

June 12, 2017, the Certified Professional Guardianship Board approved the following revisions to the proposed revised version of Disciplinary Regulation 500.

General – throughout the Proposed Revision of Disciplinary Regulation 500 the term “decertification” will be changed to “revocation of certification” or a form thereof.

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Agency's Board of Directors, or working for or together with any person whose ~~se has been~~ certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has knowledge of such revocation or suspension.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. Failure to comply with the terms of a signed Agreement Regarding Discipline.
 16. Failure to comply with the terms of a signed Agreement Regarding Discipline.
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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 the CPG Board regarding 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.

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.

Note: The following paragraph will be a footnote:

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.

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.”;

509.7 NOTIFICATION OF INTERIM SUSPENSION

Upon entry of an order for interim suspension, the AOC shall notify all superior court presiding judges ~~and~~ court administrators, and county clerks, the Social Security Administration, the Veteran’s Administration and the Department of Social and Health Services 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.

509.10 PROBATION

1. Probation is a remedy that will be imposed for a period of time that is not less than six months or more than one year 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.

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~~ all superior court presiding judges, court administrators, and county clerks, the Social Security Administration, the Veteran's Administration and the Department of Social and Health Services.

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.

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~~ may be required to 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.

508.10 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~~ a certified copy of the Judgement and Sentence 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.
