

Certified Professional Guardianship Board  
Meeting Materials  
August 11, 2014

# Certified Professional Guardianship Board

Monday, June 9, 2014 (8:00 a.m. – 9:00 a.m.)  
SeaTac Office Center, 18000 International Blvd.  
SeaTac, WA

## Proposed Meeting Minutes

### Members Present

Judge James Lawler, Chair  
Commissioner Rachelle Anderson  
Mr. Gary Beagle  
Dr. Barbara Cochrane  
Ms. Nancy Dapper  
Mr. Andrew Heinz  
Ms. Emily Rogers  
Ms. Carol Sloan  
Mr. Gerald Tarutis

### Members Absent

Judge Robert Swisher, Vice-Chair  
Ms. Rosslyn Bethmann  
Mr. William Jaback  
Judge Sally Olsen

### Staff

Ms. Shirley Bondon  
Ms. Carla Montejo  
Ms. Sally Rees  
Ms. Kim Rood

### 1. Call to Order

Judge James Lawler called the meeting to order at 9:15 a.m.

### 2. Welcome and Introductions

Judge Lawler welcomed Board members and members of the public to the meeting.

### 3. Chair's Report

#### Approval of Minutes

Judge Lawler asked for changes or corrections to the May 23, 2014 telephone conference proposed minutes. There were no changes or corrections.

**Motion:** *A motion was made and seconded to approve minutes from the May 23, 2014 meeting. The motion passed.*

#### Correspondence

WSBA Elder Law Section

Judge Lawler noted that the WSBA Elder Law Section Executive Committee submitted a request to be specifically named as a stakeholder in the Board's newly developed Communication Plan.

Judge Lawler also noted that both Mr. Beagle and Ms. Bondon attended the 3<sup>rd</sup> World Congress on Adult Guardianship in Washington, D.C., and asked Mr. Beagle to give a brief synopsis of the conference. Mr. Beagle reported that Article 12 of the United Nations Convention on the Rights of Persons with Disabilities was the focus of the conference. Article 12 – Equal recognition before the law states that persons with disabilities have the right to recognition everywhere as persons before the law and that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

Mr. Beagle reported that Article 12 incorporates additional safeguards in

guardianship and involves a focus on supported decision-making. Mr. Beagle also commented that throughout the world, guardianship is handled differently.

#### 4. Public Comment Period

#### 5. Board and Committee Charters (BJA Request)

The Board of Judicial Administration (BJA) has appointed a workgroup to review judicial branch committees, boards and commissions, including the Certified Professional Guardianship Board. Staff explained that BJA is reviewing committees in an effort to understand resource needs and to understand where mission and tasks might overlap. Supreme Court Commissions, Boards and Committees have been asked to prepare and adopt a charter containing the following information:

Committee title; authorization (court rule, court order, bylaw, statute or other); charge or purpose; AOC staff support required; policy area; other branch committees addressing the same topic; other branch committees to partner with; committee type: standing, subcommittee, workgroup; committee membership; term limit; duration/review date; budget; reporting requirements (i.e., quarterly to the BJA, the authorizing organization and/or other entities addressing same topic); and expected deliverables or recommendations.

Further discussion followed regarding committee charters.

**Motion:** *A motion was made and seconded to adopt charters for the Certified Professional Guardianship Board and its committees (Education, Regulation, Certification and Nomination) as modified. The motion passed.*

#### 6. Education Committee

The contract with the University of Washington Professional and Continuing Education (UWPCE) Office for the guardianship certificate program is up for renewal. The Education Committee met and discussed some concerns regarding the program. The Committee asked UWPCE for course evaluations for all previously held guardianship certificate courses. Education Committee members reviewed those to familiarize themselves with program successes and challenges. Malia Morrison, UWPCE, met with the Guardianship Certificate Program Advisory Committee and developed the following recommendations:

- Prospective guardians should take the online Lay Guardian training offered by the Administrative Office of the Courts, (before enrolling in the program) to give students insight into required duties.
- Develop better guidelines for guest speaker sessions, to include more description of what is expected of the speaker.

- Draft and administer a post-graduate survey to determine how graduates feel about the program, now that they are certified guardians performing the work.
- Obtain video of actual guardianship hearings in both rural and urban counties and make available to students.
- The Office of Guardianship and Elder Services should develop a template for guardianship accountings for use by Guardianship Certificate Program students. Students should be assigned a project requiring use of the template, which members of the Office of Guardianship and Elder Services will grade and provide feedback.

Also discussed was the possibility of holding the guardianship certificate program in eastern Washington. The Education Committee will ask UWPCE to consider options to offer the guardianship certificate program in eastern Washington and present a report on the topic to the Committee.

## **7. Regulations Committee**

Mr. Heinz stated that due to numbers, the Department of Health (DOH) and the CPG Board were quite different, thus the method of operation reflects the practical reality. For example, DOH regulates approximately 400,000 individuals and 80 professions, which includes nurses and various other healthcare providers, whereas the CPG Board regulates approximately 300 guardians.

The differences between the Uniform Disciplinary Act (UDA) and the Board's Regulation 500, may be narrowed to three areas.

1. Prior to hearing, almost all decisions regarding grievances received by DOH are made by panels comprised of three members of a board or commission. Unlike the CPG Board, decisions made by a DOH panel are final and not reviewed by the full board.
2. DOH has approximately 64 staff of which the duties of investigator and attorney are separate, unlike the CPG Board, where prior to filing a complaint, investigator and attorney functions are combined into one position. The Board has two staff members performing these functions.
3. Hearings officers are attorneys employed by DOH. The Administrative Office of the Courts contracts with attorneys who serve as hearings officers.

Comparing DOH to the Board's grievance cases, DOH receives approximately 10,000 cases annually, investigate 5,000 and take disciplinary actions in 3,000. Approximately 27 percent of actions are resolved informally, 24 percent with agreed orders, 26 percent with default orders and six percent with final orders after hearing.

The Board receives approximately 50 grievances annually and takes disciplinary action in approximately six. Approximately 80 percent are resolved with agreed orders and two percent with final orders after hearing.

Ms. Rees gave the Board some insight into the Washington State Comprehensive Investigator Training sponsored by the Department of Enterprise Services. Both Board grievance investigators follow guidelines put in place by the training.

Ms. Rees directed the Board's attention to a summary she developed to give the Board an overview of grievances. Grievances that were opened, closed and pending, also the resolution of the grievances. In regards to the older grievances, the process had been to hold a case until the court takes action. The CPG Board no longer waits for a response from the court.

Ms. Bondon noted that before Commissioner Valente left the Board he wrote a letter to Superior Court Judges and Commissioners explaining how the Board grievance process works. Ms. Bondon stated that the Board should send a revised version of the letter to all Superior Court Judicial Officers explaining the grievance process.

Board members discussed concerns expressed by professional guardians and their attorneys that guardians were too exposed. It was believed that guardians were not able to protect themselves from liability associated with a guardianship appointment. A Board member reported that attorneys were advising professional guardians to petition the court for instructions as a means of protection.

**Motion:** *A motion was made and seconded to publish a Request for Comment addressing the issue of petitioning for instruction as a protection for professional guardians against liability for decisions made that could be a violation of the Standards of Practice, when the choices available do not have clear outcomes. After the following discussion, the motion and second were withdrawn.*

- Should the Board develop a policy that protects guardians from discipline based on a violation of the Standards of Practice when regulation is necessary to address violations of professional guardians who are not careful and competent?
- What question would the request for comment include?
- In an effort to obtain a meaningful dialogue and discussion, shouldn't the request include more detail and specificity about the issue?
- Wouldn't it be better to discuss the issue with guardians before publishing a request for comment?

The maker of the motion suggested that the Regulations Committee meet to discuss the issue and report back to the Board. The Regulations Committee's report could include a Request for Comment. Board members agreed with the suggestion.

## **8. Board Member Guidelines**

Judge Lawler asked Ms. Bondon to review a Model Code of Ethics for Regulatory Boards for licensed professionals, which was included in the meeting materials.

The question has arisen that when a Board member is asked to speak at a class or seminar, who is that Board member speaking as, an individual or a Board member? According to the Model Code of Ethics presented, when a Board member speaks, that person represents the Board and should support the Board's decisions and policies whether or not that individual agrees with them. Disagreements regarding Board policies and procedures should be addressed in Board meetings.

The Model Code of Ethics also maintains that when a Board member is invited to speak at a function, the Board member should notify the Board chair or staff person of that invitation. Also noted, when serving on a regulatory Board, the member should not serve as an officer or in a position of leadership with the regulated profession.

Board members were reminded that any discussion in Executive Session and committee meetings are confidential. Also, if a Board member cannot attend a scheduled meeting, it is their responsibility to notify either staff or the Board's chair. A Board member should not have more than two unexcused absences in a calendar year.

Board members should refrain from engaging in ex-parte communication with members of the public regarding specific grievances and applications. These discussions are initiated to influence Board decisions and are inappropriate. When communication is initiated by others, Board members should explain that they are not able to discuss. If emails and letters are received, they should be forwarded to staff and should not be responded to.

## **9. Executive Session (Closed to Public)**

## **10. Reconvene (Open to Public)**

### **Board Member Guidelines, Continued**

The Board continued its discussion regarding the Model Code of Ethics; Disciplinary actions must never be prejudged. There should be no preferential treatment afforded those involved because of personal values, friendship or standing in the community.

- a. Opinions received from Assistant Attorney Generals are not official. They are not published, nor should they be shared with the public. They are considered attorney-client privileged information.

- b. If a Board member must recuse themselves from voting, a clear recusal process should be followed. Staff will research and present a process to the Board.
- c. Disclosure of information. Correspondence, letters and emails sent to Board members should be sent to AOC Staff so that they may disseminate to other Board members.

**11. Wrap Up and Adjourn**

**Online Guardianship Accounting Program (not on Agenda)**

The project manager of the online accounting program used in Minnesota Courts for periodic reports will demonstrate the application in Washington State in July or August, 2014. AOC staff plans to apply for a grant to customize the program for Washington State.

Meeting was adjourned at 12:17 p.m. The next Board meeting will be held on August 11, 2014 at the SeaTac Office Building.

**Recap of Motions from June 9, 2014 Meeting**

Motion Summary	Status
<b>Motion:</b> <i>A motion was made and seconded to approve minutes from the May 23, 2014 meeting. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve charters as modified. The motion passed.</i>	Passed

Action Items	Status
<i>Staff will send a revised letter to Superior Court Judges and Commissioners regarding the Board's process for guardian grievances.</i>	Completed
<i>Staff will research and present a recusal procedure.</i>	In process
<i>The Regulations Committee will meet and discuss a proposed Request for Comment addressing petitioning the court for instructions as a means to protect professional guardians from discipline, when the choices available do not have clear outcomes.</i>	In process.

# Chair's Report



## Certified Professional Guardian Board Proposed 2015 Meeting Calendar

Monday, January 12, 2015	AOC SeaTac Facility	9:00 am – 3:00 pm
<b><i>February 2015</i></b>	<b><i>No Meeting</i></b>	
Monday, March 9, 2015	Teleconference	8:00 am – 9:00 am
Monday, April 13, 2015 <b><i>Annual Planning Meeting</i></b>	AOC SeaTac Facility	9:00 am – 3:00 pm
Monday, May 11, 2015	Teleconference	8:00 am – 9:00 am
Monday, June 8, 2015	AOC SeaTac Facility	9:00 am – 3:00 pm
<b><i>July 2015</i></b>	<b><i>No Meeting</i></b>	
Monday, August 10, 2015	Teleconference	8:00 am – 9:00 am
Monday, September 14, 2015	Teleconference	8:00 am – 9:00 am
Monday, October 19, 2015	AOC SeaTac Facility	9:00 am – 3:00 pm
Monday, November 16, 2015	Teleconference	8:00 am – 9:00 am
<b><i>December 2015</i></b>	<b><i>No Meeting</i></b>	

CPG Board meetings are open to the public.

For information regarding teleconference meetings, please contact Shirley Bondon at 360.705.5302 or email [shirley.bondon@courts.wa.gov](mailto:shirley.bondon@courts.wa.gov)

# Correspondence

Mindi R. Blanchard, M.Ed., CPG  
Bridge Builders, Ltd/The Guardian Institute  
PO Box 610  
Sequim, WA 98382

June 10, 2014

Honorable James Lawler  
Certified Professional Guardian Board  
Administrative Offices of the Courts  
PO Box 41170  
Olympia, WA 98504-1170

[Electronically Submitted]

RE: CPG Certification Program

Dear Judge Lawler,

Deborah Jameson kindly shared her notes from the last CPG Board meeting with me and I wanted to provide some insight into the current certification program.

I realize that I could have misinterpreted the discussion but it seems to me that the problem of certifying guardians in rural counties is not being addressed with the current changes proposed for the University of Washington contract. I've personally heard board members mention that the UW has "deep pockets" and "should" be providing a certification class in Eastern Washington even though they would lose money by doing so. The fact of the matter is that universities are businesses, not charities, and just like any other business if they can't make a profit they will not provide the service. So, what needs to happen is for there to be a certification program that covers the same material as the UW program but doesn't require as much in overhead costs as the UW and can be more flexible to the unique needs of rural counties.

I would be happy to develop and provide such a program through The Guardian Institute. In fact, about a year ago I submitted a curriculum to the CPG Education Committee requesting approval but they wouldn't consider it at the time. In my presentation at the 3<sup>rd</sup> World Congress I presented an entirely different model for certification. The outline is as follows:

First Quarter: Internship

In my presentation I used the model of providing an internship through local colleges or universities but it wouldn't have to be done exactly that way. Experienced guardians can be

recruited and trained to supervise interns using a highly structured curriculum. The focus during this phase is guardian of the person. The fiduciary work would be added in the second quarter. Course instruction can still be done via online training. There are more ways to provide online training than using Moodle, which is not very user friendly if someone is not very tech savvy.

#### Second and Third Quarters – Provisional Guardian

Once the prospective guardian successfully completes the internship, the next step would be to work on actual guardianships but still be under the supervision of a trained, experienced guardian using a specific curriculum. Again, coursework could be done via online training.

Upon successful completion of these three quarters, the provisional guardian can be certified.

I believe this model would work far better in the rural counties where those interested in becoming a guardian are far fewer than in the urban counties. Because the prospective guardians would be working directly under the supervision of the experienced, trained guardians there wouldn't be a need to have actual classroom time. There would still be sharing of experiences through the relationships established during the online sessions. Travel would no longer be a problem. It would also help to enhance experienced guardians' businesses [as they would get paid for their work] in what could be depressed areas of the State.

I'm not saying that this is *the* solution; I'm proposing that this is a *possible* solution. A little brainstorming might generate some options that might work better. We need to be thinking outside-the-box to find solutions to the problems that the professional guardian industry is experiencing instead of trying to make one model be the answer to all the problems.

Respectfully Submitted,

*Mindi R. Blanchard, M.Ed., CPG*

# Education Committee

**THE ADMINISTRATIVE OFFICE OF THE COURTS  
WITH  
UNIVERSITY OF WASHINGTON PROFESSIONAL & CONTINUING EDUCATION**

**THIS AGREEMENT** is made and entered into by and between the Administrative Office of the Courts, hereinafter referred to as the “AOC,” as administrative support for the Certified Professional Guardian Board, hereinafter referred to as the “the CPG Board,” and University of Washington Professional & Continuing Education , hereinafter referred to as “UWPCE”.

**AUTHORITIES** The CPG Board was established by the Washington State Supreme Court to regulate the practice of certified professional guardians. GR 23(c)(2). The CPG Board’s duties and powers include establishing a professional guardian training program required of applicants for certification as professional guardians. GR 23(c)(2)(iii). The CPG Board wishes to utilize the expertise and resources of UWPCE to provide and maintain a Guardianship Certificate Program which will be subject to the CPG Board’s approval. The CPG Board directed AOC to enter into an interagency agreement with UWPCE to provide and maintain a Guardianship Certificate Program (the “Program”) consistent with the CPG Board’s standards and requirements for the mandatory initial training program required for certification as a professional guardian. AOC is designated as the administrative support for the CPG Board and may contract with agencies or organizations to carry out the CPG Board’s administrative functions. GR 23(j). Thus, AOC on behalf of the CPG Board, may enter into an interagency agreement with UWPCE under the Interlocal Cooperation Act (chapter 39.34 RCW) to provide and maintain the Program.

**IT IS THE PURPOSE OF THIS AGREEMENT** to provide and maintain a certificate program to prepare prospective certified professional guardians to assume the role of court-appointed guardian for vulnerable adults and youth, including individuals with disabilities, and to deepen the guardian’s understanding of the principles underlying the management of care.

**THEREFORE, IT IS AGREED THAT** in consideration of the mutual promises contained herein, the parties will perform as follows:

**A. Guardianship Advisory Board**

UWPCE operates with Advisory Boards for purposes of the development and review of curriculum. Advisory Boards participate through the life cycle of UWPCE Certificate Programs and are disbanded only at the time of a Certificate Program's termination. The participation of certified professional guardians, members of the extended guardianship community as well as academic subject matter experts in specific fields of competencies is necessary to ensure the continued design, development and delivery of a quality guardianship curriculum. Members of the CPG Board’s Education Committee and an AOC staff member who supports the CPG Board will represent the CPG Board on the UW Advisory Board , to ensure the CPG Board is involved in the development of the Program, and a to contribute their invaluable knowledge and expertise as individual subject matter experts. The CPG Board acknowledges UWPCE’s right and intent to appoint independent members to the Advisory Board, who have been reviewed by the CPG Board, as outlined earlier in this Section A.

## **B. Ownership and Rights to the Guardianship Certificate Program the Guardianship Certificate Program**

UWPCE retains ownership and all intellectual property rights to curriculum and online training material, such as printed course packs, other printed and multi-media content for the classroom, as well as online materials, course syllabi, exams, and other materials that are created for the Program.

In the event that another State or entity wishes to license the Program materials from UWPCE, the net revenues<sup>1</sup> from that licensing arrangement will be used (i) to offset the cost of revising the future curriculum for Washington State use, (ii) to offset UWPCE's development and implementation costs as described in Section C if not already recovered, and (iii) if any funds remain, to offset a portion of the student fees for prospective Washington State Professional Guardians attending the Program.

## **C. Costs**

UWPCE Course Fees, Quarterly Registration Fees, Certificate Fees, distance learning fees, the cost of course materials, and other applicable fees for the Program shall be paid by student enrollees. Students are responsible for any travel costs incurred to attend classroom sessions and the cost of equipment or internet access needed to access online distance learning courses.

## **D. Length of Commitment**

The parties agree to an exclusive commitment for providing the initial mandatory education/training required for certification of professional guardians state-wide throughout the State of Washington for a minimum of three years of instruction, assuming one program (with multiple courses) conducted per year for each of those three years. The three years of instruction would commence with the beginning of the October 2014 program and ending in August 31, 2017. Program instruction cycles are envisioned for every nine months and are anticipated to be offered according to the following schedule:

- Program 1: October, 2014 to May, 2015
- Program 2: October 2015 to May 2016
- Program 3: October 2016 to May 2017

## **E. Structure of the Guardianship Certificate Program**

### **1. UWPCE Responsibilities**

UWPCE retains responsibility for the Program, including the ability to set Program and course pricing and student fees, Program and course content, and other administrative and financial aspects of the Program. Program admission standards shall not exceed the

---

<sup>1</sup>"Net revenue" is defined as funds received from another state or entity less UWEO instructional and administrative costs incurred for promoting, reformatting, modifying and delivering the packaged curriculum to that other state or entity.

requirements for certification as a Professional Guardian as set forth in RCW 11.88 and GR23.

## **2. Issuing of Credentials by UWPCE and the CPG Board**

UWPCE will issue a certificate of completion to students who successfully complete all individual courses that are included in the Program.

It is the intent of the CPG Board that successful completion of the Program is a prerequisite for certification as a Professional Guardian. Certification as a Professional Guardian is governed by the Guardian CPG Board, acting in conjunction with the Washington State Supreme Court.

## **3. Program Parameters and Content**

UWPCE will develop and provide the Program according to the following guidelines for a model noncredit UW certificate program:

- 100 class hours minimum;
- A curriculum that has been reviewed and approved by one or more schools and/or colleges at the University of Washington;
- Taught by professionals in the specific fields who have been reviewed and approved by the appropriate academic units and the CPG Board;
- Directed by an Advisory Board with expertise in content areas and appointed consistent with the parameters outlined in Section A;
- Fee-based and fiscally self-sustaining;
- A clear application process;
- Admission standards developed by the Advisory Board;
- Ongoing program evaluation; and
- A clear student evaluation procedure with permanent student transcripts.

UWPCE agrees to coordinate curriculum development activities through the Guardianship Advisory Board. The Education Committee will present the curriculum developed by the Advisory Board to the CPG Board for review and approval.

The current Program is tentatively planned as three courses, consisting of blended in-person classes, and online distance learning, all to be completed within the nine-month Program instruction cycle. Online distance learning, shall be accomplished by students using high speed Internet access that each student is responsible for acquiring at no cost or obligation to UWPCE or the CPG Board.

UWPCE agrees to publicize the availability of the Program in both print through course catalogs, and online via the UWPCE web presence.



UWPCE and the CPG Board may evaluate the viability of offering individual Program courses, on a space available basis, to fulfill the CPG Board's continuing education requirements for individuals currently holding the Certified Professional Guardian designation. Continuing education will be reviewed and approved utilizing the CPG Board's process for all providers of continuing education.

UWPCE, the UW Guardianship Advisory Board and the CPG Board will evaluate the viability of holding in-person classes in Eastern Washington. UWPCE will prepare and present its evaluation and conclusions to the CPG Board during its April 2015 meeting.

UWPCE agrees to survey all past attendees of the UW Guardianship Certificate Program to solicit suggestions and recommendations to improve the program. UWPCE will present the results of the survey to the CPG Board during its April 2015 meeting. At this time, UWPCE will also report on actions taken to improve the following:

1. Student introduction to and basic understanding of the practice of guardianship, prior to the first in-person class;
2. Developing a common vocabulary;
3. Accuracy of printed and online materials;
4. Effectiveness of in-person class time;
5. Control of classroom discussions;
6. Relevant and timely instructor feedback to students;
7. Instruction on court reporting;
8. Instructions to and follow-up with presenters.

UWPCE will provide the CPG Board's Education Committee with enrollment numbers at the beginning of each Program instruction cycle and evaluation information regarding the progress of the Guardianship Certificate Program and the names of students that have successfully completed the Program at the completion of each Program instruction cycle. Information regarding specific student participants will be provided consistent with limitations imposed by federal FERPA law.

#### **F. PERIOD OF PERFORMANCE**

Subject to its other provision, the period of performance of this Agreement shall begin at the date of signature of the agreement and shall be completed after the 3 year period outlined in "Length of Commitment" above and no later than August 31, 2017, unless terminated sooner as provided herein or extended in writing by mutual agreement between the parties.

#### **G. INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

#### **H. RESPONSIBILITIES OF THE PARTIES**

Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers, and its

agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act or omission of any person, agency, firm, or corporation not a party to this Agreement.

#### **I. AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

#### **J. MANAGEMENT**

The Agreement Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Agreement Manager for the AOC is Shirley Bondon, her successor or designee, PO Box 41170, Olympia, WA 98504-1170; Phone: (360) 705-5302; e-mail: [shirley.bondon@courts.wa.gov](mailto:shirley.bondon@courts.wa.gov)

The Agreement Manager for the University of Washington is Malia Morrison, her successor or designee, University of Washington Professional & Continuing Education, Box 354978, Seattle, WA 98105-4608; Phone: (206) 616-4720; email: [mmorrison@PCE.UW.edu](mailto:mmorrison@PCE.UW.edu)

#### **K. TERMINATION**

Either party may terminate this Agreement with a minimum of ninety (90) days notice; such termination shall not be effective until completion of the then-current Program in progress.

#### **L. DISPUTES**

The parties agree to conduct all activities and perform all obligations in good faith and to work cooperatively with one another. However, disputes arising under this Agreement shall be resolved by a panel consisting of one representative from each party, and a mutually agreed upon third party. The dispute panel shall thereafter decide the disputes with the majority prevailing. The determination of the dispute panel will be final and binding on the parties.

#### **M. GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

#### **N. ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party.

#### **O. WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to the original Agreement.

#### **P. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which

can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**Q. ENTIRE AGREEMENT**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be considered to exist or to bind any of the parties to this Agreement unless otherwise stated in this Agreement.

**R. EXECUTION**

The parties acknowledge and accept the terms and conditions of this Agreement. The individuals signing on behalf of the parties below hereby represent and warrant that they have full authority to sign this Agreement and bind the party to perform all duties and obligations contemplated by the foregoing Agreement.

Approved

University of Washington Professional &  
Continuing Education

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Print or Type Name

**Vice Provost**

\_\_\_\_\_  
Title

\_\_\_\_\_  
*Date*

Approved

Administrative Office of the Courts

\_\_\_\_\_  
*Signature*

**Ramsey Radwan**

\_\_\_\_\_  
Print or Type Name

**Director, Management Services Division**

\_\_\_\_\_  
Title

\_\_\_\_\_  
*Date*

## Materials to Discuss October 20, 2014



August 1, 2014

TO: Certified Professional Guardianship Board  
FROM: Shirley Bondon, Manager, Office of Guardianship and Elder Services  
RE: Conflicts of Interest/Recusal Process

**Background**

During the June 9, 2014 Board meeting, staff was directed to draft a recusal process for Board review. Before drafting, staff reviewed current Board rules and regulations. Although, conflicts of interest are addressed in General Rule 23 and Disciplinary Regulation 500, provided in pertinent part below. These references do not address the full spectrum of conflicts of interest in relationship to the duties of members of the Board.

General Rule 23<sup>1</sup>

“GR 23 (6) Conflict of Interest. A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.”

Disciplinary Regulation 500<sup>2</sup>

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.

---

<sup>1</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr23](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr23)

<sup>2</sup> [http://www.courts.wa.gov/programs\\_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500](http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500)

507.2 The Administrative Office of the Courts (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 Standards of Practice Committee (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.

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.

512.4.4 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."

In addition, staff reviewed the Model Code of Ethics for Members of Regulatory Boards for the Licensed Professions<sup>3</sup> that the Board discussed during its June 9, 2014 meeting; Advisory Opinion 96-09<sup>4</sup> prepared by the Washington State Executive Ethics Board, which includes Model Rules for Executive Branch Boards/Commission addressing conflicts of interest and recusal; a memorandum<sup>5</sup> from the Director of the United States

---

<sup>3</sup> <http://www.fclb.org/Portals/7/CodeOfEthics.pdf>

<sup>4</sup> <http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updated%20Opinions/updated%20Advop%2096-09A.htm>

<sup>5</sup> <http://www.oge.gov/OGE-Advisories/Legal-Advisories/99x8--Recusal-Obligation-and-Screening-Arrangements/>

Office of Government Ethics regarding Recusal Obligation and Screening Arrangements for executive branch employees; and policies for other governmental bodies. Similar opinions or rules were not located for Judicial Branch boards and commissions.

### **Recommendation:**

Staff submits the following proposed policy for Board review:

## **Proposed Conflict of Interest Policy**

### **A. Introduction**

The Certified Professional Guardianship Board is committed to providing a fair, ethical and accountable environment for the conduct of its internal operations, and the management of its regulatory functions.

Being aware of and managing conflicts of interest are essential for good governance and the integrity of decision-making. It is essential that members understand that their role on the Board and its committees is to represent the interests of the Board and to act in the public interest.

A conflict of interest exists when it is likely that a Board member could be influenced or perceived to be influenced, by a personal interest when carrying out their public duty. Conflicts of interest can be actual, perceived or potential.

A conflict of interest is defined as having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of a Board member's duties to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner.

An actual conflict of interest involves a direct conflict between a member's Board duties and responsibilities and existing private interests. A perceived or apparent conflict of interest can exist where a reasonable person could perceive that a member's private interest could improperly influence the performance of his or her duties, whether or not this is in fact the case. A potential conflict of interest arises where a member has private interests that could conflict with his or her public duties in the future.

Board members must make public (and recuse themselves from) any actual, perceived and potential conflict of interest to ensure the integrity of the Board and all of its decisions.

***Disclosure and recusal*** are important tools to avoid actual, perceived or potential conflict of interest. Board members must not overuse recusal as an excuse to avoid

conflict in exercising their full responsibilities. The appointment of Board members who will likely need to consistently recuse should be avoided.

## **B. Types of Conflict of Interest**

A private or personal interest may be either pecuniary or non-pecuniary, and includes the personal, professional and business interests of the person and the individuals with whom he or she associates (relative, partner, friend, associate or colleague).

**Personal conflicts** are those actions that may ultimately have a personal or professional consequence that is a direct or indirect effect of a decision or action. No decisions should be made solely to advance the personal benefit of Board members. Some examples of personal conflict include:

- 1) **Personal gain:** Will this decision affect the Board member's personal life in any direct way?
- 2) **Sexual favors:** Will this behavior affect the Board member's position unfairly?
- 3) **Influence:** Will this behavior affect the Board member's position unfairly? Will it result in unwarranted privileges or exemptions?
- 4) **Effects on personal relationship:** Will there be an effect on the Board member's current, past or future personal and professional relationship(s), including memberships and or status in associations or professional organizations.
- 5) **Benefits to those who have a relationship with the Board member:** No decision should be made solely to effect the personal or financial gain of anyone with whom the Board member has a personal or professional relationship.
- 6) **Gift received:** Acceptance of any gift should be perceived as a bribe to influence present or future considerations.

**Financial conflicts** are those in which a Board member or those with whom he or she has a personal or professional relationship, may benefit financially, or be perceived as benefitting financially, from decisions by or the influence of the Board member. Money does not have to change hands for an interest to be financial. A financial interest includes, tangible and intangible assets and benefits. Some examples of financial conflicts include:

- 1) **Employment Gain:** These may include opportunities for consulting, speaking teaching, etc. Employment during and subsequent to Board membership should not appear to be relating to any Board matters.



- 2) **Financial Gain: Effects on the Board member's business.** Decisions and actions must not affect the future financial position of the Board member's business. Contractual and creditor relationships also apply here.
- 3) **Outside Activities:** These may include present employment, investment, and/or business opportunities.
- 4) **Recruitment of other professionals or clients into business opportunities:** Extreme care must be exercised to be certain no actual or perceived leverage of authority with the Board position is used in this area.

### C. Public Duty

All Board members have a duty to always put the public interest above their own personal or private interests when carrying out official Board duties. Determining public interest in a particular situation can be complex, but on a practical level a Board member's public duty can best be fulfilled by focusing on the Board's duty to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner; and identifying any form of conflict of interest that arises and ensuring that it is managed effectively.

### D. Competing Interests

At times, members may have multiple roles: in addition to their role with the Board, they may have a principal job in which they are employed by a government agency or a private sector organization. They may be self-employed. They may serve in another public sector or community-based role, such as being a member of a committee or statutory body. They may also serve in a professional organization or association.

In their role as Board member they may have access to confidential information that may be useful or of benefit to their work in one or more of their other roles. The risk in this situation is that there may be a temptation to use the information improperly, or to give advantage to the second organization, or create bias or prejudicial treatment of another group or person.

These conflicts are described as **competing interests** or a **conflict of duty**. These situations should be treated in the same way as potential conflicts of interest, that is, to ensure that decisions are made, and are seen to be made, on proper grounds, for the legitimate reason of protecting the public.

### E. Participating in Proceedings

There are generally two main categories of proceedings in which Board members commonly face issues of conflict of interest and bias — quasi-judicial proceedings and quasi-legislative proceedings.

Generally, in quasi-judicial proceedings (grievances and complaints) impartiality due to financial conflict of interest or personal interest is impermissible because an unbiased, impartial decision-maker is essential to due process. However, in quasi-legislative proceedings (rulemaking) ethical guidelines for personal or even financial bias may be less strict depending upon the particular facts and circumstances involved.

### *“Quasi-Judicial Proceedings”*

Examples of quasi-judicial proceedings include certification decisions, disciplinary hearings, individual appeals from administrative decisions, and most grant awards. In such cases, no "legal bias" or personal, financial or familial interest is allowed. To avoid these types of conflicts, generally a Board member must refrain from participating in the discussion or voting on the matter.

What constitutes "legal bias" is a matter of law and is more appropriately determined on a fact-specific, case-by-case basis by the Board. According to court decisions, however, legal bias may include preconceptions about facts, policy, law, or a person, group or object.

### *“Quasi-Legislative Proceedings”*

In quasi-legislative matters, (like most rulemaking) Board members should not participate in voting or discussion of matters that involve their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by Board members. Moreover, they should recuse themselves when their impartiality might reasonably be questioned due to their personal relationship with a participant in the proceeding. In such circumstances, general personal affiliations with organizations or groups will normally not preclude a Board member from participating in discussion or voting unless the organization itself is petitioning the Board directly regarding the matter. Depending upon the particular facts of (1) the relationship between the organization and the Board member and (2) the role the organization is playing in relation to issues before the Board, ethical requirements may vary greatly — from requiring that the Board member need only disclose his relationship to the full Board, to requiring that the Board remove himself entirely from the proceeding.

## **F. Managing Conflicts of Interest**

### **What is recusal?**

Generally, recusal involves disassociation with the matter at hand. The Board member would not participate in the discussion or the deliberations, make recommendations, give advice, consider findings, or in any other way assume responsibility for or attempt to influence the decision-making process. This is different from abstaining, where one participates fully in the matter, but does not vote.

## **What should a Board member do to properly recuse?**

In order to instill confidence in the process, recusal should occur in public and on the record. In some situations, the Board member may choose to leave the room, but generally recusal followed by appropriate inaction is sufficient.

### **Rule #1**

(1) When a Board member is beneficially interested, directly or indirectly, in a contract or grant that may be made by, through or is under the supervision of the Board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract or grant, the member shall:

(a) Recuse him or herself from the Board discussion regarding the specific contract or grant;

(b) Recuse him or herself from the Board vote on the specific contract or grant;  
and

(c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific contract or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1), "any other person" has a beneficial interest in a contract or grant when the other person bids or otherwise seeks to be awarded the contract or grant.

### **EXAMPLE:**

The Certified Professional Guardian Board includes representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; court staff including judicial officers; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships. A Board member is employed by a company that performs surveys. The Board is in the process of selecting a contractor to survey professional guardians. The company that employs a member of the Board is interested in the contract.

The Board member may use his or her general expertise regarding the performance of surveys, but the member is prohibited from participating in the Board's discussion and analysis implementing the criteria for selecting a contractor, and is prohibited from participating in the Board's vote to select a contractor.

## **EXAMPLE:**

The Certified Professional Guardianship Board contracts with King Software to provide computer systems for tracking disciplinary cases. King Software's contract with the Board is almost expired and the Board plans to seek bids from software companies for the next contract period. The Board issues a request for bids to various software companies who offer suitable software, including Medsoft, Inc.

Approximately nine months ago, one Board member worked for Medsoft, Inc. and received compensation from that company. The Board member subsequently left Medsoft, Inc. and went to work for the state. The Board member is not required to recuse herself from selecting a contractor for the Board's disciplinary tracking system because Medsoft did not have a beneficial interest in the Board's contract until it bid on the contract.

Therefore, Medsoft was not a person beneficially interested in the contract when the Board member received the compensation, but the Board members should disclose his or her former relationship with Medsoft. However, if the Board member received delayed compensation from Medsoft after it bid on the contract, that he or she had already earned, this is probably not a conflict of interest, but still should be disclosed. If the Board member continues to work for Medsoft the Board member would be required to disclose the relationship and to recuse himself or herself from the Board's specific discussion and the vote awarding the contract.

## **Rule #2**

(1) When a member of the Board, either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the board, the member shall:

- (a) Recuse him or herself from the Board discussion regarding the specific transaction;
- (b) Recuse him or herself from the Board vote on the specific transaction; and
- (c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the Board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, grievance or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of Board action; or

(ii) Is one to which the Board is or will be a party; or

(iii) Is one in which the Board has a direct and substantial proprietary interest.

(b) "Transaction involving the Board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the Board that is the basis for the claim, case, or lawsuit. Rulemaking is not a "transaction involving the Board."

(4) "Board action" means any action on the part of the Board including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A certification, grant, payment, award, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

#### **EXAMPLE:**

The Certified Professional Guardianship Board disciplines certified professional guardians in Washington State. The Board is conducting an investigation involving the guardianship services provided by a guardianship agency. One of the members of the Board sits on the board of directors for that agency or represents the agency in other matters. The member must recuse him or herself from any Board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the agency's guardianship services.

The Certified Professional Guardian Board certifies professional guardians in Washington State. The Board is reviewing an application for certification of an individual who is a relative, partner, friend, associate, or colleague of a member of the Board. The member must recuse him or herself from any review, discussion or deliberation regarding the application for certification.

#### **Rule #3**

If recusal occurs pursuant to model rule #1 or #2, the member of the Board shall disclose to the public the reasons for his or her recusal from any Board action whenever recusal occurs. The Board staff shall record each recusal and the basis for the recusal.

#### **G. Summary**

Considering the guidance provided above, Board members should:

- a. Fully disclose their relationships with any and all individuals and organizations when matters involving those entities come before the board;

- b. Avoid participating in quasi-legislative matters involving their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by other Board members;
- c. Not participate in rulemaking when the organization in which they have a personal interest is the petitioner for the rule in question; and
- d. Not participate in grievances and complaints or other quasi-judicial proceedings involving individuals and organizations with which they are personally interested or where their impartiality might reasonably be questioned as a result of their association with those entities.