CERTIFIED PROFESSIONAL GUARDIAN BOARD

FIDUCIARY SERVICES FOUNDATION, CPGA No. 5135, AND OWEN WALES, CPG No. 5314	)	**CPGB No. 2005-009** **AGREEMENT REGARDING DISCIPLINE AND STIPULATED FINDINGS** ***Disciplinary Regulation 514***

The parties, Fiduciary Services Foundation (FSF), a certified professional guardian agency, and Owen Wales (Mr. Wales), a certified professional guardian, and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. FSF and Mr. Wales have committed violations of the Standards of Practice for Certified Professional Guardians resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian record of FSF and Mr. Wales and will be a public record and subject to public access.

1. JURISDICTION

1.1 At all times relevant herein, FSF was a certified professional guardian agency (CPGA) pursuant to General Rule (GR) 23, CPGA No. 5135.

ORIGINAL

1.2 At all times relevant herein, Mr. Wales was a certified professional guardian (CPG) pursuant to GR 23, CPG No. 5314.

2. STATEMENT OF FACTS

2.1 During the time period of June 16, 2000 to January 17, 2001, the two designated certified professional guardians of FSF were Owen Wales and Albert Maimon. During the time period of January 17, 2001 to March 8, 2004, the two designated certified professional guardians of FSF were Owen Wales and Allan Wales[1]. On March 8, 2004, Stacy Wikle and Jason Woehler were appointed as designated guardians of the agency. The conduct which is the subject of this complaint occurred during the time period when Owen Wales and Allan Wales were the designated certified professional guardians of FSF.

2.2 On May 13, 1986, the Snohomish County Superior Court appointed Fiduciary Services Foundation as the guardian of the estate in Snohomish County Superior Court Case No. 78-4-00246-9. Fiduciary Services Foundation remained the guardian of the estate until it was dismissed, but not discharged by the court on September 23, 2004.

2.3 On May 26, 2005, the Snohomish County Superior Court issued an order in which the court concluded that Fiduciary Services Foundation had breached its fiduciary duty to the incapacitated person by failing to make full, complete, and accurate disclosures of expenditures, by failing to obtain court permission prior to making a gift, by failing to investigate the reasonableness of rental expenditures, and by failing to investigate the reasonableness of maintenance expenditures.

2.4 FSF and Mr. Wales did not view or inspect the home the incapacitated person rented prior to the incapacitated person's move into the home which occurred on or about October 2001. FSF and Mr. Wales did not view or inspect the home until Mr. Wales did so on December 2, 2003. On May

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[1] Allan Wales was decertified for noncompliance with continuing education requirements on August 10, 2004.

26, 2005, the court found that FSF failed to visit the incapacitated person or conduct an inspection of his new residence.

2.5 In its November 8, 2004 Memorandum of Prior Guardian, FSF stated that the incapacitated person contributed $2000 towards the closing costs for his brothers' purchase of the home in which the incapacitated person resided. In an October 9, 2001 letter, the Veteran's Administration stated that it had no objection to the expenditure of $2000 towards the deposit on the house. However, in its accounting filed on May 13, 2002, FSF reported the $2000 as a gift. FSF did not seek court approval prior to gifting these funds from the incapacitated person's estate.

2.6 On or about May 16, 2005, FSF filed a motion for reconsideration of the court's May 4, 2005 order. On May 26, 2005, the court denied the motion for reconsideration.

2.7 On or about July 1, 2005, FSF filed a written disclosure statement with the Board stating that there had been findings by a court that the guardian had breached its fiduciary duty to the incapacitated person, that the agency had been removed as guardian by court order, and that there was a judgment entered against the agency resulting from performance of services.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the alleged facts set forth in paragraphs 2.1 through 2.7 above, FSF and Mr. Wales violated RCW 11.92.040, RCW 11.92.140, SOP 401.4, 401.16, 403, 403.2, 406, and 406.6, which provide in pertinent part:

> **RCW 11.92.040** It shall be the duty of the guardian or limited guardian of an estate:
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> . . . .
>
> (4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law. . . .
>
> **RCW 11.92.140** The court, upon the petition of a guardian of the estate of an incapacitated person . . .may authorize the guardian to . . . to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person. . . between the standards and a statute, timely direction shall be sought from the court. . . .
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> **SOP 401.4** The guardian shall not act outside of the authority granted by the court.

SOP 401.16 Guardians of the Estate only shall maintain meaningful in-person contact with their clients as necessary to verify the individual's condition and status and that financial arrangements are appropriate.

SOP 403 The guardian shall exhibit the highest degree of trust, loyalty, attentiveness, and fidelity in relation to the incapacitated person.

SOP 403.2 All expenses paid or incurred on behalf of the incapacitated person by the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare.

SOP 406 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest.

SOP 406.6 When the available estate of the incapacitated person is sufficient, the guardian may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the incapacitated person, bearing in mind both foreseeable requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such gifts, including tax consequences.

3.2 Based on the alleged facts and alleged violations set forth above, Mr. Wales and FSF's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board

. . .

(2) Duties and Powers.

. . .

(viii) Grievances and Discipline. 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, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

DR 503 A professional guardian may be subject to disciplinary action for any of the following:

DR 503.1 Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

DR 503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

DR 503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

4. AGGRAVATING AND MITIGATING FACTORS

Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating factors in determining the sanctions to be imposed.

4.1 Aggravating Factors. Substantial experience as a guardian.

4.2 Mitigating Factors. Absence of dishonesty or selfish motives, restitution, absence of prior and subsequent disciplinary record, isolated incident, not likely to recur, remoteness of misconduct, and self-reported.

5. PRIOR RECORD OF DISCIPLINE

FSF and Mr. Wales have no prior record of discipline with the Board.

6. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on FSF and Mr. Wales for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

6.1 Reprimand. The Board hereby imposes a letter of reprimand on Owen Wales as a disciplinary sanction for the conduct as described in this Agreement. This Agreement constitutes the letter of reprimand.

6.2 Admonishment. The Board hereby imposes a letter of admonishment on Fiduciary Services Foundation as a disciplinary sanction for the conduct as described in this Agreement. This Agreement constitutes the letter of admonishment.

7. NOTICE

This Agreement shall be retained by the AOC in FSF's and Mr. Wales disciplinary files. This Agreement shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

8. ENTIRE AGREEMENT

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

9. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

10. LAWS GOVERNING

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.

11. RIGHT TO COUNSEL

FSF and Mr. Wales acknowledge that each has the right to individual counsel for representation in this disciplinary matter, at the guardian's or agency's own expense, as set forth in Disciplinary Regulation 509.1.

12. PRESENTATION OF AGREEMENT TO THE BOARD

FSF and Mr. Wales understand that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, FSF and Mr. Wales waive any

objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation.

The Standards of Practice Committee reserves the right to withdraw this offer of settlement at any time prior to presentation to the Board.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:

Owen Wales, CPG No. 5314, — Date: 6-3-09

Jason Woehler, CPG No. 10260, Designated CPG of FSF Attorney for FSF — Date: 6-3-09

/s/ See Attached
Stacy Wikle, CPG No. 9706, Designated CPG of FSF — Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

_____ DAY OF _____, 2009.

Hon. Kimberley Prochnau
Chair, Certified Professional Guardian Board

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10 **DAY OF** August **, 2009.**

Hon. Kimberley Prochnau
Chair, Certified Professional Guardian Board