# Certified Professional Guardian Board Meeting

Monday, May 13, 2013 (8:00 a.m. – 9:00 a.m.)
Telephone Conference

**Meeting Minutes**

**Chair**
Judge James Lawler, Chair

**Members Present**
Mr. Gary Beagle
Ms. Rosslyn Bethmann
Dr. Barbara Cochrane
Mr. Andrew Heinz
Mr. Bill Jaback
Judge Sally Olsen
Ms. Emily Rogers
Ms. Carol Sloan

**Members Absent**
Comm. Rachelle Anderson
Ms. Robin Balsam
Judge Robert Swisher

**Staff**
Ms. Shirley Bondon
Ms. Kim Rood

## 1. Call to Order

Judge Lawler called the meeting to order at 9:00 a.m.

## 2. Board Business

*Approval of Minutes*
Judge Lawler asked for changes or corrections to the April 8, 2013 proposed minutes. There were no changes or corrections.

**Motion:** *A motion was made and seconded to approve minutes from the April 8, 2013 meeting. The motion passed.*

## 3. Executive Session – Closed to the Public

## 4. Reconvene – Vote on Executive Session Decisions

**Applications Committee**

***Individual Applications***

**Motion:** *A motion was made and seconded to approve the application of Winston Cook. The motion passed.*

**Motion:** *A motion was made and seconded to deny the application of Lynda Knapp. The motion passed.*

**Motion:** *A motion was made and seconded to approve the application of Kirsten Murray. The motion passed.*

### Appeals

**Motion:** *A motion was made and seconded to deny the appeal of Iris Christie. The motion passed.*

**Motion:** *A motion was made and seconded to deny the appeal of Renee Ellis. The motion passed.*

### Lori Petersen Complaint

The Supreme Court has granted oral arguments in this matter, signed by the Chief Justice, June 15, 2013.

## 5. Correspondence

### William Morris, Partner, Castlemark Guardianships and Trusts

Judge Lawler received this letter from Mr. Morris in response to the Board's meeting materials for April 8, 2013 (see attached).

### Skagit County Superior Court

AOC staff gave a brief description of the letter received from Skagit County Superior Court (see attached). Skagit County has six guardianship cases that the Superior Court cannot find a professional guardian to take. Skagit County Superior Court is proposing a policy of appointing professional guardians in difficult, low finance cases from a rotating registry. Ms. Bondon noted that if the Office of Public Guardianship (OPG) had funding assured in the upcoming budget, these are the type of cases that OPG accepts.

AOC staff further reported that this letter was also sent to the Supreme Court and the State Court Administrator. Skagit County Superior Court is requesting comments directed to the Skagit County Guardianship Monitoring Program by May 15, 2013.

## 6. Relevant Legislation

### SB 5510 – Information Sharing

In its effort to discern whether a prospective or current guardian has pending complaints of abuse or neglect, the CPG Board contacts Adult Protective Services (APS) and Child Protective Services (CPS). Because information held by APS and CPS is confidential, it can be very difficult, often impossible, to obtain the information needed. SB 5510 will change this allowing information sharing between APS, CPS and the Certified Professional Guardian Board. The legislation passed and will go into effect on June 16, 2013.

### SB 5692 – Standby Guardian

SB 5692 passed and will be signed by the Governor. Since the statute has passed, the Certified Professional Guardian Board will reconsider proposed SOP

401.6. SB 5692 requires guardians to nominate a standby guardian to serve during the planned absence, death or incapacity of the court appointed guardian. The guardian is required to meet with the standby guardian in person or by telephone quarterly to update them on cases. In the absence of the appointed guardian, the standby guardian must obtain letters of guardianship that state what the standby's duties will be. To support this statute, the Regulations Committee has drafted a Standard of Practice requiring certified professional guardian's to appoint another certified professional guardian as standby.

**Motion:** *A motion was made and seconded to post Proposed SOP 401.6 Standby Guardian for comment. The motion passed.*

## 7. Adjourned

Meeting was adjourned at 8:45 a.m. Next meeting is scheduled for June 10, 2013, held at the SeaTac Office, 9:00 a.m. to 2:00 p.m.

**Recap of Motions from May 13th, 2013 Meeting**

| **Motion Summary** | **Status** |
|---|---|
| **Motion:** *A motion was made and seconded to approve the application of Winston Cook. The motion passed.* | Completed |
| **Motion:** *A motion was made and seconded to deny the application of Lynda Knapp. The motion passed.* | Completed |
| **Motion:** *A motion was made and seconded to approve the application of Kirsten Murray. The motion passed.* | Completed |
| **Motion:** *A motion was made and seconded to deny the appeal of Iris Christie. The motion passed.* | Completed |
| **Motion:** *A motion was made and seconded to deny the appeal of Renee Ellis. The motion passed.* | Completed |
| **Motion:** *A motion was made and seconded to post Proposed SOP 401.6 Standby Guardian for comment. The motion passed.* | Completed |
| **Action Item Summary** | |
| | |

Monday, April 8, 2013

The Honorable Judge James W. Lawler, Department 2
Superior Court
Law & Justice Center, 4th Floor
345 West Main Street
Chehalis WA 98532
(360) 740-1333

Your Honor:

My name is William Morris and I, along with two partners, am currently an interest owner of a Washington limited liability corporation that operates as a guardianship agency in Spokane Washington. I recently came into possession of a packet of information that was provided to CPG Board members in advance of the meeting scheduled for today, April 8, 2012. While no names were used in the materials, the scenario presented mirrors my recent experiences with the Board, and I am writing to clarify several statements that do not appear to be grounded in fact.

The statement of fact, as presented in the documents, indicates "in April 2011, a non-guardian acquired two professional guardian agencies and decided to combine them into one agency." It continues by stating that "[t]he new owner violated several Board regulations including, failing to notify the Board, the court, and incapacitated persons of the change in circumstance, failure to have two designated guardians responsible for making decisions for incapacitated persons served by the agency, failure to obtain letters of guardianship in the agency name instead of names of individual guardians and according to professional guardians working for the agency, they failed to visit incapacitated persons and provide care as prescribed by standards of practice." Additionally, the materials indicate that when two of the CPGs employed by the agency decided to leave, the agency was left "without a sufficient number of guardians to properly care for a caseload of 205 incapacitated persons" and that a "Special Master" was assigned by the court to oversee the transition.

If this anecdote is derived from my purchase of two Spokane agencies since April 2011, as I suspect it is, then the Rules Committee has presented a request to the Board that is not based in fact. I purchased Castlemark Guardianships and Trusts in April 2011 and I later purchased Eagle Guardianships and Professional Services, LLC in March 2012. It is patently untrue, to portray these acquisitions as having occurred contrary to the Standards of Practice (SOPs) of the Washington State Guardianship Board. The original purchase

of Castlemark occurred prior to the changes in SOP that required notification to clients of the sale of an agency. Despite this, the Agency did contact all Castlemark clients and let them know that a new owner had purchased the agency, but that the services they would receive would not change. The name and CPG number of the agency remained the same and there was no significant disruption in services to any of our clients.

We initially retained both of the former owners as designated CPGs holding decision-making power on behalf of the Agency while we sent a staff person through the required training. As soon as the CPG Board and the Supreme Court approved this staff member as a CPG, one of the former owners resigned, but the other stayed on as a CPG and designated decision-maker. At no time did Castlemark have fewer than the required number of CPGs during this transition from old to new management.

With regard to Letters of Guardianship for clients of Castlemark, when I purchased that agency, it had already undergone several changes in ownership over the course of the previous years. It had operated under multiple trade names including: Castlemark, Castlemark, Inc., and Angel Guardianship, and was also known under the names of its principals (James Whitely and Kim Buer). One of the first priorities of the Agency subsequent to the purchase was to clean up the names by which the Letters of Guardianship had been issued. Our attorney consulted with the Court on this matter and the Agency was notified that the best way to accomplish consistency in Agency name would be to alter the Letters as each annual review date came up. We proceeded to follow this advice, and all Letters of Guardianship were changed to read "Castlemark Guardianships and Trusts" within a year of the purchase.

Early in 2012, the majority interest owner of Eagle Guardianship and Professional Services, LLC contacted me regarding the possibility of my purchasing that agency as well. After much consideration and extended negotiations with all members of the LLC, I decided to go ahead and do so, with the intent of eventually merging the two companies. By this time, the new regulations were in effect, and all clients were notified of the purchase. Again, the name of the agency and its associated CPG number did not change, and two of the four original CPGs associated with Eagle remained on as CPGs under the new management. As with the acquisition of Castlemark, it was brought to my attention, after the purchase, that the Letters of Guardianship issued for Eagle clients were written under several forms including EGAPS, Eagle Guardianship, and Eagle, as well as several that were issued under the names of the former principals of the agency. The Purchase Agreement specifically stated that all clients were to be clients of the Agency, the representation of which the sellers were in breach of the Sale agreement. Again, our staff worked diligently to ensure that all letters were issued under the correct agency name and number.

Our highest priority overall has been to ensure that all of our clients receive the attention they deserve. If the statement of fact was indeed based on these agencies, then the statement attributed to CPGs working for the agency that indicates that our staff "failed to visit incapacitated persons and provide care as prescribed by standards of practice" is absolutely untrue. We have timekeeping records to prove that clients received far more

consistent services from agency staff following our involvement than they had prior to the mergers. In addition to two CPGs assigned as decision makers for both agencies, we also employ several case managers and a financial specialist to ensure that clients are visited regularly, and that their needs are met as they arise. In fact, we expressed concern, after the purchase of Eagle, that clients were not being seen consistently and indicated to the CPGs and the staff involved that this was not acceptable practice. Our records clearly indicate that client contact across the board is up significantly since the date of purchase, especially at Eagle. But, at no time has the Board requested copies of our records to contrive or verify the facts as stated in the circulated documents. It appears, instead, that all of the "facts" presented were derived from hearsay, anecdotal statements, and presumption.

After several months of operating as separate entities, we eventually asked the Board for permission to merge the two agencies under one name and one agency number. This request was taken to the Board and approved in November 2012. It was our intention to move all clients under one agency, Hallmark Care Services, and one Agency CPG number, but we were blindsided when we received resignation notices from the two CPGs who were employed by Eagle. According to the regulations, an Agency facing a lack of CPGs is given time to recruit and hire replacements before the Agency is considered out of compliance with the regulation. The two CPGs from Eagle gave their notice in December and the Agency hired two additional CPGs prior to the end of the month – at no time was the agency out of compliance with the regulations to such an extent that we were unable to provide sufficient oversight to our clients. In fact, the two CPGs who self terminated their employment with the Agency remain interest owners to this day as members of the LLC.

When we started this process, I signed an agreement with the AOC stating that I would not make decisions on the behalf of agency CPGs, nor would I influence the decisions of any of our certified professional guardians. Our agency currently employs three certified professional guardians and we have a fourth staff member currently enrolled in the UW Guardianship Certification Program. While the Spokane County Court Commissioner did decide to engage the services of a "special master guardian," we argue that this decision was unnecessary and was based on the upheaval caused by two CPG/Partners in the Eagle agency who no longer wished to work together as a team on behalf of our clients. I do not believe any of our actions were, at any time, out of compliance with Board regulations. We reviewed the SOPs, RCWs, and Board rules prior to making any decisions, and always believed we were acting in compliance with the applicable standards.

Both my Director of Operations, who is an attorney, and I have graduated from the UW Guardianship Certification course, but were denied the right, by the Board, to become CPGs based on factors which I believe were not only capricious, but were also a conflict of interest, give that some of the decision-makers were owners of competing companies. Despite the lack of subsequent certification, we received the same training as all other CPGs in the state, and we both passed the course with high marks. If our agency has failed, then I would characterize this as a failure in the training provided to new CPGs on

how to operate an effective CPG agency, rather than as the failure of a non-CPG who knows nothing of the role of the guardian.

I have worked for 30 years in the Spokane area as a professional supporting people with developmental disabilities. I was very involved with Willa Johns from the ARC of Spokane as well as several other professionals in our community in advocating for a board that oversees professional guardians, and I support strong oversight of professional guardians, but I do not feel that the proposal regarding non-CPG ownership of a CPG Agency is needed or required. As long as the non-CPG agrees to not influence the decisions of the employed CPGs in the agency (as I did in my agreement with the Board), or even takes the required CPG training, there is no need to prohibit free enterprise or make it more difficult for Guardianship Agencies in our state to thrive.

Again, thank you for your time.

Submitted Respectfully,

William Morris
Partner, Castlemark Guardianships and Trusts
1626 West Providence Avenue
Spokane, WA 99205
509.474.0721

# Skagit County Superior Court

Skagit County Courthouse
205 West Kincaid Street, Room 202
Mount Vernon, WA 98273

Phone: (360)336-9320
Fax: (360)336-9340
E-mail: superiorcourt@co.skagit.wa.us





April 16, 2013

Skagit County Superior Court is considering establishing a policy of appointing professional guardians in difficult, low finance cases from a rotating registry. Except in extraordinary circumstances the guardian appointed should be the person whose name next appears on the registry. This proposed policy is being considered in light of recent difficulty in finding professional guardians willing to take on such cases. Skagit County currently has over 300 active Guardianship cases. Most of those cases have family members appointed as guardian of the incapacitated person. However, in approximately 25% of our cases a professional guardian is appointed.

There are at least six current cases in Skagit County where DSHS is unable to find a state certified professional willing to serve as guardian. This situation may have arisen as a result of the recent ruling in Raven v. Department of Social & Health Services, 167 Wash. App. 446, 273 P.3d 1017, where the Court held that a professional guardian was liable for negligence based upon the standard created in the Abuse of Vulnerable Adults Act rather than common law negligence .

We are seeking input from professional guardians who practice in Skagit County about this proposed policy. Also feel free to let us know if you have another idea which might be worth considering. Please address your comments or inquiries to Skagit County Guardianship Monitoring Program, C/O Kristen Denton, Coordinator by May 15, 2013.

Sincerely,

JOHN M. MEYER, Presiding
Superior Court Judge

WASHINGTON COURTS

ADMINISTRATIVE OFFICE OF THE COURTS
Callie T. Dietz
State Court Administrator

May 13, 2013

TO: Certified Professional Guardian Board

FROM: Regulations Committee

RE: Standby Guardians

**Issue:**

Who should serve as a Standby Guardian and what are the duties of a Standby Guardian?

**Proposed Solution:**

SOP 401.6 All certified professional guardians ~~and guardian agencies~~ have a duty by statute to appoint a standby guardian. ~~In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction~~

401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court-appointed guardian per statutory requirements.

401.6.2 The standby guardian will serve when the guardian cannot be reached in an emergency, during planned absences and at the death or incapacity of the guardian.

401.6.3 The certified professional guardian will ensure that in his or her planned or unplanned absence the standby guardian shall have access to records and information needed to address the needs of the incapacitated person.

**Background:**

During the Board's January 14, 2013 meeting, Bill Jaback informed the Board of an issue that the Applications Committee discovered during the review of an application for

certification. The applicant used serving as a Standby Guardian for a Certified Professional Guardian as qualifying experience for certification. The Applications Committee discussed whether a lay person is an appropriate choice for a standby for a professional guardian. The Board's discussion of this issue raised the following additional questions:

- Should the Board limit the number of standby guardian appointments one individual can accept?

- Should the Board establish a standard of practice for professional guardians to develop contingency plans or provide guidance to help professional guardians plan for time off for vacations and illnesses?

Judge Swisher, who was chairing the meeting, asked the Regulations Committee to research the issue and submit a recommendation to the Board during its next meeting. The Regulations Committee met January 16, 2013 and asked staff to draft a proposed standard of practice.

## Current Relevant SOP

401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian. In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction.

## Current Relevant Statute

### RCW.11.88.125

The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(j). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court and upon approval of the court, the standby guardian or

limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

**New  Statute Amendment Adopted**

The Legislature adopted Senate Bill 5692relating to standby guardians and limited guardians (see Attachment A).  The bill addresses several of the Board's concerns, but does not address the issue of a lay guardian serving as standby guardian for a certified professional guardian.