

Guardianship and Conservatorship Program Regulations

509 DISCIPLINARY SANCTIONS

509.1 GUIDELINES FOR IMPOSING DISCIPLINARY SANCTIONS:

Following a determination that a CPGC 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 CPGC's misconduct;
3. The existence of aggravating or mitigating factors:
 - A. Aggravating factors include prior disciplinary action by the Board against the same CPGC, substantial experience as a CPGC, 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 CPGC, 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 CPGC's control.

509.2 TYPES OF DISCIPLINE

Upon a finding that a CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, or the guardian and conservator's fiduciary duty, or violating a court order, 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 and conservator:
 - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, a court order, or the guardian and conservator'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 and conservator'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 individual subject to guardianship or conservatorship's or their conservatorship estate's financial obligations; or
 - d. Engages in conduct or misconduct that adversely impacts an individual subject to guardianship or conservatorship in a highly significant manner. "Highly significant" in this context, means, but is not limited to, a financial loss to an individual or their finances or estate that is greater than \$ 750.00, or results in any kind of direct physical harm, infirmity or adverse medical condition to such individual; or
 - e. Engages in conduct that constitutes any Washington felony or other crime involving dishonesty, abuse, neglect, or use of physical force that occurs either while performing duties as a guardian or conservator 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 crime relevant to the functions the individual assumes as guardian or conservator that occurs either while performing duties as a guardian or conservator or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.

2. Duties of CPGC upon revocation of certification. Upon receipt of the Supreme Court's order revoking the CPGC's certification, the CPGC will submit a complete list of all active guardianships and conservatorships in which the CPGC serves as the court-appointed guardian or conservator to AOC, and must immediately notify the superior court with authority over any of the CPGC's cases of the revocation. The CPGC shall ensure the timely transfer of any active guardianship and conservatorship cases to a new CPGC and cooperate with the court in this process. The CPGC shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional CPGC. 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 or conservator may be imposed when a professional guardian and conservator:
 - a. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian or conservator may be imposed when a professional guardian and conservator: Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, a court order, or the guardian's fiduciary duty; or
 - b. Engages in conduct that occurs either while performing duties as a guardian or conservator or outside those duties, that meets the statutory elements of any Washington gross misdemeanor or misdemeanor, and which adversely reflects on the professional guardian and conservator'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 and conservator's failure to exercise reasonable care in the performance of their professional duties.
 - d. Engages in conduct or misconduct that adversely impacts an individual subject to guardianship or conservatorship 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 Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
4. Duties of CPGC upon suspension. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian or conservator and must immediately notify the superior court with authority over any of the CPGC's cases of the suspension. The CPGC shall ensure the timely transfer of any active guardianship or conservatorship cases to a new guardian or conservator and cooperate with the court in this process. The CPGC shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional guardian and conservator.

509.5 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

1. Definitions.

A. "Conviction" means:

- i. An entry of a plea of guilty, or a verdict of guilty for a crime, unless the person affirmatively shows that the plea or verdict was not accepted or was withdrawn; or
- ii. An entry of a finding or verdict of guilty for a crime, unless the person affirmatively shows that the judgment was vacated or a new trial was granted.

Conviction does not include findings or verdicts that were disclosed by the person at the time of application for professional guardian or conservator certification. this regulation and are governed by Washington State Court General Rule 23 and the Board's Series 100 Application Regulations.

B. "Crime" means, regardless of whether under a law of Washington, any other state, or the United States:

- i. Any felony criminal offense;

- ii. A criminal offense, a necessary element of which, as determined by its statutory or common law definition, includes dishonesty, neglect, abuse, violence, or use of physical force;
- iii. Any criminal offense listed under RCW 43.43.830 Background checks – Access to children or vulnerable persons - Definitions;
- iv. Any criminal offense listed under RCW 43.43.842 Vulnerable adults – Additional licensing requirements for agencies, facilities, and individuals providing services; or
- v. Any criminal offense relevant to the functions assumed as guardian or conservator.

2. Interim suspension procedure.

- A. Upon conviction of a certified professional guardian or conservator (CPGC) of a crime, the Administrative Office of the Courts (AOC) must file a certified copy of the judgment and sentence with the Board.
- B. The Standards of Practice Committee (SOPC) shall review the certified copy of the judgment and issue an order suspending the CPGC (respondent) during the pendency of disciplinary proceedings under these rules.
- C. The SOPC will direct service of a copy of the order on the respondent.
- D. When suspended, the CPGC must comply with DR 509.4.4 – Duties of CPGC upon suspension.

3. Termination of interim suspension.

- A. An interim suspension will terminate when the disciplinary proceeding under these rules, including any review or appeal of a disciplinary sanction, is complete.
- B. At any time, the suspended CPGC may petition the Board to terminate the interim suspension.
 - i. The SOPC, through disciplinary counsel, may file a response. Any response must be filed within 5 business days. The response shall be served on the respondent CPGC.
 - ii. If either the suspended CPGC or the SOPC requests, a Hearing Officer appointed for the matter must hear oral arguments on the petition at a time and place and under terms as the Hearing Officer directs.

- iii. The Hearing Officer shall make written findings and may recommend to the Board that the interim suspension be terminated only upon an affirmative finding of good cause to do so. Any recommendation of the Hearing Officer shall be considered by the Board at its next scheduled meeting.
- iv. There is no appeal right from a decision on this petition.

509.6 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

1. Types of Interim Suspension.

- A. Standards of Practice Committee Finding of Risk to Public. AOC may petition the Standards of Practice Committee for an order suspending the respondent CPGC during the pendency of any proceeding under these rules if: it appears that a respondent's continued practice as a CPGC poses a substantial threat of serious harm to the public.
- B. Standards of Practice 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 CPGC 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 Standards of Practice Committee for an order suspending the CPGC pending compliance with the request or subpoena. If the CPGC complies with the request or subpoena, the Standards of Practice Committee may lift the suspension on terms the Standards of Practice Committee deems appropriate.

2. Procedure.

- A. Petition. A Petition to the Standards of Practice Committee under this rule must set forth the acts of the CPGC constituting grounds for interim suspension. The Petition may be supported by documents or affidavits. The AOC must serve the Petition on the Standards of Practice Committee and respondent CPGC.
- B. Show Cause Order. Upon filing of the Petition, the Standards of Practice Committee Chair orders the CPGC to appear in person or telephonically before the Standards of Practice 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 CPGC 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 CPGC and Standards of Practice 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 Standards of Practice Committee may order that supporting materials are confidential. The respondent may petition the Standards of Practice Committee to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Standards of Practice Committee may terminate the interim suspension.
- F. Show Cause Hearing. The respondent may appear before the Standards of Practice Committee at the hearing to show cause why the Petition for interim suspension should not be granted.
- G. Application of Other Rules. If the Standards of Practice Committee enters an interim order suspending the CPGC, the rules relating to suspended CPGCs, including DR 509.4, apply.

509.7 NOTIFICATION OF INTERIM SUSPENSION

Upon entry of an order for interim suspension, the AOC shall notify 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 of the interim suspension. The AOC shall also remove the respondent CPGC's name from all public AOC Web site lists of certified professional guardian and conservators.

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 and conservator:
 - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty; or
 - b. Engages in conduct or misconduct that occurs while performing duties as a guardian or conservator that adversely reflects on the professional guardian and conservator's fitness to practice.
2. Prohibition Against Taking New Appointments may be imposed for conduct or misconduct that does not rise to the level of Revocation.
3. 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.
4. 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 Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
5. Duties of CPGC upon being prohibited from accepting new appointment. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian or conservator and must immediately notify the superior court with authority over any of the CPGC's cases of the prohibition.

509.9 LETTER OF REPRIMAND

1. A letter of reprimand may be imposed when a professional guardian and conservator:
 - A. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty; or
 - B. The guardian and conservator 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 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, court orders or the guardian's fiduciary duty. Probation shall consist primarily of a monitoring function that seeks to ensure the guardian and conservator:
 - 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, court orders, and guardian's fiduciary duty.
2. The Standards of Practice 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 and conservator 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 CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty, the Board may impose one or more of the following:
 - A. Limitation on practice;
 - B. Requirement that the CPGC 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 CPGC correct deficiencies and make decisions.
 - F. Periodic audits or reports;
 - G. Requirement that the CPGC work with a mentor, who is a practicing or retired CPGC or that the CPGC'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 CPGC 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 person's 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 CPGC 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.