

511 Hearings

511.5 Default: In no case shall a default be entered against the professional guardian. If the professional guardian fails to answer the complaint within the time allowed by these regulations, the Hearing Officer shall proceed to a determination of the matter in the same manner as though the professional guardian were present and had answered by admitting all allegations in the complaint. All violations in the complaint are deemed established for the purpose of imposing discipline. No notice of the date of hearing or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to a professional guardian who fails to timely answer the complaint and the professional guardian may not participate in the proceedings. If the professional guardian has answered but fails to attend the hearing at the time set, the Hearing Officer shall proceed to a determination of the matter in the same manner as though the professional guardian were present.

Entry of Default.

511.5.1 Timing: If a certified professional guardian (guardian), after being served with a notice to answer as provided in Reg. 510.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, the Board's attorney of record in the disciplinary proceeding may serve the guardian with a written motion for an order of default.

511.5.2 Motion: The Board's attorney of record must serve the guardian with a written motion for an order of default and a copy of this regulation at least five (5) days before entry of the order of default. The motion for an order of default must include the following:

- a) The dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and
- b) The Board's attorney of record statement that the guardian has not timely filed an answer as required by Reg. 510.4 and that the Board's attorney of record seeks an order of default under this regulation.

511.5.3 Entry of Order of Default: If the guardian fails to file a written answer with the Administrative Office of the Courts (AOC) within twenty (20) days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer has been assigned, the chair of the Standard of Practice Committee, on proof of proper service of the motion, enters an order finding the guardian in default.

511.5.4 Effect of Order of Default: Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the guardian may not participate further in the proceedings unless the order of default is vacated under this regulation.

511.6 Proceedings After Entry of an Order of Default.

511.6.1 Service: The AOC serves the order of default and a copy of this rule under regulation 510.4.2.

511.6.2 No Further Notices: After entry of an order of default, no further notices must be served on the guardian except for copies of the decisions of the hearing officer or the Board.

511.6.3 Disciplinary Proceeding: Within 60 days of the filing of the order of default, the hearing officer or the Board must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or Board, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. The attorney of record for the Board may present additional evidence including, but not limited to, requests for admission under regulation 511.10[1] and depositions, affidavits, and declarations regardless of the witness's availability.

511.7 Setting Aside Default.

511.7.1 Motion To Vacate Order of Default: A guardian may move to vacate the order of default and any decision of the hearing officer or Board arising from the default on the following grounds:

- a) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

- b) erroneous proceedings against a guardian, who was, at the time of the default, incapable of conducting a defense;
- c) newly discovered evidence that by due diligence could not have been previously discovered;
- d) fraud, misrepresentation, or other misconduct of an adverse party;
- e) the order of default is void;
- f) unavoidable casualty or misfortune preventing the guardian from defending; or
- f) any other reason justifying relief from the operation of the default.

511.7.2 Time:The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the guardian's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

511.7.3 Burden of Proof:The guardian bears the burden of proving the grounds for setting aside the default. If the guardian proves that the default was entered as a result of a disability which made the guardian incapable of conducting a defense, the default must be set aside.

511.7.4 Service and Contents of Motion: The motion must be filed and served under regulation 510.4.34.1 and 510.4.4 and be accompanied by a copy of guardian's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the guardian's asserted defenses and any facts that guardian asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- a) the date on which the guardian first learned of the entry of the order of default;
- b) the grounds for setting aside the order of default; and
- c) an offer of proof of the facts that the guardian expects to establish if the order of default is vacated.

511.7.4 Response to Motion: Within ten days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.

511.7.5 Decision:The hearing officer decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chair of the Board assigns a hearing officer to decide the motion. Pending a ruling on the motion, the hearing officer may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer has discretion to order appropriate conditions.

511.7.6 Appeal of Denial of Motion: A guardian may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer's decision. The guardian must file the notice of appeal within ten days of service on the guardian of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

511.7.7 Decision To Vacate Is Not Subject to Interim Review:An order setting aside an order of default is not subject to interim review.

Regulation 511 will be renumbered accordingly.