

2017

Certified Professional Guardianship Board



Grievance Report

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# CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD GRIEVANCE REPORT 2017

## INTRODUCTION

We are pleased to present the 2017 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 persons filing grievances.

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

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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.

actions needed to protect himself or herself. It is vital to protecting the public that a professional guardian's actions be open to review:

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. (SOP 402.4)

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.

### **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.

## How the Grievance Process Works

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

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. This may include 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.

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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.

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.

## **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 (14) 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 in cases is unlikely to reflect any decline in professional conduct by the CPGs (See Appendix C) but rather 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.

## **Public Records Procedures**

### **General Rule 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. However, these grievances are available by public records request.

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.



## **2017 Washington Legislative Changes Impacting Guardianship**

### **Uniform Power of Attorney Act**

The Washington Legislature adopted the Uniform Power of Attorney Act, RCW 11.125. This creates a comprehensive new chapter in Title 11 RCW. Addresses the execution, acknowledgment, termination, revocation, acceptance, and application of powers of attorney, and the designation, reimbursement, compensation, liability, and actions of agents (attorneys-in-fact). Details the authority of agents with respect to real property, tangible real property, stocks, bonds, and financial instruments; banks and other financial institutions, operation of businesses; personal and family maintenance; benefits from governmental programs; retirement plans; taxes; gifts; health care matters; and care of minor children.

A durable power of attorney can be used as a method of avoiding the filing of guardianship. A person concerned about a potential incapacity can sign a durable power of attorney which can be used by the designated agent to manage the above described types of property on behalf of the signor. A guardianship proceeding can be expensive and complicated, and does not provide for designation of the guardian by the person who is subject to the guardianship. The person subject to the guardianship no longer retains control over decision-making regarding his/her property and person, unlike the situation involving the durable power of attorney.

### **Guardianship Alternatives**

The Legislature added a provision requiring the guardianship court to modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of the incapacitated person. See RCW 11.88.120 (amended). This provision became effective July 23, 2017.

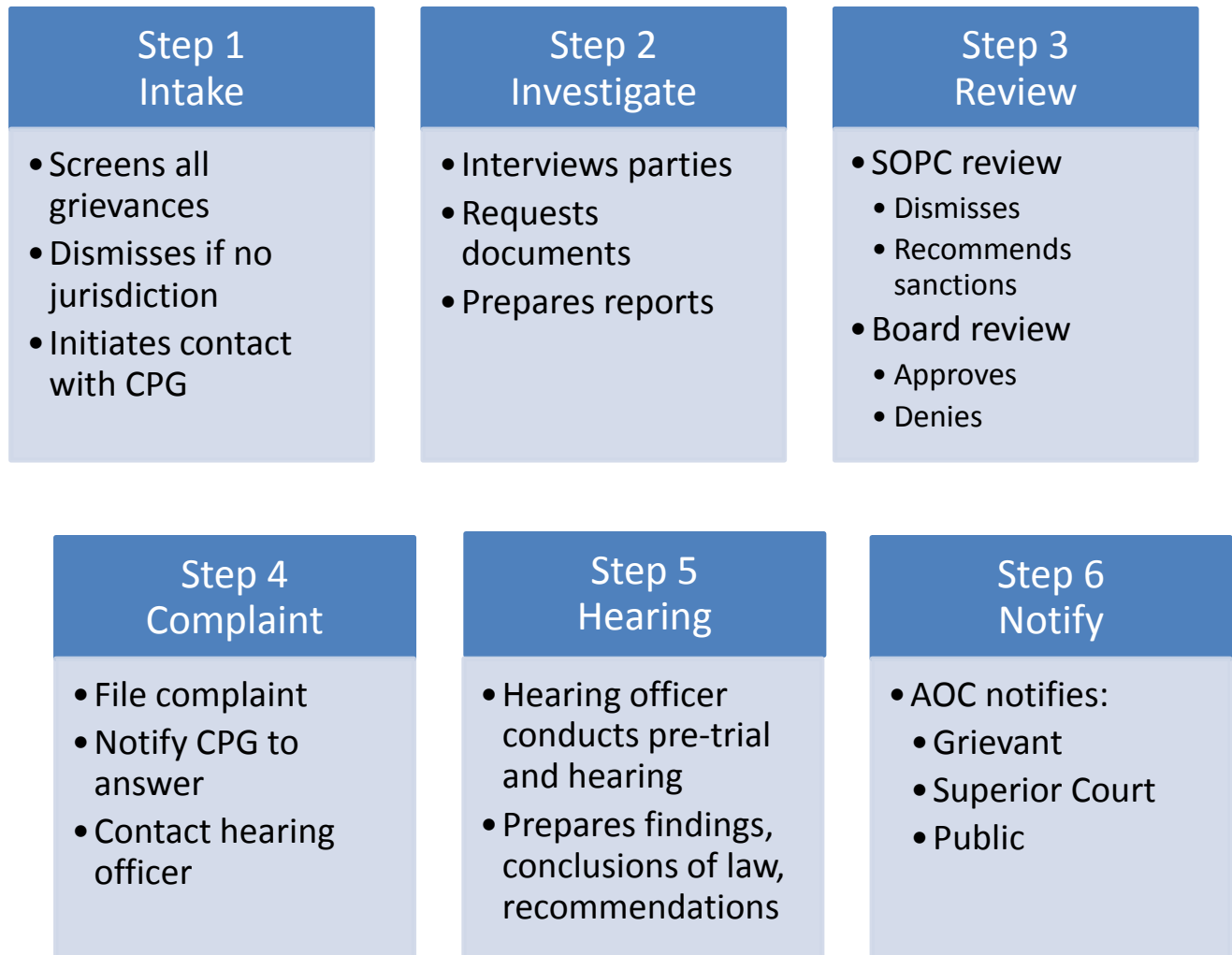
### **Right of Incapacitated Persons to Associate**

Guardians are prohibited from restricting an incapacitated person or other vulnerable adult from exercising their right to communicate, visit, interact, or otherwise associate with persons of the incapacitated person's or vulnerable adult's choosing. RCW 11.92.195 (new section), RCW 74.34.020 (amended).

### **Notice to be Given of Changes in an Incapacitated Person's Circumstances**

A guardian is required to inform certain persons within five business days after the incapacitated person; 1) makes a change in residence; 2) has been admitted to a medical facility for acute care; 3) has been treated in an emergency room setting or kept for hospital observations; or 4) dies.

## Flow Chart of Grievance Process



## 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 ongoing 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 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 additional 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. Termination is not based on an investigation and determination on the merits of a grievance. A termination of an open grievance serves primarily to conserve the Board's efforts when a CPG is no longer acting as a professional guardian and there is no longer a substantial risk of harm to the public.

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 Errors and Omissions insurance requirements.

A CPG may request to be placed on inactive status or to voluntarily surrender 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 of certification. If a CPG has opted to be on inactive status, or has voluntarily surrendered her or his certification, 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 2017

In 2017 the Board opened one hundred and four (104) grievances. Twenty-eight (28) cases were closed for lack of jurisdiction. Fourteen (14) cases involved lay guardians and nine (9) cases were complaints about a Guardian Ad Litem. In four (4) cases there was no jurisdiction because the underlying matter involved out of state court matters, and in one (1) case the Board was unable to determine that a guardianship existed. None of the cases dismissed for lack of jurisdiction involved a Certified Professional Guardian (CPG).

In addition to the cases closed for lack of jurisdiction discussed above, one (1) case was terminated due to the Voluntary Surrender of the Certified Professional Guardian (CPG). Another five (5) cases were investigated and closed by the end of the year for no actionable conduct. A total of thirty-four (34) grievances opened in 2017 were closed by the end of the year. Seventy (70) grievances remain requiring resolution. In 2017 there were two hundred and sixty-six (266) active professional guardians in Washington State. Grievances received in 2017 involved forty-nine (49) guardians or guardianship agencies, approximately 18% of the professional guardians in Washington State. Several guardians with multiple grievances in 2017 had additional grievances in other years.<sup>4</sup>

### 2017 CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES

<b>Grievances</b>	<b>2017</b>
Total Opened	104
Total Closed	33
Total Terminated	1
Total Needing Investigation	70

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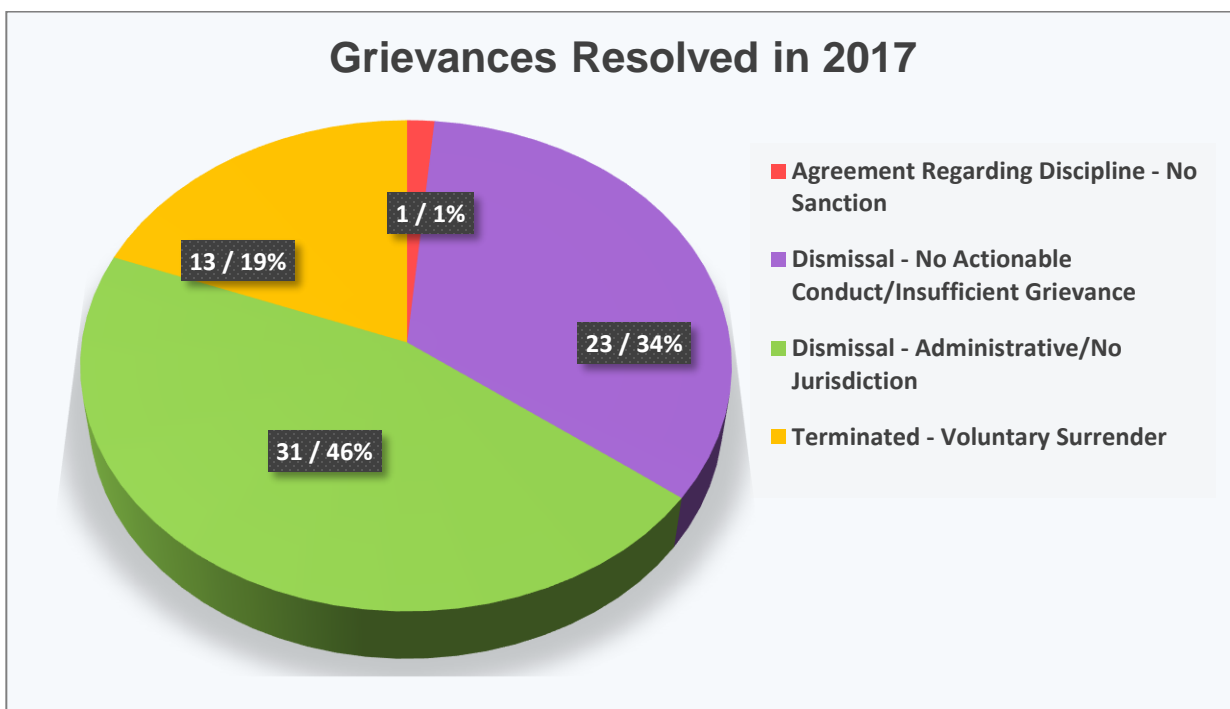
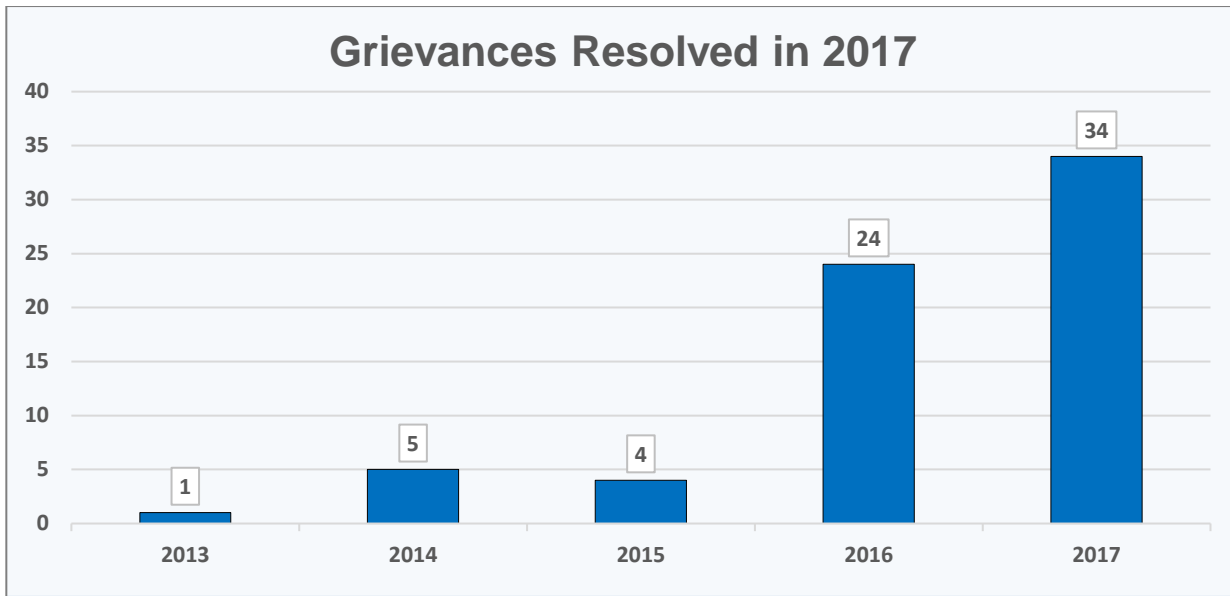
<sup>4</sup> A chart showing guardians/guardianship agencies with more than one grievance out of the Board's total pending grievances for 2017 is attached at Appendix B on Page 21.



## Resolution

Sixty-eight (68) grievances that had been received between 2013 and 2017 were closed in 2017. Fifty-four (54) of the grievances closed were dismissed; twenty-three (23) for no actionable conduct, and thirty-one (31) for lack of jurisdiction. Thirteen cases were terminated after three CPGs agreed to voluntarily surrender their certifications. One (1) case was terminated when the guardian entered into an Agreement Regarding Discipline with no sanction.

<b>Resolution</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Dismissal – No Jurisdiction				3	28	<b>31</b>
Dismissal – No Actionable Conduct		2	4	11	5	<b>22</b>
Dismissal – Insufficient Grievance				1		<b>1</b>
Admonishment						<b>0</b>
Reprimand						<b>0</b>
Suspension						<b>0</b>
Agreement Regarding Discipline – No Sanction	1					<b>1</b>
Terminated - Voluntary Surrender		3		9	1	<b>13</b>
Terminated - Administrative Decertification						<b>0</b>
Terminated - Decertification						<b>0</b>
<b>Total Closed</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>24</b>	<b>34</b>	<b>68</b>



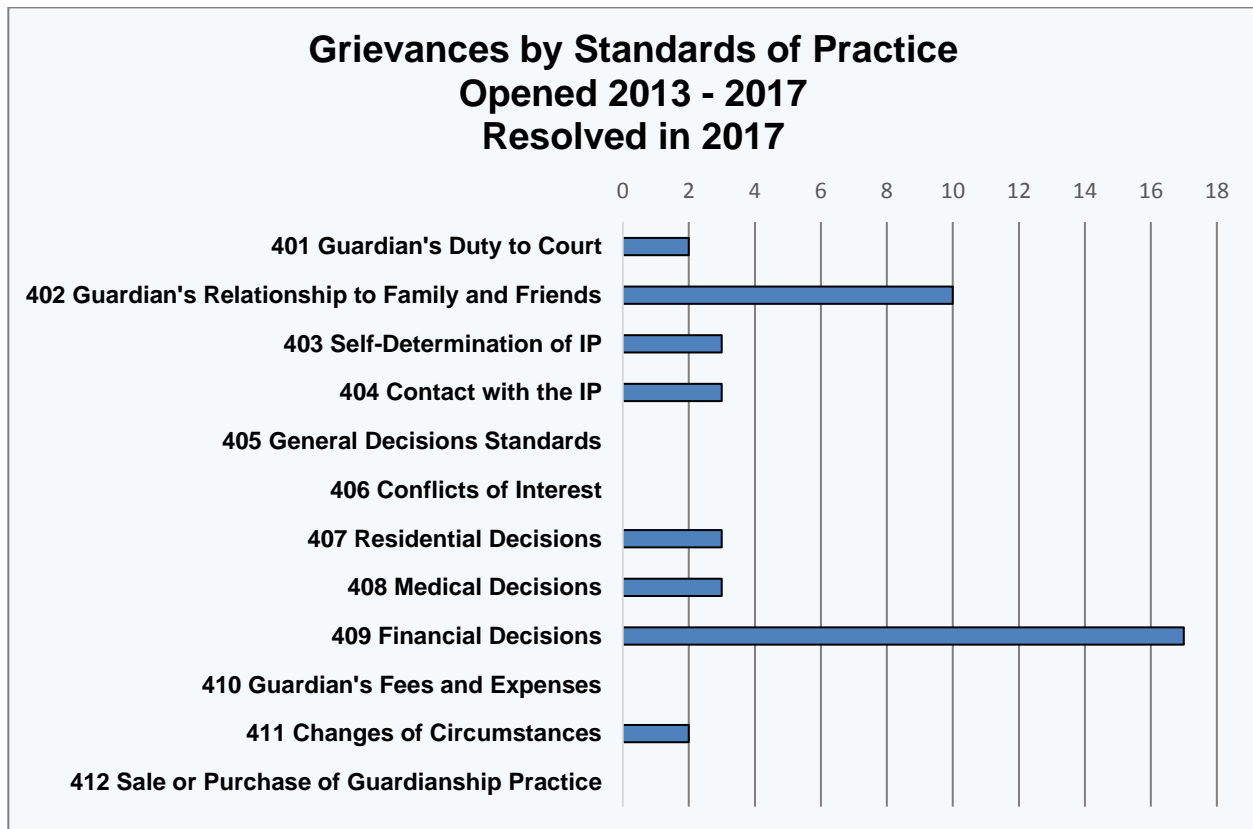
## Grievances by Standards of Practice

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)

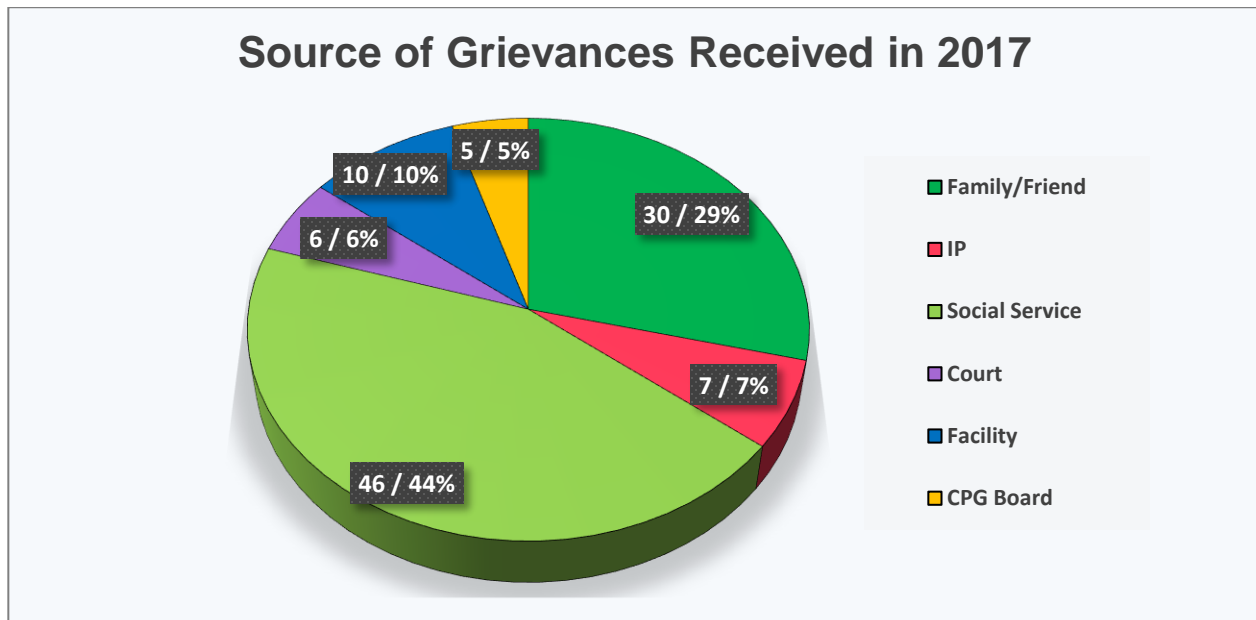
The Standards of Practice cover the broad range of a professional guardian's responsibilities. In 2017 the two largest number of grievance violations involved either the failure to manage the Incapacitated Person's financial affairs, or for the guardian to work cooperatively with family and friends.

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.



## Source 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.



In 2017, 44% 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 to submit 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.

The chart below shows the total number of grievances closed in 2017 by the year the grievance was opened. Grievances that proceed to hearing require substantially more time to resolve.

## **Grievance Case Summaries**

### **Pending Hearing**

The Board has combined four (4) grievances that are in Pending Hearing status. A hearing officer has been appointed to hear the matter 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 matter is discussed below.

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

### **Pending Disciplinary Action**

CPGB 2016-014, 2016-068, 2016-071 and 2017-019. The Board is working with the CPG on resolution of four grievances. Allegations of violation of SOP 402.1, 402.2, 402.6, 403.2, 408.4 and 409.1.

### **Grievances Resolved in 2017**

Below are brief summaries of the grievances investigated and closed by the Certified Professional Guardianship Board in 2017.

Agreements Regarding Discipline (sanctions) are of public record and posted on the Washington Courts website at: [http://www.courts.wa.gov/program\\_orgs/guardian/](http://www.courts.wa.gov/program_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. All grievances associated with a particular sanction are noted in each entry below.

### **Administrative Decertification**

There were no guardians with pending grievances decertified for administrative noncompliance in 2017.

### **Reprimand**

There were no guardians who were sanctioned with a Letter of Reprimand in 2017.

### **Admonishment**

There were no guardians who were sanctioned with a Letter of Admonishment in 2017.

## **Agreement Regarding Discipline, No Sanction**

CPGB No. 2013 042 Christopher Neil and Pacific Guardianship Services [CPG No.5485 and 5146] [Pierce County] entered into an Agreement that if the allegations made were proven at a hearing that the Board could conclude that they violated SOP 406.2, 406.3, and 410.2. Respondents agreed to advise the court and notice parties if Mr. Neil would represent both the IP and the Respondents in a guardianship, and not to charge fees for defending a grievance.

## **Dismissal**

CPGB 2014 050 [Pierce County], alleged that the CPG changed the medical provider that the IP had seen for twenty years against the wishes of the IP for the CPG's convenience; dismissed for no actionable conduct. SOP 403.2.

CPGB 2014 051 [King County], alleged that the CPG failed to follow through with calls from the facility regarding medical needs, had not removed a large item from the IP's room that impeded movement of his wheelchair for a two week period, and that the CPG threatened to move the IP when the facility called regarding the IP's needs; dismissed for no actionable conduct. SOP 402.1.

CPGB 2015 016 [Clark County], alleged that the IP was placed in an assisted living facility against his will, and that that CPG was not giving the IP notice and copies of all court hearings and filings; dismissed for no actionable conduct. SOP 407.3 and 403.5

CPGB 2015 017 [Pierce County ], alleged that the IP was charging the residential facility for handling their calls, that the CPG processed requests for funds slowly, and that the CPG refused to give the facility and the IP copies of accountings to review; dismissed for no actionable conduct. SOP 409.1, and 410.3.

CPGB 2015 034 [Cowlitz County], alleged that the CPG failed to communicate with the DSHS case manager regarding the IP's needs, did not return calls or emails and failed to appear for appointments, and did not follow through with needed documents and actions; dismissed for no actionable conduct. SOP 402.1 and 409.7

CPGB 2015 045 [Clark County], alleged, that the CPG did not ensure that the IP received adequate exercise, that the CPG had delayed getting the IP a wheelchair for a year, that the CPG had obtained a VAPO that interfered with her relationship with her daughter and that the CPG had not notified the Court that she had obtained a VAPO against a family member of the IP; dismissed for no actionable conduct. SOP 401.1, 409.1, and 402.1.

CPGB 2016 027 [Clark County], alleged that the CPG falsely labelled the IP as a "fall risk" and that she falsely accused the IP of taking money; dismissed for no actionable conduct. SOP 403.2.

CPGB 2016-030 [King County], alleged that the guardian had moved the IP from his family's home to his former home with his wife without notice to the family; dismissed for no actionable conduct. SOP 407.7.

CPGB 2016 032 [Thurston County], alleged that the guardian was seeking to sell the IP's home without permission and that he failed to pay the IP's cable bill; dismissed for no actionable conduct. SOP 409.1, and 409.4.

CPGB 2016 037 [Clark County], alleged that the IP was being held against her will in a nursing facility; dismissed for no actionable conduct. SOP 403.2, 407.1.

CPGB 2016 050 [Snohomish County], alleged that the CPG agency website lists the name of a case manager as a CPG who was not a CPG; dismissed for no actionable conduct. GR 23(d)(10), SOP 401.1.

CPGB 2016 053 [Clark County], alleged that the CPG was not paying the IP's bills, nor giving the IP the court-ordered discretionary funds; dismissed for no actionable conduct. SOP 409.1.

CPGB 2016 055 [Clark County], IP alleged that the CPG had interfered with her relationship with her husband by obtaining a VAPO and that the CPG had not assisted her to end the guardianship when the facts showed that she did not need a guardian; it was also alleged that the CPG had not notified the court after she had obtained a VAPO against the IP's husband, and that the CPG had not conducted background checks for her husband although he was performing services for the IP for the guardian; dismissed for no actionable conduct. SOP 404.1, 402.1, 403.2, 404.4, 411.1, 411.4, and RCW 11.92.043(3)

CPGB 2016 057 [King County], IP alleged that she did not like her guardian and had not chosen her; dismissed for insufficient grievance. SOP 403.1.

CPGB 2016 062 [King County], alleged guardian failed to appear in response to file on the guardian's report; dismissed for no actionable conduct. SOP 401.1.

CPGB 2016 072 [Clark County], DSHS social worker alleged that the IP failed to provide needed verification in a timely manner; dismissed for no actionable conduct. SOP 409.7.

CPGB 2016 075 [King County], alleged guardian sold property without grievant's/IP's permission and IP unable to discuss issue with guardian; dismissed no actionable conduct. SOP 403.2, 407.3, 403.5.

CPGB 2016 078 [King County] alleged that grievant did not receive copies of notices or pleadings pertaining to sale of real property, that guardian interfered with sale of real property and that guardian charged excessive fees; dismissed no actionable conduct. SOP 401.1, RCW 11.88.095(2)(j), 402.2, 410.2.

CPGB 2016 091 [out of State of Washington], alleged that the guardian was not acting in the best interest of the IP in not terminating the guardianship and removing the IP from mental health system; dismissed for no jurisdiction. SOP 411.1.

CPGB 2016 093. [out of State of Washington], alleged that the IP's money is not being spent on the IP but are being depleted; dismissed for no jurisdiction. SOP 409.1.

CPGB 2016 094 [Kitsap County], alleged that lay guardian did not treat the IP with respect; dismissed for no jurisdiction. SOP 403.2.

CPGB 2017 001 [Thurston County], alleged failure of a Certified Professional Guardian to respect an IP; dismissed for no jurisdiction. SOP 403.2.

CPGB 2017 006 [Kittitas County], alleged that the guardian kept the incapacitated person in the hospital from 12.29.2016 to at least 01.18.2017, and was unhelpful in finding the incapacitated person residential placement; dismissed for no actionable conduct. SOP 404.1.2, 404.1.3.

CPGB 2017 009 [Clark County], alleged failure of a Lay Guardian to file court ordered accounting reports; dismissed for no jurisdiction. SOP 401.1.

CPGB 2017 012 [Pierce County], alleged failure of a Guardian Ad Litem to listen to the concerns of the father of the children whose custody was being determined; dismissed for no jurisdiction. SOP 402.2.

CPGB 2017 018 [Clark County], alleged failure of a Lay Guardian to protect the IP from physical abuse; dismissed for no jurisdiction. SOP 404.1.

CPGB 2017 021 [Spokane County], alleged failure for lay guardian to pay for necessary medical assessments and to send pleadings to a family member who had filed a Request for Special Notice; dismissed for no jurisdiction. SOP 401.1, 409.1.

CPGB 2017 022 [Clallam County], alleged that the IP is being financially exploited by her lay guardian; dismissed for no jurisdiction. SOP 406.1, 406.2 and 409.1.

CPGB 2017 023 [Clark County], alleged that the CPG had changed the IP's insurance to one that would not cover her treating physician, that the CPG doesn't tell her when her medical appointments are, that there is confusion about when her next appointment is, and that the CPG is often on vacation or ill when she tries to reach her; dismissed for no actionable conduct. SOP 402.1, 402.1, 403.2, and 407.3.

CPGB 2017 024 [Spokane County], IP alleged that his lay guardian was threatening to make false charges to the police regarding his conduct and was misappropriating his money; dismissed for no jurisdiction. SOP 401.1, 406.1, 406.2, and 409.1.

CPGB 2017 035 [Clark County], hospital social worker alleged that she could not reach the guardian ad litem to get assistance with placing the IP in another more appropriate facility; dismissed for no jurisdiction. SOP 402.1.

CPGB 2017 036 [Thurston County], APS relayed a complaint to the Board that a lay guardian would not move the IP closer to her family, and was not ensuring that the IP received adequate medical care; dismissed for no jurisdiction. SOP 408.1.

CPGB 2017 041 [Pierce County], Father complained that minor put into her mother's care without monitoring or imposing conditions without a fair and impartial investigation; dismissed for no jurisdiction. SOP 402.3.

CPGB 2017 042 [Grays Harbor County], APS allegation that guardian will not allow IP to receive mental health therapy; dismissed for no jurisdiction SOP 402.3, 402.6.

CPGB 2017 045 [Spokane County], alleged failure of lay guardian to appropriately use the IP's funds and to protect the IP; dismissed for no jurisdiction. SOP 409.1, 404.1.1.

CPGB 2017 049 [Spokane County], alleged failure of lay guardian to protect the IP from financial exploitation; dismissed for no jurisdiction. SOP 409.1.



CPGB 2017 052 [King County], alleged failure of guardian to pay the correct amount of spousal allowance for several months, and to not appeal unfavorable DSHS letters; dismissed for no actionable conduct. SOP 409.1, 409.7.

CPGB 2017 053 [Clark County], alleged failure of guardian to diligently order termination of life support for IP; dismissed for no actionable conduct. SOP 408.5.

CPGB 2017 056 [Pierce County], alleged failure of lay guardian to pay a skilled nursing facility when the IP lacked the funds to pay; dismissed for no jurisdiction. SOP 409.1

CPGB 2017 062 [not applicable], alleged failure of GAL to ensure due process to the mother of children subject to a child custody proceeding; dismissed for no jurisdiction. SOP 409.1.

CPGB 2017 065 [Lewis County], alleged failure of a GAL to pursue Medicaid applications; dismissed for no jurisdiction. SOP 409.7.

CPGB 2017 071 [Clark County], alleged failure of Lay Guardian to pay IP participation at AFH; dismissed for no jurisdiction. SOP 409.1.

CPGB 2017 072 [Pierce County], alleged failure of a GAL to listen to the father in a custody dispute; dismissed for no jurisdiction. SOP 402.1.

CPGB 2017 074 [Spokane County], alleged failure of a GAL to do a thorough investigation in a custody matter; dismissed for no jurisdiction. SOP 401.1.

CPGB 2017 078 [not applicable], alleged failure of a guardian in New Hampshire to respect the IP's preferences and rights; dismissed for no jurisdiction. SOP 403.1.

CPGB 2017 083 [Thurston County], alleged failure of a GAL to do a thorough investigation in a custody matter; dismissed for no jurisdiction. SOP 401.1.

CPGB 2017 084 [Thurston County], alleged failure of a GAL to complete reports in a custody matter as ordered by the Court; dismissed for no jurisdiction. SOP 401.1.

CPGB 2017 085 [Thurston County], alleged failure of a CPG to visit the IP where the Court had not yet appointed the guardian; dismissed for no jurisdiction. SOP 404.1.

CPGB 2017 086 [not applicable], alleged failure of a GAL to ensure proper care of a child in a custody matter in Pennsylvania; dismissed for no jurisdiction. SOP 404.1.

CPGB 2017-092 [Pierce County], alleged failure of guardians to cooperate with medical providers in providing preferred medical treatment for the IP; dismissed for no actionable conduct. SOP 402.1, 408.1.

CPGB 2017 093 [not applicable], alleged failure of a GAL to conduct a proper investigation; dismissed for no jurisdiction. SOP 401.1.

CPGB 2017-098 [Cowlitz County], alleged that GAL was biased towards the other parent and was covering up his illegal and criminal actions; dismissed for no jurisdiction. SOP 406.1.

CPGB 2017-099 [King County], alleged that the co-guardians were neglecting the IP and that the IP's behaviors were getting more erratic and self-destructive but that the co-guardians did not monitor IP nor take any action even after complaints by neighbors and apartment management; dismissed for no jurisdiction. SOP 402.2, 404.1.1.

CPGB 2017-102 [Whatcom County], alleged that the Lay Guardian was financially exploiting the IP by failing to give the IP all of her money monthly and by not providing her with sufficient money for food, and that in addition she restricted her social activities without good cause; dismissed for no jurisdiction. SOP 409.1, 403.2.

### **Voluntary Surrender Termination**

CPGB 2014 001 [Spokane County], terminated following Voluntary Surrender of Professional Guardian Certification.

CPGB 2014-024 [Spokane County], terminated following Voluntary Surrender of Professional Guardian Certification.

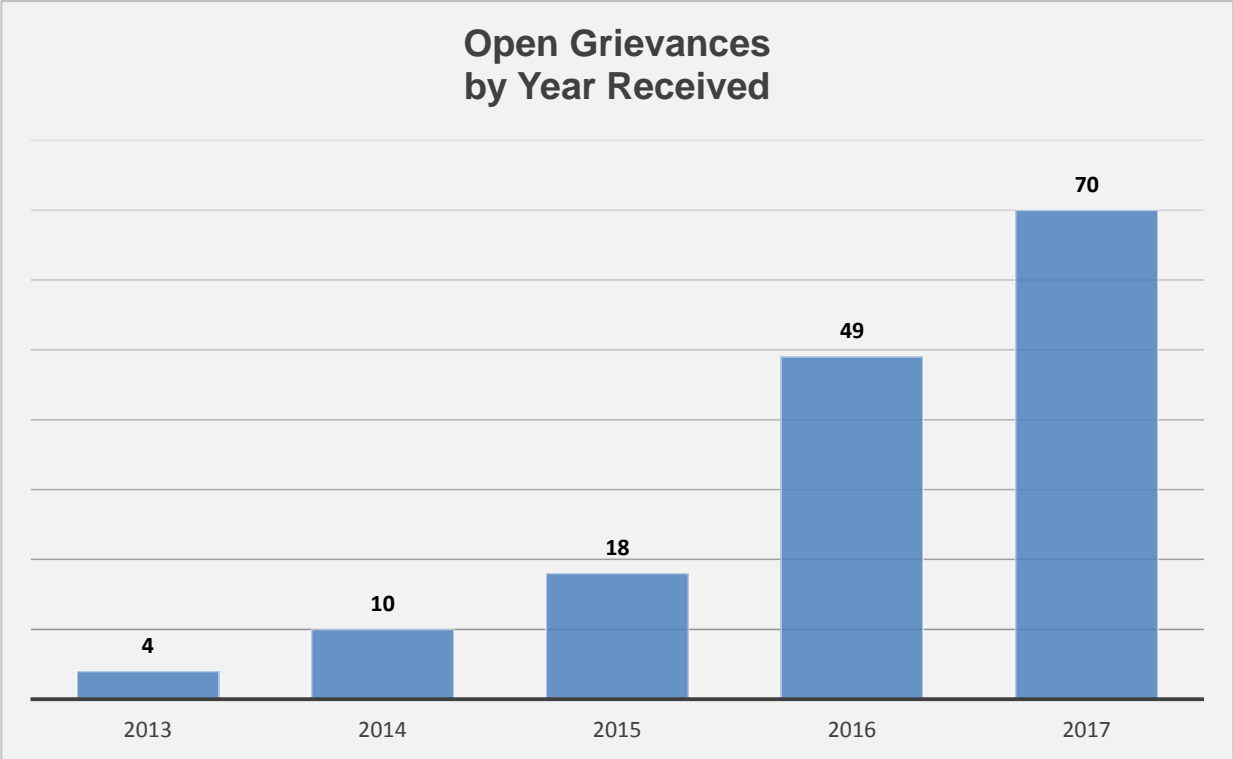
CPGB 2014-041 [Snohomish County], terminated following Voluntary Surrender of Professional Guardian Certification.

CPGB 2016-012, 2016-049, 2016-095, 2016-096, 2016-097, 2016-098, 2016-099 and 2016-100 [Spokane County], terminated following Voluntary Surrender of Professional Guardian Certification.

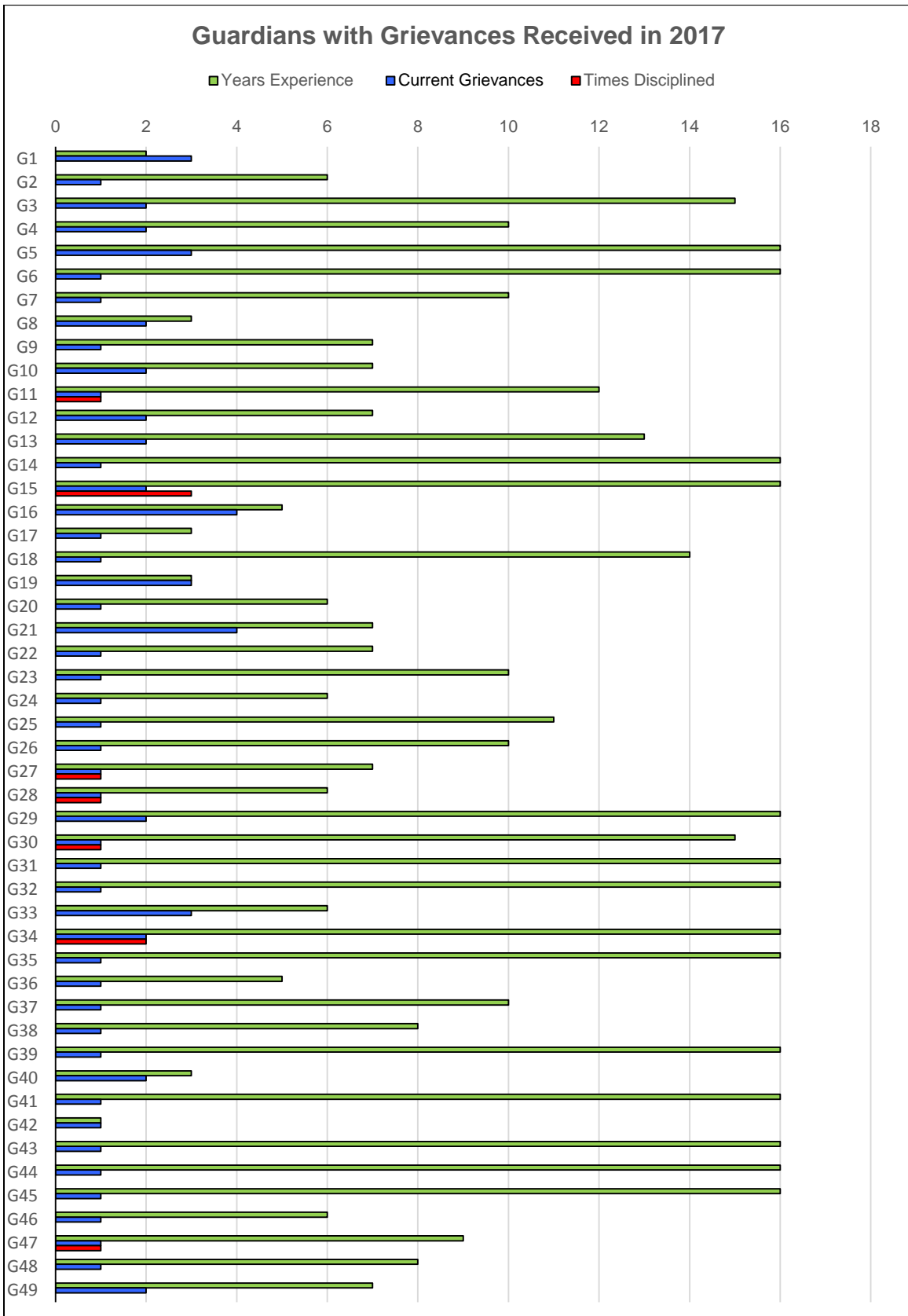
CPGB 2016-084 [Yakima County], terminated following Voluntary Surrender of Professional Guardian Certification.

CPGB 2017-044 [Spokane 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 12/31/2017	47	21	26	0

County Filed	1/1/2017 to 12/31/2017
<b>Adams</b>	0
<b>Asotin</b>	0
<b>Benton</b>	0
<b>Chelan</b>	0
<b>Clallam</b>	1
<b>Clark</b>	15
<b>Columbia</b>	0
<b>Cowlitz</b>	2
<b>Douglas</b>	0
<b>Ferry</b>	0
<b>Franklin</b>	0
<b>Garfield</b>	0
<b>Grant</b>	5
<b>Grays Harbor</b>	6
<b>Island</b>	0
<b>Jefferson</b>	0
<b>King</b>	9
<b>Kitsap</b>	3
<b>Kittitas</b>	0
<b>Klickitat</b>	0
<b>Lewis</b>	0
<b>Lincoln</b>	0
<b>Mason</b>	0
<b>Okanogan</b>	0
<b>Pacific</b>	0

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

County Filed	1/1/2017 to 12/31/2017
Pend Oreille	0
Pierce <sup>2</sup>	1
San Juan	0
Skagit	0
Skamania	0
Snohomish	1
Spokane <sup>3</sup>	5
Stevens	0
Thurston	2
Wahkiakum	0
Walla Walla	0
Whatcom	0
Whitman	0
Yakima	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>
7/24/2015 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 12/31/2017	47	10	7	10	5	15

ORDERS FILED						
Dates	Complaints Rec.	1 - 7 Days	8 - 14 Days	15 - 21 Days	22 - 28 Days	29 – 35 Days <sup>6</sup>
7/24/2015 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 12/31/2017	47	21	4	0	2	3

<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.