

CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF:

**MALAVOTTE & ASSOCIATES
SERVICES, CPGA No. 5141 AND
SCOTT E. MALAVOTTE, CPG No.
6072**

CPGB NO. 2007-017

On December 29, 2008, the Certified Professional Guardian Board closed this matter based on the guardian and agency compliance with the requirements of the Settlement Agreement Regarding Discipline, dated May 12, 2008.

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

Malavotte & Associates Services,)	PGB No. 2007-017
CPGA No. 5141 and Scott E.)	DISCIPLINARY SETTLEMENT
Malavotte, CPG No. 6072)	AGREEMENT AND STIPULATED
)	FINDINGS

DISCIPLINARY SETTLEMENT AGREEMENT AND STIPULATED FINDINGS

The parties, Scott E. Malavotte (Mr. Malavotte), a certified professional guardian, CPG No. 6072, and Malavotte & Associates Services (MAS), a certified professional guardian agency No. 5141, and the Certified Professional Guardian Board (Board) enter into this Disciplinary Settlement Agreement (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. MAS and Mr. Malavotte 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 part of the permanent professional guardian licensing records of MAS and Mr. Malavotte and shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all Superior Courts.

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I. STATEMENT OF FACTS

A. On or about July 18, 2007, the Board opened a grievance based on receipt of a letter. Pursuant to the Disciplinary Regulations for Certified Professional Guardians (DR), the grievance was investigated by a Review Panel appointed by the Board's Chairperson. The Review Panel has recommended that the Board enter into this Agreement with MAS and Mr. Malavotte in resolution of the grievance.

B. At all times relevant herein, Mr. Malavotte was a certified professional guardian (CPG) pursuant to General Rule of Court (GR) 23, licensed as CPG #6072.

C. At all times relevant herein, MAS was a certified professional guardian agency (CPGA) pursuant to General Rule of Court (GR) 23, licensed as CPG #5141.

D. On June 7, 2007, MAS petitioned for guardianship of the person and estate of D. . . . The petition nominated MAS as guardian. . . . D was living at an adult family home. He had an income of approximately \$2700/month. The petition stated that D . . . had a son who was his attorney in fact and was believed to be improperly exercising his authority. The petition stated that D . . . may have dementia.

E. On June 7, 2007, MAS filed a Declaration of Proposed Guardian in which MAS stated:

1. The proposed guardian had not reviewed the AIP's file or medical records;
2. The proposed guardian had not met with the AIP and did not plan to until it was appointed as guardian;
3. This was the first referral received from the adult family home;

1 4. The proposed guardian does not have and has not had any financial
2 relationship with the adult family home; and

3 5. David Friend has represented the proposed guardian since 1992 and does
4 not represent the adult family home.

5 F. On September 12, 2007, MAS was appointed as full guardian of the person
6 and estate. The order stated that "The guardian shall not provide copies of any material
7 filed with the court nor provide notice of hearings in the guardianship to the
8 incapacitated person." The order was entered without any findings as to why *D*
9 would not be provided copies of material.

10 G. On July 9, 2007, MAS petitioned for guardianship of the person and estate of
11 *B*. The petition nominated MAS as guardian. *B* was living at a
12 care facility. The petition indicated that *B*'s income was unknown and that
13 her assets consisted of basic household items and furniture. The petition stated that
14 *B* did not have an attorney in fact or any alternative plans in place for
15 management of medical, health care or financial decisions. The petition stated that
16 *B* had family members in Southern California, but it was not known if they were
17 able or willing to be guardian.
18

19 H. On July 9, 2007, MAS filed a Declaration of Proposed Guardian in which MAS
20 stated:

- 21 1. The proposed guardian had not reviewed the AIP's file or medical records;
22 2. The proposed guardian had not met with the AIP and did not plan to until it
23 was appointed as guardian;
24
25

1 3. The proposed guardian had received numerous referrals from the care
2 facility during the last ten years;

3 4. The proposed guardian does not have and has not had any financial
4 relationship with the care facility; and

5 5. David Friend has represented the proposed guardian since 1992 and does
6 not represent the care facility.

7 I. On August 24, 2007, the petition was dismissed because *B* passed
8 away. MAS and petitioning attorney did not request ~~ne~~ fees or cost reimbursement.

9 J. On November 9, 2006, MAS petitioned for guardianship of the person and
10 estate of *M*. The petition nominated MAS as guardian. *M* was living
11 at a care facility. *M's* income was unknown, but the GAL discovered he had
12 \$548 per month in Social Security income. The petition stated that *M* had a
13 social security benefit of unknown amount. The petition stated that *M* did not
14 have an attorney in fact or any alternative plans in place for management of medical,
15 health care or financial decisions.. The petitioner was unaware of any individuals
16 closely related by blood or marriage to *M*. The petitioner stated that *M*
17 was believed to have Parkinson's disease and dementia.

18 K. On November 9, 2006, MAS filed a Declaration of Proposed Guardian in
19 which MAS stated:

- 20 1. The proposed guardian had not reviewed the AIP's file or medical records;
21 2. The proposed guardian had not met with the AIP and did not plan to until it
22 was appointed as guardian;
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1 3. The proposed guardian had received approximately five referrals from the
2 care facility during the last ten years;

3 4. The proposed guardian does not have and has not had any financial
4 relationship with the care facility; and

5 5. David Friend has represented the proposed guardian since 1992 and does
6 not represent the care facility.

7 L. On January 18, 2007, MAS was appointed as full guardian of the person and
8 estate. The order stated that "The guardian shall not provide copies of any material
9 filed with the court nor provide notice of hearings in the guardianship to the
10 incapacitated person." The order was entered without any findings as to why *M*
11 would not be provided copies of material. Guardian received only \$450 in total fees and
12 costs prior to the dismissal of the guardianship.

13 M. On October 11, 2006, MAS petitioned for guardianship of the person and
14 estate of *S*. The petition nominated MAS as guardian. *S* was living
15 at an adult family home. The petition stated that *S* has \$319/month of Social
16 Security income and miscellaneous personal items and a wheelchair. The petition
17 stated that *S* did not have an attorney in fact or any alternative plans in place
18 for management of medical, health care or financial decisions.. The petitioner was
19 unaware of any individuals closely related by blood or marriage to *S*. The
20 petitioner stated that *S* was believed to have progressive dementia.

21 N. On October 11, 2006, MAS filed a Declaration of Proposed Guardian in which
22 MAS stated:
23

1. The proposed guardian had not reviewed the AIP's file or medical records;
2. The proposed guardian had not met with the AIP and did not plan to until it was appointed as guardian;
3. The proposed guardian had received approximately 12 to 15 referrals from the Department of Social and Health Services during the past 10 years;
4. The proposed guardian does not have and has not had any financial relationship with the Department of Social and Health Services; and
5. David Friend has represented the proposed guardian since 1992 and does not represent the Department of Social and Health Services.

O. The proposed guardian provided a letter from a nurse stating that the Department of Social and Health Services wished to petition for guardianship and nominated MAS as the proposed guardian. The letter stated that "we also request that David L. Friend (attorney for Malavotte & Associates Services) represent this facility in this petition only, pursuant to his disclosure of potential conflict of interest." On October 12, 2006, DSHS was notified of the filing of the petition. S was served with the Notice of Guardianship Petition, Order Appointing GAL and Petition.

P. On November 29, 2006, MAS was appointed as full guardian of the person and estate. The order stated that "The guardian shall not provide copies of any material filed with the court nor provide notice of hearings in the guardianship to the incapacitated person." The order was entered without any findings as to why S would not be provided copies of material.

1 **Q.** In ten out of twelve cases filed between 2006 and 2007 (and after the Ethics
2 Opinion No. 2005-001 was adopted on March 13, 2006), MAS petitioned to be
3 appointed as guardian. These cases were similar to the cases described above.

4 **R.** On July 19, 2007, the Board sent a letter to MAS and Mr. Malavotte notifying
5 them that an investigation had commenced and requesting them to respond to the
6 allegations.

7 **S.** On August 14, 2007, David Friend, the attorney for MAS responded. Mr.
8 Friend enclosed letters in the ... *B* ... and ... *D* ... cases from the persons referring
9 the cases to MAS. The letters appear to be virtually identical and similar to the letter
10 used in the ... *S* ... case.

11 **II. PRIOR RECORD OF DISCIPLINE**

12 MAS and Mr. Malavotte do not have any prior record of discipline.

13 **III. VIOLATIONS OF THE STANDARDS OF PRACTICE**

14 **A.** The Board has adopted Standards of Practice (SOP) which govern the
15 professional conduct of certified guardians.
16

17 **B.** SOP 403 requires a guardian to exhibit the highest degree of trust, loyalty,
18 attentiveness, and fidelity in relation to the incapacitated person.

19 **C.** SOP 403.1 requires a guardian to avoid self-dealing, conflict of interest and
20 the appearance of a conflict of interest. Self-dealing or conflict of interest arise when
21 the guardian has some personal, family, or agency interest from which a personal
22 benefit would be derived. Ethics Opinion No. 2005-001 states that professional
23 guardians have a clear and immediate conflict of interest in nominating themselves to
24 be appointed guardian and to be paid from the estate of the incapacitated person.
25

1 D. SOP 401 requires a guardian to protect the civil rights and liberties and to
2 maximize the independence and self-reliance of the incapacitated person.

3 E. SOP 401.12 requires a guardian to defer to an incapacitated person's
4 autonomous capacity to make decisions.

5 F. SOP 403.9 requires a guardian to provide requested information to the
6 incapacitated person unless the guardian is reasonably certain that substantial harm will
7 result from providing such information. This information shall include, but not be limited
8 to, regular reports on the status of investments and operating accounts, and on the
9 costs and disbursements necessary to manage the incapacitated person's estate,
10 medical and other personal information related to the care of the incapacitated person.

11 G. SOP 403.10 requires a guardian to provide copies of all material filed with the
12 court and notice of all hearings in the guardianship to the incapacitated person unless
13 otherwise directed by the court.
14

15 **IV. OBLIGATIONS OF MAS AND MR. MALAVOTTE PURSUANT TO THIS
16 AGREEMENT**

17 A. MAS and Mr. Malavotte agree to petition for appointment of MAS as guardian
18 only in limited circumstances, such as when the alleged incapacitated person has little
19 or no estate or when there is no other person with sufficient expertise and interest in the
20 alleged incapacitated person to file a petition. Such circumstances shall be clearly
21 documented in the petition for guardianship.

22 B. MAS and Mr. Malavotte agree to inform referral sources as to how
23 guardianships are processed and offer to refer interested parties to counsel as
24 appropriate.
25

1 **C. MAS and Mr. Malavotte agree to verify that a release of information has been**
2 **obtained from the incapacitated person allowing MAS and Mr. Malavotte access to**
3 **those facts that should be documented (for example, medical information) prior to the**
4 **filing of any petition for guardianship by MAS or Mr. Malavotte.**

5 **D. MAS and Mr. Malavotte agree to refrain from nominating MAS or Mr.**
6 **Malavotte as guardian in any petition initiated by MAS.**

7 **E. MAS and Mr. Malavotte agree, consistent with state statute, to engage in an**
8 **investigation and document that investigation in an Affidavit or Declaration to the court**
9 **regarding the following pre-filing efforts when MAS or Mr. Malavotte # petition to be**
10 **appointed as guardian:**

11 **1. Identifying any alternate nominees and providing information as to why**
12 **alternate nominees are not suitable or able to serve;**

13 **2. Attaching a written request from the party (in the party's own words)**
14 **requesting the guardianship and which identifies the basis for the request and the basis**
15 **for the decision by that party not to petition;**
16

17 **3. Attaching documentation from third parties of the facts set out in the**
18 **petition. Such documentation can include statements from care providers, family**
19 **members, friends, or others with knowledge of the circumstances of the alleged**
20 **incapacitated person; (Such documentation must comply with GR 22.)**

21 **4. Providing an assessment by the certified professional guardian as to the**
22 **availability of less restrictive alternatives and why those less restrictive alternatives do**
23 **not adequately provide for the needs of the alleged incapacitated person; and**
24

1 5. Providing the following information regarding any in-person meetings with
2 the alleged incapacitated person: the results of that meeting and an opinion of the
3 capacity issues faced by the alleged incapacitated person. An in-person meeting is
4 appropriate when the certified professional guardian is gathering information.

5 F. At any in-person meeting with the alleged incapacitated person prior to the
6 filing of a guardianship petition and in which information about guardianship or the
7 benefits of guardianship is discussed, MAS and Mr. Malavotte agree to:

- 8 1. inform the alleged incapacitated person that guardianship is a serious
9 legal matter and recommend consultation with an attorney;
- 10 2. avoid making a recommendation or giving advice;
- 11 3. not solicit the alleged incapacitated person's consent to proceed with a
12 guardianship.

13 G. MAS and Mr. Malavotte agree to disclose and describe in detail any
14 relationship the guardianship agency may have with a care facility, including the length
15 of the relationship, the approximate number of guardianship clients at the care facility
16 and any other information to assure transparency in the proceedings in all matters
17 wherein MAS and Mr. Malavotte petition the Court to be appointed as guardian.

18 H. MAS and Mr. Malavotte agree to provide copies of all material filed with the
19 court and notice of all hearings to the incapacitated person except in those cases in
20 which the court has entered findings of fact that the incapacitated person would suffer
21 substantial harm from receiving information or that the incapacitated person has no
22 residual capacity to participate in or make decisions.
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1 I. MAS and Mr. Malavotte agree to review all of its guardianship cases for
2 language limiting the duty of the guardian to provide copies of material to the
3 incapacitated person for the last two years. In any order with such language, MAS and
4 Mr. Malavotte agree to either provide copies of all material filed with the court and notice
5 of all hearings to the incapacitated person from the date of this Agreement is adopted or
6 to seek direction from the court regarding entering findings as described in H above.

7 J. MAS and Mr. Malavotte agree to accept a letter of admonishment from the
8 Board. A letter of admonishment is appropriate when a professional guardian engages
9 in professional misconduct incompatible with the standards of practice and not rising to
10 the level justifying a reprimand.

11 K. MAS and Mr. Malavotte agree to provide the Board with the names of all
12 new cases filed by MAS or Malavotte for a six month period from the date this
13 Agreement is adopted and to cooperate with the Board's monitoring of compliance with
14 this Agreement. This cooperation may include, but is not limited to, mailing copies of
15 petitions to the Board or an on-site visit by the Board.

16 L. MAS and Mr. Malavotte agree to pay costs of \$29.50 to the Board within 15
17 days of the date this Agreement is accepted by the Board.

18
19 **V. VIOLATION OF AGREEMENT**

20 Violation of this Agreement by MAS and Mr. Malavotte will constitute grounds for
21 discipline under the Disciplinary Regulations for Certified Professional Guardians. In
22 the event of an alleged breach of this Agreement, the Board shall provide notice to the
23 professional guardian alleged to be in breach of the Agreement of the allegations
24 regarding breach of the Agreement, and the professional guardian so notified shall have
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1 14 days to respond to the allegations of breach. If the Board finds that the Agreement
2 has been breached, the Board may pursue disciplinary action against the professional
3 guardian for violation of the Agreement.

4 This Agreement is binding as a statement of all known facts relating to the
5 conduct of the professional guardian, but any additional existing acts may be proven in
6 any subsequent disciplinary proceedings.

7 VI. ENTIRE AGREEMENT

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

12 VII. SEVERABILITY

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

17 VIII. LAWS GOVERNING

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

22 IX. RIGHT TO COUNSEL

23 MAS and Mr. Malavotte acknowledge the right to individual counsel for
24 representation in this disciplinary matter, at the guardian's own expense, as set forth in
25

1 Disciplinary Regulation 508. MAS and Mr. Malavotte acknowledge that they have either
2 consulted with counsel or had the opportunity to do so and chosen not to consult with
3 counsel.

4 **X. PRESENTATION OF AGREEMENT TO THE BOARD**

5 MAS and Mr. Malavotte understand that this Agreement is not binding unless and
6 until it is approved and signed by the Board. If the Board rejects this Agreement, MAS
7 and Mr. Malavotte ^{does not} waive any objection to the participation in the final determination of
8 this matter of any Board member who heard the Agreement presentation.

*ONE
SUN
M*

9 The foregoing is agreed to by:

10
11 

12 4-29-2008

13 Scott E. Malavotte
14 Individually and as Vice-President of
15 Malavotte & Associates Services

DATE

16 Copy received and Notice of Presentation Waived:

17 

18 4/29/08

19 David L. Friend, WSBA # 7346
20 Attorney for Scott E. Malavotte and
21 Malavotte & Associates Services

DATE

22 **APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN
23 BOARD THIS**

24 19 DAY OF May, 2008.

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Marywave Van Deren, Chair
Certified Professional Guardian Board

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF:

CPGB NO. 2007-017

Malavotte & Associates Services,
CPGA No. 5141 and Scott E.
Malavotte, CPG No. 6072

FINDINGS OF BOARD

The Certified Professional Guardian Board (Board) finds that the Agreement Regarding Discipline (ARD) in the above entitled matter

is an appropriate resolution of the disciplinary action and it is hereby adopted.

is not an appropriate resolution of the disciplinary action and the Board directs:

a complaint be filed.

the ARD be modified as follow: _____

The ARD is adopted by the Board without
the delineation on page 13, paragraph X.

DATED this 17 day of May, 2008.

Certified Professional Guardian Board

By: Sharon Eckstein
AOC Liaison to the Board

The foregoing modification is agreed to by:

Scott E. Malavotte PRESIDENT.

SCOTT E. MALAVOTTE, Individually & as V.P. of Malavotte & Assoc.

Copy received:

Certified Professional Guardian Board
Administrative Office of the Courts
1206 Quince Street SE
P.O. Box 41170
Olympia, WA 98504-1170
(360) 753-3365

David L. Friend, WSBA #7346
Attorney for Scott E. Malavotte & Malavotte & Assoc.

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF:

CPGB NO. 2007-017

Malavotte & Associates Services,
CPGA No. 5141 and Scott E.
Malavotte, CPG No. 6072

FINDINGS OF BOARD

The Certified Professional Guardian Board (Board) finds that the Agreement Regarding Discipline (ARD) in the above entitled matter

is an appropriate resolution of the disciplinary action and it is hereby adopted.

is not an appropriate resolution of the disciplinary action and the Board directs:

a complaint be filed.

the ARD be modified as follow: _____

The ARD is adopted by the Board without
the delineation on page 13, paragraph X.

DATED this 12 day of May, 2008.

Certified Professional Guardian Board

By: Sheron Eckholm
AOC Liaison to the Board

The foregoing modification is agreed to by:

SCOTT E. MALAVOTTE, Individually & as V.P. of Malavotte & Assoc.
FINDINGS

Certified Professional Guardian Board
Administrative Office of the Courts
1206 Quince Street SE
P.O. Box 41170
Olympia, WA 98504-1170
(360) 753-3365

Copy received:

David L. Friend

David L. Friend, WSBA #7346
Attorney for Scott E. Malavotte & Malavotte & Assoc.