

2016

# Certified Professional Guardianship Board



Grievance Report

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# CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD GRIEVANCE REPORT 2016

## INTRODUCTION

We are pleased to present the 2016 Certified Professional Guardianship Board Grievance Report. We make this report available to all with the goal of increasing public awareness of the grievance process. We hope that the disclosure of these grievances will facilitate understanding of the rules and standards applied and the most common concerns of grievants.

Pursuant to legislative mandate, the Washington State Supreme Court established a certification process and procedure for professional guardians by promulgating General Rule (GR) 23. GR 23 created a Certified Professional Guardianship Board<sup>1</sup> to implement the activities necessary to develop a process to certify individuals who choose to become professional guardians. The Supreme Court, however, retains primary jurisdiction over the Board and its functions:

- The Supreme Courts retains jurisdiction over all professional guardians who practice in the state of Washington. GR 23(b).
- The Supreme Court appoints all members to the Board. GR 23(c)(1)(i).
- The Supreme Court designates the Chair of the Board. GR 23(c)(1)(iii).
- The Supreme Court enters the order certifying an individual or agency as a certified professional guardian. GR 23(c)(2)(v).
- The Board may seek Supreme Court enforcement of an order or subpoena that it issued. GR 23(c)(2)(x)(c).
- The Supreme Court approves the Board's expense budget. GR 23(c)(3).
- The Supreme Court, pursuant to its statutory authority to direct the administrative office of the courts, instructs the Administrative Office of the Courts (AOC) to provide administrative support to the Board and authorizes AOC to contract with other agencies or organizations on behalf of the Board. GR 23(c)(8).
- The Supreme Court extends quasi-judicial immunity to the Board where the Supreme Court would have immunity in performing the same functions. GR 23(c)(5).

The Board is charged with all the substantive duties of certification:

- Processing applications
- Implementing standards of practice
- Establishing a training program
- Adopting regulations for continuing education
- Approving or denying certification
- Investigating grievances and issuing disciplinary sanctions.

In any certification program, a grievance process is requisite to maintaining the standards and integrity of the process. The role of the professional guardian is to protect the incapacitated person. By definition, the incapacitated person may not be able to understand or execute the actions needed to protect himself or herself. It is vital to protecting the public that a professional guardian's actions be open to review:

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<sup>1</sup> The Board is a board of the judicial branch and is therefore exempt from compliance with the Washington Administrative Procedures Act. RCW 34.05.010.

The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

This report summarizes the Board's efforts to investigate grievances received from the public regarding certified professional guardians or certified professional guardian agencies.

## **THE GRIEVANCE PROCESS**

### **Purpose and Scope**

GR 23(a) recites its purpose and scope as:

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.

GR 23(c)(2) outlines in greater detail the duties assigned to the Board in receiving and reviewing grievances:

(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.

Among the many regulations governing the certified professional guardians are the Disciplinary Regulations 500 et seq. These regulations detail the grounds for disciplinary action and the procedures for investigation, review, settlement and hearing.

### **How the Grievance Process Works**

Knowing how the Board defines a grievance and a complaint is key to understanding the grievance process.

A "grievance" is a written document filed by any person with the Board, or filed by the Board itself, for the purpose of commencing a review of the professional guardian's conduct under the rules and disciplinary regulations applicable to professional guardians.

A "complaint" is the document filed by the Board during a disciplinary proceeding for the purpose of bringing the matter before a hearing officer for a factual hearing on the issue of whether or not the professional guardian's conduct provides grounds for the imposition of disciplinary sanctions by the Board.

If a grievance is not dismissed or resolved without a formal proceeding, it will become a complaint.

Any person may file a grievance with the Administrative Office of the Courts (AOC) regarding a certified professional guardian or a certified professional guardian agency. Grievances may be completed on-line on the Washington Courts website at [www.courts.wa.gov](http://www.courts.wa.gov), or by submitting a written grievance to AOC.

AOC staff reviews the grievance and makes an initial determination if the Board has jurisdiction over the issues raised. AOC provides the professional guardian or agency identified with a copy of the grievance and requests a response.

To ensure that the Standards of Practice Committee (SOPC), the committee of Board members responsible for supervising the grievance process, has the information needed to determine if a grievance should be dismissed or action taken, AOC may perform other necessary investigation of the grievance including interviewing the grievant, interviewing the professional guardian, and obtaining relevant records or documentation from any person or entity. AOC then reports the results of its investigation to the Standards of Practice Committee (SOPC).<sup>2</sup>

The SOPC reviews the report and takes action on the grievance. The SOPC may request further action as designated from AOC staff, dismiss the grievance, request that the Board file a complaint, or request that the Board enter into an Agreement Regarding Discipline.

AOC forwards a grievance involving an active guardianship case that is not dismissed by the Board's disciplinary committee to the appropriate superior court with a request that the court review the matter, take any action necessary including modification, removal of the guardian, and clarification of rights and duties and report to the Board.

An Agreement Regarding Discipline (ARD) is a conditional settlement agreement negotiated between the SOPC and the certified professional guardian (or agency). Once an agreement has been reached, it is presented to the Board in Executive Session for review. The Board then votes to approve or deny the Agreement in open session. The Board's decision is recorded in the meeting minutes. Approved Agreements are posted on the Washington Courts website for public disclosure.

If a settlement cannot be reached, the SOPC may request that the Board file a complaint regarding disciplinary action against the certified professional guardian. Filing of a complaint commences a hearing process not dissimilar to an administrative hearing. Once filed, the complaint is of public record and is posted on the website. All subsequent proceedings are open to the public.

The Administrative Office of the Courts (AOC) contracts with a hearing officer (administrative law judge) to conduct the remainder of the hearing proceedings. The administrative law judge must prepare a written findings of fact, conclusions of law, and recommendations to the Board regardless of the disposition of the matter. The Board then reviews the findings, conclusions, and recommendation and determines what further action to take.

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<sup>2</sup> The Standards of Practice Committee is comprised of at least three (3) members of the Board including at least one judicial officer or attorney and at least one certified professional guardian. DR 505.1.

## **New Guardianship Complaint Procedure for State Superior Courts**

In April, 2015 the Washington State Legislature revised RCW 11.88.120 to establish a guardianship complaint procedure for state superior courts. The law went into effect on July 24, 2015. One of the main goals for the change in the law was to make it easier for the public to file complaints. The Administrative Office of the Courts prepared forms to implement the law, so that a complainant in a guardianship proceeding would have direction on how to submit his or her complaint to a court designee. The statute allows submission of complaints by letter, to make it easier for a pro se individual to submit a complaint.

The statute directs a court designee to have the complaint filed and delivered to the court by the next judicial day after receipt of the complaint. Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of several options. These include evaluation of the complaint for merit where it appears indicated. The statute also provides for the court to dismiss the complaint without scheduling a hearing if the court feels that the complaint is without merit on its face, is filed in other than good faith, is filed for an improper purpose, is in regards to issues that have already been adjudicated, or is frivolous. The statute directs the court to direct the clerk of the court to send a copy of an order entered in any court action which addresses a complaint against a Certified Professional Guardian (CPG) to the Certified Professional Guardianship Board. This gives the Board notice of possible violations of the Standards of Practice by certified professional guardians (CPGs).

Initially, the Board received very few court orders resolving guardianship complaints. However, by 2016 the Board began to receive a significant number of complaints about the conduct of CPGs that had been filed with the court, in addition to those that were filed directly with the Board. As a result, the total number of grievances filed in 2016 climbed to 104 (one hundred and four) from 65 (sixty-five) grievances filed in 2015, a sixty (60) percent increase. It should be noted that the increase stems from improved procedures, both in making it easier for the public to file its complaints, and in communication between the courts and the Board. It is unlikely to reflect any decline in professional conduct by the CPGs. (See Appendix C)

## **Impact of Newly Implemented GR 31.1**

GR 31.1, the Supreme Court's rule governing access to administrative records, was adopted with an effective date of January 1, 2016.

Per GR 31.1, standards for public access to records of the Certified Professional Guardianship Board have been revised to allow for greater access to records concerning grievances filed against certified professional guardians.

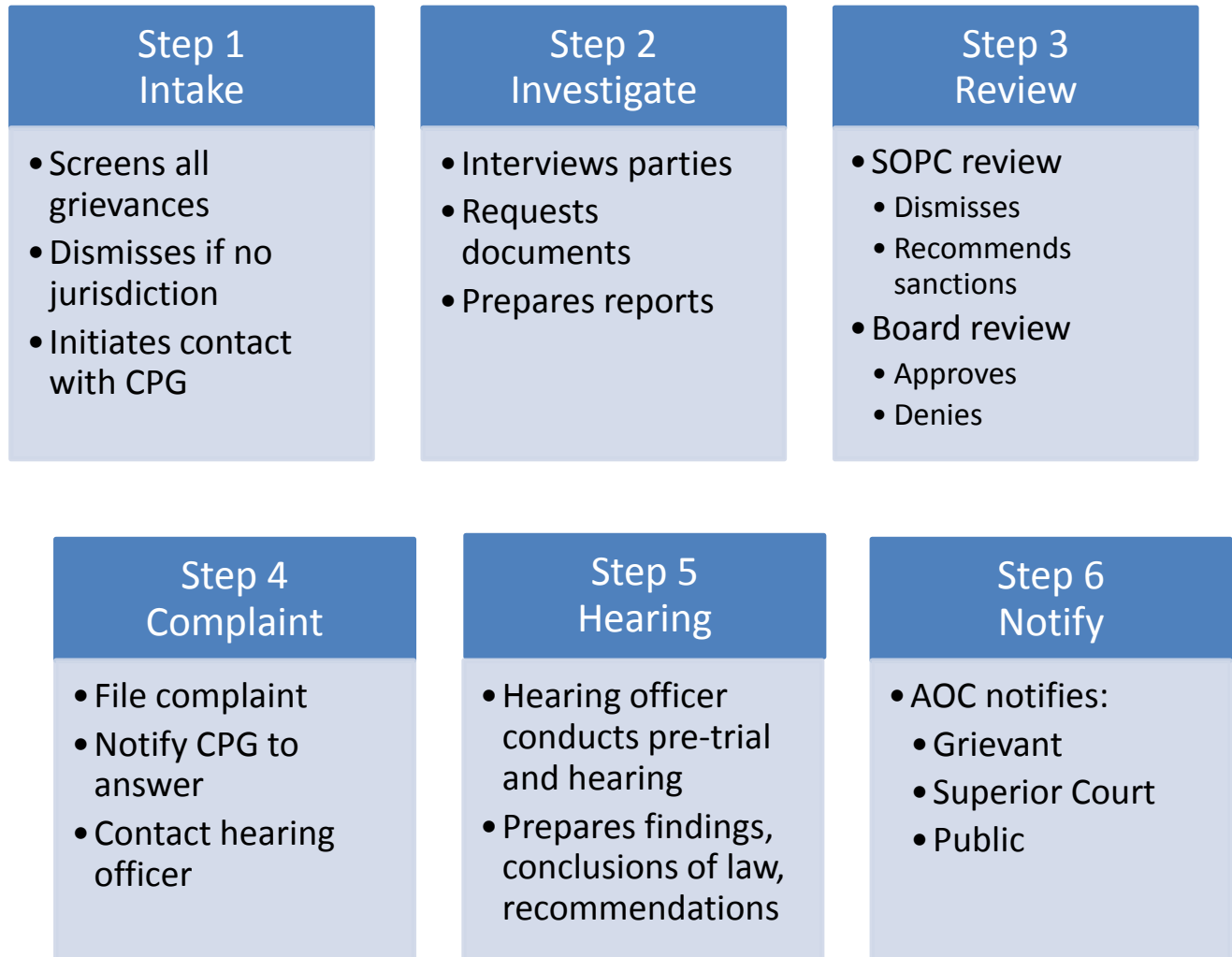
A grievance is now open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

## **New Posting Rule**

The Board adopted the following rule for posting grievances and complaints. According to the proposal, dismissed grievances will not be posted.

For a grievance or complaint that results in discipline to a professional guardian, the grievance or complaint, any response submitted by the professional guardian, the agreement or order imposing discipline, and any order on appeal by the professional guardian, shall be posted for public access on the website for the Administrative Office of the Court.

## Flow Chart of Grievance Process



### Structure and Funding

The Supreme Court delegated primary responsibility to the Board to investigate and sanction professional guardians regarding continued certification. The Supreme Court retains primary jurisdiction over professional guardians practicing in the state of Washington. Any Board recommendation of suspension or decertification resulting from a disciplinary proceeding must be filed with the Supreme Court. The Supreme Court must review such a recommendation after consideration of the transmitted record. By written order, the Court may adopt, modify, or reverse the Board's recommendation.

Funds from application fees, annual recertification fees, and any other revenue are used to defray Board expenses. Board members do not receive any compensation for service. Board members are only reimbursed for actual and necessary expenses incurred in the performance of their duties.

The Supreme Court has instructed the Administrative Office of the Courts (AOC) to provide administrative support to the Board. Staff members who provide support to the Board are AOC employees and receive compensation and benefits according to the human resources policies of AOC at large.

## Disciplinary Actions/Sanctions

Any disciplinary sanction against a certified professional guardian or agency is undertaken with only the utmost gravity. A sanction is only appropriate upon a finding of a preponderance of the evidence that the guardian has engaged in professional conduct in violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians, and that conduct caused, or potentially could cause, harm to the incapacitated person, the public, or a legal proceeding. Alternatively, any conduct that adversely reflects on the guardian's fitness to serve as a guardian, such as criminal activities or deceit, may result in disciplinary action or sanctions regardless of actual or potential harm.

Disciplinary Regulations (DR) 515 Sanctions and Remedies authorize five types of sanctions to be issued against a certified professional guardian:

- Decertification
- Suspension
- Prohibition against taking new cases
- Reprimand
- Admonishment

All five sanctions constitute disciplinary action and are open to public disclosure. If the Board approves of a sanction against a certified public guardian, an announcement of disciplinary action is sent to all superior courts in Washington. The disciplinary action is maintained in the guardian's file and posted on the Washington Courts website at: [http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/)

## Decertification

Decertification is the most severe sanction. If a professional guardian is decertified, RCW 11.88.008 limits the number of guardianship cases for which a guardian may accept compensation to two (2).

The Disciplinary Regulations describe factors to be considered for decertification:

**DR 515.2.1** Decertification is generally appropriate when a professional guardian engages in:

515.2.1.1 Professional misconduct; or deceive the court; or cause serious or potentially serious injury to a party...



515.2.1.2 Felonious criminal conduct,

515.2.1.3 Any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation....,

515.2.1.4 Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the SOPs, and where the guardian has not corrected the behavior despite previous attempts by the courts or the Board to correct the behavior.

To warrant the sanction of decertification, the guardian actions must have intentionally violated one or more Standards of Practice or other specified regulation. As a fiduciary, a guardian has the duty to act primarily for another's benefit, selflessly, and with undivided loyalty. Conduct intended to benefit his/herself or involving dishonesty, fraud, deceit or misrepresentation may result in decertification.

A guardian may also be decertified for gross incompetence. The certification process is to establish a baseline of competency among professional guardians. Professional conduct that falls below such a baseline may be deemed "gross incompetence." In considering whether actions constitute gross incompetence, the Board may apply a "reasonableness" standard.

A guardian who has demonstrated a pattern and practice of a particular behavior that falls below the Standards of Practice may also be decertified for gross incompetence. DR 506.4 authorizes the Standards of Practice Committee to direct a guardian to take corrective actions where an issue is of minor significance or of a nature not potentially harmful to clients or other persons. However, repeated failure to meet a SOP may rise to the level of gross incompetence.

For example, a guardian may not file an annual report on time. A few instances are likely correctible and unlikely to cause a client harm. The SOPC may request that the guardian participate in additional training, audit the guardian's cases on a frequent basis, or set up monitoring by an independent third party for a period of time.

However, if the guardian's conduct persists despite these or other attempts to correct the behavior, the pattern and practice of late filing may arise to the level of gross incompetence and warrant decertification.

## **Administrative Decertification**

Guardians are required to renew their certification annually and complete 24 credit hours of continuing education biennially. Failure to comply with these professional responsibilities may result in administrative decertification.

### **DR 522 Administrative Decertification**

If the board decertifies a professional guardian for an administrative reason, including but not limited to the professional guardian's failure to: pay required fees, satisfy the continuing education requirements, provide proof of insurance or waiver of insurance, or file required information with the board, any pending disciplinary grievance against the professional guardian may be dismissed. Information that a grievance was pending at the time of administrative decertification shall be placed in the guardian's licensing records and shall be available to the public.

Once the renewal deadline has passed, AOC provides a notice to the guardian to comply. In addition to completing the renewal process, the guardian may be required to pay a late fee. Failure to timely complete these actions and file the appropriate applications and disclosures with AOC is a basis for disciplinary action against a guardian for noncompliance. If the guardian fails to comply, the guardian may be decertified upon approval of the Board.

### **Prohibition on Taking New Cases/Suspension**

In some cases, an appropriate sanction may be to place limits on the professional guardian's on-going practice. These limitations may be temporary pending a change in the guardian's circumstances or an ongoing limitation or suspension of the guardian's practice.

**DR 515.2.2** Prohibition against taking new cases or suspension for a period of time, or both, is generally appropriate when a professional guardian engages in:

515.2.2.1 Professional conduct incompatible with the Standards of Practice and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceedings, or

515.2.2.2 Criminal conduct that seriously adversely reflects on the professional guardian's fitness to serve.

### **Reprimand**

A reprimand typically does not disrupt a guardian's practice; however, it indicates a serious error in a guardian's conduct. Repeated actions that warrant multiple reprimands may rise to the level of gross incompetence and subject the guardian to decertification.

**DR 515.2.3** A letter of reprimand is generally appropriate when a professional guardian engages in:

515.2.3.1 Professional misconduct incompatible with the Standards of Practice and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding, or

515.2.3.2 Any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the professional guardian's fitness to practice.

### **Admonishment**

Admonishment is the lowest sanction available. Admonishment is appropriate in minor or single events of misconduct.

**DR 515.2.4** A letter of admonishment is generally appropriate when a professional guardian engages in professional misconduct incompatible with the standards of practice and not rising to the level justifying a reprimand.

## Remedies

In addition to the five sanctions, the Board may implement various remedies for the purpose of ensuring the guardian complies with the duties, standards, and requirements of a professional guardian. For example, the Board may place a guardian on probation, prohibit the guardian from taking new cases, or require the guardian complete additional training. The Board may also require monitoring on a periodic basis or mentoring with regular reports back. Finally, the Board may always review a guardian's caseload through internal audit.

## Dismissal

All grievances received by the Administrative Office of the Courts (AOC) are investigated as appropriate. AOC may dismiss grievances in limited circumstances: administratively and for lack of jurisdiction.

AOC may dismiss a grievance for administrative reasons. The most common administrative dismissal occurs because the grievant decides not to pursue the grievance. The withdrawal of a grievance does not mandate administrative dismissal; however, circumstances may indicate that dismissal is appropriate.

Second, the Board's jurisdiction is limited to certified professional guardians or agencies acting in the capacity of a guardian.<sup>3</sup> For example, grievances may be filed regarding a guardian ad litem investigation and report. Some certified professional guardians also act as trustees. However, the Board has no jurisdiction to investigate a grievance in these circumstances. If the Board clearly has no jurisdiction, AOC will promptly dismiss the grievance and may notify the entity with jurisdiction.

The most common basis for dismissal is that the guardian's conduct does not rise to the level of a violation of a Standard of Practice. Following AOC's investigation and report, the SOPC may dismiss any grievance and is not required to obtain Board approval. However, the SOPC may present a grievance to the Board if there has not been a clear consensus on dismissal, or the SOPC believes that the Board should be consulted for other reasons.

In some grievances, the SOPC determines that a guardian's conduct may not clearly violate a Standard of Practice; however, the guardian's conduct or practice may be improved with additional training, counseling, or other remedial steps. If the guardian complies with the SOPC's direction, the matter is then reported to the Board for approval of the correction. If the Board approves of the SOPC's actions, the grievance may be dismissed with no sanction reported on the guardian's file.

Alternatively, if the guardian does not comply with the SOPC's recommendation, the SOPC may reconsider the grievance, request additional investigation, and the noncompliance may constitute an addition factor in whether to proceed to the level of a sanction.

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<sup>3</sup> The limited exception is if the guardian's conduct indicates a lack of fitness to be a guardian, such as criminal actions or fraud unrelated to their guardian duties.

## Termination

Termination of a grievance is distinguished from dismissal as discussed above. Termination is not based on an investigation and determination on the merits of a grievance. Termination of open grievances serves primarily to conserve the Board's efforts once a CPG is no longer acting as a professional guardian.

As discussed above, a CPG may be decertified for either violation of a Standard of Practice or noncompliance with certification maintenance requirements, including annual certification fee and disclosure, continuing education, or E&O insurance requirements. Once the CPG has been decertified and no longer acting as a guardian, there is no longer a substantial risk of harm to the public.

Similarly, a CPG may request to be on inactive status or to voluntarily surrender of his/her certification. The CPG must comply with all statutory and court-ordered requirements for discharge as a guardian prior to completing transition to inactive status or surrender. Once the former CPG has been discharged, s/he may not accept any new clients or engage in work as a CPG.

A former CPG may petition for reinstatement or return to active status. At that time, AOC may reinstate investigation in any terminated grievance pursuant to DR 504.1.

## GRIEVANCES AT A GLANCE 2016

In 2016 the Board opened one hundred and four (104) grievances. Eighteen (18) cases were closed for lack of jurisdiction. Two (2) additional cases were terminated due to the Voluntary Surrender of the Certified Professional Guardian (CPG), and two (2) were terminated when the CPG was subject to administrative decertification. The majority of the cases dismissed for lack of jurisdiction, thirteen (13) did not involve Certified Professional Guardians (CPG), or the individual was a CPG but he or she was not acting in that capacity. Six (6) cases involved lay guardians, three (3) were complaints about a Guardian Ad Litem, one (1) was not a CPG but further information is unknown, and three (3) involved individuals acting in another capacity (such as attorney for an Incapacitated Person, or handling settlement of an estate). In one (1) case there was no jurisdiction because the underlying matter involved out of state court matters.

In addition to the cases closed for lack of jurisdiction discussed above, another eight (8) were investigated and closed by the end of the year for no actionable conduct. A total of twenty-six (26) grievances opened in 2016 were closed by the end of the year. Seventy (70) grievances remain requiring resolution. In 2016 there were two hundred and sixty nine (269) active professional guardians in Washington State. Grievances received in 2016 involved forty-seven (47) guardians or guardianship agencies, approximately 17.47% of the professional guardians in Washington State. The ratio of grievances to CPGs for 2016 is 1 to 2.5.<sup>4</sup> Several guardians with multiple grievances in 2016 had additional grievances in other years.<sup>5</sup>

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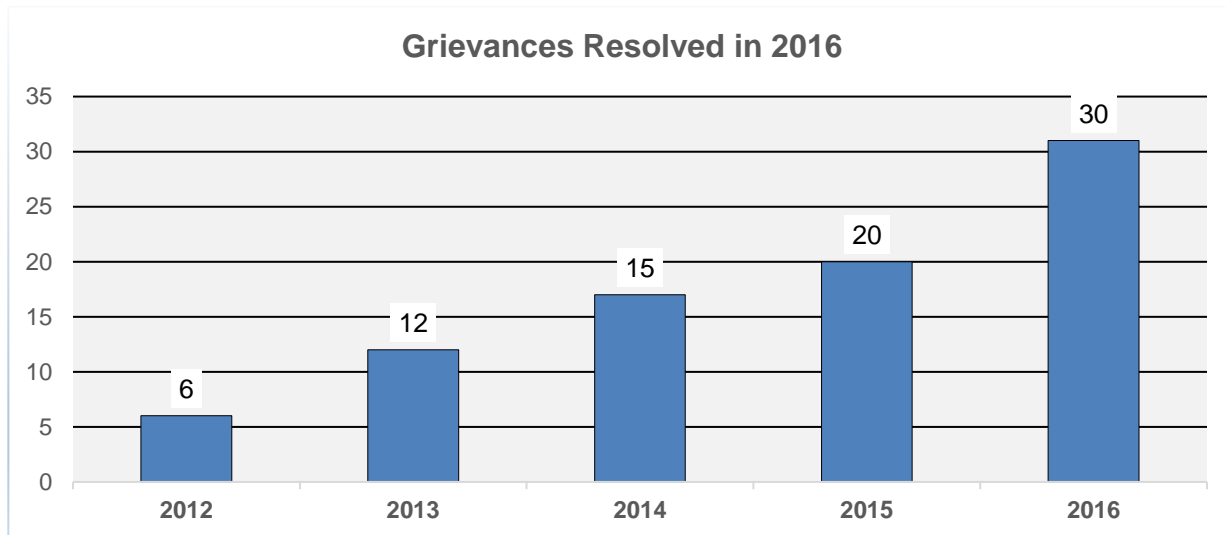
<sup>4</sup> It should be noted that other professions had a much lower number of grievances per professional. See Appendix D and Appendix E.

<sup>5</sup> A chart showing guardians/guardianship agencies with more than one grievance out of the Board's total pending grievances for 2016 is attached at Appendix B.

## 2016 CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES

Grievances	2016
Total Opened	104
Total Closed	26
Total Terminated	4
Pending Voluntary Surrender	4
Sanction	0
Total Needing Investigation	70

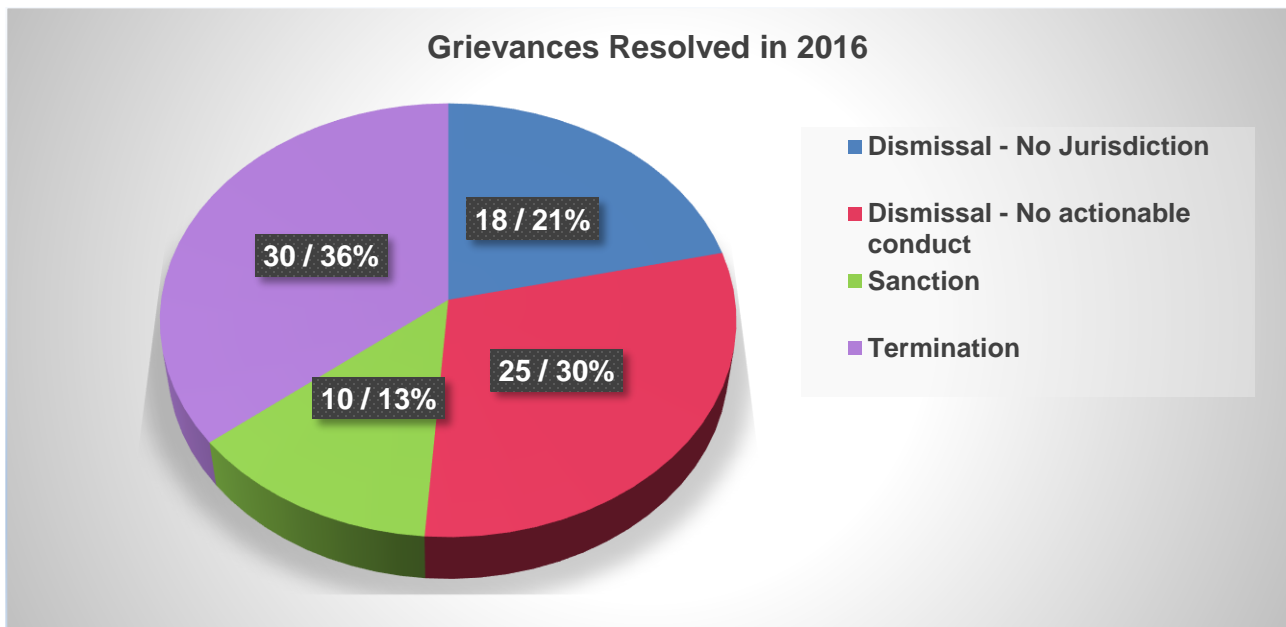
The chart below shows the total number of grievances closed in 2016 by the year opened. Grievances that proceed to hearing require substantially more time.



### Resolution

Eighty-three (83) grievances were closed in 2016 that had been received between 2012 and 2016. Forty-three (43) of the grievances closed were dismissed; twenty-five (25) for no actionable conduct, and eighteen (18) for lack of jurisdiction. Three cases were terminated after a CPG agreed to voluntarily surrender their certification. One guardian agreed to a sanction, a Letter of Reprimand, which resolved her five pending grievances. Five grievances involving a single guardian were resolved in a hearing, in which the judge imposed a Letter of Admonishment and one guardian entered into an Agreement Regarding Discipline with the CPG in which a Letter of Admonishment was imposed. There were a total of 27 grievances terminated due to Administrative Decertification, 10 involving one guardian and 17 involving a second.

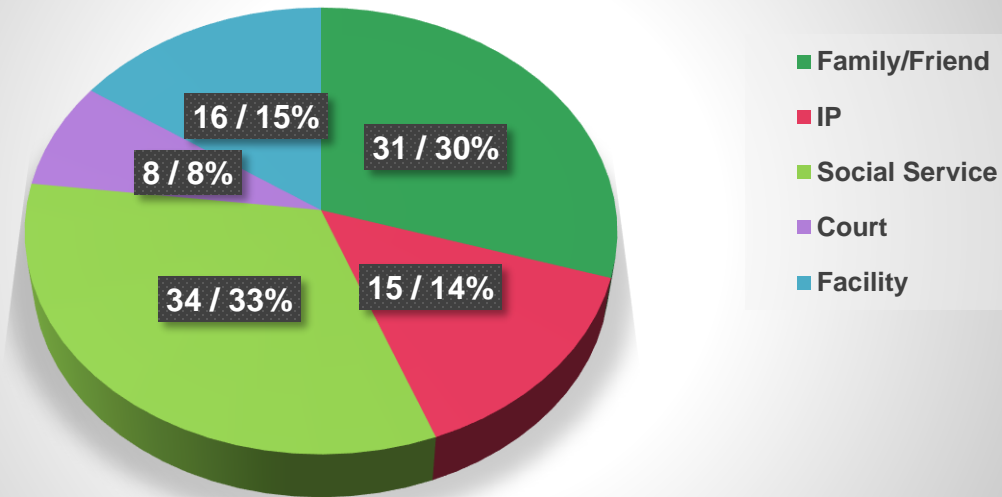
<b>Resolution</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Total</b>
Dismissal - No Jurisdiction					18	<b>18</b>
Dismissal - No Actionable Conduct		9	4	4	8	<b>25</b>
Admonishment	6					<b>6</b>
Reprimand		2		2		<b>4</b>
Suspension						
Voluntary Surrender - Terminated				1	2	<b>3</b>
Administrative Decertification - Terminated		1	11	13	2	<b>27</b>
Decertification - Terminated						
<b>Total Closed</b>	<b>6</b>	<b>12</b>	<b>15</b>	<b>20</b>	<b>30</b>	<b>83</b>



### Sources of Grievances.

Any person may file a grievance regarding the conduct of a certified professional guardian. The Board may on its own authority file a grievance against a guardian either as a result of a random audit or concerns that have been brought to the Board's attention.

### Source of Grievances Received in 2016



In 2016, 33% of all grievances were submitted by social services personnel or agencies. This group includes Adult Protective Services (APS), social workers, and medical personnel. The Board refers matters raising the possibility of abuse, neglect or exploitation to APS, which has its own intake and investigation process. Although both APS and the Board are concerned about the protection of vulnerable individuals, their purposes and remedies are different.

The second most common group who submitted grievances were family members. A third significant source for grievances is the residential facility in which the Incapacitated Person resides. It is not surprising that the three most common sources with the most frequent and the closest contact with the Incapacitated Person are most likely to see conduct that causes them concern.

### Grievances by Standards of Practice

Grievances are evaluated against the Standards of Practice, which are fairly comprehensive statements of the professional conduct expected from professional guardians. The Standards of Practice may be found in their entirety at:

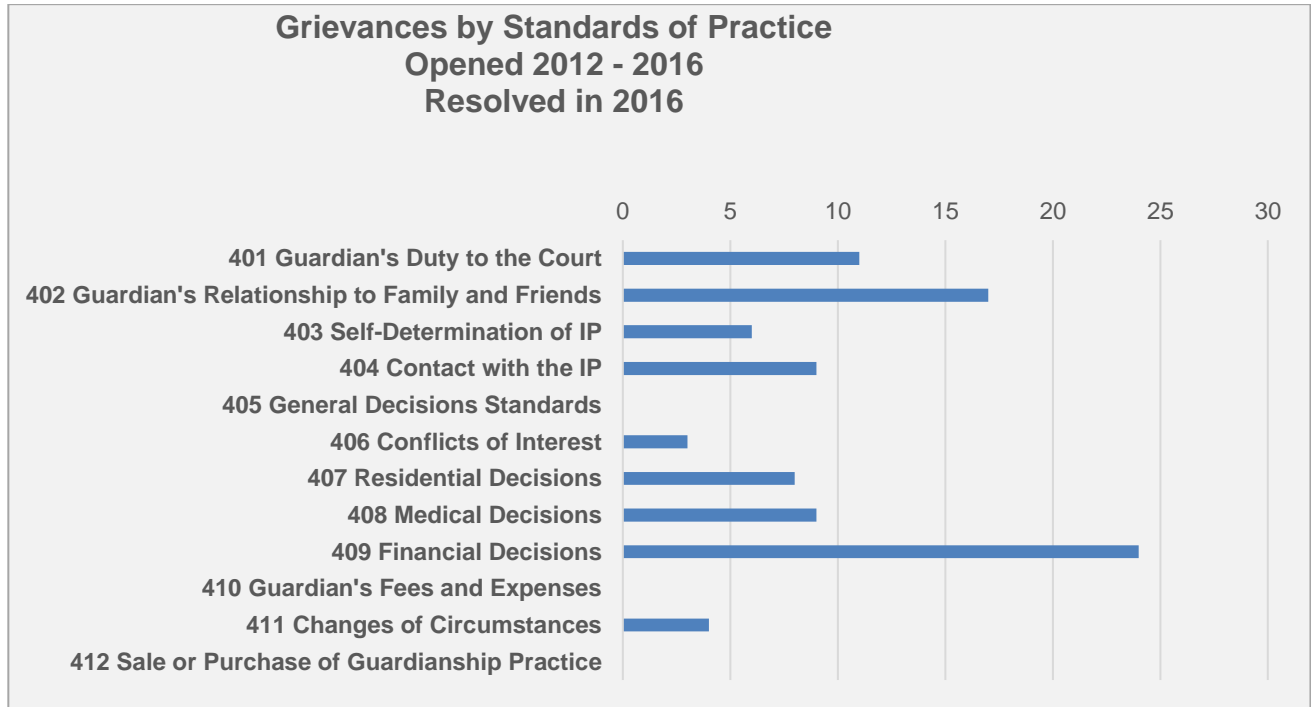
[http://www.courts.wa.gov/content/publicUpload/CPG/20131014\\_SOP\\_Regulations.pdf](http://www.courts.wa.gov/content/publicUpload/CPG/20131014_SOP_Regulations.pdf)

The Standards of Practice cover the broad range of a professional guardian’s responsibilities. In 2016 the two largest number of grievance violations involved either the failure to manage the Incapacitated Person’s financial affairs, or for the guardian to work cooperatively with family and friends.

Generally, grievances about financial matters fall into one or more of these subcategories: 1) mismanagement of the estate; 2) failure to timely pay bills; or 3) failure to apply for public benefits. The other significant category of violations arose from the guardian’s failure to perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court. A guardian’s duty to the court includes timely filing of all required annual

reports to the court, maintaining current letters of guardianship, and timely filing of a designation of stand-by guardian.

In 2015 one of the two largest number of grievance violations involved the failure to manage the Incapacitated Person's financial affairs, the second largest number involved the guardian's failure to appropriately carry out his/her duties and follow all laws.





## Grievance Case Summaries

The Board has several grievances in a hearing status. A hearing officer has been appointed to hear the matters and make recommendations to the CPGB. The CPGB may accept or reject those findings. The CPGs then have the option of accepting the CPGB's findings, or appealing to the State Supreme Court. The pending matters are discussed below.

### Pending Disciplinary Actions

CPGB 2013-042, Christopher Neil and Pacific Guardianship Services [CPG No. 5485 and CPGA 5146] [Pierce County], alleged failure to seek compensation from the estate for the needs of the IP only, and to disclose a potential conflict to the court in advance of initiating a legal action as counsel. SOP 406.5 and 410.1.

CPGB 2012-034, 2013-006, 2015-036, and CPGB 2015-053, Sheila Brashear [4729], Barbara Sturdevant [11137] and Charge d'Affaires [5127][Snohomish County], alleged failure to timely file mandatory reports, file a mandatory Designation of Standby Guardian, to competently manage the property of the IP, to actively promote the health of the IP, to work with previous guardians and family, and to comply with signed Agreement regarding Discipline. SOP 401.1, 401.6, 409.1, 402.1 and DR 514.4

### Grievances Resolved in 2016

Below are brief summaries for the grievances investigated and closed by the Certified Professional Guardianship Board in 2016.

Agreements Regarding Discipline (sanctions) are of public record and posted on the Washington Courts website at: <http://www.courts.wa.gov/programs/orgs/guardian/>. Although dismissals are subject to public disclosure, they are summarized below without the identity of the guardian.

The five types of sanctions authorized in the Disciplinary Regulations are discussed above. As briefly discussed in footnote 4 above, a sanction is issued against the professional guardian. Multiple grievances may support issuance of a sanction. All grievances associated with a particular sanction are noted in each entry below.

### Administrative Decertification

CPGB 2014-009, 2014-035, 2014-037, 2014-040; 2015-015; 2015-037; 2015-038; 2015-039, 2015-047 and 2016-052. Leslie Cloaninger [CPG No. 5170] [Whitman County], terminated due to decertification resulting from the CPG's failure to pay the annual recertification fee, file the required GR 23 (e) Disclosure, and file the Errors and Omissions Insurance Declaration, all of which were due by August 1, 2016 under Regulation 703.3 and 704.7.

CPGB 2013-043, 2014-034, 2014-039, 2014-046, 2014-061, 2014-062, 2014-063, 2014-064 2015-003, 2015-005, 2015-006, 2015-007, 2015-008, 2015-009, 2015-014, 2015-043, and 2016-001. Lori Petersen [CPG No. 9713] [Spokane County], terminated due to decertification resulting from the CPG's failure to pay the annual recertification fee, file the required GR 23 (e) Disclosure, and

file the Errors and Omissions Insurance Declaration, all of which were due by August 1, 2016 under Regulation 703.3 and 704.7.

### **Admonishment**

CPGB 2012-002, 2012-013, 2012-038, 2012-045 and 2012-046 Maureen Carroll [CPG No. 10908] [King County], hearing officer imposed a Letter of Admonishment based on the CPG's failure to file timely reports in a number of cases and to appoint standby guardian. SOP 401.1, 401.3, 401.5, and 401.6.

CPGB 2012-012. Constance O'Hara. [CPG No. 10908] [King County], entered into an Agreement Regarding Discipline in which a Letter of Admonishment was imposed for failure to file timely reports and to appoint standby guardian. SOP 401.1, 401.3, 401.5, and 401.6.

### **Reprimand**

CPGB 2013-004, 2013-029, 2015-004 and 2015-041. Lin O'Dell [CPG No. 5297] [Spokane and Stevens Counties], entered into an Agreement Regarding Discipline in which a Letter of Reprimand was imposed for hiring a felon to provide services to her incapacitated clients and not performing a background check, failing to conduct mandatory monthly visits to clients, and failing to notify the court of significant changes in the circumstances of a client. SOPs 401.1, 401, 409.1, 404.1, 404.4 and 411.1.

### **Dismissal**

CPGB 2013-002 [Pierce County], alleged failure to provide complete information in the Final Report, to return calls and other contacts from the grievant, to allow the grievant access to the IP's home; dismissed for no actionable conduct. SOP 402.2 and 409.1.

CPGB 2013-013 [King County], alleged failure to pay the cost of care for the IP, or his cell phone bill, or to advise the IP how to best manage public benefits after the receipt of a lump sum; dismissed for no actionable conduct. SOP 409.1 and 409.7.

CPGB 2013-015 [Kitsap County], alleged failure to arrange necessary preventive medical care and to close a potentially compromised bank account; dismissed for no actionable conduct. SOP 402.2, 402.3, 408.4 and 409.1.

CPGB 2013-023 [Clark County], alleged failure to address black mold in the IP's AFH which caused the IP health issues, and restricting a daughter's visitation with the IP in retaliation for complaining about the mold; dismissed for no actionable conduct. SOP 407.6, 408.4, 402.1, and 407.5.

CPGB 2013-024 [Clallam County], alleged failure to provide the IP with the appropriate level of care, interference with contact with family, alleged failure to put the IP's interests above those of third parties, and failure to obtain certification as a CPG and proper insurance before accepting the appointment to service as guardian; dismissed for no actionable conduct. SOP 401.3, 402.1, 406.1, 409.1 and 411.1.

CPGB 2013-035 [Spokane County], alleged that the IP improperly took the IP's possessions; dismissed for no actionable conduct. SOP 409.1.

CPGB 2013-039 [King County], alleged that the CPG failed to communicate adequately with the family, provide the IP with needed medical care, or to arrange proper advance directives; dismissed for no actionable conduct. SOP 402.2, 404.1.2, 408.1 and 408.4.

CPGB 2013-040 [King County], alleged failure to pay the IP's cost of care; dismissed for no actionable conduct. SOP 409.1.

CPGB 2013-046 [Kitsap County], alleged that the CPG disposed of the IP's personal property without permission of the court; dismissed for no actionable conduct. SOP 409.1.

CPGB 2014-014 [Jefferson County], alleged that the CPG was not respecting the wishes of the IP nor his residential preferences, and that the CPG was stealing from the IP; dismissed for no actionable conduct. SOPs 403.1, 407.1 and 409.1.

CPGB 2014-015 [Clark County], alleged that the CPG failed to respect the preferences of the IP and of the family by pursuing an accessible fire/emergency exit for the IP from a new residence, and that the CPG reported the family to Adult Protective Services to retaliate against it for non-cooperation with putting an exit plan in place; dismissed for no actionable conduct. SOPs 403.1, 403.2, 403.3.

CPGB 2014-016 [Thurston County], alleged that the CPG reported the grievants to Adult Protective Services to harass them, that the CPG did not respect the wishes of the IP nor of the grievant's (family), and that the CPG had attempted to hire caregivers (the grievants) through an agency that was not licensed with the Department of Health; dismissed for no actionable conduct. SOPs 401.1, 402.1, 402.5 and 403.1.

CPGB 2014-044 [Pierce County], alleged that the CPG placed the IP in an inappropriate residential setting, failed to visit the IP for several months, failed to promptly apply for Medicaid to cover needed services, and failed to address the IP's medical needs; dismissed for no actionable conduct. SOPs 404.1, 407.1, 408.1 and 409.7.

CPGB 2015-012 [King County], alleged that the CPG had failed to make payments to the AFH but that she had paid herself guardian fees, also that the CPG did not provide the IP with personal items for the first few months after taking over the guardianship and that she did not return calls to family members; dismissed for no actionable conduct. SOPs 402.1, 408.4, 409.1 and 411.1.

CPGB 2015-019 [King County], alleged failure to arrange for dialysis as ordered by physician, with the result that IP went into kidney failure; dismissed for no actionable conduct. SOP 408.4.

CPGB 2015-025 [King County], alleged failure to arrange needed surgery, to have the IP's hygiene attended to, to provide timely access to cable, and to attend to problem with bed bugs; dismissed for no actionable conduct. SOPs 408.4 and 409.1.

CPGB 2015-065 [King County], alleged failure to consult with the IP about financial decisions, sale of the IP's residence against her will, placement of the IP in an inappropriate residence, and failure to assist the IP in ending the guardianship due to improvement; dismissed for no actionable conduct. SOPs 407.1, 409.1 and 411.1.

CPGB 2016-005 [King County], alleged failure of a non-certified guardian to properly manage the IP's financial affairs, and to comply with mandatory reporting requirements; dismissed for lack of jurisdiction. SOP 401.1 and 409.1.

CPGB 2016-008 [Skagit County], alleged failure of a lay guardian to provide DSHS with documents needed to maintain Medicaid eligibility; dismissed for lack of jurisdiction. SOP 409.1, 409.2 and 409.7.

CPGB 2016-009 [King County], alleged failure of CPG to respect the authority of family and friends to create and publish an obituary for the IP; dismissed for no actionable conduct. SOP 402.1.

CPGB 2016-011 [Whatcom County], alleged failure to take care of the financial affairs of a person who was not under a guardianship with due diligence; dismissed for lack of jurisdiction. SOP 409.1.

CPGB 2016-017 [Thurston County], alleged failure by a person who was not a certified professional guardian to treat a disabled person who was not the subject of a guardianship with respect and dignity; dismissed for lack of jurisdiction. The Board regulates only the conduct of certified professional guardians serving in a guardianship. SOP 403.2.

CPGB 2016-018 [King County], alleged failure of the CPG to turn over the deceased IP's mail and funds to the IP's widow; dismissed for no actionable conduct. SOP 402.1, and 409.1

CPGB 2016 021 [Kitsap County], alleged failure to respect the CP income of the IP's spouse and to consider the residential preferences of the IP; dismissed for no actionable conduct. SOPs 407.3, and 409.1.

CPGB 2016-022 [Clark County], alleged that the CPG had violated confidentiality regarding grievance information; dismissed for no actionable conduct. SOP 401.1, and 401.2.

CPGB 2016-023 [Lewis County], alleged failure for a guardian ad litem to protect the children in the custody case from the drug use of their mother; dismissed for lack of jurisdiction. SOP 404.1, and 404.1.1.

CPGB 2016-034 [Asotin County], alleged that applicant for certification as professional guardian had more than the statutorily allowed two cases; dismissed for no actionable conduct. SOP 401.1, General Rule 23.

CPGB 2016-042 [King County], alleged that a Lay Guardian was not available to give consent to kidney dialysis; dismissed for no jurisdiction. The Board does not regulate Lay Guardians. SOP 408.1.

CPGB 2016-045 [King County], alleged that the guardians had not protected the client's private information; dismissed for no actionable conduct. SOP 402. The same grievant submitted 2016-045; 046 and 047. The grievant filed a grievance against three different persons.

CPGB 2016-046 [King County], alleged that the guardians had not protected the client's private information; dismissed for no actionable conduct. SOP 402.5. The same grievant submitted 2016-045; 046 and 047. The grievant filed a grievance against three different persons.

CPGB 2016-047 [King County], alleged that the IP's attorney had not protected the client's private information; dismissed for no jurisdiction. The Board does not regulate attorneys. SOP 402.5. The same grievant submitted 2016-045; 046 and 047. The grievant filed a grievance against three different persons.

CPGB 2016-051 [Out of State], alleged that the IP's guardian had failed to pay the cost of care for a guardianship filed in the District of Columbia; dismissed for no jurisdiction. The Board does not regulate guardians in the District of Columbia, SOP 409.1.

CPGB 2016-059 [Kitsap County], alleged that the guardian was interfering with visitation from the grievant; dismissed for no jurisdiction. The Board does not regulate lay guardians. SOP 407.5.

CPGB 2016 063 [Thurston County], alleged that the lay guardian was not cooperating with the hospital social worker's efforts to place the IP in a suitable residential placement; dismissed for no jurisdiction. SOP 402.1 and 407.1

CPGB 2016 064 [Kitsap County], alleged that the lay guardian was no longer managing the person nor the finances of the IP; dismissed for no jurisdiction. SOP 404.1 and 409.1.

CPGB 2016 082 [Lewis County], alleged that the guardian ad litem was biased against the grievant; dismissed for no jurisdiction. SOP 406.1.

CPGB 2016 083 [Douglas County], alleged that the guardian ad litem had an undisclosed conflict of interest; dismissed for no jurisdiction. SOP 406.1.

CPGB 2016 085 [Benton County], alleged that the lay guardian was not complying with her duties; dismissed for no jurisdiction. SOP 401.1.

CPGB 2016-086 [Lewis County], alleged that the guardian ad litem treats the IP with disrespect and is exceeding his authority; dismissed for no jurisdiction. SOP 404.1 and 402.1.

CPGB 2016-101 [Spokane County], IP alleged that the lay guardian was not paying bills or giving her what was owed; dismissed for no jurisdiction. SOP 409.1.

CPGB 2016-102 [Spokane County], alleged that a trustee was not taking care of the IP's financial needs; dismissed for no jurisdiction. SOP 409.1.

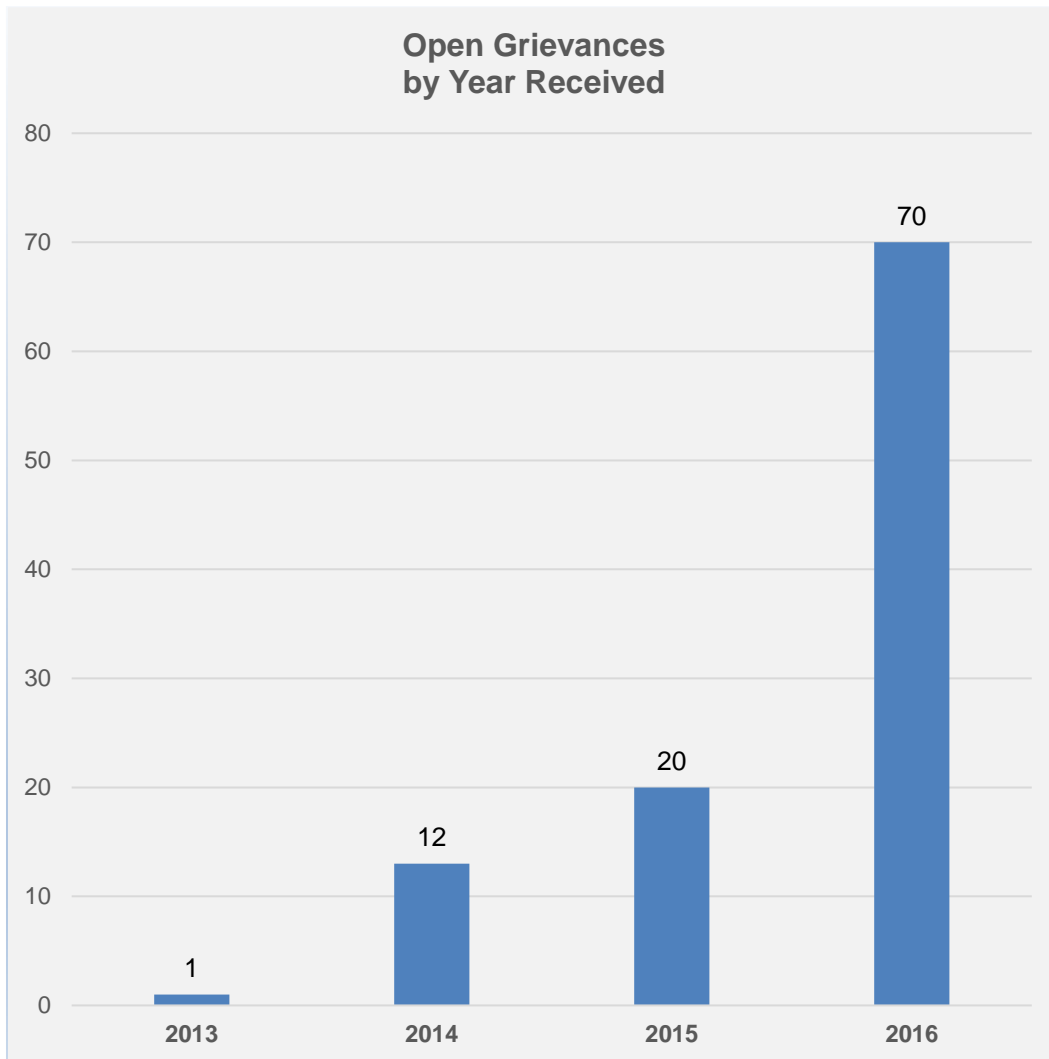
CPGB 2016-103 [Spokane County], alleged that a lay guardian was not providing for the care or financial needs of an IP; dismissed for no jurisdiction. SOP 409.1.

CPGB 2016-104 [Spokane County], the IP alleged that a guardian failed to take steps to end a guardianship after the IP's situation improved to the point that he could manage his own affairs; dismissed for no actionable conduct. SOP 411.1, 411.2 and 411.3.

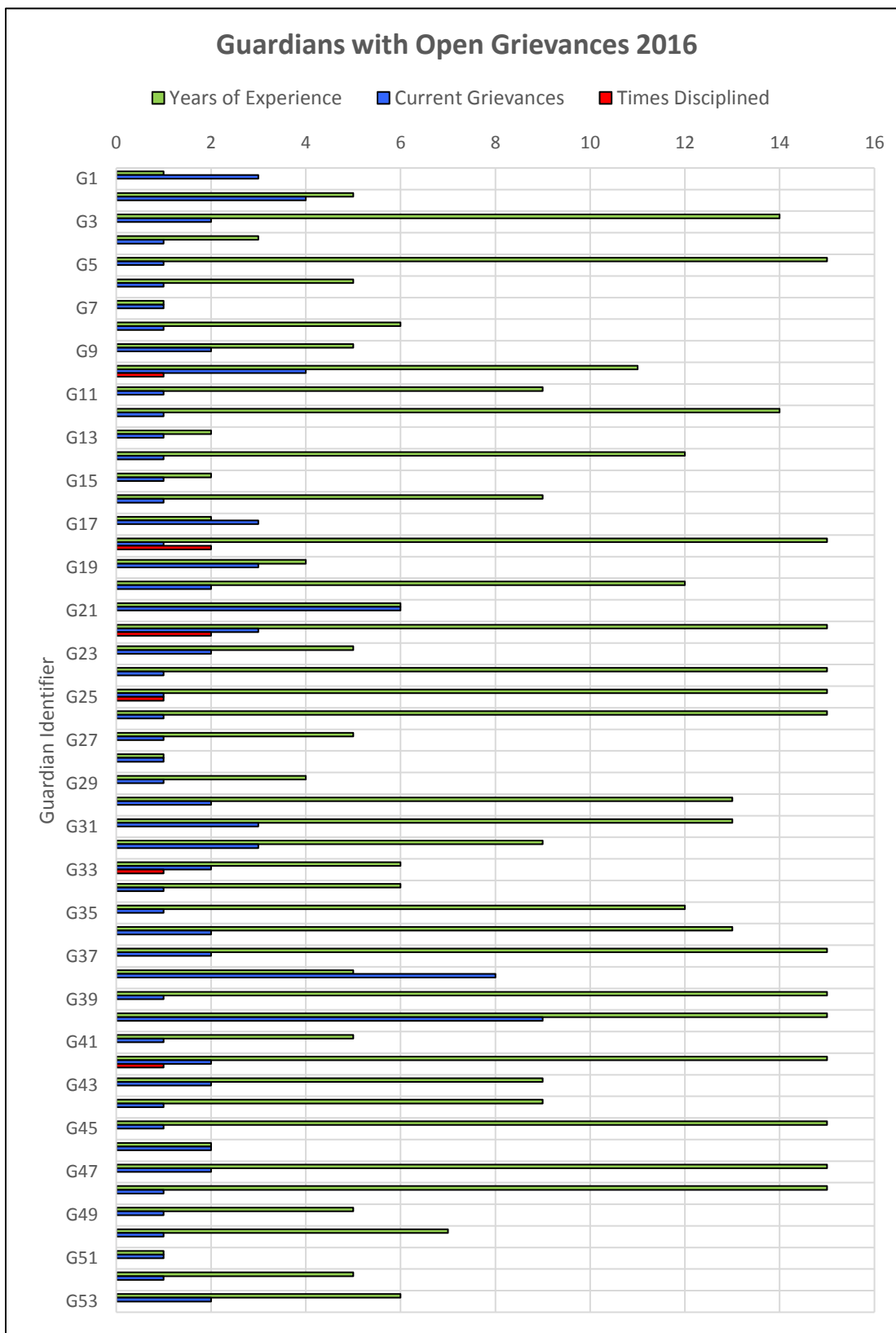
## **Voluntary Surrender Terminations**

CPGB 2015-059, 2016-003 and 2016-004. [King County], terminated following Voluntary Surrender of Professional Guardian Certification.

## Appendix A



## Appendix B



## Appendix C

### Summary of Guardianship Complaints Filed Since the Effective Date of the Complaint Process (RCW 11.88.120 – Effective July 24, 2015)

<b>COMPLAINTS RECIEVED</b>				
Dates	# Complaints Received	CPG	Lay Guardian	Unknown <sup>1</sup>
6/24/2015 to 12/31/2015	5	2	3	0
1/1/2016 to 12/31/2016	45	21	20	4
1/1/2017 to 2/16/2017	4	2	0	2

County Filed	6/24/2015 to 12/31/2015	1/1/2016 to 12/31/2016	1/1/2017 to 2/16/2017
<b>Adams</b>	0	0	0
<b>Asotin</b>	0	0	0
<b>Benton</b>	0	1	0
<b>Chelan</b>	0	0	0
<b>Clallam</b>	0	1	0
<b>Clark</b>	1	13	0
<b>Columbia</b>	0	0	0
<b>Cowlitz</b>	1	1	0
<b>Douglas</b>	0	0	0
<b>Ferry</b>	0	0	0
<b>Franklin</b>	0	0	0
<b>Garfield</b>	0	0	0
<b>Grant</b>	0	0	0
<b>Grays Harbor</b>	0	1	1
<b>Island</b>	0	0	0
<b>Jefferson</b>	0	0	0
<b>King</b>	1	10	3
<b>Kitsap</b>	1	8	0
<b>Kittitas</b>	0	0	0
<b>Klickitat</b>	0	0	0
<b>Lewis</b>	0	1	0
<b>Lincoln</b>	0	0	0
<b>Mason</b>	0	0	0
<b>Okanogan</b>	0	1	0
<b>Pacific</b>	0	0	0

<sup>1</sup> The Complaint Form was used in error. The form was used as a petition to request a guardianship



County Filed	6/24/2015 to 12/31/2015	1/1/2016 to 12/31/2016	1/1/2017 to 2/16/2017
Pend Oreille	0	1	0
Pierce <sup>2</sup>	0	0	0
San Juan	0	0	0
Skagit	0	1	0
Skamania	0	0	0
Snohomish	0	1	0
Spokane <sup>3</sup>	1	0	0
Stevens	0	0	0
Thurston	0	3	0
Wahkiakum	0	0	0
Walla Walla	0	0	0
Whatcom	0	2	0
Whitman	0	0	0
Yakima	0	0	0

ORDERS FILED <sup>4</sup>						
Dates	Complaints Rec.	Hearings Held	GAL Appointed	Dismissed Without a Hearing	Dismissed After a Hearing	Incomplete <sup>5</sup>
6/24/2015 to 12/31/2015	5	3	2	0	0	0
1/1/2016 to 12/31/2016	45	11	2	5	3	24
1/1/2017 to 2/16/2017	4	0	0	2	0	2

ORDERS FILED						
Dates	Complaints Rec.	1 - 7 Days	8 - 14 Days	15 - 21 Days	22 - 28 Days	29 – 35 Days <sup>6</sup>
6/24/2015 to 12/31/2015	5	3	0	1	0	1
1/1/2016 to 12/31/2016	45	26	7	2	2	4
1/1/2017 to 2/16/2017	4	2	0	0	0	0

<sup>2</sup> Pierce County does not use docket codes, so AOC is unable to use the codes to obtain any information about complaints filed in Pierce County.

<sup>3</sup> In 2016 the Spokane Monitoring Program processed 26 complaints. This information is not accessible using the complaint form.

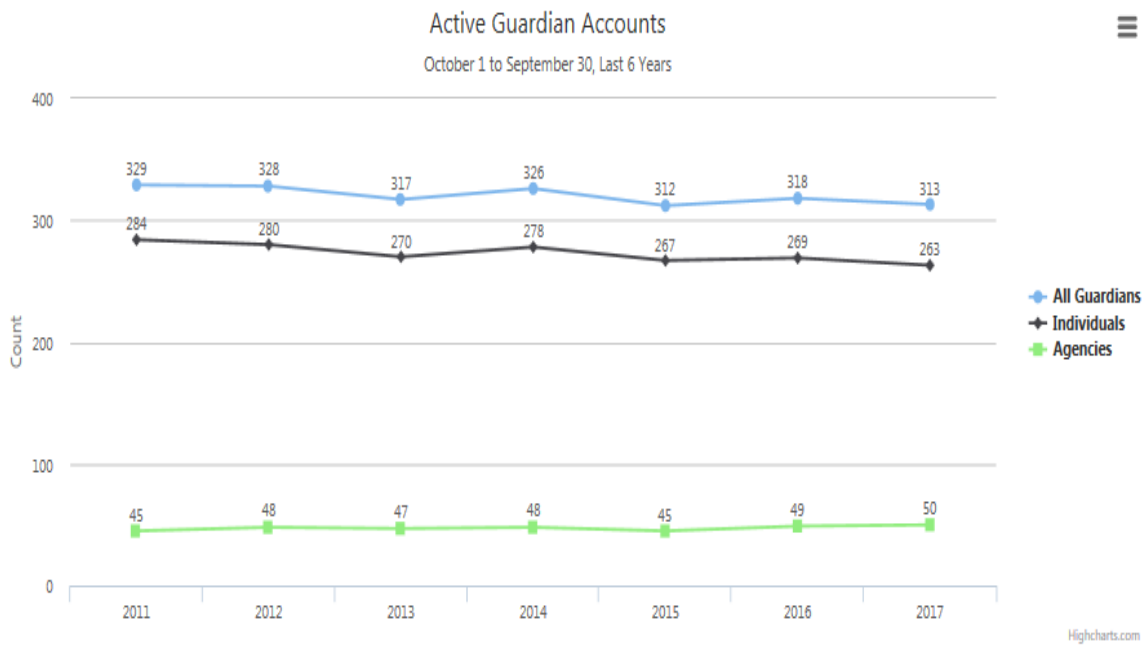
<sup>4</sup> A copy of each order would be needed to determine findings of fact and conclusions of law.

<sup>5</sup> An order was filed, but without a copy of the order, it was not possible to determine if a hearing was held, a GAL appointed or if the complaint was dismissed.

<sup>6</sup> Six orders were filed more than 35 days after receipt of the complaint.

## Appendix D

YEAR	TOTAL CPGs <sup>i</sup>	TOTAL GRIEVANCES OPENED <sup>ii</sup>	GRIEVANCE to CPG RATIO
2016	269	104	1 to 2.58
2015	269	65	1 to 4.13
2014	278	61	1 to 4.55
2013	270	56	1 to 4.82
2012	280	49	1 to 5.71
2011	284	45	1 to 6.31



<sup>i</sup> September 30

<sup>ii</sup> December 31

## Appendix E

Profession	Total Number	Complaints Received	Grievance to Professional	Disciplinary Actions Imposed	Complaints Closed with Sanction	Complaints Closed with no Action
Professional Guardians <sup>1</sup>	269	104	1 to 2.5	10	9.6%	90.4%
Attorneys <sup>2</sup>	31,126	2,081	1 to 15	74	3.5%	96.5%
LPN Nurses	9,826	719	1 to 13	404	56%	44%
RN	46,907	2,567	1 to 19	113	4%	96%
Physicians	27,001	3,339	1 to 8	164	5%	95%
Health Care Providers	428,116	22,519	1 to 9	10	9.6%	90.4%
Social Workers	133	21	1 to 6.33	0	0%	100%
Clinical Social Workers	4,082	139	1 to 29	12	9%	91%
Marriage and Family Therapist	1,555	68	1 to 23	4	6%	94%
Mental Health Counselor	6,584	328	1 to 20	26	8%	92%

Years: 2013 - 2015

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<sup>1</sup> 2016

<sup>2</sup> 2015