

Disciplinary Regulation 500  
(Proposed)

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## **500 DISCIPLINARY REGULATIONS FOR CERTIFIED PROFESSIONAL GUARDIANS**

### **501 SCOPE, JURISDICTION, AND DEFINITIONS**

#### **501.1 PURPOSE OF DISCIPLINARY REGULATIONS**

1. To assure that Certified Professional Guardians (CPG) meet and maintain minimum professional standards of practice, which are adopted as regulations under General Rule 23 – Rule for Certifying Professional Guardians.
2. To establish a process for the Certified Professional Guardianship Board (Board) to review grievances of alleged violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The disciplinary procedures for failure to comply with certification requirements are included in the Certification Maintenance and Continuing Education Regulations.
3. To set out the due process protections and other procedures that allow the professional guardian and the public to be protected.
4. To ensure meaningful access to justice services and promote public trust and confidence in the courts.

#### **501.2 JURISDICTION**

Any certified professional guardian (CPG) permitted to engage in the provision of guardianship services in this state is subject to these Disciplinary Regulations. Jurisdiction exists regardless of the CPG's residency.

#### **501.3 GROUNDS FOR DISCIPLINARY ACTION**

These rules govern the procedure by which a certified professional guardian may be subjected to disciplinary sanctions or actions for violation of the Certified Professional Guardian Standards of Practice or other regulations adopted by the Board.

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

1. Violation of or noncompliance with applicable violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians.
2. Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.
3. Failure to perform any duty one is obligated to perform as a professional guardian.
4. Violation of the oath, duties, or standards of practice of a professional guardian.

5. Permitting a professional guardian's name to be used by an uncertified person or agency.
6. Misrepresentation or concealment of a material fact made in the application for certification.
7. Suspension, decertification, or other disciplinary sanction taken by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional guardianship or interaction with an incapacitated or vulnerable person.
8. Hiring, maintaining an office with, having on a Certified Agency's Board of Directors, or working for or together with any person who has been certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has knowledge of such revocation or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.
9. Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.
10. Making a false statement under oath.
11. Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.
12. Working as a professional guardian while on inactive status.
13. Failing to cooperate during the course of an investigation as required by the Board's regulations.
14. Incompetence in the performance of the duties of a guardian.
15. Failure to appear for a scheduled court proceeding without good cause.
16. Failure to comply with the terms of a signed Agreement Regarding Discipline.

#### **501.4 DEFINITIONS**

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

1. "Advisory Letter" is a non-disciplinary letter to notify a professional that:
  - A. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against a respondent certified professional

guardian; or

- B. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or
  - C. While a certified professional guardian has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Disciplinary Committee believes that repetition of the activities that led to the investigation may result in further Disciplinary Committee action against a CPG.
2. "Agreement Regarding Discipline" (Settlement Agreement) is a written settlement agreement approved by the professional guardian and the Board of a disciplinary matter against a professional guardian. The final agreement, approved by the parties, is a finding of misconduct, is a sanction and is subject to public disclosure.
  3. "AOC" means staff of the Administrative Office of the Courts.
  4. "Board" means the Certified Professional Guardianship Board.
  5. "Chair" when used alone means the Chair of the Certified Professional Guardianship Board.
  6. "Contempt of Court" means:
    - A. Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
    - B. Disobedience of any lawful judgment, decree, order, or process of the court or tribunal;
    - C. Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
    - D. Refusal, without lawful authority, to produce a record, document, or other object.
  7. "Complaint" means the formal document, as described in DR 508.2, filed by the Board with the AOC to initiate a contested hearing before a Hearing Officer for a factual hearing on the issue of whether the professional guardian's conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian allegedly violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.
  8. "Court" unless otherwise specified, means the Supreme Court of Washington.

9. "CPG or CPGA" when used alone means a Certified Professional Guardian or Certified Professional Guardian Agency.
10. "Decertification" of a professional guardian or agency occurs when the Board or the Supreme Court revokes the certification of a professional guardian or agency for any reason.
11. "Deliberative Records" are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.
12. "Designated CPG" means the certified professional guardian working for an agency who has the final decision-making authority for incapacitated persons or their estate on behalf of the agency. The designated CPG is responsible for the actions of the agency(ies) for which they serve as designated CPG.
13. "Disciplinary Records" are the records maintained by the Washington State Administrative Office of the Courts (AOC) of any disciplinary review, sanction, or other action imposed by the Board on the professional guardian, which shall include the reason for the Board's action. The AOC shall maintain such records as defined by records retention schedules of the judicial branch and the AOC.
14. "Disciplinary Action" encompasses the process described by these disciplinary regulations.
15. "Disciplinary Counsel" The Office of the Attorney General serves as disciplinary counsel for complaints, or when otherwise requested by AOC or the Board.
16. "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 statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The grievance must include a description of the conduct of the professional guardian that the grievant alleges violates a statute, fiduciary duty, standard of practice, rule, regulation, or other authority applicable to professional guardians, including the approximate date(s) of the conduct. If the grievant is unable to submit a grievance in written form due to a disability or inability to communicate in written language, it may be communicated orally to AOC staff.
17. "Grievant" means the person or entity who files a grievance against a CPG.
18. "Hearing Officer" means the person appointed by the Board to conduct a disciplinary hearing and render a decision.
19. "Incompetent" means an individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.



20. "Investigative Records" are records related to an investigation pursuant to GR 23 and these disciplinary regulations, into the conduct of the professional guardian, prior to the imposition of any disciplinary sanction or dismissal.
21. "Motion" means a written request to the Disciplinary Committee, Board, Hearing Officer or Supreme Court to issue a ruling or order.
22. "No Contest" means the accused will not contest the facts on which the charge is based. It is not an admission of guilt. It is comparable to a guilty plea in authorizing a court to punish the accused.
23. "Party" means respondent CPG and the Board.
24. "Punitive Sanction" means a sanction imposed to punish.
25. "Remedial Sanction" means a sanction imposed for the purpose of assurance performance when a failure to perform consists of the omission or refusal to perform an act that is in the person's power to perform.
26. "Resignation" is the act or instance of resigning something, surrendering; the formal notification of resigning.
27. "Respondent" means a CPG or CPG agency and a designated CPG against whom a grievance is filed.
28. "Revoked" or "Revocation" means a professional guardian's certification is cancelled by the Board or the Washington State Supreme Court pursuant to the procedures set forth in these disciplinary regulations or any other regulations of the Board, as a result of the professional guardian's failure to comply with any statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The Board must specify whether the CPG is eligible to apply for certification with the AOC guardian program at a future date.
29. "Standard of Practice" means a model of established practice that is commonly accepted as correct.
30. "Summary Judgment" is a judgment rendered by the court or Hearing Officer prior to a verdict because no material issue of fact exists and one party or the other is entitled to a judgment ascertained through the use of statutes, rules, court decisions, and interpretation of legal principles.
31. "Suspension" of a professional guardian occurs when the Board or the Supreme Court orders that the certification of a professional guardian or agency be temporarily cancelled for a specified period of time. A suspended professional guardian or agency may not act as a certified professional guardian for any person

during the period of suspension.

32. "To File" means submitting a written document, exhibit, or other information to the AOC regarding a grievance which will be included in the disciplinary record.
33. "Words of Authority"
  - A. "May" means "has discretion to," "has a right to," or "is permitted to".
  - B. "Must" and "shall" mean "is required to".
  - C. "Should" means recommended but not required.
34. "Voluntary Resign (Surrender)" means a process where a certified professional guardian voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.
35. "Voluntary Resign (Surrender) in Lieu of Discipline" means a process where a certified professional guardian surrenders certification with a statement of charges for dismissal.

## **501.5 NO STATUTE OF LIMITATION**

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

## **502 ORGANIZATION AND STRUCTURE**

### **502.1 CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD (CPGB)**

The Washington State Certified Professional Guardianship Board has responsibility in the state to administer CPG discipline and has inherent power to maintain appropriate standards of practice and to conduct and to dispose of individual cases of CPG discipline. Persons carrying out the functions set forth in these rules act under the Certified Professional Guardianship Board's authority.

#### **1. Function. The Board:**

- A. Supervises the general functioning of the Disciplinary Committee.
- B. Makes appointments, removes those appointed, and fills vacancies as provided in these rules.
- C. Performs other functions and takes other actions provided in these rules, delegated by the Supreme Court in General Rule 23, or as necessary and proper to carry out its duties.

- D. Is responsible for hearing appeals of Disciplinary Committee decisions that are made appealable pursuant to these rules.
2. Restriction on Representing Respondents. A former member of the Board shall not represent a certified professional guardian in proceedings under the Board's regulations for at least three (3) years following expiration of the Board member's term of office. Former AOC staff shall not represent a certified professional guardian in proceeding under the Board's regulations for at least three (3) years after separation from AOC. Former members of the Board are also subject to the restrictions on representing respondents in rule 502.2(6).

## **502.2 DISCIPLINARY COMMITTEE**

1. Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include, but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business or other relationships to influence their conduct or judgment.
2. Membership. The Chair appoints a Disciplinary Committee of three to four members from among the Board members. At least one of the members must have substantial experience in guardianships. The Chair may change the appointment of members to the Disciplinary Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee.
3. Terms of Office. A board member may serve as a Disciplinary Committee member as long as the member is on the Board or for other shorter terms as determined to be appropriate by the Chair of the Board.
4. Disciplinary Committee Chair. The Chair of the Board designates one member of the Disciplinary Committee to act as its Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.
5. Meetings. The Disciplinary Committee meets at times and places determined by the Disciplinary Committee Chair. At the Disciplinary Committee Chair's discretion, the Committee may meet and act through electronic, telephonic, written, or other means of communication.
6. Disqualification of Disciplinary Committee Members. A Disciplinary Committee member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including but not limited to instances in which:
- A. The appearance of impropriety is or could reasonably be great or have the appearance of a conflict;

- B. The member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;
- C. The member previously served as a lawyer, CPG, or was a material witness in the matter in controversy;
- D. A lawyer or CPG with whom the member works, serves or has previously served as a lawyer or CPG concerning the matter, or such lawyer or CPG is or has been a material witness concerning the matter;
- E. The member has a pending grievance;
- F. The member or relative person residing in the member's household has an economic interest in the subject matter in controversy or is a party to the matter, or has any other interest that could be substantially affected by the outcome of the matter.

### **502.3 CONFLICTS REVIEW COMMITTEE**

1. **Function.** The Conflicts Review Committee (CRC) performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions involving a Board member. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business, or other relationships to influence their conduct or judgment.
2. **Membership.** The Board Chair shall appoint three members who shall not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.
3. **Chair.** The Board Chair shall designate one member of the CRC to serve as Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.
4. **Confidentiality Agreement.** All proposed members of a CRC are required to sign a confidentiality agreement prior to serving.
5. **CRC Duties.** The AOC shall transmit any grievance against a Board member to the CRC. The CRC shall perform the duties that would otherwise be performed by the Disciplinary Committee under these regulations and AOC shall support the CRC in any such grievance.

The CRC may recommend to the Board Chair that the Board member under investigation be placed on a leave of absence from the Board during its investigation. The CRC will consider the nature of the allegations against the Board

member, the available evidence regarding those allegations and the importance of maintaining public trust and confidence in the Board in making its recommendation to the Board Chair. The CRC may make such a recommendation at any time during its investigation and review of the grievance. Except as otherwise set forth in these regulations, the Board Chair shall have the sole discretion to decide whether the Board member should take a leave of absence from the Board and when the Board member may return to the Board.

6. Reimbursement. Consistent with the AOC policy, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.
7. Access to Disciplinary Information. CRC Members have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. CRC Members shall return original files to the AOC promptly upon completion of the duties required by these rules and shall not retain copies.
8. Independence. CRC Members act independently of disciplinary counsel and the Board.
9. Board Member Responsibility. If the Board files a complaint against a Board member, the Board member shall take a leave of absence from the Board until the conclusion of the disciplinary proceeding.

#### **502.4 DISCIPLINARY COUNSEL**

The Attorney General's Office will serve as disciplinary counsel on the Board's behalf when a complaint has been filed or when requested by the Board or AOC and performs other duties as required by these rules.

#### **502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN**

1. Right to Representation. A CPG may be represented by counsel at the CPG's own expense during any stage of an investigation or proceeding under these rules.
2. Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.
3. Restriction on Charging Fee To Respond to Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person's estate a fee or recover costs from a grievant or incapacitated person's estate for responding to a grievance.
4. Medical and Psychological Records. A respondent CPG must furnish written

releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.

## **503 RELEASE OF INFORMATION**

General Rule (GR) 31.1 controls release of information.

## **504 GENERAL PROCEDURAL RULES**

### **504.1 SERVICE OF PAPERS**

1. Service Required. Every pleading, every paper relating to discovery, every written motion other than one that may be heard ex parte, and every similar paper or document issued by the Board, disciplinary counsel, the AOC, or the respondent CPG under these rules must be served on the opposing party. If a hearing is pending, the party also must serve a copy on the Disciplinary Committee by serving the AOC at:

Administrative Office of the Courts  
1112 Quince St. SE  
PO Box 41170  
Olympia, WA 98504-1170

2. Methods of Service.

- A. Service by Mail.

- i. All certified professional guardians agree to accept personal service by registered or certified mail at the address provided by the guardian. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.
- ii. Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be made by first class mail if:
  - a. The parties so agree;
  - b. The document is a notice of dismissal, deferral or a request for review of dismissal or deferral;
  - c. One or more properly made certified mailings are returned as unclaimed;

d. Service is on the AOC on behalf of the Disciplinary Committee or Board.

iii. The address for service by mail is as follows:

a. For the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the AOC;

b. For disciplinary counsel, at the address of the AOC or other address that disciplinary counsel requests.

B. Service by Delivery. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

3. Proof of Service. If personal service is used pursuant to DR 504.1.2, proof of service may be made by affidavit of service, or a signed acknowledgment of service. Proof of service must be filed, but need not be served on the opposing party.

#### **504.2 FILING; ORDERS**

1. Filing Originals. The original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the AOC.
2. Filing and Service of Orders. Any written order, decision or ruling must be filed with the AOC, and the AOC serves it on the respondent lawyer and disciplinary counsel.
3. Electronic filing or service of documents upon the Board or the AOC is permitted with authorization of the Board or the AOC. Electronic service upon a party is not permitted without authorization of the party. Electronic filing and service includes transmission by electronic mail and electronic facsimile transmission.

#### **504.3 PAPERS**

All pleadings or other papers must be word processed or printed, double spaced, on 8½ by 11-inch pages. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

#### **504.4 COMPUTATION OF TIME**

1. Computation. In computing any period of time prescribed or allowed by these rules the day of the act from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or

allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

2. Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or document upon him and the notice or document is served upon him by mail, three (3) days shall be added to the prescribed period.

#### **504.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME**

Except for notices of appeal or matters pending before the Supreme Court, the respondent certified professional guardian, the AOC, and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

#### **504.6 ENFORCEMENT OF SUBPOENAS**

Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearing or deposition. The subpoena shall be issued in the name of the Board and shall be signed and subscribed to by the party or the party's attorney of record. Subpoenas shall be served in the same manner as in civil cases in superior court. A failure to attend or produce as required by the subpoena shall be considered contempt of the Supreme Court. A motion to quash or modify the subpoena, on the grounds of unreasonableness or oppression, shall be decided by the Disciplinary Committee Chair or Hearing Officer.

### **505 GRIEVANCE INVESTIGATION**

#### **505.1 GRIEVANTS**

1. Filing of Grievance.
  - A. Any person or entity may file a grievance, as defined in section 501.4.16 against a certified professional guardian.
  - B. The Disciplinary Committee Chair may open a grievance based on any information obtained by the AOC or the Board.
  - C. Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of his or her identity, the nature of the allegations of the grievance to the respondent CPG or to any other person contacted during the investigation.
    - i. The identity of the person bringing the grievance is disclosed unless the person submits a written request for confidentiality that explains his or her reasons for not wanting his or her identity disclosed, and which the Disciplinary Committee approves. At the discretion of the Disciplinary Committee Chair, the grievant's identity may be revealed for good cause.



- ii. If the matter goes to a hearing and the grievant's testimony is required, the grievant's identity as a witness is not confidential, the fact that he/she brought the grievance may remain confidential.

2. Grievant Rights. A grievant has the following rights:

- A. To be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;
- B. To have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;
- C. To submit additional supplemental written information or documentation at any time;
- D. To attend any hearing conducted into the grievance;
- E. To provide testimony at any hearing conducted into the grievance, if such testimony is determined by AOC to be appropriate and relevant to the proceeding;
- F. To be advised of the disposition of the grievance;
- G. To be advised when his or her identity will no longer be confidential; and
- H. After supplying additional information in reference to the grievance, to request reconsideration of a dismissal of the grievance as provided in DR 506.2.

3. Grievant Duties. A grievant has the duty to do the following:

- A. At the time of filing the grievance or when requested, give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;
- B. Assist in securing relevant evidence, which may include signing releases of information; and
- C. Appear and testify at any hearing resulting from the grievance when such testimony is requested by AOC, through disciplinary counsel.

If the grievant fails to do any of the duties above, a grievance may be dismissed.

## **505.2 INVESTIGATION OF GRIEVANCE**

1. Review and Investigation. The AOC must review any alleged or apparent

misconduct by a CPG. AOC shall conduct an initial investigation to ensure that any grievances received are complete, meet jurisdictional requirements as defined in DR 501.3, and provide sufficient factual information to warrant further consideration. When appropriate the initial investigation should include the following:

- A. Provide a copy of the grievance to the respondent certified professional guardian and request a response pursuant to DR 506.3.
  - B. Provide a copy of the respondent certified professional guardian's response to the grievant and request a response.
  - C. Interview persons believed to possess relevant information or documents.
  - D. Request and review relevant documents.
2. Initial Dismissal. AOC may dismiss a grievance that fails to provide sufficient factual information, fails to meet jurisdictional requirements, or fails to identify an action which would result in sanctions. AOC is not required to seek the approval of the Disciplinary Committee or the Board for such dismissals.
3. Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance:
- A. The unwillingness of a grievant to continue the grievance;
  - B. The withdrawal of the grievance, a compromise between the grievant and the respondent; or
  - C. Restitution by the respondent.
4. Deferral.
- A. An investigation into alleged acts of misconduct by a CPG may be deferred by the Chair of the Disciplinary Committee or AOC staff with the approval of the Disciplinary Chair, if it appears that the deferral will not endanger the public, and;
    - i. The allegations are related to pending civil or criminal litigation;
    - ii. The respondent CPG is physically or mentally unable to respond to the investigation; or
    - iii. For other good cause shown.
  - B. The AOC must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review

is requested, the AOC refers the matter to the Disciplinary Committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Board no later than thirty (30) days after the AOC mails the notice regarding deferral.

5. Duty To Furnish Prompt Response. The respondent CPG must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation. Upon inquiry or request, the respondent CPG must:
  - A. Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;
  - B. Permit inspection and copying of the CPG's business records, files, and accounts;
  - C. Furnish copies of requested records, files, and accounts; and
  - D. Furnish written releases or authorizations if needed to obtain documents or information from third parties.
6. Failure To Cooperate.
  - A. Interim Suspension. If a CPG has not complied with any request made under DR 505.2.5 for more than thirty (30) days, the AOC may notify the CPG that failure to comply within ten (10) days may subject the CPG to interim suspension under rule 509.5.
  - B. Grounds for Discipline. A CPG's failure to cooperate fully and promptly with an investigation as required by DR 505.2.5 is also grounds for discipline.

### **505.3 PRIVILEGES**

1. Privilege Against Self-Incrimination. A CPG's duty to cooperate is subject to the CPG's privilege against self-incrimination, where applicable.
2. Confidential Information. A CPG may not assert confidentiality under the Standards of Professional Conduct or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents.

## **506 REVIEW BY DISCIPLINARY COMMITTEE**

### **506.1 REVIEW OF GRIEVANCE**

Within one hundred twenty (120) days of the AOC receiving the written grievance, the

Disciplinary Committee shall attempt to review all initial investigations not dismissed pursuant to DR 505.2.2. If the Disciplinary Committee feels that there is insufficient information, it may request the AOC to conduct further investigation. The AOC shall attempt to complete its investigation and to present the investigation's results to the committee for its review within two hundred ten (210) days after receiving the written grievance. Once the Disciplinary Committee has determined that it has sufficient information regarding the allegation, it must either dismiss the grievance pursuant to DR 506.2 or proceed under DR 507 or DR 508.

Due to existing resources, the deadlines set out in Regulation 506.1 are aspirational, rather than mandatory. Although the deadlines in Regulation 506.1 are aspirational, the Disciplinary Committee and AOC will attempt to comply with those deadlines to the extent that existing resources allow for compliance.

### **506.2 DISMISSAL OF GRIEVANCE BY DISCIPLINARY COMMITTEE**

1. Dismissal. The Chair of the Disciplinary Committee or AOC (pursuant to DR 505.2) may dismiss grievances. On dismissal by either the Chair of the Disciplinary Committee or AOC, AOC must notify:
  - A. The respondent of the allegations and dismissal of the grievance; and
  - B. The grievant of the outcome and the procedure for review in this rule.
2. Review of Dismissal. A grievant may request review of dismissal of the grievance, if additional evidence has been obtained since the filing of the grievance. The request for review and the additional evidence to the AOC must be received by AOC no later than thirty (30) days after the date of the dismissal of the grievance. If review is requested, the Chair of the Disciplinary Committee may either reopen the matter on his/her authority for investigation or refer it to the Disciplinary Committee for a decision regarding re-opening.
3. Authority on Review. In reviewing a request to re-open a grievance under this rule, the Disciplinary Committee may:
  - A. Affirm the dismissal;
  - B. Order further investigation as appropriate.

### **506.3 RESPONSE TO GRIEVANCE**

The certified professional guardian shall have thirty (30) days to respond to the allegations and provide any mitigating information. This response and information shall be sent to the AOC. Should the CPG require more time to adequately respond, the CPG shall make a request in writing to AOC stating the reasons for such an extension of time. The Disciplinary Committee Chair or AOC shall make a determination regarding whether to grant the request for extension within five (5) days of receiving the request.

## **507 RESOLUTION WITHOUT COMPLAINT**

Grievances not dismissed can be resolved without the filing of a complaint, through the following non-exhaustive methods: An advisory letter (DR 507.1), a Settlement Agreement (DR 507.2), or voluntary resignation (surrender) in lieu of discipline (DR 507.3).

### **507.1 ADVISORY LETTER**

An advisory letter may be issued when a complaint is not warranted, but it is appropriate to caution a respondent CPG concerning his or her conduct. An advisory letter is not confidential and does not constitute a finding of misconduct, is not a sanction, and is not a disciplinary action. An advisory letter may be issued to notify a certified professional guardian that:

1. While there is insufficient evidence to support disciplinary action, the Disciplinary Committee believes that continuation of the activities that led to the investigation may result in further Board action against a respondent certified professional guardian;
2. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or
3. While a certified professional guardian has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Disciplinary Committee believes that repetition of the activities that led to the investigation may result in further Disciplinary Committee action against a CPG.

### **507.2 SETTLEMENT AGREEMENTS**

1. Requirements. Any disciplinary matter or proceeding may be resolved by a Settlement Agreement (Agreement Regarding Discipline) at any time. The Settlement Agreement must be signed by the respondent CPG and AOC, and approved by the Disciplinary Committee and the Board. A Settlement Agreement is a finding of misconduct, is a sanction and is subject to public disclosure.
2. Form. A Settlement Agreement:
  - A. Must provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Disciplinary Committee to form an opinion as to the propriety of the proposed resolution, including aggravating and mitigating factors considered, so as to make the Settlement Agreement useful in any subsequent disciplinary proceeding against the respondent CPG;
  - B. Must set forth the respondent's prior disciplinary record;
  - C. Must state that the Settlement Agreement is not binding on the Disciplinary Committee as a final statement of facts about the respondent's conduct, and

- that additional facts may be proved in a subsequent disciplinary proceeding;
- D. Must fix the amount of costs and expenses, if any, to be paid by the respondent;
  - E. May impose terms and conditions and any other appropriate provisions.
3. Conditional Approval. The Disciplinary Committee's approval is conditional, as all Settlement Agreements must be submitted to the Board for their final approval. The Board's decision on whether to approve a Settlement Agreement shall be reflected in board minutes.
4. Response. Upon receipt of a proposed Settlement Agreement, the respondent CPG must respond in writing within thirty (30) days to the proposed Settlement Agreement. The CPG may:
- A. Agree to and sign the Settlement Agreement;
  - B. Propose changes to the Settlement Agreement;
  - C. Reject the Settlement Agreement and request a hearing;
  - D. Voluntarily resign in lieu of further disciplinary proceedings.

### **507.3 VOLUNTARY RESIGNATION (SURRENDER), IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS**

1. Grounds. A respondent CPG who desires not to contest or defend against allegations of misconduct may, at any time, voluntarily resign his or her certification as a CPG in lieu of further disciplinary proceedings.
2. Process. The respondent first notifies the AOC that the respondent intends to submit a voluntary resignation request and asks AOC, to prepare a statement of alleged misconduct and a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to AOC a signed voluntary resignation, sworn to or affirmed under oath and notarized. The signed voluntary resignation must include the following to be accepted for filing:
- A. AOC's statement of the alleged misconduct, and either: 1) an admission of that misconduct; or 2) a statement that while not admitting the misconduct the respondent agrees not to contest the facts on which the misconduct is based;
  - B. An acknowledgement that the voluntary resignation may be permanent, including the statement, "I understand that my voluntary resignation may be permanent and that any future application by me for reinstatement as a CPG will consider the circumstances around the voluntary resignation including resolution of the pending disciplinary action.";

- C. A list of all guardian and standby guardian appointments;
  - D. A statement that when applying for any employment as a fiduciary, the respondent agrees to disclose the voluntary resignation in response to any question regarding disciplinary action or the status of the respondent's certification;
  - E. A statement that the respondent agrees to pay any restitution or additional costs and expenses as may be requested by the Disciplinary Committee, and attaches payment for costs as described in DR 507.3.5; and
  - F. A statement that when the voluntary resignation becomes effective, the respondent will be subject to all restrictions that apply to a CPG whose certification has been revoked.
3. Public Filing. Upon receipt of a voluntary resignation in lieu of discipline meeting the requirements set forth above, AOC shall file it as a public record of the Disciplinary Committee. AOC will also notify the superior courts and all other agencies from which the CPG receives appointments of the voluntary resignation.
4. Effect. A voluntary resignation in lieu of discipline meeting the requirements set forth above, under this rule is effective upon its filing with the AOC. All disciplinary proceedings against the respondent terminate, except the AOC has the discretion to continue any investigations deemed appropriate under the circumstances to create a sufficient record of the respondent's actions for consideration in the event the respondent seeks certification at a later time.
5. Costs and Expenses.
- A. With the voluntary resignation, the respondent must pay all actual costs for which AOC provides documentation.
  - B. If additional proceedings are pending at the time respondent serves the notice of intent to voluntarily resign, AOC, through disciplinary counsel, may also file a claim under DR 509.13 for costs and expenses for that proceeding.
6. Review of Costs, Expenses. Any claims for costs and expenses not resolved by agreement between the AOC and the respondent may be submitted at any time including after the voluntary resignation, to the Disciplinary Committee in writing, for the determination of appropriate costs and expenses.

## **508 RESOLUTION WITH COMPLAINT**

### **508.1 GENERAL PROCEDURE**

1. Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated,

apply directly.

## 508.2 COMMENCEMENT OF PROCEEDINGS

### 1. Complaint.

- A. Filing. After a preliminary finding of misconduct by the Disciplinary Committee pursuant to DR 506, a Complaint may be filed by the Board with AOC.
  - B. Service. After the Complaint is filed, AOC must serve the Complaint, with a Notice to Answer, on the respondent CPG.
  - C. Content. The Complaint must state the respondent CPG's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct and the sanction sought. AOC must sign the Complaint.
  - D. Prior Discipline. Prior disciplinary action against the respondent may be described in the Complaint.
  - E. Amendment of Complaint. AOC may amend a Complaint at any time to add facts or charges. AOC shall serve an Amended Complaint on the respondent as provided in DR 508.3.1(B) with a Notice to Answer. A Respondent must answer the amendments to the complaint as described in DR 508.4.
2. Joinder. The Disciplinary Committee may, in its discretion, consolidate alleged violations relating to two or more grievances against the same respondent in one Complaint, or may consolidate alleged violations against two or more respondents in one Complaint that relate to the same grievance or grievances.

## 508.3 NOTICE TO ANSWER

1. Content. The Notice to Answer must be substantially in the following form:

BEFORE THE DISCIPLINARY COMMITTEE OF THE  
CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD

In Re	)	NOTICE TO ANSWER
	)	
	)	
	)	
	)	

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To: The above named CPG:

AND TO: Respondent Attorney



1. You are hereby notified that a Complaint Regarding Disciplinary Action (hereinafter, "Complaint") has been filed against you with the Administrative Office of the Courts, a copy of which is served upon you with this Notice. Pursuant to DR 504.1, service is made by registered or certified mail to your address on file with the Administrative Office of the Courts. Service shall be deemed complete on the third day after mailing in accordance with Civil Rule 5(b)(2).

2. You must deliver or mail an original and one copy of your Answer to the Disciplinary Action **within 30 days of service (exclusive of the date of service)** to the Certified Professional Guardianship Board, Administrative Office of the Courts, P.O. Box 41170, Olympia, WA 98504-1170. Electronic service or filing is not accepted without prior agreement.

3. Upon receipt of your Answer to Disciplinary Action, a Hearing Officer will be appointed to conduct all further proceedings. The Hearing Officer shall ensure that the parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing.

4. All disciplinary hearings shall be held within the State of Washington at such place and time as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, at the discretion of the Hearing Officer.

5. If you fail to answer within 30 days of the date of service of this Complaint, the Board may proceed to obtain an order of default against you pursuant to DR 508.5. 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 you may not participate further in the proceedings unless the order of default is vacated under this regulation.

6. The Certified Professional Guardianship Board Disciplinary Regulations govern all proceedings and may be found on the Washington Courts website at: [http://www.courts.wa.gov/programs\\_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500](http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Certified Professional Guardianship Board

By \_\_\_\_\_

#### **508.4 ANSWER**

1. **Time to Answer.** Within thirty (30) days of service of the Complaint and Notice to Answer, the respondent CPG must file and serve an Answer. Failure to file an Answer as required may result in the respondent forfeiting his or her opportunity to present a defense or engage in pre-hearing discovery.
2. **Content.** The Answer must contain:
  - A. A specific denial or admission of each fact or claim asserted in the Complaint;
  - B. A statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition;
  - C. Any mitigating factors as described in DR 509.1.3.(B); and
  - D. An address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.
3. **Filing and Service.** The Answer must be mailed to AOC.

#### **508.5 ENTRY OF DEFAULT**

1. **Timing:** If a certified professional guardian (CPG), after being served with a notice to answer as provided in DR 508.4, 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 CPG with a written motion for an order of default.
2. **Motion:** The Board's attorney of record must serve the CPG 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 CPG has not timely filed an answer as required by DR 508.4 and that the Board's attorney of record seeks an order of default under this regulation.
3. **Entry of Order of Default:** If the CPG 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 CPG in default.
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 CPG may not participate further in the proceedings unless the order of default is vacated under this regulation. The Board may proceed to resolve the case without further notice to, or hearing for the benefit of the CPG.

5. Proceedings After Entry of an Order of Default.
6. Service: The AOC serves the order of default and a copy of this rule under DR 504.1.
7. Disciplinary Proceeding: Within sixty (60) days of the filing of the order of default, the Board must conduct a disciplinary proceeding to impose disciplinary action based on the allegations and violations established under DR 508.2.1. At the discretion of the 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 DR 508.8 and depositions, affidavits, and declarations regardless of the witness's availability.
8. Motion To Vacate Order of Default: Within thirty (30) days after service of a default order, the CPG may file a written motion requesting that the order be vacated, on the following grounds:
  - A. Mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
  - B. Erroneous proceedings against a CPG, 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 CPG from defending;
  - G. Any other reason justifying relief from the operation of the default.
9. Burden of Proof: The CPG bears the burden of proving the grounds for setting aside the default. If the CPG proves that the default was entered as a result of a disability which made the CPG incapable of conducting a defense, the default must be set aside.
10. Service and Contents of Motion: The motion must be filed and served under DR 504 and be accompanied by a copy of CPG's proposed answer to each formal complaint

for which an order of default has been entered. The proposed answer must state with specificity the CPG's asserted defenses and any facts the CPG asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- A. The date on which the CPG 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 CPG expects to establish if the order of default is vacated.

11. Response to Motion: Within ten (10) days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.
12. Decision: The Hearing Officer decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the Hearing Officer may order a stay of proceedings not to exceed thirty (30) days. In granting a motion to vacate an order of default, the Hearing Officer has discretion to order appropriate conditions.
13. Appeal of Denial of Motion: A CPG 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 CPG must file the notice of appeal within ten (10) days of service on the CPG 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 thirty (30) days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.
14. Decision To Vacate Is Not Subject to Interim Review: An order setting aside an order of default is not subject to interim review by the Board.

## **508.6 SCHEDULING**

1. All disciplinary hearings must be held in Washington State at such time and place as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, in the discretion of the Hearing Officer. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the Hearing Officer.
2. Scheduling Order. The Hearing Officer must enter an order setting the dates and places of hearings. This order will include any prehearing deadlines the Hearing Officer deems required by the complexity of the case, which may include witness lists, discovery dates, motions, and exhibits. The AOC shall ensure that all parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing, unless this time requirement is waived by all parties

3. Continuance. Either party may move for a continuance of the hearing date. The Hearing Officer has discretion to grant the motion for good cause shown.

### **508.7 MOTIONS**

Motions must be in writing and served on the opposing party. The Hearing Officer shall determine whether a response and reply is called for and the timing of any such response or reply. The Hearing Officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by telephone or other electronic means at the discretion of the Hearing Officer. A ruling on a written motion must be in writing and filed with the AOC.

### **508.8 DISCOVERY AND PREHEARING PROCEDURES**

1. General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.
2. Requests for Admission. After a Complaint is filed, the parties may request admissions under Civil Rule 36.
3. Other Discovery. After a Complaint is filed, the parties may obtain other discovery under the Superior Court Civil Rules only on motion and under terms and limitations the Hearing Officer deems just or on the parties' Settlement Agreement.

### **508.9 PARTICIPATION AT DISCIPLINARY HEARING**

1. Respondent CPG Must Attend. A respondent CPG given notice of a hearing must attend the hearing. If, after proper notice, the respondent fails to attend the hearing, the Hearing Officer:
  - A. May draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and
  - B. Must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:
    - i. The facts stated are within the witness's personal knowledge;
    - ii. The facts are set forth with particularity; and
    - iii. It shows affirmatively that the witness could testify competently to the stated facts.
2. Witnesses. Witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by Civil Rule 32. Testimony must be recorded by a court reporter or, if allowed by the Disciplinary Committee, by digital or tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

3. Subpoenas. Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearing or deposition. The subpoena shall be issued in the name of the Board and shall be signed and subscribed to by the party or the party's attorney of record. Subpoenas shall be served in the same manner as in civil cases in superior court. A failure to attend or produce as required by the subpoena shall be considered contempt of the Supreme Court. A motion to quash or modify the subpoena, on the grounds of unreasonableness or oppression, shall be decided by the Hearing Officer.

## **508.10 HEARINGS**

1. Scope of the Hearings. To limit the scope of hearings, parties may stipulate to specific facts, whether misconduct occurred, and/or disciplinary sanctions. The Hearing Officer may determine whether both facts surrounding the alleged misconduct and disciplinary sanctions shall be litigated at the same hearing, or whether they shall be addressed at separate hearings.
2. Upon agreement by both parties, and approval by the Hearing Officer, hearings may be limited to the disciplinary sanction only.
3. Burden of Proof. The Board has the burden of establishing an act of misconduct by a preponderance of the evidence.
4. Proceeding Based on Criminal Conviction. If a Complaint charges a respondent CPG with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.
5. Rules of Evidence. The rules of evidence shall be those set forth in Chapter 34.05 RCW, the Administrative Procedures Act.
6. Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the Hearing Officer files a decision.

## **508.11 DECISION OF HEARING OFFICER**

Within ninety (90) days after the proceedings are concluded, unless extended by agreement, the Hearing Officer should file with the parties a Decision in the form of findings of fact, conclusions of law, and order recommending disciplinary sanction.

## **509 DISCIPLINARY SANCTIONS**

### **509.1 GUIDELINES FOR IMPOSING DISCIPLINARY SANCTIONS:**

Following a determination that a CPG has engaged in misconduct, disciplinary sanctions may be appropriate. Factors to be considered in imposing disciplinary

sanctions, include:

1. Nature of the misconduct;
2. Potential or actual injury caused by the CPG's misconduct;
3. The existence of aggravating or mitigating factors:
  - A. Aggravating factors include prior disciplinary action by the Board against the same CPG, substantial experience as a CPG, intentional, premeditated, knowing, grossly incompetent or grossly negligent act, bad faith or obstruction, dishonest or selfish motives, a pattern of misconduct, multiple offenses, failure to cooperate during the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, indifference to making restitution, and illegal conduct.
  - B. Mitigating factors include the absence of a prior disciplinary record, isolated incident not likely to recur, remoteness of misconduct, inexperience as a CPG, implementation of remedial measures to mitigate harm or risk of harm, self-reported and voluntary admission of violation, timely good faith efforts to make restitution or rectify consequences of misconduct, and temporary circumstances outside of the CPG's control.

## **509.2 TYPES OF DISCIPLINE**

Upon a finding that a CPG has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty, the Board may impose one or more of the following:

1. Revocation of certification;
2. Suspension of certification;
3. Prohibition Against Taking New Cases;
4. Reprimand;
5. Probation;
6. Other Disciplinary Sanctions as described in DR 509.7
7. Restitution.

### **509.3 REVOCATION OF CERTIFICATION**

1. Applicability of Revocation: Revocation may be imposed when a professional guardian:

- a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty; and was previously disciplined with a sanction, remedy or other remedial action by the Board, a court, or a judicial officer; or
- b. Engages in any act of dishonesty, fraud, deception, conflict of interest, selfishness or misrepresentation that adversely reflects on the guardian's fitness to practice; or
- c. Engages in gross incompetence, including but not limited to, case tracking, a pattern of late filings, accounting errors, delinquent or late payments of an incapacitated person's or estate's financial obligations; or
- d. Engages in conduct or misconduct that adversely impacts an incapacitated person in a highly significant manner. "Highly significant" in this context, means, but is not limited to, a financial loss to an incapacitated person or their estate that is greater than \$ 750.00, or results in any kind of direct physical harm, infirmity or adverse medical condition to an incapacitated person; or
  - e. Engages in conduct that constitutes any Washington felony that occurs either while performing duties as a guardian or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.
- f. Engages in conduct that constitutes a misdemeanor or gross misdemeanor involving moral turpitude that occurs either while performing duties as a guardian or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.

2. Duties of CPG upon revocation of certification. Upon receipt of the Supreme Court's order revoking the CPG's certification, the CPG will submit a complete list of all active guardianships in which the CPG serves as the court-appointed guardian or standby guardian to AOC, and must immediately notify the superior court with authority over any of the CPG's cases of the revocation. The CPG shall ensure the timely transfer of any active guardianship cases to a new CPG and cooperate with the court in this process. The CPG shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPG. The CPG shall immediately cease holding him or herself out to the public as a professional CPG. If requirements aren't met the Board may file a motion for contempt of court with the Supreme Court.

### **509.4 SUSPENSION**

1. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian may be imposed when a professional guardian:



- a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty; or
- b. Engages in conduct that occurs either while performing duties as a guardian or outside those duties, that meets the statutory elements of any Washington gross misdemeanor or misdemeanor, and which adversely reflects on the professional guardian's fitness to practice; or
- c. Engages in ordinary negligence in the performance of their duties as a guardian. "Ordinary negligence" is defined in this context as a guardian's failure to exercise reasonable care in the performance of their professional duties.
- d. Engages in conduct or misconduct that adversely impacts an incapacitated person in a manner that is not "highly significant" as defined above.
- e. Suspension may be imposed for conduct or misconduct that does not rise to the level of Revocation.

2. Term of Suspension. A suspension must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. Suspension does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing of declarations, etc.

3. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the suspension period. The request shall include a statement verifying that the conditions of the suspension have been met. With approval of the Disciplinary Committee Chair, the AOC shall reinstate the CPG.

4. Duties of CPG upon suspension. The CPG will submit a complete list of all active guardianships in which he or she serves as the court-appointed guardian or the standby guardian and must immediately notify the superior court with authority over any of the CPG's cases of the suspension. The CPG shall ensure the timely transfer of any active guardianship cases to a new guardian and cooperate with the court in this process. The CPG shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPG. The CPG shall immediately cease holding him or herself out to the public as a professional guardian.

## **509.5 INTERIM SUSPENSION FOR CONVICTION OF A CRIME**

### **1. Definitions.**

- A. "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, or a verdict of guilty, unless the defendant affirmatively shows that the guilty plea or verdict was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment

was arrested or a new trial granted. Conviction does not include findings or verdicts that were disclosed at the time of application.

B. "Serious Crime" includes any:

- i. Felony;
- ii. Crime, a necessary element of which, as determined by its statutory or common law definition, includes any of the following:
  - a. Commission of an act of violence;
  - b. Interference with the administration of justice;
  - c. Perjury;
  - d. Fraudulent misrepresentation;
  - e. Bribery;
  - f. Extortion;
  - g. Misappropriation;
  - h. Theft.
- iii. Attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

2. Procedure upon Conviction.

If a CPG is convicted of a felony or other serious crime, or, is convicted of a misdemeanor or gross misdemeanor involving moral turpitude, AOC must file with the Board a certified copy of the judgment and sentence that sets out such conviction. The Board shall decertify a professional guardian upon the conviction of a felony or a misdemeanor or gross misdemeanor involving moral turpitude, under either state or federal law, regardless whether such conviction is after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of any appeal. AOC must also petition the Disciplinary Committee Chair for an order suspending the respondent CPG during the pendency of disciplinary proceedings.

The decertification shall be effective upon the filing of a certified copy of such conviction with the Board. The Board shall file the certified copy of the conviction with other Board records pertaining to the professional guardian's certification. The Board shall provide written notice of the decertification to the professional guardian by certified mail, directed to the guardian's last known address maintained by the AOC. The notice shall advise the professional guardian of the decertification and the reason(s) for the

decertification. The notice shall further advise that if the professional guardian should not have been decertified by the Board, the professional guardian may file a petition requesting an administrative hearing. The petition shall set forth in detail the facts supporting the professional guardian's claim that an administrative error has occurred and that the professional guardian has not been convicted of a felony, or a misdemeanor or gross misdemeanor involving moral turpitude. The petition must be signed by the professional guardian under penalty of perjury. The professional guardian must file the petition within 15 days of the date of mailing of the Board's notice of decertification. Any petition not filed within 15 days shall be dismissed by the Board.

If a timely petition is filed by the professional guardian, the Board Chair shall appoint a three-person Review Panel to conduct a hearing on the petition. The sole issue before the Review Panel shall be to determine whether the professional guardian has been convicted of a felony, or of a misdemeanor or gross misdemeanor involving moral turpitude. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation about whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the professional guardian.

The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is approved, then the professional guardian shall be eligible for recertification, if the professional guardian shows proof of compliance with all other requirements for certification. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by first-class mail to the professional guardian. Any such order shall be final

- A. If a CPG is convicted of a crime that is not a felony, a serious crime, or a misdemeanor or gross misdemeanor involving moral turpitude, the Disciplinary Committee considers a report of the conviction in the same manner as any other report of possible misconduct by a CPG.
3. Petition. A petition to the Disciplinary Committee for suspension under this rule must include a copy of any available document establishing the fact of conviction. AOC may also include additional facts, statements, arguments, affidavits, and documents in the petition. AOC must serve a copy of the petition on the respondent, and proof of service filed with the AOC.
  4. Immediate Interim Suspension. If the crime of conviction is a felony or other serious crime or a misdemeanor or gross misdemeanor involving moral turpitude, the Disciplinary Committee must enter an order immediately suspending the respondent's CPG certification.
    - A. If suspended, the respondent must comply with DR 509.4.4.

- B. Suspension under this rule occurs:
- i. Whether the conviction was under a law of this state, any other state, or the United States;
  - ii. Whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and
  - iii. Regardless of the pendency of an appeal of the underlying conviction.
5. Duration of Interim Suspension. An interim suspension under this rule must terminate when the disciplinary proceedings in response to the complaint are fully completed or after appeal of the Disciplinary Committee's decision.
6. Termination of Suspension.
- A. Petition and Response. A respondent may at any time petition the Disciplinary Committee to recommend termination of an interim suspension. AOC, through disciplinary counsel, may file a response to the petition.
  - B. Disciplinary Committee Recommendation. If either party requests, the Disciplinary Committee must hear oral arguments on the petition at a time and place and under terms as the Disciplinary Committee Chair directs. The Disciplinary Committee may recommend termination of a suspension only if the Committee makes an affirmative finding of good cause to do so. There is no right of appeal from a Disciplinary Committee's decision regarding interim suspension.

## **509.6 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES**

1. Types of Interim Suspension.
- A. Disciplinary Committee Finding of Risk to Public. AOC may petition the Disciplinary Committee for an order suspending the respondent CPG during the pendency of any proceeding under these rules if: it appears that a respondent's continued practice as a CPG poses a substantial threat of serious harm to the public.
  - B. Disciplinary Committee Recommendation for Decertification. When the recommended sanction in a Complaint is decertification, AOC may file a petition for the respondent's suspension during the remainder of the proceedings.
  - C. Failure To Cooperate with Investigation. When any CPG fails without good cause to comply with a request under DR 505.2.5 for information or documents, or with a subpoena issued under DR 504.6, AOC may petition the Disciplinary Committee for an order suspending the CPG pending compliance

with the request or subpoena. If the CPG complies with the request or subpoena, the Disciplinary Committee may lift the suspension on terms the Disciplinary Committee deems appropriate.

## 2. Procedure.

- A. **Petition.** A Petition to the Disciplinary Committee under this rule must set forth the acts of the CPG constituting grounds for interim suspension. The Petition may be supported by documents or affidavits. The AOC must serve the Petition on the Disciplinary Committee and respondent CPG.
- B. **Show Cause Order.** Upon filing of the Petition, the Disciplinary Committee Chair orders the CPG to appear in person or telephonically before the Disciplinary Committee to show cause why the Petition for interim suspension should not be granted. This Show Cause Hearing cannot occur less than ten (10) days after service on the respondent of the Show Cause Order.
- C. **Answer to Petition.** The CPG may answer the Petition. An Answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the Show Cause Hearing.
- D. **Filing of Answer.** Any Answer must be filed with the AOC within ten (10) days of receipt of the Show Cause Order.
- E. **Settlement Agreement.** At any time a respondent CPG and Disciplinary Committee may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime or a substantial threat of serious harm to the public. Settlement Agreements under this rule are public upon filing with the AOC, but the Disciplinary Committee may order that supporting materials are confidential. The respondent may petition the Disciplinary Committee to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Disciplinary Committee may terminate the interim suspension.
- F. **Show Cause Hearing.** The respondent may appear before the Disciplinary Committee at the hearing to show cause why the Petition for interim suspension should not be granted.
- G. **Application of Other Rules.** If the Disciplinary Committee enters an interim order suspending the CPG, the rules relating to suspended CPGs, including DR 509.4, apply.

### **509.7 NOTIFICATION OF INTERIM SUSPENSION**

Upon entry of an order for interim suspension, the AOC shall notify all presiding judges and court administrators of the interim suspension. The AOC shall also remove the

respondent CPG's name from all public AOC Web site lists of certified professional guardians.

### **509.8 PROHIBITION AGAINST TAKING NEW APPOINTMENTS**

1. Applicability of Prohibition Against Taking New Appointments. A prohibition against taking new appointments may be imposed when a professional guardian:

- a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty; or
- b. Engages in conduct or misconduct that occurs while performing duties as a guardian that adversely reflects on the professional guardian's fitness to practice.

3. Prohibition Against Taking New Appointments may be imposed for conduct or misconduct that does not rise to the level of Revocation.

2. Term of Prohibition Against Taking New Appointments. A prohibition against taking new appointments must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. A prohibition against taking new appointments does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing of declarations, etc.

3. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the prohibition against taking new appointment period. The request shall include a statement verifying that the conditions of the prohibition against taking new appointment have been met. With approval of the Disciplinary Committee Chair, the AOC shall reinstate the CPG.

4. Duties of CPG upon being prohibited from accepting new appointment. The CPG will submit a complete list of all active guardianships in which he or she serves as the court-appointed guardian or the standby guardian and must immediately notify the superior court with authority over any of the CPG's cases of the prohibition.

### **509.9 LETTER OF REPRIMAND**

1. A letter of reprimand may be imposed when a professional guardian:

- A. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty; or
- B. The guardian engages in conduct which does not rise to the level of a Revocation, Suspension or Prohibition Against Taking New Cases.

## **509.10 PROBATION**

1. Probation is a remedy that will be imposed for a period of time that is not less than six months in duration when a professional guardian fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty. Probation shall consist primarily of a monitoring function that seeks to ensure the guardian:

- A. Fully complies with any sanctions, remedies or other actions imposed by the Board, a court or a judicial officer; and
- B. Fully complies with the duties, requirements or prohibitions in the Standards of Practice, Guardianship Program rules and regulations, Washington statutes, and guardian's fiduciary duty.

2. The Disciplinary Committee Chair may appoint a suitable person to monitor the conditions of the probation are being met. Cooperation with a person so appointed is a condition of the probation. The guardian will be responsible for compensating the appointed monitor.

3. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

4. Probation may be imposed in conjunction with any disciplinary action except Revocation.

## **509.11 OTHER DISCIPLINARY SANCTIONS**

1. Upon a finding that a CPG has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty, the Board may impose one or more of the following:

- A. Limitation on practice;
- B. Requirement that the CPG attend specific education courses or training, including the initial mandatory training;
- C. Alcohol or drug treatment;
- D. Behavior modification classes;
- E. Professional office practice or management advice and support to help the CPG correct deficiencies and make decisions.
- F. Periodic audits or reports;

G. Requirement that the CPG work with a mentor, who is a practicing or retired CPG or that the CPG's work be supervised;

H. Other requirements consistent with the purposes of discipline;

2. The Board must specify the terms and requirements in writing.
3. Failure to comply with the terms and requirements may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the discipline.

### **509.12 RESTITUTION**

1. Restitution defined: Restitution is the payment of the victim's out-of-pocket expenses directly related to the respondent's misconduct.
2. Restitution May Be Required. After a finding of misconduct, a respondent CPG may be ordered to make restitution to persons financially injured by the respondent's conduct.
3. Payment of Restitution.
  - A. A respondent ordered to make restitution must do so within thirty (30) days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.
  - B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if:
    - i. The respondent demonstrates in writing present inability to pay restitution; and
    - ii. The AOC consults with the persons owed restitution.
4. Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

### **509.13 COSTS AND FEES**

1. Assessment. The Board's costs and fees may be assessed as provided in this rule against any respondent CPG who is disciplined.
2. Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except fees as defined below, reasonably and necessarily incurred by the Board in the complete performance of its duties under these rules, whether incurred before or after the filing of a Complaint. Costs include, by way of illustration



and not limitation:

- A. Court reporter charges for attending and transcribing depositions or hearings;
  - B. Necessary travel expenses of the Hearing Officer, disciplinary counsel, AOC staff or witnesses;
  - C. Witness charges;
  - D. Costs of conducting an examination of books and records or an audit;
  - E. Costs incurred in supervising probation imposed under rule 509.5;
  - F. Telephone toll charges;
  - G. Costs for court records;
  - H. Costs for AOC staff professional services;
  - I. Costs of copying materials.
3. Fees defined. Fees assessed under this rule may be equal to the actual fees incurred by the AOC.
4. Statement of Costs and Fees.
- A. Content. A statement of costs and fees must state with particularity the nature and amount of the costs claimed and also state the fees requested. An appropriate AOC staff member must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.
  - B. Service. The AOC serves a copy of the statement on the respondent.
5. Assessment Discretionary. Assessment of any or all costs and fees may be denied if it appears in the interests of justice to do so.
6. Payment of Costs and Fees.
- A. A respondent ordered to pay costs and fees must do so within thirty (30) days of the date on which the assessment becomes final, unless the order provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.
  - B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and fees.

7. Failure To Comply. A respondent's failure to pay costs and fees when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

## **510 BOARD'S REVIEW**

### **510.1 DECISION**

1. Decision. For purposes of this title, "Decision" means the Hearing Officer's findings of fact, conclusions of law, and order recommending disciplinary sanction,.
2. Review of Decision. The Board reviews all Hearing Officer Decisions. Either party may file a written Notice of Review within thirty (30) days of the final Decision. The Disciplinary Committee members shall recuse themselves from all review proceedings. All Board members shall disqualify themselves as necessary according to the standards set out in DR 502.2.6.
3. Notice of Review. The Notice of Review must include the following:
  - A. A statement that review being requested;
  - B. The portion of the Hearing Officer's decision to be challenged;
  - C. The general basis for the review; and
  - D. Whether a full or partial transcript should be ordered pursuant to 510.3.

### **510.2 TRANSCRIPT OF HEARING**

1. Ordering Transcript. AOC must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review.
2. Filing and Service. The original of the transcript is filed with the AOC and AOC must serve it on the respondent except if the respondent ordered the transcript.

### **510.3 RECORD ON REVIEW**

1. Generally. The record on review consists of:
  - A. Any hearing transcript or partial transcript; and
  - B. Documents and exhibits admitted into the evidentiary record by the Hearing Officer.
2. References to the Record. Briefs filed must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits and documents.

3. No Additional Evidence. Evidence not presented to the Hearing Officer must not be presented to the Board.
4. The AOC shall prepare and distribute the record on review to the Board.

#### **510.4 BRIEFS**

1. When seeking review by the Board, the respondent has the right to file a brief, which shall include a statement in opposition to the Decision of the Hearing Officer, alleging errors of fact, law, or other pertinent matter.
2. Time for Filing Briefs. Briefs, if any, must be filed within twenty (20) days of service on the respondent CPG of a copy of the hearing transcript unless no transcript was requested. If no transcript was requested, briefs must be filed within twenty (20) days of the filing of the Notice of Review.
3. Disciplinary counsel must file a brief within fifteen (15) days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within fifteen (15) days of the expiration of the period for the respondent to file a brief.
4. The respondent may file a reply to disciplinary counsel's brief within ten (10) days of service of that brief on the respondent, unless respondent failed to file an initial brief.

#### **510.5 DECISION OF BOARD**

1. Basis for Review. Board review is based on the Hearing Officer's Decision, the parties' briefs, and the record on review.
2. Action by Board. The Chair, by virtue of that office, is not disqualified from participating in the review before the Board or from participating in the Board's vote on a matter. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the Hearing Officer.
3. Board Order. The Board must issue a written Order within ninety (90) days of the hearing on the appeal. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the Hearing Officer, the Board must state the reasons for its decision in a written Order. A Board member agreeing with the majority's Order may file separate concurring reasons. A Board member dissenting from the majority's Order may set forth in writing the reasons for that dissent. The Order should be prepared as expeditiously as possible and consists of the majority's decision together with any written dissent. A copy of the complete Order is served by the AOC on the parties.
4. Board's Order is Final. The Board's Order is final unless the Board is recommending suspension or decertification, in which case the Supreme Court shall review the Board's Decision. The Board will file its decision and the complete record

with the Supreme Court.

## **510.7 CHAIR MAY MODIFY REQUIREMENTS**

Upon written motion and for good cause shown, the Chair may modify the time periods in CR 10, and make other orders as appear appropriate to assure fair and orderly Board review.

## **511 SUPREME COURT REVIEW**

**511.1 Notification of Filing:** Upon the filing of the Board's recommendation of suspension or decertification and of the record, the Supreme Court Clerk shall mail written notice to the professional guardian and counsel.

**511.2 Review on the Record:** The Supreme Court shall review any Board recommendation for suspension or decertification after consideration of the transmitted record. No oral argument or evidence will be heard by the Supreme Court. The Supreme Court may adopt, modify, or reverse the Board's recommendation by written order. The AOC shall mail a copy of the Supreme Court's order to all parties, counsel, and the Board. Costs, if any, of transcription and preparation of the record for Supreme Court review shall be paid by the Board.

**511.3 Finality:** The court's order in a disciplinary proceeding is final when filed unless the court specifically provides otherwise.

### **511.4 Decertified or Suspended Professional Guardians**

**511.4.1 Referral to Court:** The Supreme Court's order decertifying or suspending a professional guardian shall include provisions providing for the immediate referral of the matter to the superior court of each county.

**511.4.2 Agencies:** If the Board has recommended decertification or suspension of a professional guardian to the Supreme Court, the employer agency, if any, shall, upon notice of the Board's recommendation, promptly appear before the Board to determine how the decertification or suspension shall affect continuation of the agency's certification. Continuing certification of an agency affected by the suspension or decertification of a professional guardian shall be determined by the Board. The Board's primary concern shall be the best interests of the incapacitated persons. This provision does not supplant the exclusive jurisdiction of the superior court of each county over guardianship cases.

**511.4.3 Notice to Interested Parties:** Within ten (10) days of decertification or suspension, the professional guardian shall notify all parties entitled to notice in any active or pending guardianship matters of the professional guardian's decertification or suspension and the anticipated effect on the incapacitated person.

511.4.4 Immediate Cessation of Professional Guardian Status: After entry of the order of decertification or suspension, the decertified or suspended professional guardian shall not accept any new appointments or engage in work as a professional guardian in any matter, except to assist in the orderly transfer of cases.

511.4.5 Affidavit of Compliance: Within ten (10) days of the effective date of the decertification or suspension order, the decertified or suspended professional guardian shall file with the AOC:

- a) An affidavit attesting to full compliance with the provisions of the order, and with these regulations, including current mailing address.
- b) A copy of the notification letter sent to all parties entitled to notice, together with a list of the names and addresses of all persons to whom the notice was sent.

511.4.6 Records Maintained: Proof of compliance with these regulations shall be a condition precedent to any petition for reinstatement.

## **511.5 DECERTIFIED OR SUSPENDED PROFESSIONAL GUARDIANS**

1. Referral to Superior Court: Upon receipt of the Supreme Court's order decertifying or suspending a professional guardian, the AOC shall notify each superior court.
2. Agencies: If the Board has recommended decertification or suspension of a professional guardian to the Supreme Court, the employer agency, if any, shall, upon notice of the Supreme Court order contact AOC to determine how the decertification or suspension shall affect continuation of the agency's certification. Continuing certification of an agency affected by the suspension or decertification of a professional guardian shall be determined by the Board. The Board's primary concern shall be the best interests of the incapacitated persons.
3. Notice to Interested Parties: Within ten (10) days of decertification or suspension, the professional guardian shall notify all parties entitled to notice in any active or pending guardianship matters of the professional guardian's decertification or suspension and the anticipated effect on the incapacitated person.
4. Immediate Cessation of Professional Guardian Status: After entry of the order of decertification or suspension, the decertified or suspended professional guardian shall not accept any new appointments or engage in work as a professional guardian in any matter, except to assist in the orderly transfer of cases.

## 512 DISCIPLINE FROM OTHER JURISDICTIONS; DUTY TO SELF-REPORT

1. **Duty To Self-Report Discipline.** Within thirty (30) days of being disciplined in another jurisdiction as a certified professional guardian or conservator, whatever term may be appropriate in that other jurisdiction, a CPG must inform the AOC of the discipline.
2. **Obtaining Order.** Upon notification from any source that a CPG certified in this state was disciplined in another jurisdiction, the AOC must obtain a copy of the Order and file it with the Disciplinary Committee.
3. **Disciplinary Committee Action.** Upon receipt of information demonstrating that a CPG certified in this state has been disciplined in another jurisdiction, the Disciplinary Committee may order the respondent CPG to show cause within thirty (30) days of service of the show cause order why it should not impose the identical discipline. The AOC must serve this Order by certified mail, and a copy of the Order from the other jurisdiction, on the respondent.
4. **Deferral.** If the other jurisdiction has stayed the discipline, any reciprocal discipline in this state is deferred until the stay expires.
5. **Discipline to Be Imposed.**
  - A. Thirty (30) days after service of the Order under Section (3), the Disciplinary Committee may impose the identical discipline unless the CPG demonstrates or the Disciplinary Committee finds, that it clearly appears on the face of the record on which the discipline is based, that:
    - i. The procedure so lacked notice or opportunity to be heard that it denied due process;
    - ii. The proof of misconduct was so weak that the Disciplinary Committee is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;
    - iii. The imposition of the same discipline would result in grave injustice;
    - iv. The established misconduct warrants substantially different discipline in this state; or
    - v. Appropriate discipline has already been imposed in this jurisdiction for the misconduct.
  - B. If the Disciplinary Committee determines that any of the factors in subsection (A) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

6. **Conclusive Effect.** Except as this rule otherwise provides, a final adjudication in another jurisdiction that a CPG has engaged in misconduct conclusively establishes the misconduct for purposes of a disciplinary proceeding in this state.
7. **Affidavit of Compliance.** Within ten (10) days of the effective date of the decertification or suspension order, the decertified or suspended professional guardian shall file with the AOC:
  - A. An affidavit attesting to full compliance with the provisions of the order, and with these regulations, including current mailing address.
  - B. A copy of the notification letter sent to all parties entitled to notice, together with a list of the names and addresses of all persons to whom the notice was sent.
8. **Records Maintained.** Proof of compliance with these regulations shall be a condition precedent to any petition for reinstatement.

### **513 REVIEW OF SUPERIOR COURT CASE FILINGS**

To periodically audit CPGs' compliance with standards of practice and statutory court filing requirements, the Board directs AOC to select certified professional guardians at least monthly and review the guardians' cases on SCOMIS or other available case information sources. AOC may open a grievance and conduct an investigation pursuant to these Disciplinary Regulations.

### **514 REQUEST FOR DISCIPLINARY RECORD**

When an official licensing or disciplinary body of any state with a pending application, investigation or disciplinary action involving a certified professional guardian in Washington requests disciplinary information from the Board or the AOC, the AOC will certify and transmit the disciplinary record of the certified professional guardian involved. Notice of the request and the transmitted materials shall be provided to the last known address of the certified professional guardian.

### **515 ADMINISTRATIVE DECERTIFICATION**

If the Board decertifies a CPG for an administrative reason, including but not limited to the certified 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 CPG may be dismissed. If the grievance is within the jurisdiction of the Disciplinary Committee, it may dismiss the grievance. If the Disciplinary Committee has already sent the grievance to the Board with a recommendation of action, the Board may dismiss the grievance. Information that a grievance was pending at the time of administrative decertification shall be placed in the CPG's licensing records and shall be available to the public.