

500 DISCIPLINARY REGULATIONS FOR CERTIFIED PROFESSIONAL GUARDIANS

501 SCOPE, JURISDICTION, AND DEFINITIONS

501.1 PURPOSE OF DISCIPLINARY REGULATIONS

- (a) 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.
- (b) 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, any requirement governing the conduct of professional guardians 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.
- (c) To set out the due process protections and other procedures that allow the professional guardian and the public to be protected.
- (d) 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 CPGs 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 Washington State Certified Professional Guardian Board.

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

- (a) Violation of or noncompliance with applicable statutes, courts orders, court rules, or other authority.
- (b) Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.
- (c) Failure to perform any duty one is obligated to perform as a professional guardian.
- (d) Violation of the oath, duties, or standards of practice of a professional guardian.
- (e) Permitting a professional guardian's name to be used by an uncertified person or agency.
- (f) Misrepresentation or concealment of a material fact made in the application for certification.
- (g) 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.

- (h) 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 as a disciplinary sanction, 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.
- (i) Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.
- (j) Making a false statement under oath.
- (k) 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.
- (l) Working as a professional guardian while on inactive status.
- (m) Failing to cooperate during the course of an investigation as required by the Board's regulations.
- (n) Incompetence in the performance of the duties of a guardian.
- (o) Failure to appear for a scheduled court proceeding without good cause.
- (p) 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:

- (a) "Agreement Regarding Discipline" is a written settlement agreement approved by the professional guardian and the Board of a grievance or complaint against a professional guardian. The final agreement, approved by the parties, is a public record available for inspection, copying, and disclosure.
- (b) "AOC" means staff of the Administrative Office of the Courts.
- (c) "Board" means the Certified Professional Guardian Board.
- (d) "Chair" when used alone means the Chair of the Certified Professional Guardian Board.
- (e) "CPG" when used alone means a Certified Professional Guardian or Certified Professional Guardian Agency.
- (f) "Complaint" means the formal document, as described in section 508.3(a), 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.

- (g) “Decertification” of a professional guardian or agency occurs when the Board or the Supreme Court cancels the certification of a professional guardian or agency for any reason.
- (h) “Deliberative records” are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.
- (i) “Designated CPG” means the certified professional guardians working for an agency who have 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.
- (j) “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.
- (k) “Disciplinary action” encompasses the process described by these disciplinary regulations.
- (l) “Disciplinary Counsel” AOC staff serve as disciplinary counsel for grievances. The AG serves as disciplinary counsel for complaints.
- (m) “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 rules and disciplinary regulations applicable to professional guardians. The grievance should 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.
- (n) “Grievant” means the person or entity who files a grievance against a CPG.
- (o) “Incompetence” individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.
- (p) “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.
- (q) “Motion” means a written request that the Disciplinary Committee or Board make a specified ruling or order.
- (r) “Party” means respondent CPG and the AOC.

(s) "Respondent" means a CPG against whom a grievance is filed.

(t) "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 Board rule or regulation.

(u) "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.

(v) "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.

(w) "Words of authority"

(1) "May" means "has discretion to," "has a right to," or "is permitted to".

(2) "Must" and "shall" mean "is required to".

(3) "Should" means recommended but not required.

(x) "Voluntary 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.

501.4 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 GUARDIAN BOARD (CPGB)

The Washington State Certified Professional Guardian 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 CPB Board's authority.

(a) Function. The CPG Board:

(1) supervises the general functioning of the Disciplinary Committee;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules;

- (3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court in General Rule 23, or necessary and proper to carry out its duties.
- (4) is responsible for hearing appeals of Disciplinary Committee decisions that are made appealable pursuant to these rules.

(b) Restriction on Representing Respondents. A former member of the Board shall not represent a 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 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(f).

502.2 DISCIPLINARY COMMITTEE

- (a) Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or 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, or other relationships to influence their conduct or judgment.
- (b) 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.
- (c) Terms of Office. A CPG 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 CPG Board.
- (d) Disciplinary Committee Chair. The Chair of the CPG Board designates one member of the Disciplinary Committee to act as its Chair.
- (e) Meetings. The Disciplinary Committee meets at times and places determined by the Disciplinary Committee Chair. In the Disciplinary Committee Chair's discretion, the Committee may meet and act through electronic, telephonic, written, or other means of communication.
- (f) 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:
 - (1) the appearance of impropriety is or could reasonably be great or have the appearance of a conflict;
 - (2) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(3) the member previously served as a lawyer, CPG, or was a material witness in the matter in controversy;

(4)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;

(5) the member has a pending grievance; or

(6) 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

- (a) 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. All proposed members of a CRC are required to sign a confidentiality agreement prior to serving.
- (b) 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 report to the CRC on any such grievance.
- (c) 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.
- (d) 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.
- (e) Consistent with the AOC policy, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.
- (f) 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.
- (g) Independence. CRC Members act independently of disciplinary counsel and the Board.

502.4 DISCIPLINARY COUNSEL

The Attorney General's Office will serve as disciplinary counsel on the Board/AOC's behalf on all

complaint matters identified under these rules. AOC staff may serve as disciplinary counsel on behalf of the Board on all grievance matters identified under these rules. Disciplinary counsel performs other duties as required by these rules. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding.

502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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 GENERAL PROCEDURAL RULES

503.1 SERVICE OF PAPERS

- (a) 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 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
P O Box 41170
Olympia, WA 98504-1170

- (b) Methods of Service.
 - (1) Service by Mail.

(A) 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.

(B) 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:

- (i) the parties so agree;
- (ii) the document is a notice of dismissal, deferral or a request for review of dismissal or deferral;
- (iii) one or more properly made certified mailings are returned as unclaimed; or
- (iv) service is on the AOC on behalf of the Disciplinary Committee or Board.

(C) The address for service by mail is as follows:

- (i) 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;
- (ii) for disciplinary counsel, at the address of the AOC or other address that disciplinary counsel requests.

(2) 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.

(c) Proof of Service. If personal service is used pursuant to (b)(2), proof of service may be made by affidavit of service, or a signed acknowledgment of service.

503.2 FILING; ORDERS

- (a) Filing Originals. The original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the AOC.
- (b) 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.
- (c) 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.

503.3 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.

503.4 COMPUTATION OF TIME

(a) 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 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) 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, 3 days shall be added to the prescribed period.

503.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

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

503.6 ENFORCEMENT OF 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 Disciplinary Committee Chair or Hearing Officer.

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