; (2) Guardian of the Estate; and (3) Business Operations/ Ethics/Conflict Communication.

The 90-hour certificate program is a hybrid of 56 hours of classroom-based instruction and 34 hours of interactive online instruction, accomplished over four to six months. The program provides a comprehensive overview of guardianship of adults. Students learn the fiduciary responsibilities, legal/regulatory frameworks, and ethical contexts encountered by a professional guardian, and develop the skills necessary to effectively navigate the social and health services system on behalf of clients.

The instructors include practicing certified professional guardians, attorneys, nurses, ethicists, finance and accounting professionals, and advocates for incapacitated persons. Instructors included: Gary Beagle, CPG & Board Member; Leesa Camerota, CPG; Martha Duggan, Case Manager; Bill Jaback, CPG, CPA; Deborah Jameson, AOC Guardian Investigator; John Jardine, CPG & Board Member; Lexie Lamborn, CPG; Tom O'Brien, CPG; Diane Renihan, CPA; Jamie Shirley, PhD RN, UW Faculty; and Kathleen Wareham, JD.

The first course, Guardianship of the Person, provides an introduction to guardianship and the responsibilities of a guardian of the person, including:

- ❖ Identification of alternatives to guardianship;
- ❖ The process of appointment of a guardian;

- ❖ Responsibility of a potential guardian for due diligence as to whether appointment should be accepted;
- ❖ Identifying the needs of the incapacitated person and preparing care plans and reports for the court;
- ❖ Duties and roles in personal decision-making in medical, social and psychological arenas, including advocating for the incapacitated person;
- ❖ Understanding and adapting when changes in circumstances occur and when to seek court direction;
- ❖ Special issues facing the guardian of the person: residential placement, code status, and extraordinary medical procedures.



Erika Hughes, *Untitled*

The second course, *Guardianship of the Estate*, provides an overview of the responsibilities of a guardian of the estate, including:

- ❖ Marshaling and inventorying the assets of the estate;
- ❖ Protecting the assets of the estate, bonding and blocked accounts;

- ❖ Writing periodic reports, accountings and budgets;
- ❖ What to do when a major financial change occurs;
- ❖ When to request court authority and filing petitions to the court for relief;
- ❖ Court supervision and delinquency monitoring;
- ❖ Sale and gifting of assets, special needs trusts and incapacitated person as trust beneficiary;
- ❖ Building from a model fiduciary's plan;
- ❖ Developing and maintaining checklists for all of the above.

The third course provides an overview of guardianship ethics and conflict resolution, and a segment on business operations, including:

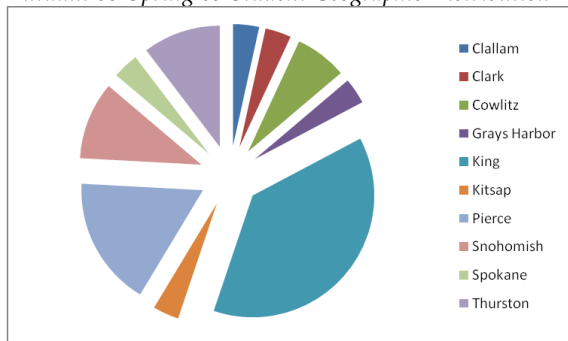
- ❖ Identifying patterns of communication with an incapacitated person, his/her family, and other parties in guardianship actions, and engaging them in constructive problem solving;
- ❖ Applying an ethical model to decisions in ambiguous situations;
- ❖ Applying "substituted judgment" and "best interests" standards to various case studies;
- ❖ Possible remedies/consequences for breaches of ethical obligations;
- ❖ Process for complaints against guardians;
- ❖ Guardianship business operations, including business structure, business plans, and ethical marketing.

Students were given three case studies to work with throughout the entire program.

They created court pleadings and reports based on the case study information, applied class information to their cases, and responded to emergencies on their cases. The case studies involved *June*, an elderly woman with moderate dementia, living in her own home; *Sarah*, a young, pregnant woman with developmental disability; and *Tomas*, a young man with a diagnosis of mild developmental disability and mental illness. The program ended with a capstone presentation of sample annual reports made to Board Chair, Judge Kim Prochnau.

The first graduating class was composed of 29 highly qualified individuals with backgrounds in geriatric case management, accounting, nursing home administration, law, mental health, social work, and financial management. The geographic locations of the students are represented in the chart below.

Autumn 08-Spring 09 Student Geographic Distribution



The median age of the students was 48.1; the youngest student was 28.5 and the oldest student was 64.9 years old. The gender breakdown was 25 female students and 4 male students. Four of the students are currently certified guardians who

completed the program as required by the Office of Public Guardianship. The students' expertise in various disciplines enriched class and online discussions, and this first class of students will continue to support each other after graduation through an email list serve they created. This level of ongoing communication and support for new guardians was one of the unexpected benefits of the new certificate program.

The next UWEO Guardianship Certificate Program will run from March 13 to August 8, 2009. The format will be the same as the first program. In September 2009, the program will move to the east side of the state and the classroom-based sessions will be in Spokane and Yakima. The UWEO expects to modify the format of the fall program by reorganizing the course content as follows: (1) Guardianship Basics; (2) Guardianship Roles; and (3) Advanced Issues in Guardianship. This reformulation will provide better focus for developing the necessary skills of a professional guardian, in addition to providing the option of single-course enrollment to lay guardians or persons working in related fields.



Roland Vieira, *Heart*

RANDOM AUDITING OF CPG GUARDIANSHIP CASE REPORTS

After recognizing a pattern of untimely and incomplete case filings in those guardianships under investigation as part of the Board's grievance process, the Board adopted a program to randomly audit whether certified professional guardians are complying with required guardianship reporting.

The Board discussed the proposed requirement for random auditing at several public meetings, received comments from a variety of stakeholders, and adopted the regulation for random auditing in November 2008:

Regulation 520 provides:

Review of Superior Court Case Filings. To periodically audit guardians' compliance with standards of practice and statutory court filing requirements, the Board directs AOC to select certified professional guardians at least monthly and review the guardians' cases on SCOMIS or other available case information sources. AOC may open a grievance and conduct an investigation pursuant to these Disciplinary Regulations.

The primary objective of the random auditing program is to insure that certified professional guardians are practicing according to standards of practice and statutory requirements in order to protect the incapacitated person. One of the guardian's duties is

to keep the court apprised of the circumstances of the incapacitated person by filing periodic reports. Due to budget, resource and time constraints, many courts are not able to consistently and effectively monitor whether required reports are filed. The Board can assist the courts by randomly auditing CPG case filings on a statewide basis.



Katie McClay, *Big Orange Poppy*

The Board received a significant number of comments on this regulation—more than the Board has ever received on any proposed amendment to a regulation. The comments came from certified professional guardians, long-term care ombudsmen, attorneys, Disability Rights Washington and other advocates for incapacitated persons, the Governor's Committee on Disability Issues and Employment, Department of Social & Health Services (DSHS) Division of Developmental Disabilities, and DSHS Aging and Disability Services Administration.



Maria Brocke, *Dress*

One of the major concerns expressed in the comments was whether the Board should actively audit guardians when the superior court is charged with oversight of guardianships. There was discussion about how not all counties in Washington have the funds or staff to monitor guardianships, and that the Superior Court Judges' Association (SCJA) Guardianship & Probate Committee – recognizing the limitations of county budgets – welcomed the additional oversight. Approximately half of Washington counties have some kind of delinquency review, though the level of review varies. The Board's auditing program will complement the existing programs.

By implementing the random audit of all certified professional guardians across the state, the Board will be able to gather the data to determine if there is a widespread problem or whether it is limited to specific case characteristics or local practices. Auditing is necessary to determine if the failure to meet the filing requirements is indicative of other practice or case management problems, and then to determine the level of enforcement or education needed.

The Board is currently developing an implementation process for DR 520 and anticipates that the audits will begin by June 2009. The general plan is to audit certified professional guardians' cases for timeliness of filing required reports such as the inventory, personal care plan, and annual accountings. The audit will look at the prior six months for compliance with timely filing.

The guardians will be selected monthly at random from both western and eastern Washington. The information on audits will be shared with the superior court if a guardian is not compliant with filing all reports. Guardians may be audited a second time if there are concerns with the original audit. Each guardian will be audited and it is expected that the process will take approximately two years.



Larry Mills, *Untitled (8-31-99)*

It is hoped that the random audit program will provide useful statistical data.

- ❖ There is no accurate information on the number of professional guardianship cases and by requesting CPGs to provide case lists, the Board will be able to gather that information.
- ❖ The audit results will provide the Board with statistics on the percentage of CPGs who file timely reports allowing the Board to determine whether further education is needed.
- ❖ The Board is also interested in gathering data on whether there is any correlation between late filings and a guardian who is having systemic problems, including those that could have a more severe impact on the incapacitated person.
- ❖ Finally, the Board anticipates that auditing will provide data on each county's monitoring program and the potential need for court educational resources.

The direction the Board is taking by implementing a random auditing program is consistent with the regulation of guardians at the national level. Other states such as Arizona and California are auditing their guardians. The Board understands that timeliness of reports is only one aspect of guardianship case management and plans to continue working with the courts, professional guardians, and community advocates to improve guardianship practice.

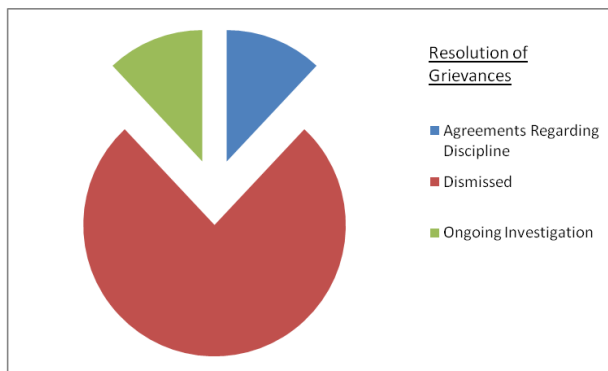


Chris Brown, *Untitled*

COMMITTEE REPORTS

Standards of Practice Committee

The Standards of Practice Committee (SOPC) had a very active year in resolving grievances, developing sanction guidelines, and considering proposed revisions to the disciplinary regulations. There were 25 grievances opened this year, approximately the same number as the previous year. (A full list of the grievances is attached at Appendix A.) The resolution of the grievances is illustrated in the following chart.



The SOPC further defined procedures for handling grievances by articulating clear guidelines for when the Board has jurisdiction to consider grievances. Generally, a grievance is considered by the Board where it involves a certified professional guardian, acting as a guardian, and alleged to have violated the Standards of Practice or Disciplinary Regulations. The SOPC also further defined the role of the Guardian Investigator and continued to stress the critical role of the superior court in monitoring guardianships.

To ensure consistency and flexibility in discipline, the SOPC developed sanction guidelines. The sanction guidelines were presented at the Board's annual retreat through the use of a case study. The guidelines follow the current regulations and set out a six-step process that considers the nature of the violation, the mental state of the guardian, the harm to the incapacitated person, the aggravating and mitigating factors, the appropriate sanction and additional conditions that should be imposed to protect the public.

Implementing one of the Board's goals from 2007, the SOPC proposed Disciplinary Regulation 520 regarding random auditing of guardian case filings, which is discussed in greater detail in this report. The SOPC considered proposed revisions to standards of practice and regulations describing the disciplinary complaint process and will continue to review regulations and ensure that they are updated or clarified as needed.



Larry Mills, *Untitled (4-03-07)*

Application Committee

The Application Committee meets monthly to review applications for professional guardian certification and make recommendations to the Board. In 2008, 38 applications for certification as professional guardians were considered, 18 were granted certification, and 20 were denied. Three agency certification applications were received and were all granted certification.

2008 Certification Statistics

CPGs	246
Agencies (CPGAs)	42
Voluntary Surrenders	13
Inactive Certifications	2
<u>Decertifications</u>	
Disciplinary	1
Dues noncompliance	9
CEU noncompliance	4



Barbie Wilkins, *Untitled*

Supreme Court Adopts the Board's suggested Amendments to GR 23.

Effective January 13, 2009, the Supreme Court adopted the Board's suggested amendments to GR 23, increasing the Board's ability to insure professional guardians are capable of performing their duties on behalf of incapacitated persons, by: (1) increasing the education and experience requirements for certification; (2) requiring disclosure of credit history to assess the applicant's ability to manage financial affairs; (3) allowing denial of certification for lack of moral character; and (4) providing the Board the administrative functions necessary to implement the regulatory framework. The amendments included the restriction that no more than one-third of the Board membership shall be practicing professional guardians.

Ethics Committee

The Ethics Committee meets as required to consider ethics advisory opinion requests and issues related to ethical standards, as requested by the Board.

The Board issued an ethics advisory opinion responding to the following request: Who, if anyone, should be given notice when a professional guardian petitions for the appointment of a co-guardian to assist the existing guardian or

to be discharged and have a standby or successor guardian appointed?

Summary of the Opinion:

Notice must always be provided to any “interested persons” who have requested special notice of proceedings, absent a court order to the contrary. RCW 11.92.150. Unless otherwise directed by the court, the Standards of Practice also require notice to the incapacitated person.

If the proposed successor or co-guardian would be managing community assets for both an incapacitated person and their spouse who had not been adjudged to be incapacitated, due process may require notice to the spouse even if that spouse has not requested special notice. If the proposed successor or co-guardian is not a certified guardian or was proposed but objected to in the initial proceedings, the court may wish to give notice to persons who might be likely to be able to provide information on the suitability of the proposed guardian or might wish to appoint a guardian ad litem to investigate the proposed guardian’s suitability.

The professional guardian should seek instructions or consult with counsel as to whether the court’s local practice and rules require additional notice or steps to be taken. See CPGB Ethics Advisory Opinion No. 2007-003.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=938&committee_id=127.

Amended Regulations Require Requests for Ethics Advisory Opinions to Include Specific Factual Circumstances

After considering pending requests for ethics advisory opinions that originated from discussion within the Ethics Committee and did not describe a specific factual circumstance, the Committee expressed its concern that without the presentation of a specific factual circumstance upon which to provide informed direction, attempting to draft an opinion to cover all conceivable scenarios encompassed by a broad, general question may result in unintended consequences. The Board agreed and following notice and comment, adopted amendments to its regulations requiring requests for ethics advisory opinions to present a specific factual circumstance. See Regulations 302.2 and 302.2 (amendments effective March 9, 2009).

http://www.courts.wa.gov/committee/?fa=committee.child&child_id=29&committee_id=117.



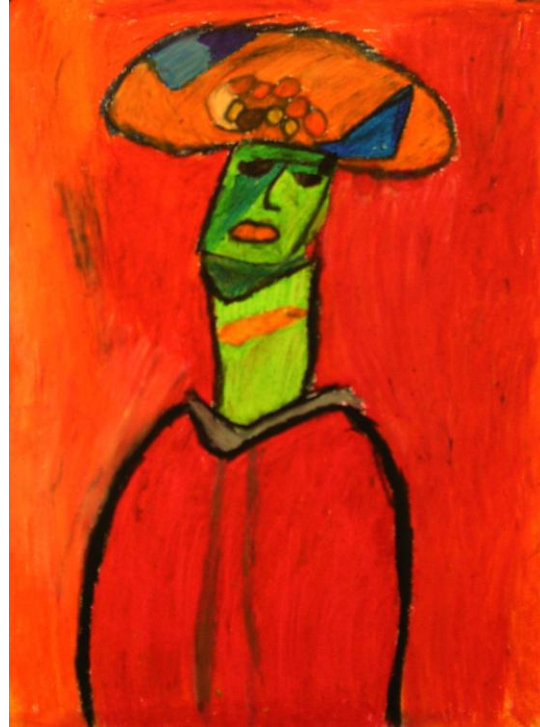
Wesley James, *Bird*

Education Committee

The Education Committee devoted its energies to developing the curriculum for the University of Washington Educational Outreach (UWEO) Guardianship Certificate Program, which is described in detail in this report. The Committee's role in developing the certificate program was essential to providing the necessary expertise to create an educational program that covered the variety of skills necessary to practice as a professional guardian. In less than one year, the Committee worked with the UWEO in creating lesson plans for each learning objective set forth in the broadly scoped curriculum designs approved by the Board. In the coming year the Committee will collaborate with the UWEO Advisory Group in updating the CPG Manual and continuing to advise on improvements to the certificate program.



Allison Oswald, *Blue Cat*



Erika Hughes, *Woman in Red*

Errors & Omissions Insurance Required. Effective January 31, 2008, certified professional guardians and agencies are required to maintain a minimum of \$500,000 of errors and omissions insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless exempted or waived. Exemption applies to guardians or agencies with 25 or fewer guardianship case appointments at one time and with less than \$500,000.00 total countable guardianship assets under management. See Regulation 117.

http://www.courts.wa.gov/committee/?fa=committee.child&child_id=50&committee_id=117

Certified Professional Guardian Board

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Spokane County Superior Court

Ms. Sharon York

The Arc of Washington

For more information regarding the
Certified Professional Guardian Program,
visit: www.courts.wa.gov/programs&orgs
or contact Sharon Eckholm, AOC Liaison
to the Board, at (360) 704-4031
or sharon.eckholm@courts.wa.gov.

Deserving Special Recognition

Hon. Marywave Van Deren, Court of Appeals Div. II, deserves special recognition for her years of service as a dedicated member and Chair of the Board. Under Judge Van Deren's recent leadership as Chair, the Board eliminated the grievance backlog, refined the disciplinary process and greatly improved the required education of professional guardians. Managing these accomplishments in one year evidences Judge Van Deren's dedication to improving the care of the most vulnerable of our population. Judge Van Deren resigned from the Board at the end of 2008.



Katie McClay, *Heart*

Appendix A

Certified Professional Guardian Board Grievance List

CPGB #	County	Nature of Allegations	Disposition
2003-002	King	Alleged mismanagement of IP's estate.	Settlement Agreement—monitoring compliance.
2003-011	Spokane	Alleged mismanagement of IP's person and estate and failure to file timely reports	Settlement Agreement—monitoring compliance
2004-004A 2005-014A	King	Alleged mismanagement of IP's estate	Agreement Regarding Discipline—monitoring compliance.
2004-004B 2005-014B	King	Alleged mismanagement of IP's estate.	Investigation Ongoing
2004-013	Snohomish	Alleged mismanagement of IP's estate and failure to file timely reports	Settlement Agreement with letter of reprimand approved by Board. Monitoring completed.
2005-009	Snohomish	Alleged mishandling of IP's estate.	Disciplinary proceeding Complaint filed on 11/26/08.
2007-007A	Kitsap	Alleged mishandling of IP's estate and failure to file timely reports	Agreement Regarding Discipline with decertification of guardian and agency.
2007-007B	Kitsap	Alleged mishandling of IP's estate, failure to file timely reports, and breach of Agreement Regarding Discipline.	Disciplinary proceeding Complaint issued--resolved with Agreement Regarding Discipline and decertification of guardian.
2007-009	Cowlitz	Alleged failure to file timely reports.	Agreement Regarding Discipline—guardian accepted decertification.
2007-017	King	Alleged ethical violations.	Agreement Regarding Discipline-monitoring complete.
2007-021	Thurston	Alleged mismanagement of IP's person.	Investigation ongoing
2007-025	King	Alleged mismanagement of IP's estate and failure to respond to IP or others.	Investigation ongoing

CPGB #	County	Nature of Allegations	Disposition
2007-026	King	Alleged mismanagement of IP's estate and failure to file timely reports	Agreement Regarding Discipline with monitoring. Monitoring completed.
2008-001	Pacific	Alleged failure to file timely reports.	Agreement Regarding Discipline adopted 5/12/08.
2008-002	Spokane	Alleged mismanagement of IP's estate and person.	Dismissed, no actionable conduct.
2008-003	Kitsap	Alleged mismanagement of IP's estate	Administratively dismissed, no written grievance received
2008-004	Kitsap	Alleged mismanagement of IP's person.	Administratively dismissed, no written grievance received
2008-005	Pierce	Alleged mismanagement of IP's estate.	Dismissed, no actionable conduct.
2008-006	King	Alleged mismanagement of IP's estate.	Dismissed, no actionable conduct.
2008-007	Kitsap	Alleged mismanagement of IP's person and failure to respond to IP or others.	Dismissed, no actionable conduct.
2008-008	Lincoln	Alleged mismanagement of IP's person and estate and failure to timely file reports.	Dismissed, no actionable conduct.
2008-009	King	Allegation that lay guardian had more than 3 paying clients	Dismissed, no jurisdiction.
2008-010	Spokane	Alleged mismanagement of IP's person and failure to respond to IP or others.	Dismissed, no actionable conduct.
2008-011	Spokane	Alleged failure to respond to IP or others.	Dismissed, no actionable conduct.
2008-012	Grays Harbor	Alleged mismanagement of IP's estate and ethical violations.	Agreement Regarding Discipline adopted 11/3/2008—Monitoring for 6 months.
2008-013	King	Alleged mismanagement of IP's estate.	Dismissed, no actionable conduct.

CPGB #	County	Nature of Allegations	Disposition
2008-014	Spokane	Self disclosure by guardian regarding a grievance filed with another professional licensing body.	Dismissed, no jurisdiction.
2008-015	Spokane	Alleged failure to file timely reports and ethical violations	Agreement Regarding Discipline adopted 1/12/09.
2008-016	Lewis	Alleged mismanagement of IP's estate and person.	Dismissed, no actionable conduct.
2008-017	King	Alleged mismanagement of IP's person and failure to respond to IP or others.	Dismissed, no actionable conduct.
2008-018	Spokane	Alleged mismanagement of IP's estate.	Dismissed, no actionable conduct.
2008-019	Kitsap	Alleged failure to respond to IP or others.	Dismissed, no actionable conduct.
2008-020	King	Alleged mismanagement of IP's person and estate.	Dismissed, no actionable conduct.
2008-021	King	Alleged mismanagement of IP's person and estate.	Investigation ongoing
2008-022	King	Alleged ethical violations.	Dismissed, no actionable conduct.
2008-023	King	Alleged ethical violations.	Investigation ongoing
2008-024	Grays Harbor	Alleged mismanagement of IP's person.	Dismissed, no actionable conduct.
2008-025	King, Pierce	Alleged violation of general duty of guardian.	Investigation ongoing