



CERTIFIED PROFESSIONAL GUARDIAN BOARD

)	CPGB No. 2011-011
)	
Joyce Ostby, CPG No. 10509)	AGREEMENT REGARDING DISCIPLINE
)	AND STIPULATED FINDINGS
)	
)	<i>Disciplinary Regulation 514</i>
)	
_____)	

The parties, Joyce Ostby, (Ms. Ostby) CPG No. 10509, 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. Ms. Ostby has 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 Ms. Ostby and will be a public record and subject to public access.

1. JURISDICTION

1.1 At all times relevant herein, Ms. Ostby was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No.10509. Ms. Ostby was certified in July 2006.

ORIGINAL

1.2 The Certified Professional Guardian Board is responsible for reviewing any allegation that a certified professional guardian or certified professional guardianship agency has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. Pursuant to its Disciplinary Regulations, the Board may impose discipline, sanctions, costs and other remedies upon a finding of violation, or may recommend that the Washington Supreme Court impose discipline, sanctions and costs, when the recommendation is for suspension or decertification of the certified professional guardian or agency.

2. STATEMENT OF FACTS

2.1 On or about February 28, 2011, the Board opened a grievance, 2011-011, based on Ms. Ostby's performance in a re-audit of her guardianship cases.

2.2 On February 8, 2010, Ms. Ostby was randomly selected to have her cases audited for timeliness of filing certain reports. Five out of Ms. Ostby's thirteen cases were audited and in each of those cases there were instances of prior non-compliance with filing deadlines, an average of 28 days late per case. All of Ms. Ostby's cases are in Spokane County. The Standards of Practice Committee of the Board decided to re-audit Ms. Ostby in six months.

2.3 On or about February 3, 2011, all of Ms. Ostby's cases were re-audited for the timeliness of filing certain reports for the period between January 2010 and January 2011. Ms. Ostby had instances of prior non-compliance in eleven of her thirteen cases as follows:

- a. Case #06-4-00917-9, the annual report was due on 1/11/11 filed on 2/4/11 (4 days late)¹.
- b. Case #06-4-00283-2, the annual report was due 12/17/10 and filed 1/10/11 (10 days late).
- c. Case #08-4-01487-0, the annual report was due 4/6/10 and filed 6/1/10 (30 days late).
- d. Case #09-4-00208-0, the annual report was due 10/13/10 and filed 11/5/10 (5 days late).

¹ Spokane County allows guardians to file reports on the last day of the month in which the report was due and be considered to be in compliance.

- e. Case #08-4-00912-4, the annual report was due 12/10/10 and filed 1/10/11 (10 days late).
- f. Case # 08-4-0001528-1, the annual report was due 3/30/10 and filed 4/29/10 (29 days late).
- g. Case # 08-4-00868-3, the annual report was due 10/31/10 and filed 11/5/10 (5 days late).
- h. Case #08-4-01108-1, the annual report was due 6/3/10 and filed 7/12/10 (12 days late).
- i. Case #09-4-00703-1, the annual report was due 10/1/10 and filed 11/5/10 (5 days late).
- j. Case #08-4-01313-9-9, the annual report was due 8/12/10 and filed 9/8/10 (8 days late).
- k. Case #08-4-01229-0, the annual report was due 2/1/10 and filed 4/1/10 (30 days late).

2.4 Ms. Ostby's explanation for the late filings noted that she was now only a few days late in filing reports. She said that the late filings in January were because her computer broke down and she had to buy and install a new printer. She noted that she has not received a non-compliance letter from the Spokane County Superior Court.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.2-2.4, Ms. Ostby's conduct constitutes grounds for discipline pursuant to 401.1 and 401.3, which provide in pertinent part:

SOP 401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

SOP 401.3 The guardian shall provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

3.2 Based on the facts and violations set forth above, Ms. Ostby'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 503.4 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. Multiple offenses, pattern of conduct

4.2 Mitigating Factors. Absence of dishonesty or selfish motive, absence of a prior disciplinary record,

5. PRIOR RECORD OF DISCIPLINE

Ms. Ostby has no prior record of discipline with the Board.

6. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on Ms. Ostby 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 Letter of admonishment. The Board hereby imposes a letter of admonishment on Ms. Ostby. This Agreement constitutes the letter of admonishment and shall be placed in the Board's disciplinary files for Ms. Ostby.

6.2 Monitoring. The Board imposes the following requirements on Ms. Ostby:

6.2.1 Ms. Ostby shall be subject to monitoring of cases in which Ms. Ostby is the court-appointed guardian to determine whether she is meeting her duties to her clients regarding filing deadlines and having a case management system. The monitor shall be a mutually agreed upon attorney. Monitoring shall commence upon entry of this Agreement.

6.2.2 During the period of monitoring, the monitor shall review Ms. Ostby's cases on at least two occasions to verify the filing dates of all reports and inventories filed by the guardian with the court, or required to be filed by the guardian, to determine whether the documents have been filed within the time period required by statute and/or court order.

6.2.3 The monitor shall also review Ms. Ostby's case management system for tracking filing deadlines. Ms. Ostby shall create and implement a unified tracking system for all guardianships which will prevent any future missed or late filings of reports as well as providing better case management. Ms. Ostby will demonstrate to the monitor that the tracking system has been created and is adequate.

6.2.4 At the conclusion of the six month monitoring period, the monitor shall file a written report within 30 days with the Standards of Practice Committee that reflects the monitor's findings and conclusions regarding the files reviewed and the guardian's case management system.

6.2.5 The fees and costs of the monitor shall be paid by Ms. Ostby within thirty (30) days following presentation by the monitor of the monitor's bill. Ms. Ostby shall not be required to pay more than one thousand dollars (\$1000.00) in fees and costs for a six month period of monitoring

6.2.6 After the Standards of Practice Committee (SOPC) has reviewed the monitor's findings and conclusions, it shall report to the Board on Ms. Ostby's compliance with this Agreement and any applicable statutes, rules and regulations. The SOPC may recommend that Ms. Ostby be released from the monitoring requirement, or it may recommend other disciplinary sanctions.

6.3 Probation. Ms. Ostby shall be under probation for a period of not less than six months to ensure her compliance with the duties, standards and requirements for a professional guardian. If Ms. Ostby complies with the duties, standards and requirements of a professional guardian for six months, the probation will be lifted. If not, the probation period may be continued for another period not to exceed six months or the Board may take further disciplinary action.

7. VIOLATION OF AGREEMENT

7.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, filing reports late, failing to develop and use a case management system, and failing to pay the monitor promptly.

7.2 In the event of an alleged breach of this Agreement, the Board will issue a Complaint pursuant to its Disciplinary Regulations, providing notice and an opportunity for a hearing to the certified professional guardian alleged to be in breach of the Agreement. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

7.3 This Agreement is binding as a statement of all known facts relating to the conduct of Ms. Ostby but any additional existing acts may be proven in any subsequent disciplinary proceedings.

8. NOTICE

This Agreement shall be retained by the AOC in Ms. Ostby's disciplinary file. 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.

9. 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.

10. 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.

11. 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.

12. RIGHT TO COUNSEL

Ms. Ostby acknowledges that she has the right to individual counsel for representation in this disciplinary matter, at her expense, as set forth in Disciplinary Regulation 509.1.

13. PRESENTATION OF AGREEMENT TO THE BOARD

Ms. Ostby understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Ms. Ostby waives any objection to the

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

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:



Joyce Ostby, CPG #10509
Individually

4/18/11

Date

Attorney for
WSBA # _____

Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

12th DAY OF May, 2011.



~~Hon. Christopher Wickham~~ Honorable James Lawler
Acting Chair, Certified Professional Guardian Board