

Guardianship Program Rules

500 Disciplinary Regulations

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Guardianship Program Rules

501 Standards of Practice Relationship to Disciplinary Regulations

The Standards of Practice are designed to assist professional guardians in performing their duties and to protect the public interest. The standards constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of professional guardian misconduct. The standards are designed to promote:

Consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;

Consideration of the appropriate weight of such factors in light of the stated goals of guardian discipline; and

Consistency in the imposition of disciplinary sanctions for the same or similar offenses.

The weight given any violation of a standard of practice is set out in the disciplinary regulations.

Guardianship Program Rules

502 Purpose of Disciplinary Regulations

502.1 To assure that Certified Professional Guardians meet and maintain minimum professional standards of practice, which are adopted as regulations under General Rule 23 – Rule for Certifying Professional Guardians.

502.2 To establish a process for the Certified Professional Guardian Board (Board) to review grievances of alleged violations of statutes, fiduciary duties, standards of practice, rules, regulations, and any other authority applicable to professional guardians. The disciplinary procedures for failure to pay dues or failure to complete continuing education requirements are included in the Application and Continuing Education Regulations.

502.3 To set out the due process protections and other procedures that allow the professional guardian and the public to be protected.

Guardianship Program Rules

503 Grounds for Disciplinary Action

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

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

503.2 Commission of a felony or of a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.

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

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

503.5 Permitting a professional guardian's name to be used by an uncertified person or agency.

503.6 Misrepresentation or concealment of a material fact made in the application for certification.

503.7 Suspension, decertification, or other disciplinary sanction 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.

503.8 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 decertified or suspended and who is not eligible for re-certification, if the professional guardian has knowledge of such decertification or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.

503.9 Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.

503.10 Making a false statement under oath.

503.11 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.

503.12 Working as a professional guardian while on inactive status.

503.13 Failing to cooperate during the course of an investigation as required by the Board's regulations.

Guardianship Program Rules

504 Grievances

504.1 Any person or entity may file a grievance with the Administrative Office of the Courts (AOC) regarding a professional guardian. The Board may file a grievance in its name if alleged or apparent misconduct comes to the Board's attention without a grievance being filed by a third person.

504.2 Grievances may be filed by completing the grievance form located on the Washington Courts website at http://www.courts.wa.gov/programs_orgs/forms/ and submitting the grievance form to the Board through the AOC.

504.3 The AOC will review each complaint and may follow up in writing or through other means to obtain all necessary information for the grievance to proceed. This follow-up may include the AOC returning incomplete or unclear grievances to the submitting person or body with an explanation of why the grievance is incomplete and what additional information is necessary.

504.4 Unless the Standards of Practice Committee (SOPC) has dismissed the grievance, the AOC shall send a grievance regarding an active guardianship case to the appropriate superior court with a request that the court review the grievance, take any action the court deems necessary, and report back to the AOC.

504.5 Unless the SOPC has dismissed the grievance, AOC will send a copy of the grievance to the professional guardian, provide information to the professional guardian about the website location of the Board's disciplinary regulations and request that the professional guardian respond to the grievance in writing.

504.6 AOC may perform other necessary investigation of the grievance, which may include any of the following: interviewing the grievant, interviewing the professional guardian and obtaining relevant records or documentation from any person or entity.

504.7 AOC will report the results of its investigation to the SOPC unless the grievance is against a Board member, in which case the AOC will report the results of its investigation to the Conflicts Review Committee (CRC) which shall act on the grievance in accord with these regulations.

Guardianship Program Rules

505 Standards of Practice Committee (SOPC)

505.1 The SOPC shall have three members appointed by the Board Chair. At least one member must be a certified professional guardian and at least one member must be an attorney or judicial officer. The Board Chair shall designate one member as the chair of the committee. All committee members will serve a term of one year. The Board Chair shall also appoint at least three alternate members of the SOPC to assist the SOPC in the performance of its duties as requested by the Chair of the SOPC. At least one alternate member shall be a certified professional guardian and one alternate member shall be a judicial officer or attorney.

505.2 Members of the SOPC shall perform tasks related to the disciplinary process as set forth in these regulations or as assigned by the Board.

Guardianship Program Rules

506 Standards of Practice Committee Action on Grievances

506.1 The SOPC shall review reports prepared by AOC, if any, and take one of the following actions on each grievance: request further information from AOC, dismiss, request that the Board file a formal complaint, request that the Board enter into an Agreement Regarding Discipline, or direct that AOC contact the professional guardian to discuss an issue of minor significance and of a nature not potentially harmful to clients of the professional guardian or other persons. The SOPC may also refer the grievance to other regulatory agencies or to law enforcement. If the SOPC requests Board action, the request shall be accompanied by a written report setting forth the reasons for the request.

506.1.1 The SOPC may direct AOC to obtain the statement of any person believed to have information relevant to the grievance, obtain opinions from expert witnesses, or any other information the SOPC determines may be relevant to the grievance.

506.1.2 Where there is reasonable cause to believe that testimony should be perpetuated, AOC may depose any witness upon reasonable notice to the professional guardian being investigated. An AOC staff attorney or an attorney appointed by the Board Chair shall conduct the deposition. The deposition shall be taken under oath before a Notary Public or other officer authorized by the law of the jurisdiction where the deposition is taken. The deposition may be transcribed by any party for use in further proceedings.

506.1.3 AOC may issue a subpoena to compel attendance of witnesses or to compel production of documents at a deposition. The subpoena shall be issued in the name of the Board and subscribed by the signature of the Board's attorney. Subpoenas shall be served in the same manner as in civil cases in superior court. Failure to attend or produce documents pursuant to a properly issued 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 Board Chair.

506.2 The SOPC will dismiss the grievance if it determines that the Board has no jurisdiction over the grievance or if the allegations and other information available to the SOPC, do not provide grounds for disciplinary action by the Board. The AOC will notify the grievant in writing that the grievance has been dismissed and the reason for the dismissal.

506.3 The SOPC may request that a complaint be filed if the Board has jurisdiction over the grievance and the grievance and other information available to the SOPC provide grounds for disciplinary action by the Board.

506.4 The SOPC may direct AOC to contact a professional guardian directly to discuss a grievance regarding an issue of minor significance or of a nature not potentially

harmful to clients of the professional guardian or other persons. The SOPC may direct the professional guardian to take corrective measures. If the professional guardian takes the action requested by the SOPC, the SOPC will report the professional guardian's compliance to the Board. If the Board approves of this resolution, then the matter will be closed. This resolution does not constitute a finding of misconduct by the Board, is not a sanction, is not disciplinary action, and is not public information. The grievant shall be informed that the matter is closed with no disciplinary action taken by the Board. If the professional guardian refuses to take action as directed by the SOPC, or the Board does not approve the resolution, the matter shall be reviewed by the SOPC for further action.

506.5 The SOPC may conditionally settle and dispose of grievances without a hearing, provided a complete report of the conditional disposition of each grievance shall go to the Board for approval. Upon review of the SOPC report, the Board shall take action and make a record of the Board's decision which shall appear in the meeting minutes.

506.6 The Board may defer processing any grievance involving material allegations that are substantially similar to the material allegations of pending criminal or civil litigation. In such event, the professional guardian shall make all reasonable efforts to obtain a prompt disposition of such pending litigation. Acquittal of the professional guardian of criminal charges or a verdict or a judgment favoring the professional guardian in civil litigation involving substantially similar material allegations shall not require abatement of any Board disciplinary investigation predicated upon the same material allegations.

Guardianship Program Rules

507 Conflicts Review Committee

507.1 The Conflicts Review Committee (CRC) shall have three members appointed by the Board Chair, who shall also designate the committee chair. CRC members may not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.

507.2 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 SOPC under these regulations and AOC shall report to the CRC on any such grievance.

507.3 The CRC may also 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.

507.4 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.

507.5 Consistent with the Office of Financial Management rules, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

Guardianship Program Rules

508 Duties of the Certified Professional Guardian in a Disciplinary Proceeding

508.1 It shall be the duty and the obligation of a professional guardian or agency subject to a disciplinary investigation to cooperate with the SOPC, Board, or the AOC staff as requested, subject only to the proper exercise of the professional guardian's privilege against self-incrimination.

508.2 Upon request, the professional guardian shall provide the following within the time specified:

508.2.1 Documents, including allowing AOC to inspect and copy business records, files, and accounts.

508.2.2 A full and complete explanation covering the matters contained in the grievance.

508.2.3 Written releases or authorizations where needed to obtain access to documents or information in the possession of third parties.

508.3 The professional guardian may be required to report to and seek instruction from the appointing court.

Guardianship Program Rules

509 General Provisions

509.1 Representation of the Professional Guardian

509.1.1 A professional guardian may be represented by counsel at the professional guardian's expense at any stage of any investigation or proceeding under the Board's regulations.

509.1.2 Should the professional guardian seek reimbursement or imposition of fees and costs from a guardianship estate during the pendency of any Board or AOC investigation, the matter must be addressed by the superior court with jurisdiction over the case.

509.1.3 A former member of the Board who is also a licensed attorney in Washington shall not represent a professional guardian in proceedings under the Board's regulations until after two (2) years have elapsed following expiration of the Board member's term of office.

Guardianship Program Rules

510 Hearing Procedures

510.1 Complaint

510.1.1 Upon the SOPC's request that a complaint be filed, and upon approval of the Board, the AOC shall sign such a complaint that shall set forth the allegations regarding particular acts or omissions of the professional guardian in such detail as to enable the professional guardian to be informed of the allegations. The complaint shall be filed with the AOC.

510.1.2 Prior Board disciplinary action against the professional guardian may be set forth in a separate count of the complaint. Prior Board disciplinary action is a factor to be considered in determining any sanction imposed in a disciplinary action.

510.2 Hearing Officer: In the absence of a hearing officer hired by the AOC, the Board Chair shall appoint a Hearing Officer, but may fulfill the obligations of a Hearing Officer in the absence of such appointment. Any Board member may be appointed as the Hearing Officer, except for any member of the Standards of Practice Committee that investigated the grievance.

510.3 Commencement of Proceedings: A disciplinary action shall become public when the complaint has been filed with the AOC by counsel representing the Board. The complaint and all subsequent pleadings filed in the disciplinary action shall be open to public access.

510.4 Notice

510.4.1 A copy of the complaint with notice to answer, notice of the location of the Board's disciplinary regulations on the AOC website, and any pleadings, notices, or other documents shall be served on the professional guardian by registered or certified mail at the address on file with the AOC.

510.4.2 By applying to be certified, all professional guardians agree to accept personal service by registered or certified mail at the address provided by the professional guardian.

510.4.3 Service on the Board of any pleadings, notices, or other documents may be made by delivery or mailing to the Administrative Office of the Courts, 1112 Quince St SE, PO Box 41170, Olympia WA 98504-1170 during regular business hours. A copy of any document served on the Board shall be served by mail or personal delivery on the Board's attorney of record in the disciplinary proceeding.

510.4.4 Proof of service by affidavit or certificate of service, or mailing, sheriff's return of service, or a signed acknowledgment of service, shall be filed in the office of the AOC.

510.4.5 Electronic filing or service of documents upon the Board or the AOC is not permitted without the express written authorization of the Board or the AOC. Electronic service upon a party is not permitted without the express written authorization of the party. Electronic filing and service includes transmission by electronic mail and electronic facsimile transmission.

510.5 Response: The professional guardian may file a response to the complaint. Failure to timely respond or to keep the AOC advised of the professional guardian's current address for service during the pendency of the disciplinary hearing procedures may lead to an adverse decision as defined below.

510.6 Time to Respond: The professional guardian shall be allowed thirty (30) days from the date of service, exclusive of the date of service, to respond to the complaint.

510.7 Amendment and Extensions of Time: The Hearing Officer may at any time allow or require amendments to the complaint or to the answer. The Hearing Officer may extend the time for filing any pleading for good cause.

510.8 Procedural Irregularity: No technical or procedural irregularity shall affect the validity of a complaint or of any related proceedings.

Guardianship Program Rules

511 Hearing

511.1 Board Representation: AOC staff or other person, including counsel appointed by the Chair, shall represent the Board.

511.2 Where Held: 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, in the discretion of the Hearing Officer.

511.3 Date of Hearing: 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.

511.4 Postponements/Continuances: The Hearing Officer may grant a postponement or continuance of any hearing. An application for a continuance or postponement by a party shall be supported by affidavit and shall be served and filed at least seven (7) days prior to the scheduled hearing, unless such time is shortened by the Hearing Officer.

511.5 Entry of Default

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

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

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

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

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

511.6 Proceedings After Entry of an Order of Default.

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

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

511.6.3 Disciplinary Proceeding: Within 60 days of the filing of the order of default, the hearing officer or the Board must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or Board, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. The attorney of record for the Board may present additional evidence including, but not limited to, requests for admission under regulation 511.10.0 and depositions, affidavits, and declarations regardless of the witness's availability.

511.7 Setting Aside Default

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

- a) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
- b) erroneous proceedings against a guardian, who was, at the time of the default, incapable of conducting a defense;
- c) newly discovered evidence that by due diligence could not have been previously discovered;
- d) fraud, misrepresentation, or other misconduct of an adverse party;
- e) the order of default is void;
- f) unavoidable casualty or misfortune preventing the guardian from defending; or

g) any other reason justifying relief from the operation of the default.

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

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

511.7.4 Service and Contents of Motion: The motion must be filed and served under regulation 510.4.3 and 510.4.4 and be accompanied by a copy of guardian's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the guardian's asserted defenses and any facts that guardian asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

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

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

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

511.7.7 Appeal of Denial of Motion: A guardian may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer's decision. The guardian must file the notice of appeal within ten days of service on the guardian of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of

proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

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

511.8 Protective Orders: To protect a compelling privacy or safety interest of a grievant, witness, third party, or professional guardian, the Hearing Officer may, upon motion and finding that such privacy or safety interests outweigh the public interest in access to the record, issue a protective order prohibiting the public disclosure of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Said order shall state with particularity the information prohibited from disclosure. Agreement of the parties alone does not constitute a sufficient basis for granting a protective order. The hearing on a motion for a protective order shall occur as soon as possible in order to not delay the proceedings.

511.9 Subpoenas: Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearings 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.

511.10 Discovery: The parties shall have the following discovery rights, limited only to the extent the Hearing Officer deems just:

511.10.1 Admissions from a party under Superior Court Civil Rule (CR) 36.

511.10.2 Depositions of another party or witness under Superior Court Civil Rule (CR) 30.

511.10.3 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' stipulation.

511.11 Testimony: Testimony may be live or taken electronically via telephone, video, or other means at the discretion of the Hearing Officer. Hearings shall be electronically recorded and testimony may be presented through depositions. Witnesses shall testify under oath administered by the Hearing Officer.

511.12 Exchange of Materials: The parties shall exchange witness lists and exhibits prior to the hearing, as directed by the Hearing Officer. Failure to comply with the case scheduling requirements as directed by the Hearing Officer may result in the exclusion of witnesses and evidence not timely identified.

511.13 Cooperation: It shall be the duty of the professional guardian and the Board's counsel to timely respond to all requests or directions of the Hearing Officer. Upon a party's failure to do so, the Hearing Officer may recommend to the Board that the professional guardian be decertified for non-compliance with the disciplinary process. Such failure may constitute a separate violation of these regulations. The Hearing Officer may dismiss the complaint with prejudice upon failure of the Board's counsel to timely respond to requests or directions of the Hearing Officer.

511.14 Standard of Proof: The Board bears the burden of establishing misconduct warranting disciplinary action by a preponderance of the evidence in all cases. (Adopted 11-14-11)

511.15 Rules of Evidence: The rules of evidence shall be those set forth in chapter 34.05 RCW, the Administrative Procedure Act.

511.16 Civil Rules as Reference: The Civil Rules of the Superior Court shall be referred to as a guide in any matter not covered by these regulations. The Hearing Officer shall determine the applicability and shall decide the procedure to be used.

511.17 Witness Fees: Witnesses shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by RCW 2.40 and RCW 5.56.010, except that the AOC shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The party issuing a subpoena shall pay the fees, allowances, and cost of producing records required to be produced by subpoena.

511.18 Findings, Conclusions, and Recommendation: Within twenty (20) days after the hearing, the Hearing Officer shall file with the AOC written findings of fact, conclusions of law, and recommendations to the Board for action. The AOC shall mail copies to the parties.

Guardianship Program Rules

512 Board Review

512.1 Transcript of the Hearing: The Board shall prepare the transcript of the evidentiary hearing held before the Hearing Officer and shall mail a copy to each party.

512.2 Statement in Opposition and Rebuttal: Any statement in opposition to the decision of the Hearing Officer, alleging errors of fact, law, or any other pertinent matter shall be filed within twenty (20) days from receipt of the hearing transcript. Said statement shall be filed with the Board and served on each party. Each party shall have ten (10) days from the date of mailing of a statement in opposition of any party to file a rebuttal to said statement. Receipt of any mailed materials shall be deemed complete three days after the postmarked date on the materials.

512.3 Board Review: The Board shall review the Hearing Officer's findings of fact, conclusions of law and recommendations. In addition, the Board shall review any statements in support or opposition to such findings, conclusions, and recommendation, and any portion of the record deemed necessary to resolve the matter.

512.4 Board Action

512.4.1 Board Decision: The Board shall adopt, modify or reverse the findings, conclusions, and recommendation of the Hearing Officer by written decision, a copy of which shall be served upon the parties.

512.4.2 Dissent: If any Board member or members dissent from the findings, conclusions, and recommendation of the majority, the member or members shall state in writing the reasons for the dissent. Dissents shall be made a part of the record.

512.4.3 Retention of Records: The record of any disciplinary proceeding shall be retained in accordance with records retention schedules for the judicial branch and the AOC.

512.4.4 Disposition Requiring Supreme Court Action: If the Board's recommendation is that the professional guardian be decertified or suspended, that recommendation, along with the record, shall be transmitted to the Supreme Court.

512.4.5 Disqualification: The Hearing Officer and all Board members who served on the SOPC are disqualified from participating in the Board's review of the Hearing Officer's decision and from participating in the Board's vote on the matter.

512.4.6 Quorum: A quorum for determination of the Board's decision on review of the Hearing Officer's decision shall consist of a majority of the Board members who are not disqualified as above.

512.4.7 Information to Grievant: The Board shall advise the grievant in all cases of the final disposition of the grievance.

Guardianship Program Rules

513 Supreme Court Review

513.1 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.

513.2 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.

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

513.4 Decertified or Suspended Professional Guardians

513.4.1 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.

513.4.2 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.

513.4.3 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.

513.4.4 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.

513.4.5 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.

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

Guardianship Program Rules

514 Agreements Regarding Discipline

514.1 Requirements: Any disciplinary matter may be resolved by an Agreement Regarding Discipline entered into at any time by the professional guardian and by the Board.

514.2 An Agreement Regarding Discipline shall:

514.2.1 State the material facts relating to the particular acts or omissions of the professional guardian.

514.2.2 Set forth the guardian's prior record of discipline or any absence of such record.

514.2.3 State that the Agreement Regarding Discipline is binding as a statement of all known facts relating to the conduct of the professional guardian, but that any additional existing acts may be proven in any subsequent disciplinary proceedings.

514.2.4 Fix any costs, restitution, and expenses to be paid by any party.

514.3 Notice

514.3.1 The Agreement Regarding Discipline shall be retained by the AOC in the professional guardian's disciplinary file.

514.3.2 The Agreement Regarding Discipline shall be open to public access and disclosure. Notice of the discipline imposed in such Agreements shall be sent to all superior courts.

514.4 Failure to Comply: Failure of a professional guardian to comply with the terms of an Agreement Regarding Discipline may constitute additional grounds for discipline.

Guardianship Program Rules

515 Sanctions and Remedies

515.1 Following a determination that a professional guardian has violated a provision of the Standards of Practice, sanctions may be appropriate. Any sanction or remedy imposed by the Board or the Supreme Court on a professional guardian or agency, whether or not agreed to by the professional guardian, is a disciplinary sanction. Sanctions may include decertification, suspension, prohibition against taking new cases, letter of reprimand, or letter of admonishment. Factors to be considered in imposing sanctions include:

515.1.1 The duty violated.

515.1.2 The professional guardian's mental state.

515.1.3 The potential or actual injury caused by the professional guardian's misconduct.

515.1.4 The existence of aggravating or mitigating factors.

515.1.4.1 Aggravating factors include prior disciplinary action by the Board against the same professional guardian, 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.

515.1.4.2 Mitigating factors include the absence of a prior disciplinary record, timely good faith to make restitution or to rectify consequences of misconduct, cooperation with the disciplinary proceedings, and temporary circumstances outside the professional guardian's control.

515.2 Imposition of Sanctions: Generally, the following sanctions are available.

515.2.1 Decertification is generally appropriate when a professional guardian engages in:

515.2.1.1 Professional misconduct incompatible with the Standards of Practice with the intent to benefit the professional guardian or another; or deceive the court; or cause serious or potentially serious injury to a party, the public, or the legal system or causes serious or potentially serious interference with a legal proceeding;

515.2.1.2 Felonious criminal conduct,

515.2.1.3 Any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously, adversely reflects on the professional guardian's fitness to practice, or

515.2.1.4 Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the same Standards of Practice, and where the guardian has not corrected the behavior despite previous attempts by the courts or the Board to correct the behavior. (Adopted 1-9-12)

515.2.2 Prohibition against taking new cases or suspension for a period of time, or both, is generally appropriate when a professional guardian engages in:

515.2.2.1 Professional conduct incompatible with the Standards of Practice and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding, or

515.2.2.2 Criminal conduct that seriously adversely reflects on the professional guardian's fitness to serve.

515.2.3 A letter of reprimand is generally appropriate when a professional guardian engages in:

515.2.3.1 Professional misconduct incompatible with the Standards of Practice and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding, or

515.2.3.2 Any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the professional guardian's fitness to practice.

515.2.4 A letter of admonishment is generally appropriate when a professional guardian engages in professional misconduct incompatible with the standards of practice and not rising to the level justifying a reprimand.

515.3 Remedies are designed to ensure compliance with duties, standards, and requirements for a professional guardian. Remedies may include, but are not limited to, changes in methods of practice, probation, restitution, additional training for guardian or staff, requirement that the professional guardian obtain expert consultation, mentoring, or an audit.

Guardianship Program Rules

516 Costs

The Board may order a professional guardian to pay costs including cost of the discipline process and any other directly provable expense, including attorney fees as part of the sanctions imposed. A Hearing Officer may recommend the payment of costs. Failure of a professional guardian to pay costs or to pay restitution when ordered to do so, or failure to comply with the terms entered, may constitute additional grounds for discipline. (Amended 2-11-08).

Guardianship Program Rules

517 Reinstatement after Decertification or Suspension

517.1 No decertified or suspended professional guardian shall resume working as a professional guardian until they have complied with all orders for sanctions and have received written confirmation of such compliance from the Board.

517.2 No petition for reinstatement shall be allowed until five (5) years after decertification.

Guardianship Program Rules

518 Conviction of Felony

518.1 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, whether such conviction is after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of an appeal. 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.

518.2 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.

518.3 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.

Guardianship Program Rules

519 Suspension Pending Disciplinary Proceedings

519.1 Board may Suspend a Professional Guardian Pending Disciplinary Proceedings: After institution of a disciplinary proceeding where it appears that a continuation of certification by a professional guardian will result in substantial risk of injury to the public, or where the professional guardian has refused to cooperate in the disciplinary procedures, the SOPC may request that the Board suspend the professional guardian during the pendency of the disciplinary proceedings.

519.2 Petition and Notice to Answer: At the request of the SOPC, an attorney appointed by the Board Chair shall file a petition with the Board requesting that the Board suspend the professional guardian during the pendency of disciplinary proceedings. The petition to the Board under this rule shall set forth grounds for such suspension pending disciplinary proceedings. A copy of the complaint shall be attached to the petition. Documents or affidavits may support the petition. The Board shall issue an order to show cause requiring the professional guardian to appear before the Board on a date certain to show cause why the request for Suspension Pending Disciplinary Proceedings should not be granted.

519.3 Answer to Petition: The professional guardian's answer may contain facts relating only to the issue of substantial risk of injury to the public, shall be verified by the professional guardian, and may be supported by declarations, affidavits, and other documentary evidence.

519.4 Service of Answer: A copy of the answer shall be served on the Board's attorney at least five days before the scheduled show cause hearing. For good cause shown, the time for answer may be extended.

519.5 Costs: No costs shall be assessed for a hearing on a petition to suspend a professional guardian pending disciplinary proceedings.

519.6 Show Cause Hearing: The Board shall base its decision on all pleadings and other documents, affidavits and declarations filed by the parties, as well as oral argument of the parties. The Board shall issue an order suspending the certification of the professional guardian during the pendency of the disciplinary proceedings if it is persuaded by a preponderance of the evidence that the continued certification of the professional guardian presents a substantial risk of injury to the public or that the professional guardian has failed to cooperate in disciplinary proceedings.

519.7 Supreme Court Review: Either party may request review of the Board's order by the Supreme Court. The Supreme Court shall review the Board's order and the pleadings, documents, affidavits and declarations filed by the parties before the Board. The Supreme Court shall determine whether oral argument is granted. The Supreme

Court may adopt, modify or reverse the order of the Board. The AOC shall mail a copy of the Supreme Court's order to all parties.

Guardianship Program Rules

520 Review of Superior Court Case Filings

To periodically audit guardians' 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.

Guardianship Program Rules

521 Request for Disciplinary Record

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

Guardianship Program Rules

522 Administrative Decertification

If the Board decertifies a professional guardian for an administrative reason, including but not limited to the 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 professional guardian may be dismissed. If the grievance is within the jurisdiction of the SOPC, it may dismiss the grievance. If the SOPC 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 guardian's licensing records and shall be available to the public.