

Miscellaneous Meeting Materials

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512 Board Review

512.1 Transcript of the Hearing: The Board shall prepare the transcript of the evidentiary hearing held before the Hearing Officer and shall mail a copy to each party.

512.2 Statement in Opposition and Rebuttal: Any statement in opposition to the decision of the Hearing Officer, alleging errors of fact, law, or any other pertinent matter shall be filed within twenty (20) days from receipt of the hearing transcript. Said statement shall be filed with the Board and served on each party. Each party shall have ten (10) days from the date of mailing of a statement in opposition of any party to file a rebuttal to said statement. Receipt of any mailed materials shall be deemed complete three days after the postmarked date on the materials.

512.3 Board Review: The Board shall review the Hearing Officer's findings of fact, conclusions of law and recommendations. In addition, the Board shall review any statements in support or opposition to such findings, conclusions, and recommendation, and any portion of the record deemed necessary to resolve the matter.

512.4 Board Action

512.4.1 Board Decision: The Board shall adopt, modify or reverse the findings, conclusions, and recommendation of the Hearing Officer by written decision, a copy of which shall be served upon the parties.

512.4.2 Dissent: If any Board member or members dissent from the findings, conclusions, and recommendation of the majority, the member or members shall state in writing the reasons for the dissent. Dissents shall be made a part of the record.

512.4.3 Retention of Records: The record of any disciplinary proceeding shall be retained in accordance with records retention schedules for the judicial branch and the AOC.

512.4.4 Disposition Requiring Supreme Court Action: If the Board's recommendation is that the professional guardian be decertified or suspended, that recommendation, along with the record, shall be transmitted to the Supreme Court.

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.

512.4.5 Quorum: A quorum for determination of the Board's decision on review of the Hearing Officer's decision shall consist of a majority of the Board members who are not disqualified as above.

512.4.6 Information to Grievant: The Board shall advise the grievant in all cases of the final disposition of the grievance.

CERTIFIED PROFESSIONAL GUARDIAN BOARD

In the Matter of:

MAUREEN CARROLL,
CPG NO. 10908,

Respondent.

CPGB NO. 2012-002, 2012-013, 2012-038, 2012-045, and 2012-046

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS TO THE CPG BOARD

I. STATEMENT AND SUMMARY OF THE CASE

THIS MATTER came before the Hearing Officer, Jeff B. Crollard, on May 6, 2015 as a contested disciplinary proceeding challenging the proposed decertification of Maureen Carroll, CPG No. 10908 (“Carroll”) by the Certified Professional Guardian Board (“Board” or “CPG Board”). At the hearing, the CPG Board was represented by Chad C. Standifer, Assistant Attorney General. Maureen Carroll was represented by attorney Richard Furman of Aiken, St. Louis & Siljeg, PS. To the best of the Hearing Officer’s knowledge, this is only the second full administrative hearing of a contested CPG Board disciplinary action. The Hearing Officer apologizes for the lateness in issuing this decision with his Findings of Fact, Conclusions of Law, and Recommendations to the CPG Board.

The main difficulty in deciding this matter concerns the issue of what time period of the guardian’s conduct to examine. The Hearing Officer believes this is relevant to the Board’s requested sanction of decertification. The Board’s Disciplinary Regulations (“DR”) list four grounds for which decertification is generally appropriate. DR 515.2.1. The first three involve intentional misconduct, summarized here: (1) misconduct with the intent to personally benefit

oneself, or to deceive the court, or to seriously harm someone; (2) felonious criminal conduct; or (3) other intentional, serious dishonesty, fraud or deceit. DR 515.2.1 and .2 and .3.

The fourth ground for decertification is gross incompetence, defined by the Board in DR 515.2.1.4:

Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the same Standards of Practice, **and where the guardian has not corrected the behavior** despite previous attempts by the courts or the Board to correct the behavior. (**bold** added)

This basis for decertification is different than the others. With the first three, if proven, the Disciplinary Regulations say the guardian usually is to be decertified. For the fourth, however, a time element is added. A key issue for the Hearing Officer—and for which he requested briefing—was the interpretation of the above bolded language. What time period is to be considered when determining whether the guardian has or has not corrected her behavior?

In this matter, Maureen Carroll violated many court filing deadlines in 2011 and 2012. In the five guardianship cases covered by the Board's Complaint, the King County Superior Court had issued 44 orders to file the late documents. This included 11 orders to show cause for why she should not be found in contempt of court for failing to file the documents, and 5 orders to appear on the delinquency calendar for failure to appear at the show cause hearings. The Board opened five Grievances against Ms. Carroll from February 2012 to November 2012.

In late 2012, probably after the fifth Grievance was opened on 11/27/2012, the Board's Guardian Grievance Investigator recommended to Ms. Carroll that she hire an attorney who specializes in guardianships to help bring her case files into compliance with court reporting requirements and stay in compliance. She did. Ms. Carroll hired an attorney and bookkeeper in early January 2013. The number of late court filings dropped dramatically. Out of her approximately 25 guardianship cases, it appears Ms. Carroll had 4 late court filings in 2013, and 2 late filings in early 2014. In 2013, Ms. Carroll received 1 court order to file a late

document, *no* orders to show cause, and *no* orders to appear on the delinquency calendar. In 2014 (the hearing record before the undersigned goes to April 2014), she had none.

Because of staff turnover at the Administrative Office of the Courts (AOC), Ms. Carroll's Grievances were not staffed for much of 2013 or the beginning of 2014. The Board issued its Complaint against Ms. Carroll on April 9, 2014. In response to the undersigned's request for briefing on the time period to examine when interpreting the "gross incompetence" basis for decertification, the Board pointed to 3 late filings in 2013 (one of which was on time), and argued that "These events show that even with assistance, Ms. Carroll has struggled to keep courts informed by timely filing the required reports." Board's Post-Hearing Brief, p. 22, lines 7-8. Characterizing 3 late filings as a struggle, and implying there was no meaningful change in Ms. Carroll's conduct from 2012 to 2013, is not accurate. Perhaps recognizing its record was thin on this point, the Board argued in a footnote: "The Board's investigation concluded well in advance of the Complaint being issued in April 2014. Ms. Carroll's filings in the last few years are therefore not at issue in this proceeding, and Ms. Carroll offered no evidence establishing that her current filing practices are exemplary." *Id.*, fn. 12.¹

The Board "bears the burden of establishing misconduct warranting disciplinary action by a preponderance of the evidence in all cases." DR 511.15. The Board did prove misconduct by multiple late filings of documents by Maureen Carroll warranting discipline. However, to support an order of *decertification* based on "gross incompetence," the Board must prove not only her practice of late filings, but also that Ms. Carroll "has *not* corrected the behavior despite previous attempts by the courts or the Board to correct the behavior." DR

¹ The Board did offer into evidence documents from June 2014 and July 2014 to support its allegation that Ms. Carroll continued to fail to provide sufficient proof of Errors & Omissions (E&O) Insurance coverage. *See*, Joint Exhibits 72, 73. This was another reason for the Board's requested sanction, discussed below. *See*, Board's Pre-Hearing Brief, pp. 12-13; Board's Post-Hearing Brief, pp. 5-6.

515.2.1.4. Those are facts the Board must establish, not Ms. Carroll.² The interpretation of the phrase “has not corrected the behavior” is a legal conclusion the Hearing Officer must make. The undersigned has concluded that the time period encompassed by this provision in DR 515.2.1.4 means, at a minimum, up to the time the April 2014 Complaint was filed.³

The Board alleged in its April 2014 Complaint that on November 25, 2103 AOC staff completed on audit of Ms. Carroll’s active cases as of January 15, 2013 and concluded that “the **majority** of [Ms. Carroll’s] reports were filed late.” Complaint ¶2.6.1. (**bold added**) The Complaint also alleged that on January 17, 2014 the AOC staff requested an updated active case list, and a second audit “confirmed that [Ms. Carroll] continued to file her reports late.” Complaint, ¶2.6.3. However, the parties’ Joint Exhibits do NOT contain a copy of the first or second audit by Board staff referenced in the Complaint, and no document or testimony was submitted by either party to support the allegation that a majority of Ms. Carroll’s reports in 2013 or 2014 were filed late. The allegation also was not asserted in the Board’s pre-Hearing or post-Hearing briefs. The Board is deemed to have abandoned, or failed to prove by a preponderance of the evidence, its allegation that a “majority” of Ms. Carroll’s court filings were late in 2013 and 2014.

It should be pointed out that there has been no allegation of harm to any of Maureen Carroll’s guardianship clients due to her late court filings. There also have been no allegations of accounting errors, money mismanagement, self-dealing, mistreatment, or neglect of her clients in any way. Ms. Carroll’s case reports and accountings, once filed, have been approved by the guardianship courts.

² This is distinct from the rule that generally “the party facing discipline ‘bears the burden of showing the Board’s recommended sanction is not proportionate’ ” to other disciplinary proceedings. *In Re Petersen*, 180 Wn.2d 768, 790-91, 329 P.3d 853 (2014) (internal citation omitted).

³ It could go beyond that point in time if the Board offered documentation of the guardian’s untimely court filings after the Complaint was filed April 2014, and the Board had moved to amend the pleadings to conform to the evidence, as allowed by DR 510.8, DR 511.16, and Superior Court Civil Rule 15(b).

The undersigned agrees however that the multitude of late court filings in many of Ms. Carroll's cases in 2011 and 2012 warrants disciplinary sanction by the Board, such as a prohibition against taking new cases for a period of time and a letter of admonishment, as well as the ordering of several remedies, including further training, mentoring, and auditing of Ms. Carroll's cases for a period of time. The recommendations are discussed throughout this opinion. The undersigned Hearing Officer, however, does not recommend decertification.

II. EVIDENCE

The parties submitted a Joint Statement of Evidence on March 3, 2015, with the Board offering Exhibits 1 through 74, and the Respondent Ms. Carroll offering Exhibits 75 through 116. The parties then stipulated at the hearing to the admission of all exhibits, reserving argument as to relevance, etc. The parties' Joint Statement of Evidence is attached and incorporated herein. **The Joint Statement of Evidence and Exhibits 1 through 116 were admitted into the record.** No other exhibits were offered by either party.

Witnesses testifying for the Board were Shirley Bondon, AOC Manager, and Carla Montejo, AOC Senior Court Program Analyst/Guardian Grievance Investigator. Witnesses testifying for the Respondent were Maureen Carroll, and expert witness John Hertog.

Based upon the record presented, the remarks and briefing of counsel, the undersigned Hearing Officer makes the following Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. Maureen Carroll, CPG No. 10908, is a certified professional guardian pursuant to GR 23 practicing in the state of Washington. The Washington Supreme Court certified Ms. Carroll on April 16, 2009. Exhibit 1.
2. Ms. Carroll's educational background includes two B.A.'s in social services fields, and her work history includes a number of years with the Department of Social & Health Services, working primarily in the oversight of Rainier School and adult family homes serving individuals with developmental (intellectual) disabilities ("DD"). Sometime in 2008, she

became employed fulltime at Sound Mental Health, working in crisis stabilization for people with DD. She has remained employed fulltime at Sound Mental Health during the entire period at question in this case, including up to the present. She also volunteers after hours about 5 hours a week in a community psychiatric clinic. As of the May 2015 hearing, she said she had about 23 or 24 guardianship cases. She expressed her love for her clientele and described her packed schedule as a lifestyle choice. She said she also has a good, organized Standby Guardian, Malinda Frey, for most of her current cases, as well as an attorney and bookkeeper to assist with court filings. Testimony of Carroll.

3. Ms. Carroll had no prior experience as a court appointed guardian, or in operating a business, prior to her guardianship professional certification in mid 2009. She started working as a guardian in a certified guardianship agency operated by Pam Privette, who she said was recommended to her by AOC staff. Ms. Privette did not provide the guidance or business advice she hoped for, and Ms. Privette later had disciplinary problems with the CPG Board. Testimony of Carroll.

4. Ms. Carroll began taking cases on her own in 2010, and believes she had about 11 cases by about mid 2011, which climbed to about 25 cases by mid 2013. She described herself as having a big heart and testified that most of her cases were referred to her by Adult Protective Services or the Attorney General's Office, and many done pro bono. She said she didn't hire an attorney to assist or advise her because she mistakenly thought she'd have to pay the attorney personally rather than it being a covered guardianship expense. Testimony of Carroll.

5. A few of Ms. Carroll's court required reports were late in 2010, but the great majority of her late court filings occurred in 2011 and 2012. *See*, Exhibits 11, 24, 34, 44, and 63.

6. The CPG Board received grievance reports of Ms. Carroll's late filings from the King County Superior Court on 2/3/2012, 4/9/2012, 11/5/2012, 11/7/2012, and 11/27/2012. The Board opened disciplinary Grievances shortly after receiving the court reports, eventually opening a total of five Grievances. Exhibits 11, 24, 34, 44, and 63. On 4/9/2014, the CPG

Board issued a Complaint against Ms. Carroll recommending decertification based primarily on these five Grievances regarding multiple late court filings, as well as alleged failure to comply with additional training requirements, violation of Errors & Omission Insurance coverage requirements, and her prior disciplinary history.

7. The Board's Complaint and Notice to Answer were filed on April 9, 2014. The Respondent Maureen Carroll was served via certified mail and filed an Answer on May 13, 2014. The Respondent was timely notified of the time and place of the Hearing in accordance with the Prehearing Conference Order and Notice of Hearing, dated January 20, 2015.

8. Before discussing each of the Grievances, the undersigned Hearing Officer wishes to note his concern about Ms. Carroll carrying a guardianship caseload of 25 clients or more, while simultaneously working a 40 hour per week fulltime professional job in a demanding field. The record does not reflect what hours of the day she has worked at Sound Mental Health since 2008, but is likely to have contributed to her many missed court deadlines in 2011 and 2012 when she also lacked prior experience as a guardian, and had virtually no backup or professional assistance. Since she obtained professional assistance in 2013, she has continued to work fulltime at Sound Mental Health, and the record before the Hearing Officer shows very few missed deadlines in 2013 and early 2014 (where the record essentially ends). Nonetheless, the undersigned cannot be certain of the impact her other fulltime job has on her current responsibilities as a professional guardian, and therefore will recommend below that the Board order monitoring of Ms. Carroll's guardianship cases and filings for a period of time to ensure that her duties as a professional guardian are being met. The five guardianship case grievances are now described.

A. Guardianship of R.R., King County Superior Court No. 10-4-0683-3

9. The court appointed Ms. Carroll the guardian of the person and estate of R.R. on March 4, 2011. Ex. 2. Ms. Carroll remembered R.R. and described him (and each of the other four clients in this case) warmly. R.R. was a former homeless Korean vet, who had dementia, and was living in an apartment with services she arranged through COPES. Testimony of Carroll.

10. Ms. Carroll failed to file an Inventory and the Designation of a Standby Guardian within the 90-day statutory filing period ending June 2, 2011. Ex. 4. She had been informed by the court to do so in the initial guardianship paperwork provided to her. Ex. 3.

11. The court issued two case review orders regarding Ms. Carroll's failure to file an Inventory and the Designation of a Standby Guardian, and then an Order to Show Cause on December 12, 2011. Exhibits 4, 5 and 6. Ms. Carroll failed to appear at the show cause hearing on January 24, 2012, but filed her Designation of Standby Guardian on January 30, 2012. Ex. 76. After the court issued an Order on Show Cause and Citation for Contempt of Court on February 2, 2012, she filed the Inventory on February 6, 2012. Exhibits 7, 77. The CBG Board received a grievance from the court in R.R. around 2/8/2012 and opened a Grievance soon thereafter. Ex. 11.

12. Ms. Carroll failed to file the Guardian's First Annual Report in R.R. within the 90-days statutory filing period ending June 4, 2012. Ex. 3. The court issued four orders regarding her failure to file the annual report, and then issued an Order on Show Cause and Citation for Contempt of Court for failure to appear at a show cause hearing on November 15, 2012. Exhibits 8, 9, 10, 12, and 13. Ms. Carroll subsequently filed the annual report on December 20, 2012, and it was approved by the court that day. Exhibits 78, 81.

13. Ms. Carroll did not file the Guardian's Second Annual Report for R.R. when it was due by June 3, 2013. The report was filed on July 7, 2013 and approved by the court on August 30, 2013, with triennial reports adopted for future reporting. *See* Ex. 79, 82. This late filing in 2013 (one of the few) was after Ms. Carroll had retained an attorney and bookkeeper.

B. Guardianship of C.B., King County Superior Court No. 10-4-05318-0

14. The court appointed Ms. Carroll guardian of the person and estate of C.B. on December 3, 2010. Ex. 14. C.B. died on May 2, 2011, and a Notice of Death was timely filed by Ms. Carroll with the court on June 2, 2011. Ex. 16.

15. Ms. Carroll did not file the Guardian's First and Final Report within the 90-day statutory filing period ending August 31, 2011. The court issued four orders regarding her failure to file the First and Final Report in C.B. Exhibits 17, 18, 19, 20. On April 9, 2012, the court then issued an Order on Show Cause and Citation for Contempt of Court for failure to appear at a show cause hearing on March 7, 2012. Ex. 21. The CPB Board received a grievance from the court in C.B. around April 12, 2012 and opened a Grievance soon thereafter. Ex. 24. The court issued two more orders regarding Ms. Carroll's failure to file the First Annual and Final Report. *See* Exhibits 22 and 23. Ms. Carroll filed the First and Final Report on June 20, 2012, which the court approved the same day. Exhibits 84, 23.

16. A review of Ms. Carroll's time records in her First/Final Report show significant and frequent involvement by her in C.B.'s case, in which she was his guardian for a few short months. Because of C.B.'s mental illness, aggression, and medical issues, all nursing homes in King County had refused to admit him. Ms. Carroll assisted C.B. in transfers/placements to: Valley Medical Center hospital, Georgian House in Lakewood, Northwest Geropsych hospital, and finally SeaMar nursing home in Seattle. She interacted and negotiated his needs with each of these entities, as well as with Social Security office, DSHS-HCS, his bank, Qualstar, and the power company. When his health took a sudden downturn and dying, she arranged for hospice, and she visited C.B. and provided support to his family many times over the course of three days in late April/early May, 2012. Ex. 84, pp. 4-5. However, it took Ms. Carroll one year to file her First and Final Report after C.B.'s death.

C. Guardianship of J.C., King County Superior Court No. 10-4-040602-2

17. The court appointed Maureen Carroll the guardian of person and estate of J.C. on September 13, 2010. Ex. 25. J.C. was described by Ms. Carroll as a regal, elderly woman from the Philippines whose daughters may have exploited her. The case was referred to Ms. Carroll by APS and the AG's Office. She handled all bill paying for J.C., oversaw her relatively moderate medical issues, and spent considerable time arranging for J.C. to return to the Philippines, a task that was time consuming because J.C.'s passport had been stolen. Ms. Testimony of Carroll; Ex. 89, pp. 5-6.

18. Ms. Carroll did not file the Inventory, Personal Care Plan, and Designation of Standby Guardian that were due by December 13, 2010, filing them three weeks late on January 6, 2011. Exhibits 26, 86, 87, 91.

19. Ms. Carroll did not file her Guardian's First Annual Report within 90 days after December 12, 2011. Ex. 26. The court issued six orders regarding Ms. Carroll's failure to file the First Annual Report. Exhibits 27, 28, 29, 30, 31, and 32. The court then issued an Order on Show Cause and Citation for Contempt of Court for her failure to appear at a show cause hearing on October 31, 2012. The order appointed a Guardian ad Litem to investigate Ms. Carroll's failure to file guardian's reports and to appear on show cause orders. Ex. 33. The CPG Board received a grievance from the court in J.C. around November 5, 2012, and opened a Grievance soon thereafter. Ex. 34. Ms. Carroll filed the annual report on December 14, 2012, and the GAL was discharged. Exhibits 35, 88.

20. Ms. Carroll filed a Notice of Death of J.C. on January 18, 2013. Ex. 36. She did not file her Guardian's Final Report by its due date of April 18, 2013, prompting the court to issue a case review order on April 18, 2013. Ex. 37. Ms. Carroll filed the Final Report, and her attorney filed the Petition for an Order approving the final report, which was approved by the court on May 13, 2013. Exhibits 89, 90.

21. *J.C. was the first case in 2013 with a late filed document after Ms. Carroll had retained an attorney and bookkeeper to assist her. It is the only case in 2013 or 2014 with a court order issued to Ms. Carroll concerning a late filing.*⁴

D. Guardianship of L.B., King County Superior Court No. 07-4-03115-1

22. The court appointed Ms. Carroll successor guardian of the person and estate for L.B. on February 28, 2011. Ex. 38. L.B. lived in an Adult Family Home. She apparently had dementia and was not very communicative by the time of Ms. Carroll's appointment. Ex. 94, p.5. Ms. Carroll described the AFH as one that needed monitoring, and based on her time records, Ms. Carroll visited or made contact on a monthly basis. She arranged for a change in L.B.'s care plan after L.B. had a choking incident on 10/15/2011, and during the last month of L.B.'s life (March 2012), Ms. Carroll visited L.B. or had contact with hospice, the AFH provider, and L.B.'s church a number of times. Ex. 94, p. 5.⁵

23. Ms. Carroll did not timely file the Inventory and Personal Care Plan for L.B., which were due May 31, 2011; instead filing them on August 11, 2011. Exhibits 92, 93. It appears that the Designation of a Standby Guardian was never filed by Ms. Carroll. Ex. 96.

24. Ms. Carroll filed a Notice of Death of L.B. on April 4, 2012. Ex. 40. Ms. Carroll's First and Final Report were due by July 3, 2012. The court issued two orders concerning this filing requirement, *see* Exhibits 41, 42, and on October 25, 2012 issued an Order to Show Cause and Citation for Contempt of Court for failure to appear at a show cause hearing two days earlier. Ex 43. The CPG Board received a grievance from the court in L.B. around

⁴ The box checked on page 1 of the 5/13/2013 Order states: "Internal Administrative review, no prior notice of review date to parties." Ex. 37, p. 1. The order was mailed to Ms. Carroll at an incorrect address, Ex. 37, p. 2 *cf* Ex. 37, p. 1 and Testimony of Carroll, and not to her attorney, Mr. Furman, who had not filed a Notice of Appearance. Ex. 85, pp. 4-5. This does not excuse the delay but may help explain it.

⁵ An apparent typographical error on Ex. 94. p.5 makes it appear there was a 1 year gap in Ms. Carroll's visits from may 2011 to May 2012. The entries dated 5/28/2012 through 12/20/2012 must be for the year 2011 because L.B. is reported to have died on March 22, 2012. Ex. 40.

November 7, 2012, and opened a Grievance shortly thereafter. Ex. 44. The court placed Ms. Carroll on the Delinquency Calendar, with a hearing date of January 22, 2013. Ex. 45. Ms. Carroll subsequently filed her Final Report and Petition for an Order Approving the Guardian's Activities, which the court approved on January 8, 2013. Exhibits 94, 95. ⁶

E. Guardianship of E.J., King County Superior Court No. 11-4-00739-9

25. The court appointed Ms. Carroll guardian of the person and estate for E.J. on February 10, 2011. Ex.46. Ms. Carroll learned the next day from APS that E.J. had been taken to Texas by a Ms. Clark, who had financially exploited him in Washington, taken him off his needed medications, and then abandoned him in Texas. Ms. Cannon arranged for E.J.'s return to his assisted living facility in Washington, got his medications restored, coordinated his placement on Medicaid for financial and medical assistance, and obtained a vulnerable adults protection order against Ms. Clark. Ex. 97, pp. 3, 7-8. E.J.'s health improved and he was happy at his care facility. In 2011, Ms. Carroll paid E.J.'s bills, met with him and the facility when minor changes were needed in his care, had social visits with E.J., and bought him Christmas presents. Ex. 97, pp. 7-8.

26. Ms. Carroll, however, did not file the Inventory and Personal Care Plan by their due date of May 10, 2011. Ex. 47. Prior to 2013, the court issued five orders to Ms. Carroll to file the Inventory and Personal Care Plan. Exhibits 48, 49, 50, 51, and 57 (dated 12/29/2012). On February 8, 2013, the Court issued another case review order to Ms. Carroll. Ex. 59. On April 13, 2013, the court sent a copy of the case review order to Mr. Furman. Ex. 60, p. 4. Ms. Carroll then filed the Inventory and Personal Care Plan on May 13, 2013. Exhibits 104, 105.

⁶ This filing and order were done in 2013—on January 8th—but it appears this was before the involvement of Ms. Carroll's attorney. The Respondent's Hearing Brief indicates that his firm has assisted Ms. Carroll "from 2013 to the present." *Id.*, p. 4, line 11. Mr. Furman's letter's of 1/27/2014 to the Board's grievance investigator Sally Rees, has an Exhibit A dated January 18, 2013, which Mr. Furman describes in his letter as "my initial audit of Ms. Carroll's caseload when I first started working with her." Ex. 70, pp. 1 and 4 to 7. Neither this audit nor his letter mentions the L.B. case.

27. Ms. Carroll did not file her Guardian's First Annual Report by its due date of May 10, 2012. Ex. 47. The court issued four orders regarding the failure to file the annual report. Exhibits 52, 53, 54, and 55. The court then issued an Order on Show Cause and Citation for Contempt of Court for Ms. Carroll's failure to appear at a show cause Hearing on November 15, 2012. Ex. 56. The CPG Board received a grievance from the court in E.J. around November 27, 2012, and opened a Grievance soon thereafter. Ex. 63. Ms. Carroll filed her First Annual Report on December 20, 2012, and it was approved by the court on January 4, 2013. Exhibits 97, 58.

28. The Board alleges that Ms. Carroll failed to file her *Second* Annual Report in the E.J. case by its due date of May 13, 2013. *See*, Complaint ¶2.5.6; Board's Post-Hearing Brief, p. 22, lines 4-6. This is incorrect. Ms. Carroll, no doubt with her attorney's assistance, filed the Second Annual Report in E.J. on its due date, May 13, 2013. Ex. 106, p. 1.

29. Thus, out of the five cases listed in the Board's Complaint, after Maureen Carroll hired an attorney and bookkeeper in early January 2013 to assist her, two court filings were late. In J.C., the Final Report due on April 18, 2013 was filed on May 13, 2013. In R.R., the Second Annual Report due on June 3, 2013 was filed on July 7, 2013. In addition, in J.C., the court issued one case review order because of the Final Report not filed by April 18, 2013. No other court orders were issued in these five cases or any other case in the record in 2013 or 2014 alleging late filings by Ms. Carroll.

F. Other Late Case Filings in 2013 and early 2014

30. The record indicates lateness in four other cases in 2013 that were not listed in the Board's Complaint. In Ex. 65, at p. 2, the Board's investigator at the time, Sally Rees, identified four cases in a November 26, 2013 letter to Maureen Carroll:

- * In the *Guardianship of S.G.*, an annual report was filed on 11/12/2013, but no petition and order for approval had yet been filed for hearing;
- * In the *Guardianship of D.J.*, a triennial report had been due 8/23/2013;

- * In the *Guardianship of H.M.*, the second annual report due 4/6/2013 was not filed, nor was the petition and order for approval of the first annual report filed by Ms. Carroll in 2012; and
- * In the *Guardianship of C.R.*, annual reports were due on 11/16/2012 and 11/16/2013.

31. The record does not indicate what happened in the above cases of S.G. and C.R. The record does not contain any documents from those cases, such as court orders. It is logical to conclude that the C.R. case closed because it was not listed by Mr. Furman two months later when he sent Ms. Rees an updated list of Ms. Carroll's active cases on January 27, 2014. Ex. 70, pp. 1, 9.

32. In his January 27, 2014 letter, Mr. Furman stated that the triennial report had been filed in the above D.J. case on January 24, 2014; and that the annual and final reports had been filed in the H.M. case on January 27, 2014. He was awaiting the court's orders on the petitions to approve the H.M. reports. Ex. 70, pp. 1-2.

33. In summary, from the record it appears there were four other cases in 2013 in which there 1 or 2 documents filed late with the court. These were promptly addressed when brought to Ms. Carroll or her attorney's attention. It is not the job of the Board's staff to notify guardians or their attorneys of missed filing requirements. But when considering the sanction of decertification, the need to consider whether the guardian has corrected her behavior makes the significant progress in 2013 noteworthy and relevant.

G. SOPC Request that Ms. Carroll Receive Training on Court Filing Requirements

34. On September 20, 2012, the Board's grievance investigator at the time, Carol Smith, sent Maureen Carroll an email indicating that the Standards of Practice Committee (SOPC) requested that she receive additional training because of her failure to appear in court (and file court documents timely). Ms. Smith attached a list of upcoming trainings and said she believed "the last training with Beth Taylor to be the best choice." Ex. 67, p. 1. The "last

training” with Beth Taylor was a CLE workshop at the King County Superior Court Clerk’s Office held on December 7 and 14, 2012. Ex. 67, p. 2.

35. Ms. Carroll responded enthusiastically by email that same day (9/20/2012) to Carol Smith, stating:

Carol,

I am more than happy to attend this training. It is actually what I need. I do want to be successful. During our CPG training (1st one) we were not given adequate information regarding filings. We were told to “have our attorney do it”. All of my clients are APS referrals. Not a good business choice. Unfortunately my referrals grew faster than my knowledge. I am quite skilled in mental health and social service system navigation so I am never at a loss for referrals and have a hard time turning down hard luck stories. Since quite a few of my clients are pro bono and 95% are DSHS it took me a while to find an attorney. Not too many attorneys want to work for free or low pay on an ongoing basis! I feel very fortunate to have Richard Furman as my attorney. Although, I still have the problem of most of my early cases coming around for review. This course should provide me with the basic tools to be more efficient.

Maureen K. Carroll. [See, Ex. 67, p. 1.]

36. Ms. Carroll contacted the King County Clerk’s Office the same day and asked how she could register for the December 7 and 14, 2012 training. Ex. 67, p. 3. She paid the registration and went to the training site on December 7th, not realizing that a week earlier the training location had been changed. She corresponded with Carol Smith that day, who among other things told Ms. Carroll that she didn’t know if other trainings were coming up. Ex. 67, p. 3.

37. It is unknown why Carol Smith did not recommend to Ms. Carroll in September 2012 that she attend the same training taught by Beth Taylor at the Clerk’s Office two months earlier, on October 5 and 12, 2012. Ex. 67, p. 1. This would have left some leeway. It is also unknown why Ms. Smith did not ask Ms. Carroll to attend a training by Beth Taylor in 2013. It appears from the King County website that Beth Taylor and the Clerk’s Office offer this CLE workshop on practical aspects of the court and clerk’s office at least twice a year.⁷

⁷ Links to the 2016 and 2014 CLE workshops: <http://kingcounty.gov/courts/clerk/programs/CLE.aspx> and <http://www.kingcounty.gov/~media/courts/Clerk/docs/Alerts/14-001.ashx?la=en>

38. Carol Smith left AOC in January 2013. Testimony of Shirley Bondon. Carol Smith did not testify at the hearing. The record does not contain any further request by AOC, the SOPC, or the subsequent guardian grievance investigators, Sally Rees or Carla Montoya, asking Ms. Carroll to attend any further training.

39. The record reflects that Carol Smith asked Ms. Carroll in late 2012 to hire an attorney who specialized in guardianships to assist her with her filings and court procedures. Testimony of Carroll; Ex. 70, p. 1. It is unclear when Ms. Smith made that recommendation, but it likely occurred in November 2012, when three new Grievances were opened, or shortly thereafter. Ms. Carroll testified that Carol Smith recommended she contact Richard Furman. It is uncontested that as of early January 2013 Ms. Carroll had hired Mr. Furman's firm and a bookkeeper to assist her with her guardianship court filings. Ms. Carroll testified that she considered the hiring of Mr. Furman to meet the need for more training. Testimony of Carroll; Respondent's Brief re Proportionality, p. 5.

40. The Board's Complaint at ¶2.7 is titled "Failure to Comply," which it uses to describe Ms. Carroll's failure to later complete a comparable training after she missed the December 2012 training by Beth Taylor. To the best of the Hearing Officer's knowledge, the failure to perform a recommendation by the SOPC is not misconduct unless further action is taken by the SOPC. DR 506.4 says that the SOPC may direct the guardian to take corrective measures, and if the guardian refuses to take the action directed by the SOPC, the matter shall be reviewed by the SOPC for further action. Prior to the Complaint, the record does not reflect any further action by the SOPC, the Board, or its staff to request or enforce its recommendation of additional training for Ms. Carroll.⁸ This allegation of not attending training is proven, but it is not misconduct and does not support the proposed sanction of decertification.

⁸ The Complaint also incorrectly says that the SOPC was "unaware of the existence of the other three grievances" when it made its recommendation for further training on September 20, 2012. Complaint ¶2.7. The

41. In its Pre-Hearing Brief, the Board listed as a third “aggravating factor” relevant to sanctions Ms. Carroll’s “steadfast refusal to acknowledge that her conduct was wrongful in any manner.” Brief., p. 17, lines 7-8. Ms. Carroll’s email of September 20, 2012 to Carol Smith demonstrates to the contrary: “I am more than happy to attend this training. It is actually what I need. . . . my referrals grew faster than my knowledge.” In Ms. Carroll’s 2015 Hearing testimony, when asked what she did when she received the court orders to show cause, she said: “I did the wrong thing—I froze.” The Board says this is the extent of her acknowledgement of wrongdoing, and characterizes Ms. Carroll testimony as a “continued refusal to take full responsibility for her misconduct” because she also said that no clients were harmed, and that her practices improved after she hired an attorney and bookkeeper. Board’s Post-Hearing Brief, p. 19, lines 22-23. The undersigned does not interpret Ms. Carroll’s response or testimony as a refusal to accept responsibility. Ms. Carroll’s position, and her argument through counsel, is not that she isn’t responsible for her misconduct, but that it doesn’t warrant decertification. *See*, Carroll testimony; Respondent’s Brief Re: Proportionality, pp. 2, and 16-17; Respondent’s Hearing Brief, pp. 6-7.

42. The record shows that the timeliness of Ms. Carroll’s court filings greatly improved after she hired Mr. Furman and a bookkeeper in early January 2013. The record also shows that Ms. Carroll still files some of the case documents and uses forms that may be out-of-date. The footer at the bottom shows she is using “12/2005 Revised Guardianship Forms” in 2013. *See*, e.g., Exhibits 79, 104, 105, 106. The undersigned knows since 2005 some guardianship laws have changed and require a new format. *See*, e.g., RCW 11.92.040(4). Mr. Furman’s petition and order for approval of a guardian’s reports and accounting follow the new format. Exhibits 90, 100. The undersigned has not reviewed all of Ms. Carroll’s filings in 2013 in the record, but assuming some of them are out-of-date, he recommends that the Board order Ms.

other three grievances were not opened until November 2012. Exhibits 34, 44, and 63. These would have been all the more reason for the SOPC to have repeated or enforced its recommendation.

Carroll to have her forms reviewed by an experienced guardianship attorney. She could download many newer guardianship forms from King County Superior Court's website, but the undersigned doesn't know whether she'll need additional forms, thus the recommendation for individual advice. See <http://www.kingcounty.gov/courts/scforms/guardianship.aspx>

43. In addition, even though the timeliness of Ms. Carroll's court filings improved significantly after she got legal advice and assistance in 2013, a guardian is not supposed to rely upon a lawyer for compliance with standard reporting requirements. Standards of Practice 401.3 and 401.5 say the certified guardian "shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23 [and] these standards," and "shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements." A guardian is supposed to "seek legal advice as necessary to know how the law applies to specific decisions." SOP 401.4. Ms. Carroll may know the requirements better now than in 2011 and 2012, but as a precaution the undersigned recommends that the Board order Ms. Carroll to obtain additional training on court procedures and guardianship filing requirements. The CLE provided by the King County Clerk's Office is a place to start, but its course material does not appear to be specific to guardianship filing requirements, so other CE materials designed for certified professional guardians would be appropriate in addition to the Clerk's Office training.

H. The Errors & Omission Insurance Requirement

44. Errors & Omission Insurance coverage ("E&O") is important for the protection of a professional guardian's clients who may suffer harm or loss due to the guardian's negligence, and wish to seek compensation. The Board's rules exempt certified professional guardians from the requirement to have E&O insurance if the guardian has 25 or fewer clients, or the aggregate countable client assets are below \$500,000. See, Certification Maintenance Regulation ("CMR") 704.3.

45. Guardians are required to file each year by August 1st to file an Annual Recertification Form containing an E&O Insurance Declaration signed under penalty of perjury, stating that the guardian or guardian agency either maintains E&O insurance, or is exempt from the requirement. CMR 704.5. If E&O insurance is required, the guardian must also include a declaration page from the guardian's E&O insurance policy with the annual declaration sent to the Board. CMR 704.5.2. If the guardian has claimed exempt status, but during the year the caseload or aggregate assets increase rendering the guardian no longer exempt, the guardian must file a status change declaration with the Board within 15 calendar days. CMR 704.6.2. Failure by the guardian to comply with the regulation may subject the guardian to the sanctions listed in the Disciplinary Regulations, including suspension or decertification. CMR 704.7.1. If the guardian fails to comply with the regulation, the Board must send the guardian a written notice of noncompliance. CMR 704.7.3.

46. On July 29, 2013, Maureen Carroll submitted her E&O Insurance Declaration for the year 2013. She stated she had 25 or fewer cases and client assets below \$500,000, and therefore, was exempt from the requirement to carry E&O Insurance. Ex. 69, pp. 1-4.

47. The Board's staff subsequently determined that Ms. Carroll had 27 guardianship cases in July 2013. In December 2012, the Board's guardian grievance investigator Carol Smith asked Ms. Carroll for a list of her active cases. Ex. 64, p. 2. On January 15, 2013, Ms. Carroll's attorney Richard Furman apparently sent AOC the active client list, *see* Ex. 65, p. 2, but his correspondence is not in the record.

48. The Board's guardian grievance investigator position was unfilled from about January to August 2013, and Ms. Carroll's case not staffed for most of 2013. Testimony of Bondon. On November 25, 2013, the new grievance investigator Sally Rees notified Ms. Carroll that she had completed an audit of Ms. Carroll's January 15, 2013 active cases sent to her by Mr. Furman. Ex. 65, p. 1. A copy of Sally Rees' audit of the cases is *not* in the record.

49. At some point, the Board compiled a list of Ms. Carroll's active case as of July 23, 2013 (a few days prior to her E&O Declaration of July 29, 2013). Ex. 71. This list indicated that Ms. Carroll had 27 active cases at the time she submitted her E&O Insurance Declaration on July 29, 2013, *not* 25 or fewer. Ex. 71, and Ex. 69, pp. 1-4.

50. Ms. Carroll testified that she did not realize on July 29, 2013 her caseload was 27. One of the clients, J.S., had died the previous month and she didn't realize a deceased client was considered an active case. Ms. Carroll also testified that the most recent client was added on July 17, 2013, but that her software counts clients on the 15th and 30th of each month and had not listed this person on the July 15th list she'd examined. Thus, she thought she had 25 clients when she signed the declaration. Carroll testimony; Ex. 71.

51. Ms. Carroll's testimony was credible insofar as her signing the July 29, 2013 declaration. However, as of *July 30*, 2013, when Ms. Carroll's software would have counted the recently added client, and she should have known she had at least 26 clients (giving her the benefit of the doubt and not counting the client who died in June 2013). Ms. Carroll did not report this change in caseload status to the Board, which she was obligated under CMR 704.6.2 to do within 15 days.

52. On January 17, 2014, guardian grievance investigator Sally Rees sent an email to Ms. Carroll's attorney requesting an updated list of guardianship cases. Ex. 66. Mr. Furman submitted an updated list of current cases to Ms. Rees on January 27, 2014, showing 30 cases. Ex. 70, p. 9. It is not clear from the record when Ms. Carroll's caseload grew larger than the July 2013 list, because the updated list does not show appointment dates. Compare Ex. 71 with Ex. 70, p. 9. All of the clients on the original list are also on the updated list, except for the client who had died in June 2013. Therefore, Ms. Carroll had at least 26 clients for this 6 month period without reporting it to AOC.

53. Ms. Carroll argues that as soon as she was notified of her mistaken count of the July 2013 clients (i.e., that she had 27 not 25), she obtained E&O insurance immediately and filed a

new declaration with the Board, pointing to her amended 2013 E&O Declaration of 2/5/2014. Ex. 69, pp. 5-8; Respondent's Brief re Proportionality, p. 6, lines 1-11.

54. The record is not clear as to when Ms. Carroll was notified of this mistake. Exhibit 71, the list showing 27 clients, is not dated. It was prepared by investigator Sally Rees, according to Shirley Bondon's testimony, but the record does not indicate when it was sent to Ms. Carroll. Ms. Rees and Richard Furman spoke on January 29, 2014 about E&O insurance coverage. *See* emails at Ex. 116. While Ms. Carroll's 2/5/2014 Declaration is within 15 days of this conversation of 1/29/2014, the requirement for guardians under CMR 704.6.2 is to file an amended declaration within 15 days of caseload status change, not to file it within 15 days of the Board informing the guardian her client count is wrong. Furthermore, it is likely Ms. Carroll had more than 26 clients during a portion of the July 2013 to January 2014 period because it is not very likely that she got 4 more clients immediately before Mr. Furman prepared the January 27, 2014 list. In short, the Board has proven that Ms. Carroll did not comply with the 15 day notice requirement of CMR 704.6.2.

55. The Board, however, did not adequately notify Ms. Carroll of her E&O violations. Since the Board's staff compiled the list in Exhibit 71, at some point they knew it showed Ms. Carroll had 27 cases in July 2013 and that her July 29, 2013 E&O Insurance Declaration was incorrect. Shirley Bondon testified that she reviews the E&O Insurance Declarations and supervises the investigators. At some point, the Board had the obligation under CMR 704.7.3 to send Ms. Carroll written notice of noncompliance and request proof of E&O insurance coverage. Ms. Bondon testified that Ms. Carroll was not notified under CMR 704.7.3 that any of her E&O Declarations were out of compliance.

56. Sally Rees informed Richard Furman on February 5, 2014 that the SOP Committee was renewing its request that Ms. Carroll voluntarily surrender her certification, based primarily on the five Grievances regarding late court filings and the audit of current cases. Exhibits 116, 115. The 2/4/2014 letter sent to Ms. Carroll with this request refers to a second audit of her

cases by Ms. Rees, *see* Ex. 115, but neither this audit nor the prior one by Ms. Rees are in the record. Mr. Furman asked why the SOPC had decided the matter before getting the E&O coverage information he was gathering at her request. Ex. 116, p. 2. Ms Rees responded: “Like any other new grievance, the issue regarding E&O coverage has not yet been presented to the SOPC. It really is an entirely different and separate topic. It has not been fully investigated, and therefore, it would be inappropriate to raise the topic until more information has been obtained.” Ex. 116, p. 1. It is clear the Board’s investigator considered the E&O coverage issue to be a separate grievance.

57. The Board’s Complaint filed on April 9, 2014 includes the E&O coverage issue: “Respondent did not notify AOC when the number of her active cases exceeded 25 and did not provide proof of E&O insurance.” Complaint ¶ 2.8.2. The record does not indicate that the E&O violations were put into a Grievance and sent to Ms. Carroll. Guardians have the right to respond to a grievance alleging a violation of the Standards of Practice or Certification of Maintenance Regulations. DR 504.5 and CMR 704.7.3. This was not provided to Ms. Carroll prior to the Board filing its Complaint. The Complaint was signed on behalf of the CPG Board by “Shirley Bondon, Manager.” Ms. Bondon testified that she did not review the Complaint before it was filed.

58. In its briefing and at the hearing, the Board also argued that Ms. Carroll failed to prove that she *ever* had E&O insurance coverage. The Board argues that although Ms. Carroll’s two most recent E&O Declarations said she had E&O coverage through a guardianship agency, Clarity Guardians, LLC, Ms. Carroll has failed to prove so. The Board says that at most, she was covered only when consulting on a case where Clarity was the appointed guardian. *See*, Board’s Post-Hearing Brief, pp. 5-6.

59. In her amended 2013 E&O Declaration of February 5, 2014, and her 2014 E&O Declaration of July 27, 2014, Ms. Carroll stated that her caseload now exceeded 25, her E&O

insurer was Dominion Insurance Services, and she was covered by the E&O Insurance policy held by Clarity Guardian LLC, CPGA No. 12975. Ex. 69, pp. 7-8; Ex. 72, pp. 3-4.

60. Certified agency Clarity Guardian LLC filed its Annual Recertification form and E&O Insurance Declaration for the year 2014 on June 27, 2014. Ex. 73. This form required the agency to disclose the names of all certified professional guardians working at the agency, and the names of all certified professional guardians who have left the agency since August 1, 2013. The guardians' names listed are Malinda Frey and Bret Gemlich. The Board points out that Maureen Carroll's name is *not* listed. The form also does not request the names of independent contractors or guardians otherwise covered by the policy. Ex. 73, p. 2.

61. Maureen Carroll filed her E&O Insurance Declaration for the year 2014 on July 27, 2014. With this form, in which she stated she had E&O insurance through Clarity Guardians, LLC, Ms. Carroll included a Confirmation of Coverage page written on Dominion Insurance Services letterhead that listed the Insured as: "Clarity Guardians, LLC." Ex. 72, p. 5. Ms. Carroll testified that she was informed by Malinda Frey that because she was a consultant on Clarity cases, and Ms. Frey was a Designated Standby Guardian in some of Ms. Carroll's cases, that Ms. Carroll was covered by the E&O insurance policy held by Clarity.

62. Shirley Bondon testified that she spoke with an agent from Dominion Insurance Services and was told that Clarity Guardians' E&O insurance policy only covered employees and independent contractors/consultants working on Clarity cases. She said she did not make any notes of this conversation. On direct exam, Ms. Bondon testified that Dominion sent her a copy of the policy, then on cross-exam she said it was not in the file. Ms. Bondon also testified that one day before the Hearing she received an email from Dominion indicating the same limits on coverage as explained to her by the agent. Ms. Bondon did not bring a copy of the email to the Hearing and the Board did not move to keep the record open to admit it later.

63. CMR 704.5.2 requires the guardian to include "a declaration page from its policy of errors and omissions policy" with the guardian's annual declaration. Ms. Carroll asserts that

she did so with the declaration page attached at Ex. 72, p. 5. The Board argues that particular declaration page does not apply to Ms. Carroll because it names the Insured as Clarity Guardians, LLC. CMR 704.5.3 authorizes the Board “at any time to request information from the guardian” to determine whether the guardian “meets the requirements of this regulation.” The Board did not request further proof from Ms. Carroll of E&O insurance coverage, such as a copy of the insurance policy and its endorsements, or a letter from Dominion confirming coverage.

64. The doubt about Clarity’s E&O insurance policy covering Ms. Carroll was raised by the Board in its Pre-Hearing Brief on pages 12 -13. The brief was filed on March 23, 2015 and the Hearing held on May 6, 2015. Both parties had time to obtain further proof of their positions. Ms. Carroll, like the Board, could have gotten the actual policy or confirmation from Dominion. The Board could have offered into evidence the email it had just received from Dominion. Either party could have called a Dominion insurance agent and/or Malinda Frey as witnesses, and the Hearing Officer could have permitted testimony by telephone. Neither did.

65. DR 511.15 states that “the rules of evidence shall be those set forth in chapter 34.05 RCW, the Administrative Procedure Act.” RCW 34.05.452(1) provides that “Evidence, including hearsay evidence, is admissible if in the judgment of the presiding Officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.” The testimony by Maureen Carroll that Malinda Frey told her she was covered under Clarity Guardians’ E&O insurance policy is hearsay evidence. The testimony by Shirley Bondon that an agent from Dominion Insurance told her Clarity’s policy only covered employees and agents working on Clarity’s cases, is also hearsay evidence.

66. Both parties’ positions have some plausibility. For Ms. Carroll: some of the cases in the record show that Malinda Frey is a standby guardian for Ms. Carroll. An insurance policy declaration page is just one page, whereas the policy with its definitions, exclusions, and

endorsements is likely 30 or more pages long, and would clarify who is covered. Similarly, the Board's E&O Declaration form for certified agencies is less than complete, as it doesn't ask what other guardians are covered by the policy. On the other hand, weighing in the Board's favor: the declaration page does only name Clarity Guardians as the insured, and, something not pointed out by the Board but in the record: Ms. Carroll and Clarity Guardians had not joined their guardianship practices, *see* Ex. 115, p. 2. It also seems odd for an insurer to cover another entity with no legal relationship to the Insured. However, this Hearing Officer is not an expert on insurance coverage, and the record and briefing are incomplete on the issue.

67. If the Board is correct in its position and Ms. Carroll is *not* covered by Clarity's policy, then the Board may be implying that Maureen Carroll or Clarity Guardians, or both, are guilty of "intentional misconduct involving dishonesty . . . or misrepresentation." *See*, DR 515.2.1.3. The policy declaration page, titled Confirmation of Coverage, that's attached to Ms. Carroll's E&O Declaration of July 27, 2014 is identical to the Confirmation of Coverage page attached to Clarity Guardians' E&O Declaration of June 27, 2014. *See* Ex. 72, p. 5 and Ex. 73, p. 5. Ms. Carroll testified that she did not get documents from Dominion Insurance, so she must have obtained the Confirmation of Coverage page from Clarity Guardians. If Ms. Carroll got this page from Clarity and knew that she wasn't covered, then she is guilty of intentional misrepresentation, and Clarity apparently aided her. If Ms. Carroll got the page from Clarity, and was mistakenly told by Clarity she was covered, then either she or Clarity may be guilty of ignorance regarding the insurance industry (assuming the Board's position is correct).

68. In the end, whether it has been shown that Ms. Carroll violated the E&O coverage requirements may turn on the burden of proof. The Board argues that "Ms. Carroll has yet to provide the Board with proof that she ever obtained the required Errors and Omissions insurance." Post-Hearing Brief, p. 6, lines 13-14. Ms. Carroll argued it was a "clerical mistake" in July 2013 to believe she had 25 clients rather than 26 or 27, and further argued that she had obtained E&O insurance, filed a new declaration with proof of insurance, Ex. 72, and

was never notified by the Board that her E&O insurance was insufficient. *See* Respondent’s Brief re Proportionality, pp. 5-6. To bolster its argument, the Board quotes case law for the principle that generally “the party claiming an exemption from a legal requirement bears the burden of proving the exemption.” Board’s Post-Hearing Brief, p. 5, lines 24-24. However, Ms. Carroll did *not* argue she was exempt from the CMR 704 requirement to carry E&O insurance if she had 25 or more clients. She testified that she did have E&O insurance through Clarity Guardians and had filed adequate proof of this in Ex. 69, pp. 4-8, and Ex. 72.

69. As stated earlier, the Board “bears the burden of establishing misconduct warranting disciplinary action by a preponderance of the evidence in all cases.” DR 511.15. Ms. Carroll put forth evidence of her E&O coverage by attaching the policy declaration page, as required by CMR 704.5.2, but the Board challenges her assertion that this shows coverage for her. The Board alleged that Ms. Carroll “did not provide proof of E&O insurance.” Complaint ¶ 2.8.2. This is a factual allegation of misconduct for which the Board has the burden of proof. Either party could have submitted conclusive evidence, but did not. Hearsay evidence was offered by both parties, and admitted because there was no objection. Neither of the oral hearsay statements was more or less plausible than the other, and thus essentially cancels each other out. The Board has the burden of proof on the allegation that Ms. Carroll did not provide proof of E&O insurance. Under the current record, the Board has not met that burden by a preponderance of the evidence. The Board has proven that Ms. Carroll did not notify the Board with 15 days of an increase in caseload requiring her to carry E&O insurance.⁹

I. Prior Discipline

⁹ In hindsight, the Board, the Hearing Officer, and perhaps Ms. Carroll wish additional evidence on the E&O coverage issue was in the record. There were many clear opportunities for the record to be made more complete—such as offering the alleged email from Dominion, or calling Ms. Frey or an agent from Dominion as witnesses. But it is not the job of the Hearing Officer to make the record. This also may illustrate why it would have been helpful for the Board to put the E&O issue into the form of Grievance, and then developed it further and allowed Ms. Carroll to respond, prior to including it in the Complaint.

70. Maureen Carroll entered into an Agreement Regarding Discipline (“ARD”) with the Board on October 10, 2011 concerning Ms. Carroll’s failure to timely submit her annual declarations of continuing education. *See* Ex. 74. At the time, certified professional guardians were required to report their continuing education (“CE”) to the Board by the following January 31 of each year. Reminders were sent out by email in October, November, December, January, February and April. The ARD states that for her 2010 CE reporting, Ms. Carroll filed the declaration belatedly on June 2, 2011. For her 2009 CEs, Ms. Carroll filed the declaration late on May 20, 2010. And that in 2009, which must mean for her 2008 CEs, Ms. Carroll paid a late fee for filing her declaration on March 30, 2009. Ex. 74, pp. 2-3.

71. The ARD at Ex. 74 appears to contain an error concerning 2009. It states that Ms. Carroll paid a late fee for filing her CE declaration on *March 30, 2009*. A photocopy of the Washington Supreme Court’s certification of Ms. Carroll as a guardian shows it occurred on *April 16, 2009*. *See* Exhibit 1. She was not a guardian on March 30, 2009 and would not have had CE requirements in 2008 or a fine in 2009.

72. The ARD placed Ms. Carroll on probation for a period of two years: from October 10, 2011 to October 10, 2013. The terms of the ARD required her to file “all Board required declarations on time, including, but not limited to, the annual disclosure/declaration, the errors & omissions insurance declaration, [and] continuing education declaration.” Ex. 74, p. 3. Failure to comply with the terms of the ARD may constitute additional grounds for discipline. DR 514.4.

73. The Board contends that Ms. Carroll violated the terms of the ARD by failing to timely file an amended E&O Insurance Declaration in 2013, as required by CMR 704.6.2, within 15 days of her guardianship caseload exceeding 25 clients. Board’s Post-Hearing Brief, p. 9. Ms. Carroll was on probation until October 10, 2013. As discussed above, Ms. Carroll’s software informed her on July 30, 2013 that she had 26 clients (27 if she’d counted the deceased client), so at that point she should have known she was above 25. A second client died on 11/23/2013

(J.C.), and a third died on 12/16/2013 (H.L.M.), *see* Ex. 70, so for the last two months of the ARD probation period Ms. Carroll should have known that her client count exceeded 25. The earliest by which Ms. Carroll notified the Board she was above 25 cases and was no longer exempt from E&O requirements, was in her amended E&O Declaration of February 5, 2014.

74. The Board says this violation of the ARD terms “should be given considerable weight” and that it shows Ms. Carroll “continues to blatantly disregard the regulatory obligations.” *Id.*, p. 19, line 7. The Board has proven a violation of the ARD. As discussed earlier, the Board has not proven Ms. Carroll’s violation of the E&O reporting requirements was intentional or an intentional misrepresentation. The undersigned cannot conclude that it demonstrated a blatant disregard of her obligations, as opposed to sloppiness. Even though an amended E&O Declaration was promptly filed with the Board on 2/5/2014 once Mr. Furman became aware of the caseload count, this violation of the ARD is given additional weight because of its similarity to Ms. Carroll’s violation of court filing deadlines.¹⁰

75. The Board’s current grievance investigator, Carla Montoya, testified that Ms. Carroll’s late filings in her guardianship cases violated the ARD; however, the Board’s counsel Chad Standifer stipulated at the Hearing that the Board was not alleging the ARD was violated by late filings with the court. The Board has proven violation of the ARD by Ms. Carroll’s late filing of her amended E&O Declaration in February 2014 informing the Board of a caseload increase above 25 in July 2013.

¹⁰ However, the undersigned must again raise the issue of the accuracy of the information provided to the SOPC by AOC staff (while recognizing that the AOC has been greatly understaffed). It is likely that AOC staff prepared the ARD with Ms. Carroll that wrongly stated she had CE obligations in 2008 and thus was fined in 2009 (or they wrongly prepared the document that fined her). Similarly, in Sally Rees’ letter to Ms. Carroll on February 4, 2014, Ms. Rees states that one of the factors critical to the SOPC’s decision to request voluntary surrender or decertification was Ms. Carroll’s violation of the ARD, and Ms. Rees says “The ARD also recites other incidents of late filing of renewal forms, insurance declaration pages, and previous continuing education requirements.” Ex. 115, p. 2. The ARD does NOT recite other incidents of late filing of renewal forms or insurance declaration pages. *See* Ex. 74.

IV. CONCLUSIONS OF LAW

1. The Certified Professional Guardianship Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. General Rule (“GR”) 23(c)(2)(viii). The Board has separate jurisdictional authority to discipline professional guardians, apart from a guardianship court’s oversight of individual cases. General Rule 23(a). The Board was created by the Washington State Supreme Court to oversee the certification, regulation, and discipline of professional guardians. *In Re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 329 P.3d 853 (2014). Therefore, the court’s approval of a guardian’s late report and accounting does not preclude the CPB Board from imposing disciplinary sanctions.

2. The Board alleged Ms. Carroll repeatedly violated SOP 401.1, 401.3, and 401.5 through a pattern of late filings in five separate guardianship matters.¹¹ The Board has proven this allegation by a preponderance of the evidence, based on Findings of Fact: ¶¶ 5-6, 10-13, 15, 18-20, 23-24, 26-27, 29-30, 32.

3. The Board alleged that Ms. Carroll violated SOP 401.6 by failing to timely appoint a standby guardian in three guardianship cases.¹² The statute requires designation of a standby guardian within 90 days of the guardian’s appointment. RCW 11.88.125(1). The

¹¹ SOP 401.1: “The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and requirements of the court.”

SOP 401.3: “The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws, which govern the conduct of the guardian in the management of the affairs of an incapacitated person.”

SOP 401.5: “The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements.”

¹² SOP 401.6: “All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian.”

Board has proven this allegation by a preponderance of the evidence. *See*, Findings of Fact: ¶¶ 10-11, 18-19, 23.

4. The Board alleged that Ms. Carroll violated CMR 704.6.2 by failing to report within 15 days of her caseload exceeding 25 that she was no longer exempt from the requirement to maintain Errors and Omissions insurance.¹³ The Board has proven this allegation by a preponderance of the evidence. *See*, Findings of Fact: ¶¶ 47, 49, 51-52, 54.

5. CMR 704.7.1 provides that “Failure to comply with this regulation [concerning E&O coverage] in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.”

6. The Board alleged that Ms. Carroll failed to prove that she *ever* had E&O insurance coverage. The Board has the burden of proof on this factual allegation. The Board has *not* proven this allegation by a preponderance of the evidence. *See*, Findings of Fact: ¶¶ 59, 61-69.

7. The Board alleged that Ms. Carroll failed to comply with the SOPC’s request that she obtain additional training pertinent to her late court filings. The allegation of not attending such training is proven, but does not constitute misconduct and does not support the recommended sanction of decertification. *See*, Findings of Fact: ¶¶ 34-40.

8. The Board alleged that Ms. Carroll violated the terms of her Agreement Regarding Discipline when she failed to comply with the requirement in CMR 704.6.2 to report within 15 days of her caseload exceeding 25 that she was no longer exempt from the

¹³ CMR 704.6.2: “A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

requirement to maintain E&O insurance. The Board has proven this allegation by a preponderance of the evidence. *See*, Findings of Fact: ¶¶ 72-75.

9. DR 514.4 provides that “Failure of a professional guardian to comply with the terms of an Agreement Regarding Discipline may constitute additional grounds for discipline.” DR 510.1.2 states that “Prior Board disciplinary action is a factor to be considered in determining any sanction imposed in a disciplinary action.”

10. Under Disciplinary Regulation 503, a professional guardian may be subject to disciplinary action for the following:

DR 503.1. Violation or noncompliance with applicable statutes, court orders, court rules, or other authority.

DR 503.4. Violation of oath, duties, or standards of practice of a professional guardian.

11. Disciplinary Regulation 515.1 authorizes the Board or Supreme Court to impose a sanction or a remedy upon a professional guardian. “Sanctions may include decertification, suspension, and prohibition against taking new cases, letter of reprimand, or letter of admonishment.” DR 515.1. “Remedies are designed to ensure compliance with duties, standards, and requirements for a professional guardian. Remedies may include, but are not limited to, changes in methods of practice, probation, restitution, additional training for guardian or staff, requirement that the professional guardian obtain expert consultation, mentoring, or an audit.” DR 515.3.

12. The Board alleged that Ms. Carroll should be decertified under DR 515.2.1.4 based upon her “gross incompetence.” This term is defined by the Board as:

Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the same Standards of Practice, and where the guardian has not corrected the behavior despite previous attempts by the courts or the Board to correct the behavior.

13. The Board has proven “gross incompetence” of Ms. Carroll *in 2011 and 2012* under DR 515.2.1.4 by a preponderance of the evidence. *See*, Findings of Fact: ¶¶ 5-6, 10-13,

15, 18-20, 23-24, 26-27, 29-30, and 32. During those two years, Ms. Carroll demonstrated a “pattern or practice of late filings” of court documents in at least five cases, and did *not* correct her behavior with any degree of promptness despite repeated notices and orders from the court. If the only time period examined when applying the definition of “gross incompetence” were the years 2011 and 2012, the standard for decertification would be met, because, in the Board’s words, Ms. Carroll had “repeatedly ignored” court orders.

14. That is not how the Board approached this matter for the first two years. The Board received and opened Grievances on February 8, 2012 and April 4, 2012 regarding two cases (R.R. and C.B.), each of which already had multiple late filings and court orders for show cause. There is no evidence in the record of the Board investigating these grievances and moving quickly toward decertification. The first correspondence in the record between the Board and Ms. Carroll in 2012 is Carol Smith’s email of September 20, 2012 to Ms. Carroll telling her the SOPC wanted her to obtain additional training, to which Ms. Carroll readily agrees. The Board next received and opened three Grievances in November 2012 (J.C., L.B., and E.J.), cases with multiple missed court deadlines and increasingly terse court orders, much like the two earlier Grievances. If the Board wished to decertify Ms. Carroll at that point because of her “pattern or practice of late filings” that she’d had not corrected “despite previous attempts by the courts,” the Board could have moved soon toward decertification or pursued a Suspension Pending Disciplinary Proceedings pursuant to DR 519. Instead, Carol Smith recommended Ms. Carroll contact a guardianship law firm and get some help cleaning up her court filing messes. Ms. Carroll did that, and made substantial, corrective progress, although the subsequent AOC investigator minimizes it. Twenty-six months after opening the first Grievance, the Board filed its Complaint. The Hearing Officer realizes there will always be some time lag between having the evidence and “filing the charges.” But because DR 515.2.1.4 has two components that must be proven, one being whether the guardian has “corrected the behavior,” a time period must be established. The Hearing Officer has

concluded that because the Board must prove the Complaint, the relevant time period is up to the filing of the Complaint, in this case April 2014.

15. The record shows significant corrections in 2013 and 2014 after Ms. Carroll hired an attorney and bookkeeper to assist her. The few late court filings during this period are isolated and not prolonged. Ms. Carroll no longer had a “pattern or practice of late filings.” The Board has not proven by a preponderance of the evidence that Ms. Carroll is grossly incompetent as the term is defined in DR 515.2.1.4. This conclusion is based on the summary of the case on p. 4 above and Findings of Fact: ¶¶ 21, 28-29, 31, 33, 35-36, 39-42, and 58-69.

16. In addition to her late filings with the court, in 2010 and 2011 Ms. Carroll demonstrated a “pattern or practice of late filings” of her continuing education declaration with the Board. This led to a Board imposed ARD in October 2011. Ms. Carroll violated the terms of the ARD once by not filing an E&O declaration within 15 days of July 2013 informing the Board that her caseload now exceeded 25 clients and she was no longer being exempt from E&O insurance coverage. This was a single violation of the ARD, and *not* a “pattern or practice of late filings” with the Board. It does not establish grounds for decertification.

17. The Board has not proven by a preponderance of the evidence that Ms. Carroll is grossly incompetent as the term is defined in DR 515.2.1.4. This conclusion is based on the summary of the case on p. 4 above and Findings of Fact: ¶¶ 21, 28-29, 31, 33, 35-36, 39-42, 58-69; and 70-75.

18. DR 515.2 lists other possible sanctions of Ms. Carroll. The two most applicable are a prohibition against taking new cases for a period of time, DR 515.2.2, and a letter of admonishment pursuant to DR 515.2.4.

19. DR 515.2.2 and DR 515.2.2.1 state in relevant part that a prohibition on taking new cases or suspension of the guardian for a period of time, is generally appropriate when the guardian engages in professional [mis]conduct “incompatible with the Standards of Practice and causes injury or potential injury to a party, the public, or the legal system.” Because

suspension is the more severe sanction of the two, it would seem more applicable when there's been injury or it's a better fit for the circumstances.

20. Suspension seems less preferable in this case for several reasons. First, none of Ms. Carroll's clients were harmed by her late filings. Second, many of her clients are low income and a substantial are served by her *pro bono*. It could be difficult to find a replacement guardian for the suspension period, and some of her clients could be harmed. The time records in Ms. Carroll's accountings reveal a close and helpful involvement in the clients' lives. That would be lost if she were suspended.

21. A temporary prohibition against taking new clients, by contrast, could protect her current clients, and allow Ms. Carroll, her attorney, and a mentor, with AOC audits, time to examine and improve her guardianship practices. **The Hearing Officer recommends the sanction of prohibiting Ms. Carroll from taking new clients for a period of 6 months.**

22. DR 515.2.4 provides that "A letter of admonishment is generally appropriate when a professional guardian engages in misconduct incompatible with the standards of practice and not rising to the level justifying a reprimand."¹⁴ The Board has clearly proven Ms. Carroll engaged in misconduct multiple times below the professional standards of practice for certified guardians. **The undersigned Hearing Officer recommends that the Board issue a letter of admonishment to Maureen Carroll.**

23. The Board may impose a number of remedies pursuant to DR 515.3. In addition to the above sanctions, the Hearing Officer recommends the following remedies:

¹⁴ A letter of reprimand is appropriate when the guardian's misconduct "causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding," or any other misconduct "that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the professional guardian's fitness to practice." While it is possible that Ms. Carroll engaged in dishonesty or misrepresentation in filing the Confirmation of Coverage from Dominion Insurance, Ex. 72, p. 5, the Board did not prove such misrepresentation by a preponderance of the evidence. Thus, a letter of admonishment seems more applicable than a reprimand.

- a. Review of Ms. Carroll's guardianship forms by an experienced attorney,** such as Mr. Furman, **within the next 6 months.** The attorney review should be a hands-on look at Ms. Carroll's actual case documents, not a general training on filing requirements.
- b. Mentoring and consultation for a period of 12 months** from an experienced certified professional guardian, subject to the Board's approval, and at Ms. Carroll's cost, to review Ms. Carroll's guardianship practices and case tracking systems to ensure timely filing of documents and reports with the Board and the court. The mentor/consultant shall report to the Board on a quarterly basis for one year about Ms. Carroll's progress and adherence to the filing requirements.
- c. Additional training in the next 6 months on court procedures.** Attendance at the next two day CLE workshop offered by the King County Superior Court Clerk's Office, or different training if it is better and available. All but one of Ms. Carroll's listed cases is in King County, thus the King County recommendation. The Clerk's Office workshop isn't guardian specific, but it appears to provide useful information about court procedures. This training should be in addition to Ms. Carroll's annual CPG continuing education requirements.
- d. Auditing of Ms. Carroll's guardianship files by AOC for 6 months.** The undersigned does not know the specifics of AOC auditing. One possible model is set forth in the Supplemental Agreement Regarding Discipline in *Guardianship Services of Eastern Washington* and *Dale R. Frederickson*, CPGB No. 2003-011 [Ex. O]. The agreement included monitoring by the AOC guardianship investigator, at the guardian's expense (with designated maximum costs per 3 months). The monitor/auditor reviewed a specified number of cases selected at random and reported to the Standards of Practice Committee.

e. **Examination of Ms. Carroll's other fulltime job commitments.** The Hearing Officer recommends that the AOC auditor inquire with Ms. Carroll's about her full-time job commitments at Sound Mental Health. Given the extent of Ms. Carroll's late filings in 2011 and 2012, it is appropriate to inquire into Ms. Carroll's hours of work, the flexibility of her hours, and the availability of a standby guardian, or Ms. Carroll, if an emergency arose in one of her guardianship cases. This inquiry should occur during the first 3 months of the prohibition on new cases, so that Ms. Carroll and her mentor may address any problems noted by AOC. The undersigned recommends that the SOPC may, in its discretion, develop further proposed recommendations or an Agreement Regarding Discipline concerning Ms. Carroll's guardianship caseload, if after following the above process, further remedies appear warranted.

f. **Violation of October 2011 ARD.** Pursuant to DR 510.1.2 and DR 514.4, the Hearing Officer considered Ms. Carroll's violation of the prior ARD. The Board urges that it be given substantial weight. While Ms. Carroll's one-time violation of the prior ARD does not support a sanction of decertification, because of the similarity of the problems addressed in the ARD (late filing of the two CE declarations with the Board after multiple notices) and the misconduct found in the Board's Grievances (many late filings in five cases despite multiple court orders), the violation of a prior ARD is an additional basis to recommend the wide array of sanctions and remedies above; and in addition, the Hearing Officer will recommend that Ms. Carroll pay for the cost of these Board ordered remedies. The recommended remedies may be costly for Ms. Carroll, but appear warranted in this case.

Aggravating and Mitigating Factors

24. In determining the appropriate sanctions, the Hearing Officer may consider the existence of aggravating or mitigating factors. These are defined by the Board:

DR 515.1.4.1. Aggravating factors include prior disciplinary action by the Board against the same professional guardian, dishonest or selfish motives, a pattern of misconduct, multiple offenses, failure to cooperate during the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, indifference to making restitution, and illegal conduct.

DR 515.1.4.2. Mitigating factors include the absence of a prior disciplinary record, timely good faith to make restitution or to rectify consequences of misconduct, cooperation with the disciplinary proceedings, and temporary circumstances outside the professional guardian's control.

25. Four aggravating factors are present: Ms. Carroll's prior ADR disciplinary action by the Board in 2011; a pattern of misconduct in the Grievance cases, consisting of Ms. Carroll receiving numerous notices and orders from the court, including the threat of sanction, before completing or filing guardianship documents; multiple offenses because this it occurred in at least 5 guardianship cases in 2011 and 2012; and vulnerability of the victims, because nearly all her clients were significantly cognitively impaired and most did not appear to have strong alternative advocates. However, contrary to the Board, the undersigned found that Ms. Carroll did *not* refuse to acknowledge the wrongful nature of her conduct. *See* FOF 40. These aggravating factors were given significant weight in the Hearing Officer's decision to recommend an extensive combination of sanctions and remedies in Ms. Carroll's case.

26. One mitigating factor is present: Ms. Carroll cooperated with the disciplinary proceedings, according to the Board's briefing and statement at the Hearing. The possible mitigating factors of restitution or rectifying the consequences of misconduct were not necessary because there was no theft or mismanagement of funds, and no harm to clients. Ms. Carroll's cooperation with the Board, the lack of harm to any of her clients, her evident commitment to her clients, and her significantly corrected guardianship practices from 2013 forward, were also given weight in the Hearing Officer's decision to recommend a combination of sanctions and remedies rather than decertification.

Proportionality Analysis of the Sanctions

27. Because “the Board aspires to consistency with disciplinary sanctions,” the Washington Supreme Court ruled that “the Board must provide its reasoning for its recommended sanction not just in reference to the conduct of the guardian but also in reference to past disciplinary matters.” *In re Petersen, id.*, 180 Wn.2d 768, 790-91, and fn. 20 (2014). “This means the Board must consider the penalties that were imposed in past cases that appear to involve similar violations of regulations or similar punishments as that in the present case.” *Id.* Proportional sanctions should be “roughly proportionate . . . for analogous levels of culpability.” *In re Disciplinary Proceeding Against Dynan*, 152 Wn.2d 601, 623, 98 P.3d 444 (2004) (internal citation omitted).

28. The *Petersen* Court noted that agreed disciplinary settlements were the most common approach used by the Board and may be distinguishable from other cases. *In Re Petersen, id.* at fn. 20. Other than *Petersen*, Ms. Carroll’s case is the only known guardianship disciplinary case that has progressed to a full Hearing. The importance of this point is that the details of the other cases are not known to the undersigned Hearing Officer or the parties. The Disciplinary Settlement Agreements have brief stipulated facts. The other distinction to note is that the settlements with agreed *decertification* do not appear to identify the DR 515.2.1 basis upon which the guardian was decertified. DR 515.2.1 lists four different grounds for decertification. The undersigned has not found one of these prior cases citing DR 515.2.1.4, the provision used by the Board in Ms. Carroll’s case.

29. The *Petersen* Court said that generally “the party facing discipline ‘bears the burden of showing the Board’s recommended sanction is not proportionate’ ” to other disciplinary proceedings. *In Re Petersen, id.*, 180 Wn.2d at 790-91 (internal citation omitted). The issue must be raised by the party facing discipline, *see Petersen, id.*, at 793, which Ms. Carroll has done, and then both parties must set forth a proportionality analysis.

30. In its proportionality analysis, the Board argues that the proposed sanction of decertification in Ms. Carroll's case matter is consistent with the decertification imposed or agreed to in prior comparable cases with similar violations of the Standards of Practice. The Board points to three cases as the most comparable to Maureen Carroll's: *In re Dawn Morgan*, CPGB No. 2007-009 [Ex. F]; *In re Jason B. Couey*, CPGB No. 2008-015 [Ex. E]; and *In re Sharon Nielson*, CPGB Nos. 2010-025, 2011-005, and 2011-010 [Ex. D]. Board's Post-Hearing Brief, pp. 8-11.¹⁵

31. *Morgan* is the only known guardian decertified primarily for missing deadlines. Her decertification was reached in a Disciplinary Settlement Agreement and Stipulated Facts. In *Morgan*, the Board reviewed what appears to have been all of Ms. Morgan's guardianship cases—14. Out of 14 cases, she was delinquent in 12. In early June 2007, the Board notified Ms. Morgan of its investigation findings. She responded on July 5, 2007 and promised to correct all problems in each of the 12 cases by the end of August 2007. She did not do so. As of the date of the Disciplinary Settlement Agreement of April 26, 2008, Ms. Morgan was still delinquent in 10 of the 12 cases.

32. The case delinquencies in *Morgan* were quite prolonged. In 8 of the 10 cases, Ms. Morgan *never* filed an annual report, triennial report or final report. In 5 cases, she never filed notices of death or started probates after the incapacitated persons died. In the case of S, for example, the ward had died six years earlier and there'd been no notice of death, final report or order closing the case. In many cases, Ms. Morgan's inventories, accountings, personal care plans, or orders approving her actions were 2 to 4 years late. *Id.* at 2-6.

33. Ms. Carroll was also quite late in a number of court filings in 2011 and 2012. The key difference between *Morgan* and the present case is that in *Morgan* the guardian had

¹⁵ The prior guardianship disciplinary settlements agreements cited by the Board and Ms. Carroll were attached to their post-Hearing briefs. Each party used letters A, B, C, etc. to identify their exhibits. Most cases were identified by the parties by the same exhibit letter. For ease, the undersigned is using the exhibit letter given the case by Ms. Carroll, attached to Respondent's Brief re Proportionality.

NOT corrected her *pattern or practice* of late filings. She was contacted by the Board and promised to correct her filings in the next two months. She did not. Eight months later, at the time she signed the agreed decertification, she had failed to remedy many of the delinquencies in 10 of 12 cases. *Morgan* was not a case of a few reports still due. If taken to Hearing, Morgan's conduct could well have justified decertification under DR 515.2.1.4 for "gross incompetence." By contrast, while Ms. Carroll still had several late court filings in 2013 and 2014, the record shows she no longer had a pattern or practice of late filings.

34. The Board's Post-Hearing Brief quotes a sentence in *Morgan* with which the undersigned fully agrees: "The failure of the guardian to timely file annual reports and accountings as required by statute deprives the superior court of the information necessary for the court to exercise its supervisory authority over the guardianship." The Hearing Officer is not minimizing the importance of keeping the court informed of the ward's status. In this case, Ms. Carroll's clients were "lucky" that nothing harmful appears to have happened in 2011 and 2012. The Board, however, has not met the criteria for decertification under DR 515.2.1.4 given Ms. Carroll's substantial correction in 2013 and 2014.

35. In the *Couey* and *Nielson* cases, the guardians either implicitly or explicitly quit being guardians, which of course led to a number of late or missed court filings, and left the Board with no choice but to decertify them. In *Couey*, the Board found that Mr. Couey's reports were delinquent in all five 5 guardianship cases, he did not have time records to substantiate his fees in one case, and he had not filed his E&O insurance declaration or continuing education with the Board. The Board says the present case and *Couey* are comparable, and argues that Ms. Carroll's misconduct was worse because she was late more times and in more cases. Board, Post-Hearing Brief, 10.

36. There are, however, two important distinctions between *Couey* and the present case. In *Couey*, the guardian resigned in three of five cases between April 2008 and June 2008. The wards in his other two cases died, in April 2008 and July 2008. He had not filed a notice

of death in those cases, or his final accountings or obtained final court orders in any of the five cases. The Disciplinary Settlement Agreement also noted that Mr. Couey “did not pay annual dues for 2008 because he planned to surrender his guardianship certificate.” *Couey*, p. 3. In addition, Mr. Couey was the standby guardian in 19 cases, and had told the guardian he did not intend to serve as standby guardian, but had not notified the court. *Couey*, pp. 2, 3. This was *not* a guardian who had substantially corrected his behavior and wanted to remain a guardian. In key ways, his case is different than Ms. Carroll’s.

37. In *Nielson*, the Board found that Ms. Nielson was delinquent in filing court reports in several cases—on average late by 54 days in 5 cases. She failed to file other reports, did not explain how she would prevent future late filings, and did not appear at several court Hearings, despite notices and orders to compel. Ms. Nielson also failed to notify the Board of her noncompliance with the E&O regulation when she had aggregate client assets exceeding \$500,000, and, in one case, she was guilty of financial mismanagement and had been ordered to reimburse the client \$9,700. In Ms. Carroll’s case, the Board argues that Ms. Carroll’s late filings and non-appearance in court were more egregious, and argues that the two cases are comparable because both guardians were the subject of scrutiny by the Board and the courts, engaged in multiple violations of the Board’s regulations, and had failed to timely cure their misconduct. Board, Post-Hearing Brief, pp. 10-11.

38. *Nielson* however is distinguishable in significant ways. Ms. Nielson explicitly quit being a guardian. She did not even *try* to correct the late filings, appear in court, or cure her paperwork with the Board. In *Nielson*, the Board’s Disciplinary Complaint says after the Board opened the grievance, “Ms. Nielson sent a letter to the courts and to the Board stating that she had been ill with heart disease and depressed She said that she was getting all of her cases reassigned and would not be doing guardian work in the future.” *Id.*, p. 2. Ms. Nielson did not respond to the Grievance, and did appear at the scheduled disciplinary Hearing. She was decertified by Default. Board’s Post-Hearing Brief, p. 10.

39. In the present case, Maureen Carroll indeed failed to timely file reports and respond to many court orders in 2011 and 2012. The Hearing Officer has found that to constitute misconduct, warranting the Board sanctions and proscribed remedies. But Ms. Carroll's disciplinary case is distinguishable from *Morgan*, *Couey*, and *Nielson* in key ways. It is somewhat disconcerting that the Board points to these cases as the ones most comparable to Ms. Carroll's in its proportionality analysis. Board, Post-Hearing Brief, p. 8.

40. In its proportionality analysis, the Respondent Ms. Carroll points to several cases where guardians were decertified for an accumulation of actions that included untimely court filings, and she notes that in those cases the guardians' actions were harmful to their incapacitated clients, unlike in her case. The main thrust of Respondent's argument is that the Board has required more than multiple late filings to decertify (except in *Morgan*, where the guardian didn't correct her behavior). Respondent, Brief re Proportionality, pp. 8-9.

41. For example, in *In Re Marsha Caldwell*, CPGB No. 2007-007 [Ex. B], the guardian entered into an agreed decertification based upon findings that the guardian: withdrew approximately \$12,000 from an IP's account without court authority; failed to timely pay the IP's living expenses; failed to file a yearly accounting, failed to block a bank account, in one case for two years; failed to report significant IP asset changes; sold a condominium without court approval; and sought to be a successor guardian in a case in violation of a prior disciplinary agreement with the Board.

42. In *In re Carole Gaherin*, CPGB 2010-020 and 2011-021 [Ex. C], the guardian entered into an agreed decertification based upon findings that the guardian: failed to visit the incapacitated person (IP) on a regular basis, or respond to family member inquiries for over three months; failed to block an IP's bank account and then bounced checks; failed to timely file reports with the court in 22 of 35 audited cases; falsely stated to the court that she had timely filed a report; and received 137 notices for filing late reports and 39 show cause orders to appear for late filings.

43. The undersigned agrees with the Board that the scope and nature of the various violations in cases like *Caldwell* and *Gaherin*, or *In re Denise Meigs*, PGB No. 2001-0005 [Ex. A] (where the guardian also engaged in various financial mismanagement, and eventually asked to resign her certification), are too different factually to be comparable to Maureen Carroll's case. Board, Post-Hearing Brief, pp. 15-16. The Board's agreed disciplinary decertifications of those three guardians do not cite the provision(s) in the Disciplinary Regulations relied upon. It would appear, however, that in *Caldwell*, *Gaherin*, and *Meigs*, the guardians' misconduct would have qualified for decertification under DR 515.2.1.1 (misconduct with intent to benefit the guardian, deceive the court, or cause serious harm), as well as under DR 515.2.1.3 (intentional misconduct involving dishonesty, etc.), as well as under DR 515.2.1.4 (gross incompetence), as none of these three guardians corrected their behavior. The Respondent's point, however, is well taken: except in *Morgan*, where the guardian did not correct her late filings, in no other known case has the Board pursued decertification based almost entirely on a guardian's late court filings.¹⁶

44. Both the Board and the Respondent cite the cases of *In re Adagio Guardian Assocs.* and *Helen Helfrich*, CPGGB No. 2008-001 [Ex. G], and *In re Elaine Judd*, CPGGB No. 2009-009 [Ex. H], but draw different lessons from them. Board, *id.* at 12-13; Respondent, *id.* at 11-12. *Adagio* is described by the Board as one of several cases where "the guardians did not engage in a pattern of misconduct over an extended period of time." Board, *id.*, p. 12. In *Adagio*, the Board found violations in four cases. In one case, the personal care plan,

¹⁶ The Board also proved that Ms. Carroll untimely filed an E&O Insurance Declaration due in August 2013, which in turn violated the ARD, wherein she agreed to timely file all declarations with the Board. As pointed out by the Respondent, *id.* Proportionality Brief at 13-15, sanctions for those violations in many other cases have been minor, such as a \$50 fine for late filing of the E&O declaration. The Hearing Officer realizes that in those other cases with minor sanctions, the guardians were not also guilty of misconduct as extensive as Ms. Carroll's multiple late court filings. The point is that the Board appears to generally not treat these other violations seriously, so they should not add much "weight" to Ms. Carroll's primary misconduct: her multiple and repeated late court filings, and the Respondent argues for that misconduct alone the Board has not previously pursued decertification (with the *Morgan* exception).

inventory, and budget were filed 6 months late and the court order approving the annual report 1 year late. In two other cases, the guardian was respectively 2 years and 4 years late filing a personal care plan and annual report, and did so only after contact by the Board. The undersigned does consider 2 and 4 years an extended period of time. After the Board's notified the guardians of these delinquencies,¹⁷ they quickly filed the reports and implemented an agency-wide system to track all reporting deadlines.

45. In *Adagio*, the Board imposed NO sanctions other than an Agreement Regarding Discipline, in which the guardians agreed to use and update its unified tracking system. The Board's ARD also contained this reasoning:

Adagio has set up a unified tracking system for all reporting requirements. The Board acknowledges that no individual client appears to have suffered any harm as a result of the failure to report. Finally, the Board acknowledges that Ms. Helfrich took immediate steps to address the Board's concerns, including completing reports and seeking court approval of those reports. (*Adagio, id.* at 4.)

46. In Ms. Carroll's case, as in *Adagio*, she missed court filing deadlines over the course of two years, but no clients were harmed. When she was contacted by the Board in November or early December 2012 (the record doesn't show what other contact occurred in 2012 other than the September 20, 2012 email), Ms. Carroll got bookkeeping and legal help to address her case delinquencies. Her misconduct was more egregious than in *Adagio*, and the Hearing Officer is not certain that she yet has adequate case tracking systems in place, which is the basis for the much more extensive sanctions and remedies than in *Adagio*.

¹⁷ There is no mention in the *Adagio* ARD or nearly any of the other settlement agreements of court notices or orders to the guardian. It's hard to imagine a court going 4 years without issuing an Order to file a personal care plan. But this was a widespread problem identified in the Report of the Guardianship Task Force to the WSBA Elder Law Section Executive Committee in August 2009: in most counties, little *active monitoring* of guardianship cases occurred. This led to legislative changes and new uniform requirements for the courts. Many of the case review notices sent to Maureen Carroll were generated by active monitoring software that did not exist a few years earlier. This likely explains their absence from the older cases, and does not excuse Ms. Carroll's non-compliance, given that she was put on notice repeatedly.

47. In *Judd*, the Board used a mixture of minor sanctions and several remedies to address the many late filings by Ms. Judd, who in nine cases had 23 late filings and failed to get required disbursement orders. Personal care plans, inventories, and annual reports were filed 2 to 13 months late, usually ranging between 6 to 9 months late. The Board noted in its ARD that: “Regarding the late filings of . . . reports, the guardian said that she took on too many cases and her top priority was ensuring client’s health and welfare. She understands that completing reports is also a priority and has not taken on new cases.” *Judd, id.* at 3. This is similar to the acknowledgement that Ms. Carroll made to Carol Smith that: “I am more than happy to attend this training. It is actually what I need. . . . Unfortunately my referrals grew faster than my knowledge.”

48. The sanctions and remedies imposed by the Board in *Judd* were: a letter of admonishment; an audit of her case files for six months; probation for six months; and the responsibility to create and implement a case tracking system. *Id.* at 5. Ms. Judd also self-imposed a freeze on taking new cases. The remedies recommended by the Hearing Officer in Ms. Carroll’s case are similar though more extensive, because her misconduct was more widespread and prolonged. But as in *Judd* and *Adagio*, Ms. Carroll took significant steps to correct her guardianship practices. In that way, her case is more comparable to *Judd* and *Adagio* than it is to *Morgan, Couey, Nielson* or the other cases cited above.

49. It is perhaps worth noting the sanctions imposed in the recent case of *In re Sound Guardianship and Pam Privette*, CPG No. 2011-007, 2011-018 (2013). According to Ms. Carroll’s testimony, Pam Privette (and her agency) was the guardian recommended to her in 2009 by AOC as a place to obtain her initial professional experience. In *Sound Guardianship and Pam Privette*, the CPG agency agreed to decertification because it no longer had two CPGs yet had continued to operate. The remaining CPG, Pam Privette, was found in the agreed settlement to have failed to investigate for 15 months an allegation of financial exploitation of one of her wards; moved a second ward to another care facility against his

wishes and improperly restricted his family visits for 6 weeks; and also to have acted as guardian in these two cases from one to three months without letters of guardianship. For her misconduct, Ms. Privette received a reprimand and a sanction of \$3,000 to cover the Board's cost in the matter.

Costs and Attorneys Fees

50. The Board may, as part of the sanctions imposed, order a professional guardian to pay the cost of the disciplinary process and any other directly provable expense, including attorney fees. DR 516. It is appropriate to consider whether monetary fees are consistent with prior cases. *In re Petersen, id.*, 180 Wn.2d at 791. Costs have been assessed in many Board agreed settlements. Costs of \$3,000 were assessed as part of the settlement reached after a complaint had been filed and a hearing date scheduled. *In re Ethicare Inc., George Marco, Teresa Marcoe, and Julie Crawford*, CPGB No. 2007-025; and *In re Sound Guardianship and Pamela Privette*, cited above. In *Petersen*, the Supreme Court was impliedly critical of the Board's imposition of costs and attorney's fees totaling \$32,393. Later in *Petersen*, following a remand by the Washington State Supreme Court, the Board ultimately assessed costs of \$7,500. The Court upheld the Board's decision on March 13, 2015.

51. In the present case, the Hearing Officer does not know the Board's costs or attorney's fees. Both the Board and Ms. Carroll have requested an award of costs and attorney's fees. Respondent points out that from the beginning of the grievance process she has admitted her late filings and agreed to admonishment or lesser sanction. Ms. Carroll claims that the Board has refused to work with her, saying it was decertification or nothing, even though it "knew" that decertification was disproportionate to the sanction imposed in comparable cases.¹⁸ Respondent's Hearing Brief, p. 7. The problem, of course, is that there

¹⁸ Ms. Carroll could point to Mr. Furman's offer to AOC in late January 2014 that she would join with an agency to learn how to better manage her practice, and undergo quarterly audits by AOC. This offer was rejected by the Board, who said that she still had late filings and had also violated her 2011 ARD. The Board thus requested "Voluntary Surrender of Certification" or said it would pursue decertification. *See*, Ex. 115

are no exactly comparable cases. When there's been decertification, the guardian's misconduct has been *more* egregious than Ms. Carroll's, or the guardian has essentially quit and agreed to decertification. When the Board's sanction has been less than decertification, the guardian's misconduct has been *less* egregious than Ms. Carroll's. In this case, the Hearing Officer recommends a middle ground where significant remedies and some sanctions are imposed but not decertification.

52. Because this is a case of first impression—the first known CPG decertification Hearing based solely on the DR 515.2.1.4 basis of “gross incompetence,” the Hearing Officer is reluctant to in effect sanction the Board for pursuing a legal basis that had yet to be tested. It is true that the parties may have been able to settle the case in early 2014 if they had continued to negotiate, but what the Board viewed as adequate correction of her guardianship practices was not the same as Ms. Carroll's, and these were untested waters. The Hearing Officer recommends that costs and fees **NOT** be awarded to the Respondent.¹⁹

Similarly, the Hearing Officer recommends that the Board NOT impose costs or fees on the Respondent. When examined closely, several of the Board's assertions in this proceeding were overly rigid or not well founded. Ms. Carroll had made significant changes. A settlement perhaps could have been reached. The Hearing Officer does recommend that Ms. Carroll pay for the costs of her compliance with the Board's ordered remedies, which the undersigned estimates may be between \$10,000 to \$20,000, based on the figures seen in several ARDs. That will be some financial cost for making the Board and courts address this in the first place, along with her attorney's fees, and at this point further expenditures by Ms. Carroll would be

¹⁹ The Hearing Officer also doubts that he has authority to order an award of costs or fees against the Board. In the usual Administrative Procedures Act adjudicatory Hearing, the administrative law judge does not have authority to award fees or costs. Ms. Carroll did not provide briefing on this issue, and the undersigned is not willing to “award” fees and costs against the Board without clear authority, noting of course that this decision consists of recommendations to the Board, and the oddness of the Board ordering fees against itself.

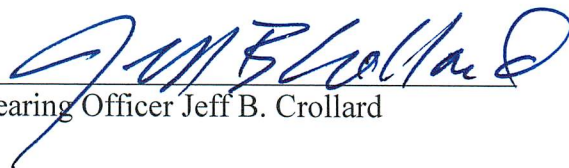
1 better spent on implementing the better systems that may still be needed in her guardianship
2 practice.

3 **V. RECOMMENDATIONS**

4 The undersigned Hearing Officer recommends that the Board adopt the above Findings
5 of Fact and Conclusions of Law, and issue disciplinary sanctions and remedies as described
6 above and summarized here:

- 7
- 8 1. Prohibition on new guardianship case appointments for six months;
 - 9 2. Issue a Letter of Admonition against Maureen Carroll, CPG No. 10908;
 - 10 3. Review of Ms. Carroll's guardianship forms by an experienced attorney within
11 the next six months;
 - 12 4. Mentoring and consultation for a period of 12 months from an experienced
13 certified professional guardian;
 - 14 5. Additional training in the next 6 months on court procedures;
 - 15 6. Auditing of Ms. Carroll's guardianship files by AOC for 6 months; and
 - 16 7. Examination of Ms. Carroll's other fulltime job commitments;

17
18 DATED this 12th day of February, 2016.

19
20 
21 Hearing Officer Jeff B. Crollard

APPEAL RIGHTS

Pursuant to DR 512.2, any statement in opposition to the decision of the Hearing Officer, alleging errors of fact, law, or any other pertinent matter shall be filed within twenty (20) days from the receipt of the Hearing transcript. Said statement shall be filed with the Board and served on each party. Each party shall have ten (10) days from the date of mailing of a statement in opposition of any party to file a rebuttal to said statement. Receipt of any mailed materials shall be deemed complete three days after the postmarked date on the material.

Statements in Support or Opposition

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

In the Matter of:

MAUREEN CARROLL,
CPG NO. 10908,

Respondents.

CPGB NO. 2012-002, 2012-013, 2012-038, 2012-045, and 2012-046

STATEMENT REQUESTING A
PARTIAL MODIFICATION OF THE
HEARING OFFICER'S
RECOMMENDATIONS TO THE
BOARD

I. INTRODUCTION

The Staff of the Certified Professional Guardian Board (hereinafter the "Board Staff") by and through its attorneys, ROBERT W. FERGUSON, Attorney General, and CHAD C. STANDIFER, Assistant Attorney General, respectfully requests, the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations to the Board for Action (hereinafter the "Recommendations to the Board") dated February 12, 2016, be adopted in their entirety, with the following exception: the Respondent should be ordered to pay a portion of the costs associated with this disciplinary process. Board Staff's request for costs is supported by the accompanying Declaration of Shirley Bondon.

II. THE BOARD'S REVIEW AUTHORITY

Pursuant to DR 512.3, the Board shall review the Hearing Officer's findings of fact, conclusions of law, and recommendations, along with any statements filed by the parties in support or opposition of the Hearing Officer's decision. The Board shall then adopt, modify or

1 reverse the findings, conclusions, and recommendations of the Hearing Officer by written
2 decision. DR 512.4. The Hearing Officer's Recommendations to the Board are supported by
3 substantial evidence and are consistent with the applicable Standards of Practice and
4 Disciplinary Regulations. Board Staff requests only one modification to the Recommendations
5 to the Board, a requirement the Respondent pay a portion of the costs of this disciplinary
6 matter, as discussed further below. Board Staff requests the remainder of the
7 Recommendations to the Board be adopted in their entirety by the Board.

8 III. THE BOARD SHOULD ORDER THE RESPONDENT TO PAY COSTS

9 A. The Board Should Follow Its Practice Of Ordering Respondents To Pay Costs Of 10 The Disciplinary Process Pursuant To DR 516

11 The Board may order a professional guardian to pay costs including the cost of the
12 disciplinary process and any other directly provable expense, including attorney fees as part of
13 the sanctions imposed. DR 516. A Hearing Officer may recommend the payment of costs as
14 part of his or her findings and conclusions. *Id.* In this matter, the Hearing Officer did not
15 recommend the Respondent be ordered to pay the costs. Recommendations to the Board at 47-
16 48, Conclusion of Law 52.

17 In deciding whether to order costs, it is appropriate for the Board to consider whether
18 imposing monetary fees would be consistent with prior cases. *See In re Petersen*, 180 Wn.2d
19 768, 790-91, 329 P.3d 853 (2014). In two matters, the Board has assessed costs following an
20 adjudicative hearing. In the *Petersen* matter, following a remand by the Washington State
21 Supreme Court, the Board ultimately assessed costs of \$7,500. CPGB No. 2010-005, 2010-
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1 006, 2010-007, 2010-008, and 2009-013.¹ In the *Emerald City Guardianship Services, Inc.*
2 *and Crystal Jordan* matter, the Board assessed costs of \$20,414.22. CPGB No. 2012-039.²

3 Costs have also been assessed in numerous other Board disciplinary matters. For
4 example, in at least two matters, costs were assessed as part of a settlement reached after a
5 complaint had been filed and a hearing date scheduled. *In re Ethicare Inc., George Marco,*
6 *Teresa Marcoe, and Julie Crawford, CPGB No. 2007-025; In re Sound Guardianship and*
7 *Pamela Privette, CPGB No. 2011-007 and 2011-018.* In both matters, \$3,000 in costs was
8 deemed appropriate. *Id.*

9 The above described cases are reflective of the Board's custom of ordering a
10 Respondent to pay at least a portion of the costs of the disciplinary process. That custom is
11 consistent with DR 516, and should be followed here.

12 **B. The Reasons Provided By The Hearing Officer Do Not Support A Deviation From**
13 **DR 516 And The Board's Customary Practice Of Imposing Costs**

14 The Board has incurred considerable expenses associated with the administrative
15 adjudication of this matter, which total \$41,740.03. *See* Declaration of Shirley Bondon. The
16 Hearing Officer declined to recommend costs be ordered, reasoning that: several of the Board's
17 assertions were "overly rigid or not well founded;" a settlement "perhaps" could have been
18 reached; and Ms. Carroll has to pay the costs of her compliance with the other remedies
19 imposed. Recommendations to the Board at 47, Conclusion of Law 52. None of these reasons
20 support a conclusion that costs should not be ordered here.

21 First, the Hearing Officer upheld each of the allegations set forth in the original
22 Disciplinary Proceeding Complaint, finding the Respondent: violated numerous Standards of

23 ¹ A copy of the Board's Findings of Facts, Conclusions of Law, and Recommendations dated January 28,
24 2015, in the *Petersen* matter is attached as Attachment A. The Washington Supreme Court upheld that decision
on March 13, 2015, a copy of which is attached as Attachment B.

25 ² A copy of the Board's Final Decision and Recommendation to Supreme Court dated January 13, 2015,
26 in the *Emerald City Guardianship Services, Inc. and Crystal Jordan* matter is attached as Attachment C. The
Washington Supreme Court upheld that decision on March 31, 2015, a copy of which is attached as Attachment
D.

1 Practice, including SOP 401.1, 401.3, 401.5, 401.6; violated CMR 704.6.2; and violated the
2 terms of her prior Agreement Regarding Discipline (ARD). Recommendations to the Board at
3 29-30. Thus, any assertions the Board's allegations were not substantiated rings hollow. The
4 Respondent's proven violations form a reasonable basis for a request for costs in this matter.

5 Second, whether or not a settlement of this matter could have been reached has no
6 bearing on whether costs are awarded to the Board under DR 516. Settlement discussions are
7 inadmissible in this proceeding, pursuant to ER 408. Any consideration of a potential
8 settlement of this case should be therefore by rejected as not relevant to either the violations or
9 the penalties ordered in this case. At the outset of this proceeding, the Respondent was put on
10 notice Board Staff intended on pursuing costs in this matter, and chose to bear the risk of
11 proceeding to hearing. A consequence of having been found to have committed violations of
12 the Standards of Practice is the imposition of costs.

13 Third, the Respondent's payment for the recommended monitoring of her practices as a
14 guardian should not, in and of itself, eliminate her separate obligation to pay at least a portion
15 of the costs of the disciplinary process. It is only due to her established incompetence that the
16 Board is forced to impose monitoring requirements upon her, in an effort to correct her
17 deficient filing practices. She is, in effect, being given another opportunity to correct *her* prior
18 misconduct, which should have no impact on whether or not the Board is reimbursed for
19 having had to pursue this action. It is already Ms. Carroll's obligation to comply with the
20 statutory requirements required of guardians. SOP 401.3 and 401.5. To the extent the
21 recommended monitoring will require her to consult with legal counsel, a guardian is already
22 required to seek legal advice as necessary. SOP 401.4. Ms. Carroll has repeatedly asserted
23 during this proceeding she has corrected her behavior, including asserting she has been
24 working "diligently with a bookkeeper and legal counsel to correct her actions and ensure her
25 reports are filed on a timely basis." Respondent's Hearing Brief at 6. Assuming her assertions
26

1 are accurate, the costs of the monitoring program being recommended by the Hearing Officer
2 should be limited as her practices would already have been modified.

3 Finally, the Hearing Officer found numerous aggravating factors present in this matter,
4 including Ms. Carroll's prior Agreement Regarding Discipline, her pattern of misconduct, her
5 multiple offenses, and the vulnerability of her victims. Recommendations to the Board at 37,
6 Conclusion of Law 25. The existence of these aggravating factors does not support a deviation
7 from the Board's custom of imposing costs, particularly in the context of a matter that has been
8 adjudicated. Given the serious nature of Ms. Carroll's misconduct, requiring her to reimburse
9 the Board for at least a portion of its costs incurred during this disciplinary proceeding is more
10 than justified.

11 In sum, Conclusion of Law 52 should be modified to reflect a recommendation to order
12 the Respondents to pay a portion of the Board's costs.

13 **C. The Board Has Discretion To Order The Respondent To Pay Only A Portion Of**
14 **The Costs Incurred During This Disciplinary Proceeding**

15 In determining what amount is appropriate, the Board should consider the amounts
16 imposed in prior cases, as discussed above. In addition, however, while not eliminating the
17 requirement she pay costs, the Board may consider the fact that Ms. Carroll does have to pay
18 for the costs of the monitoring program as justifying a reduction of the costs imposed.

19 The Board may wish to look to its decision-making process in awarding costs in the
20 *Petersen* case for guidance here. The Board's actual costs associated with the adjudication of
21 the *Petersen* matter were \$40,366.16. *Petersen*, 180 Wn.2d at 779. The Board has incurred a
22 substantially similar amount of costs as a result of the adjudication in this matter (\$41,740.03).
23 In *Petersen*, the Board ultimately ordered the Respondent to pay \$7,500. Attachment A, ¶¶ 14-
24 15. In so ordering, the Board did factor in that the Respondent was responsible for paying for
25 the costs of a monitoring program, *but still chose to impose costs. Id.* As this matter is most
26

1 comparable to the *Petersen* matter, awarding costs in a manner similar to that case would
2 certainly be appropriate.

3 **IV. CONCLUSION**

4 Based on the above, Board Staff respectfully requests: 1) the Recommendations to the
5 Board be adopted by the Board in their entirety, with the exception of Conclusion of Law 52;
6 2) Conclusion of Law 52 should be modified to reflect the imposition of costs in this matter;
7 and 3) the Respondent should be ordered to pay the costs associated with the disciplinary
8 process in an amount not less than \$7,500.

9 DATED this 3rd day of March, 2016.

10 ROBERT W. FERGUSON
11 Attorney General

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13 CHAD C. STANDIFER, WSBA #29724
14 Assistant Attorney General
15 Attorneys for the Certified Professional
16 Guardian Board Staff
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1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record
3 on the date below via electronic mail to:

4 Richard Furman, Esq.
5 Aiken St. Louis & Siljeg P.S.
6 furman@aiken.com

7 I certify under penalty of perjury under the laws of the state of Washington that the
8 foregoing is true and correct.

9 DATED this 3rd day of March, 2016 at Olympia, Washington.

10 
11 STACY HIATT
12 Legal Assistant

ATTACHMENT A

CERTIFIED PROFESSIONAL GUARDIAN BOARD

LORI PETERSEN,)	
CPG No. 9713,	)	CPGB No. 2010-005, 2010-006, 2010-007,
	)	2010-008, 2009-013
Respondent.)	
	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND RECOMMENDATIONS
)	
	)	<i>Disciplinary Regulation 513</i>
)	

On February 27, 2013, the Certified Professional Guardian Board (Board) petitioned the Washington State Supreme Court for an order of suspension of Respondent Lori Petersen for violations of the Standards of Practice as determined at hearing on October 22-24, 2012, and as confirmed by the Board on January 30, 2013. Respondent requested the Supreme Court review the Board’s Order and the sanction, arguing that the Board’s actions violated the principles of separation of powers, the appearance of fairness doctrine, and that the Board applied an improper evidentiary standard. Both the Board and Respondent submitted briefing and made their respective oral arguments to the Court.

On July 3, 2014, the Washington State Supreme Court issued its opinion *In the Matter of the Disciplinary Proceeding against Lori Petersen*, 180 Wn.2d 768 (2014). The Court rejected Respondent’s arguments generally, but remanded the matter to the Board to determine if the recommended sanction is consistent with sanctions imposed by the Board in other disciplinary actions.

The Board issued a Notice of Procedure and Schedule on Remand dated September 29, 2014, ordering that each party submit a statement in support of their position on proportionality by October 13, 2014. The Notice provided that the submissions should be limited to the issue of proportionality that neither party could offer rebuttal statements, and that no opportunity for oral argument would be provided. Both the Board and Respondent submitted statements in support of their respective positions on proportionality on October 13, 2014.

At its regular meeting on October 20, 2014, the Certified Professional Guardian Board met in Executive Session to consider whether the sanction in this matter was proportionate to sanctions entered in other cases for similar violations. The Board voted in open session to adopt the following analysis and determination.

1. FINDINGS OF FACT

1.1 At all times relevant herein, Lori Petersen, CPG No. 9713 (“Respondent”), was a certified professional guardian pursuant to General Rule (GR) 23 practicing in the state of Washington.

1.2 The Certified Professional Guardian Board has only been in existence since 2000. In this time period, only about ten complaints have been filed against a certified professional guardian or agency to initiate the hearing process. Most sanctions have been imposed by agreement (settlement) between the Board and the respondent. *See* DR 514.

1.3 *In the Matter of Lori Petersen* is inherently dissimilar from all other disciplinary proceedings for two reasons. It is the first action handled by the Board to proceed to full

contested hearing on the merits, and it is the first proceeding in which suspension was the recommended sanction.¹

1.4 Appropriate factors in a proportionality analysis include commonalities in Standards of Practice (SOP) violated, potential or actual injuries, aggravating and mitigating factors, and the sanctions imposed.

1.5 The Board considered the sanction in the case of *In re Carol Gaherin*, CPGB 2010-020 and 2011-021. Both the Board and Respondent identified and analyzed the *Gaherin* case in their statements. In the *Gaherin* case, the agreed-upon sanction was decertification of Ms. Gaherin as a professional guardian, with time allowed to complete transfer of her appointments to other guardians.

1.5.1 Common factors between the current case and *Gaherin* include:

- The guardians in both cases violated Standard of Practice (SOP) 401.9² regarding the guardian's responsibility to cooperate with and carefully consider the views and opinions of the incapacitated person, professionals, relatives and friends knowledgeable about the incapacitated person.
- Both guardians violated SOP 401.15³ requiring a guardian to have meaningful in-person contact with their clients and telephone contact with care providers, medical staff or others managing an incapacitated person's care.
- Incapacitated persons of both guardians suffered actual harm.

¹ The Board imposed a suspension in CPGB No. 2012-039 *In re Emerald City Guardianship Services, Inc. and Crystal Jordan*. However, this sanction was issued on an emergency basis pending hearing and occurred after the recommendation in the *Petersen* matter.

² Renumbered as SOP 402.2.

³ Renumbered as SOP 404.

- Aggravating factors in both cases included the guardians' substantial prior experience as a professional guardian; both guardians had multiple offenses; and their conduct constituted a pattern of misconduct.

1.5.2 Dissimilar factors between *Gaherin* and *Petersen* included:

- Ms. Gaherin violated SOP 401.3⁴ by failing to timely file reports in her cases, accumulating 137 notices of noncompliance and 39 notices to appear at show cause hearings over a five-year period.
- Ms. Gaherin violated SOP 406⁵ by incurring numerous nonsufficient funds check fees, making duplicate fee payments to herself, and failing to maintain a running balance in the check register among other issues.
- Ms. Gaherin's conduct included aggravating factors of the substantial number of incapacitated persons she had placed at risk of harm; whereas, Ms. Petersen's actions affected only two of her incapacitated persons. However, Ms. Gaherin had no record of prior discipline; while, Ms. Petersen had a prior disciplinary record, including similar aggravating factors of substantial experience as a guardian, multiple offenses, pattern of conduct, and knowing or grossly incompetent or negligent act.
- Mitigating factors in favor of Ms. Gaherin included an absence of dishonesty or selfish motive. The hearing officer found that Ms. Petersen had cooperated with the disciplinary proceedings, but gave little weight to this as a mitigating factor.

⁴ Renumbered as SOP 401.5.

⁵ Renumbered as SOP 409.1.

- Finally, Ms. Gaherin’s actions were deemed to constitute “grossly negligent acts”⁶ warranting the highest sanction of decertification. The hearing officer determined Ms. Petersen acted “knowingly and willfully,” which does not rise to the level of decertification for the sanction.

1.6 *In re Steven H. Broom, CPGB 2011-014.* Both the Board and Respondent identified *Broom* in their respective analyses.

1.6.1 Common factors with the *Petersen* case include:

- Both guardians moved incapacitated persons without prior consultation with the incapacitated person’s family, in violation of SOP 401.9.⁷
- Both guardians failed to select residential placements that would enhance the quality of life and provide for physical comfort and safety of the incapacitated person in violation of SOP 404.5.⁸

1.6.2 Dissimilar factors between *Broom* and *Petersen* are:

- Mr. Broom moved the incapacitated person to another facility because the facility advised him that it could no longer provide the level of care needed by the incapacitated person. Ms. Petersen moved the incapacitated person without attempting to secure additional care from their current care provider and failed to establish any legitimate basis for moving either D.S. or J.S.
- Mr. Broom notified the family about the move in advance, that resulted in the family’s strenuous objections. Ms. Petersen did not consult with her incapacitated

⁶ *Cf.* DR 515.2.1.4 Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violation of the same Standards of Practice.

⁷ Renumbered as SOP 402.2.

⁸ Renumbered as SOP 407.6.

persons, nor did she consult with family, friends or professionals about moving either incapacitated person.

- The incapacitated person in the *Broom* matter suffered no harm by being moved to another care facility, but rather received more appropriate care for her declining condition. In contrast, both incapacitated persons suffered harm because of Ms. Petersen's move. J.S. suffered severe emotional distress and was without necessary equipment for sleeping and movement. D.S.'s family members were upset and concerned that their mother had been moved and could not contact anyone who had information about her condition or location.
- *Broom* identified no aggravating factors, and Mr. Broom had no prior disciplinary actions. Therefore, the lowest sanction of admonishment was appropriate. The sanction in *Petersen* is appropriately greater because of the number of aggravating factors including prior disciplinary action.

1.7 *In re Pamela Privette, CPGB 2011-07 and 2011-018.* Both parties discussed *Privette* in their respective statements, and they concurred that the misconduct in *Privette* related primarily to a different subject matter. The violations in that case, where a reprimand was the agreed sanction, were Ms. Privette's failure to obtain a bond and Letters of Guardianship⁹; to protect personal and economic interests of the incapacitated person¹⁰; and to have in-person contact with her client.¹¹

⁹ SOP 401.1 (renumbered as SOP 401.3); SOP 401.4 (renumbered as and 401.2); and SOP 406.2 (renumbered as SOP 409.3).

¹⁰ SOP 401.5 (renumbered as SOP 403.1).

¹¹ SOP 401.15 (renumbered as SOP 404.1). In addition, Ms. Privette failed to notify the Board when her certified professional guardianship agency lost one of its two designated CPGs and failed to retain a second CPG as required in SOP 119.1 (renumbered as 102.4).

1.7.1 The only common violation between *Privette* and *Petersen* was of SOP 401.9¹²-- moving the incapacitated person without consulting the incapacitated person's (IP's) family and friends.

1.7.2 Distinguishing factors are:

- Ms. Privette contended that the facility had refused to allow the IP to remain there.
- The family was informed of the relocation, but not the facility where IP was moved.
- Ms. Privette specifically directed the facility to provide IP's family and friends with no information due to previous conflict within the family.
- No aggravating or mitigating factors were identified, and Ms. Privette had no prior record of discipline. Based on the violations of multiple Standards of Practice, the sanction in *Privette* was reprimand.

1.8 Respondent cited *In re Sound Senior Assistance*, CPGB No. 2011-001 as a comparable case, due to a common violation of SOP 402.2. *In re Sound Senior Assistance* was settled in two separate agreements: one with the agency and the other with the designated CPG for the incapacitated person. There are no common facts between *Sound Senior Assistance* and *Petersen*. Neither agreement cites a violation of SOP 402.2.¹³ Therefore, there is no basis for comparison.

1.9 Similarly, Respondent attempted to distinguish *In re Wanda Cain*, CPGB No. 2010-017, and *In re Sharon Nielsen*, CPGB 2010-025, 2011-005, and 2011-010. Again, there are no

¹² Renumbered as SOP 402.2.

¹³ Formerly SOP 401.9.

common violations of the Standards of Practice, and therefore, these cases provide no basis for analysis of proportionality with *Petersen*.

1.10 Respondent has not challenged the proportionality of the Board's prior recommendation of the remedy of monitoring for two years after the completion of the suspension.

1.11 Respondent has not challenged the proportionality of the Board's prior recommendation for assessment of costs in the amount of \$32,393.66.

2. CONCLUSIONS OF LAW

2.1 Respondent is a Certified Professional Guardian who is subject to discipline by the Board pursuant to GR 23 and the Disciplinary Regulations.

2.2 The burden of proof in a disciplinary matter is by a preponderance of the evidence, and Respondent bears the burden of proving disproportionality of the sanction imposed by the Board. 180 Wn.2d at 790-91.

2.3 Respondent's statement fails to address the fundamental concepts of proportionality: "roughly proportionate sanctions imposed in similar situations or for analogous levels of culpability." *In re Disciplinary Proceeding against Gillingham*, 126 Wn.2d 454, 469 (1995).

2.3.1 "Similar situations" inherently means similar facts of the case. The facts in *Petersen* are those facts as found by the hearing officer and confirmed by the Board. "Because Petersen has failed to properly assign error to the hearing officer's factual findings, we do not disturb them." *Petersen*, 180 Wn.2d 768, 780. Respondent's statement does not compare the Hearing Officer's facts with the facts of other settled disciplinary matters, but instead compares the facts of the other cases with her prior assertions and defenses that the Hearing Officer ruled were not established by a preponderance of the evidence.¹⁴

¹⁴ For example, Respondent contends that she moved D.S. and J.S. because she believed they were in a "potentially dangerous environment." *Statement* at 4. *Cf.* Hearing Officer's *Findings*, "There was no

2.3.2 “[A]nalogous levels of culpability” is fairly equated to Respondent’s mental state and the existence of aggravating factors as previously found by the hearing officer, confirmed by the Board, and upheld by the Supreme Court. The Hearing Officer found that Respondent acted knowingly and willfully. *Findings* at 12. Further, the Hearing Officer found several aggravating factors to which he gave significant weight, including Respondent’s substantial experience as a guardian; her refusal to acknowledge the wrongful nature of her conduct;¹⁵ and a prior disciplinary action supporting a pattern of failing to cooperate or collaborate with others to insure the best interests of the incapacitated person.¹⁶ *Findings* at 14-15. Respondent still contends the SOP violations relate to her not being sufficiently sensitive to the input of the family and friends (*Statement* at 2); that her actions caused little or no harm (*Statement* at 4); and that she acted “in good faith” (*Statement* at 7); and, thus, she should not be subject to discipline.

2.3.3 Respondent has failed to prove by a preponderance of the evidence that the recommendation of suspension is disproportionate to other sanctions issued by the Board.

2.4. In the Board’s separate analysis of the proportionality of its recommendation for suspension, it finds that *In re Broom*, CPGB No. 2011-014, is most comparable based on the Standards of Practice violated. The situation in *Broom*, however, differs from *Petersen* in several key respects. The reason for the move in *Broom* was documented in a letter from the

evidence of any emergency medical justification for moving D.S. without input from her family. . . . There was no showing that any quality of care issues could not have been addressed by discussion and communication.” At 12.

¹⁵ Respondent’s Statement of Proportionality asserts: “[Respondent’s] actions were done in a good faith attempt to protect them both from what she perceived to be a dangerous situation.” *Statement* at 7.

¹⁶ “The prior disciplinary action against Ms. Petersen was an agreed letter of admonishment for a minor clerical mistake that was unrelated to any of the violations she has been determined to have committed in this matter.” Peterson’s *Statement* at 11-12. The Hearing Officer gave significant weight to this prior disciplinary action because he found that “it supports a conclusion that Respondent has a pattern of not cooperating or collaborating with others to insure the best interests of incapacitated persons are advanced.” *Findings* at 15.

care facility to Mr. Broom stating that it was no longer able to provide the appropriate level of care for the incapacitated person. Mr. Broom in fact notified the family members of the need to relocate, and the family objected that the distance to the new care facility would limit their ability to visit the IP. No aggravating or mitigating factors were found, and Mr. Broom had no prior record of discipline. Although it was determined that Mr. Broom engaged in professional misconduct incompatible with the Standards of Practice, in the absence of aggravating factors and prior discipline, the lesser sanction of admonishment was found to be appropriate under DR 515.2.4.

2.5 Ms. Petersen's misconduct was substantially more egregious than Mr. Broom's. Ms. Petersen did not notify any family or friends prior to the move of either D.S. or J.S., thus family and friends of neither IP had an opportunity to consult with Ms. Petersen or the facility, or object to the moves. Ms. Petersen failed to prove that she had any reasons for moving either IP for either medical or quality of life reasons. In contrast, although the family in *Broom* may have been inconvenienced by the longer distance, there was no showing that the incapacitated person suffered any potential or actual harm, whereas Ms. Petersen's clients, especially J.S., suffered actual and significant harm. Finally, the significant aggravating factors that outweigh mitigating factors and Ms. Petersen's prior disciplinary record justify a greater sanction than admonishment.

2.6 The sanction of decertification requires intentional misconduct or gross incompetence as demonstrated by a pattern or practice of the same violations. A significant part of the grievance *In re Gaherin* was her failure to timely file reports and financial mismanagement of multiple clients. Her violations of SOP 401.9 and 401.15 are not deemed insignificant, but affected only three of her clients and did not involve relocation. For each of these three clients, Ms. Gaherin had had some contact with the clients and their families; however, it was inconsistent and

insufficient to actually consider their opinions and concerns. Although no intentional conduct was found, grossly negligent acts and the number of IP's at risk of harm were identified as aggravating factors warranting decertification in that case.

2.7 *Gaherin* and *Petersen* have in common aggravating factors of multiple offenses, pattern of conduct and significant experience as a guardian. Ms. Petersen was not determined to have acted with intent or gross incompetence like Ms. Gaherin and the number of clients at risk of harm were only the two. Therefore, the sanction of decertification was inappropriate in *Petersen*.

2.8 *In re Privette* bears some resemblance to *Petersen* in the relocation of one incapacitated person. Ms. Privette contended that she had contacted the family about the relocation, but had not provided them the location of the new care facility due to prior family conflicts. The family disputed her contention. Because this grievance was settled by agreement, no conclusive finding of fact was found. Several other violations regarding Ms. Privette's compliance with court orders and the financial management of her clients' estates were deemed professional misconduct incompatible with the Standards of Practice. Unlike *Petersen*, no aggravating or mitigating factors were identified, and Ms. Privette had no prior record of discipline. A letter of reprimand was appropriate for her misconduct.

2.9 Ms. Petersen failed to perform core duties required of any guardian. Compliance with timely filing or mismanagement of the estate cannot fairly be considered of greater importance than the care and consideration of the incapacitated person. Ms. Petersen's lack of consultation with her incapacitated persons and their families exceeded mere failure, as it was dismissive of any other's opinion. The Hearing Officer found "a complete lack of meaningful discussion with D.S.'s involved family members or with the Petersen Place staff regarding this move . . . or the

basis for it.” *Findings* at 12. As for J.S., Ms. Petersen knew of the difficulty that J.S. had in transitioning to the adult family home, but made no attempt to explain to him why he was being moved. Further, she failed to insure that his wheelchair that was essential to his comfort and safety was moved with him. Such disregard for the personal welfare of her client cannot constitute mere professional misconduct sufficient for a reprimand. The Board concludes that the sanction of suspension for Ms. Petersen is not disproportionate to the facts and culpability of these other matters.

2.10 Because the sanction of suspension has not been imposed in any other matter, there is no basis for comparison of the length of time of the suspension. However, a shorter period does not seem to reflect the gravity of Ms. Petersen’s actions, while longer than a year tends to suggest a punitive element.

2.11 Respondent argues two new mitigating factors that have arisen since the time of her initial misconduct: 1) de facto suspension and 2) imposition of civil fines against the adult family home “Petersen Place.” The Notice of Procedure expressly limited the submission of evidence to the issue of proportionality. Neither of Respondent’s new arguments go to proportionality of the sanction. The former seeks to obtain equitable relief from the sanction, and the latter attempts to present new evidence not in existence when Respondent’s actions occurred or the grievances were filed. Therefore, the Board did not consider these factors to be relevant to its proportionality analysis.

2.12 Respondent renews two other arguments on mitigation that were rejected in prior proceedings. The fact that these assertions were found to have little or no merit fails to establish any basis for comparison. However, the Board considers them in the interest of completeness.

2.12.1 Respondent asserts that her willingness to accept public pay guardianships is a mitigating factor. The Hearing Officer gave this argument little weight. It is not a recognized mitigating factor in DR 515.1.4.2, and no prior cases have included acceptance of low-fee cases as a mitigating factor. Final disqualification of this argument is that Respondent was found to violate her responsibilities for a public pay incapacitated person in CPGB No. 2010-004 in which a letter of admonishment was issued against Respondent.

2.12.2 Second, Respondent contends that her prior disciplinary action should be given little weight as an aggravating factor. In CPGB No. 2010-004, Respondent was found in violation of SOP 406 and 406.8 based on her failure to “cooperate with the determination of the incapacitated person’s eligibility for public pay for cost of care and the guardian failed to fill out periodic forms required to determine public pay status.” *Petersen ARD* at 2. Respondent characterizes these violations as “a minor clerical mistake.” *Statement of Petersen* at 11. However, a guardian of the estate’s primary responsibility is financial management of an incapacitated person’s estate. Failure to assure that an incapacitated person has financial resources to provide for care and residence and the failure to comply with state or federal reporting requirements hardly constitute a clerical error.

2.13 Respondent did not challenge the recommendation for consultation or monitoring of her relocation decisions (in advance of the relocation) for two years after the conclusion of the one-year suspension. Monitoring is not a sanction, but a remedy designed to ensure compliance with duties, standards and requirements for a professional guardian. DR 515.3. Monitoring has been included in many prior agreements of varying time frames depending on the professional duties at issue.

2.14 Respondent did not challenge the recommendation for payment of the cost of the disciplinary process. Costs have been assessed in numerous disciplinary matters. However, costs are based primarily on the resources and expenses incurred by the Board in resolution of the grievance. Although no prior case resembles the length and extensive legal process of *Petersen*, the Board considered two matters *In re Ethicare Inc., George Marcoe, Teresa Marco, and Julie Crawford*, CPGB No. 2007-025, and *In re Sound Guardianship and Pamela Privette*, CPGB No. 2011-007 and 2011-018. In both matters, the Board filed a complaint against the agency and the certified professional guardians after attempts to resolve the matters by agreement failed. In both matters, respondents filed answers, a hearing officer was appointed, and a hearing date was scheduled. Prior to hearing, both matters settled through an agreement regarding discipline. Costs in the amount of \$3,000 were assessed in each matter.

2.15 Based on the vastly larger expenditure of resources and expenses in *Petersen*, the Board concluded that costs in this matter should be substantially higher than in *Ethicare* or *Privette*. However, the Board also considered its recommendation that Respondent pay all fees associated with monitoring for two years after the conclusion of her suspension. Therefore, the Board has reduced the costs assessed to \$7,500.

3. RECOMMENDATION

3.1 After discussion and consideration, the Board recommends that the Supreme Court enter an order suspending Respondent Lori Petersen for one year (12 months) for the professional misconduct relating to residential relocation of incapacitated persons D.S. and J.S.; and that Respondent be prohibited from taking new cases for three months for the professional misconduct relating to the failure to inform the children of incapacitated person D.S. of the emergency room visit and hospitalization of D.S., to run concurrently with the suspension.

3.2 The Board recommends that "suspension" mean that Respondent may not act in the capacity of a certified professional guardian; shall accept no new cases; and shall relinquish all existing cases to another CPG.

3.3 When Respondent's suspension has expired and she returns to work as a CPG, the Board recommends that an independent monitor shall monitor Respondent's caseload for a period of 24 months; that the Standards of Practice Committee approve the selected independent monitor; and that Respondent pay for all fees and costs associated with retaining the monitor.

3.4 The Board recommends that Respondent pay costs to the Board in the amount of \$7,500.

**APPROVED AND ORDERED BY THE
CERTIFIED PROFESSIONAL GUARDIAN BOARD**

This 28 day of Jan. 2015, ~~2014~~

James W. Lawler
Honorable James W. Lawler, Chair
Certified Professional Guardian Board

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

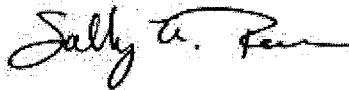
IN THE MATTER OF THE DISCIPLINARY)
PROCEEDING AGAINST:) No. 88513-3
) GR 17 Declaration
LORI A PETERSEN, CPG No. 9713,)
)
Petitioner.)

I, Sally N. Rees, hereby declare that:

1. I have personally examined the Findings of Facts, Conclusions of Law, and Recommendations to the Supreme Court, consisting of 16 pages, including this declaration;
2. The attached faxed signature page from The Honorable James Lawler, Chair of the Certified Professional Guardian Board, is true, correct, and legible.
3. With the inclusion of the faxed signature page, the document is complete.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct to the best of my knowledge.

EXECUTED this 28th day of January, 2015, at Olympia, Washington.



Sally N. Rees, Sr. Court Program Analyst
Administrative Office of the Courts
PO Box 41170-1170
Olympia, WA 98504
Phone: (360) 704-4062 Fax: (360) 956-5700

ATTACHMENT B

Filed
Washington State Supreme Court

MAR 13 2015

Ronald R. Carpenter
Clerk

THE SUPREME COURT OF WASHINGTON

IN RE:)
)
LORI A. PETERSEN,)
)
CPG No. 9713.)
_____)

ORDER

Supreme Court No.
91244-1

This Court, by opinion dated July 3, 2014, in *DISCIPLINE OF PETERSEN, 180 Wn.2d 768*, remanded this matter back to the Certified Professional Guardian Board so it could determine whether the sanction it asked the Court to impose against Lori A. Petersen promotes consistency. After the matter was remanded, the Board additionally considered the matter at its regularly-scheduled meeting on January 12, 2015, and adopted "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS *Disciplinary Regulation 513*" (Findings).

On February 4, 2015, the Certified Professional Guardian Board's (Board) filed with this Court a "PETITION FOR ORDER OF SUSPENSION" (Petition), dated January 28, 2015, in the matter of Lori A. Petersen. Pursuant to the Disciplinary Regulation 512.4.4, the Board petitioned the Court: (1) to affirm the Board's sanction against Lori A. Petersen of a one year suspension as proportional; (2) to affirm the Board's recommendations for the remedy of monitoring for 24 months following the end of the suspension at Lori A. Petersen's expense; and (3) to affirm the Board's recommendation that Lori A. Petersen pay costs to the Board in the amount of \$7,500.00. The Court reviewed both the Petition and the Findings, and after further consideration of the matter, the Court determined unanimously that the following order should be entered. Now, therefore, it is hereby

697/805

ORDERED:

That the Board's recommendations to the Supreme Court are affirmed and adopted. Therefore, Lori A. Petersen is suspended for a period of one year. The effective date of suspension is 7 days from the date of this order. Following the end of the one year suspension, she shall be monitored for a 24 month period. The monitoring shall be at Lori A. Petersen's expense. Lori A. Petersen shall pay costs to the Board in the amount of \$7,500.00.

DATED at Olympia, Washington, this 13th day of March, 2015.

For the Court

Madsen, D. J.
CHIEF JUSTICE

ATTACHMENT C

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

In the Matter of:

EMERALD CITY GUARDIANSHIP SERVICES, INC., CPGA NO. 11249, and CRYSTAL JORDAN, CPG NO. 10941,

Respondents.

CPGB NO. 2012-039

FINAL DECISION AND RECOMMENDATION TO SUPREME COURT

I. STATEMENT OF THE CASE

1.1 A Disciplinary Proceeding Complaint ("Complaint") and Notice to Answer ("Notice") were filed on March 11, 2014.¹ Respondents Emerald City Guardianship Services, Inc. ("ECGS") and Crystal Jordan were served via certified mail with the Complaint and Notice on March 13, 2014. Respondents failed to file a response. A Default Order was issued by SOPC Chair Robert Swisher on May 19, 2014.

1.2 On March 12, 2014, a Petition for Suspension Pending Disciplinary Proceedings was issued, pursuant to DR 519.1. Respondents contested the Petition for Suspension. On March 25, 2014, the Board issued an Order suspending the certifications of each of the Respondents.

1.3 An administrative hearing was held on July 16, 2014 before Hearing Officer Jeff Crollard on the Complaint. At the hearing, the Certified Professional Guardian Board

¹ On March 12, 2014, a Petition for Suspension Pending Disciplinary Proceedings was issued, pursuant to DR 519.1. On March 25, 2014, the Board issued an Order suspending the certifications of each of the Respondents. The Hearing Officer for the hearing held on July 16, 2014 was not bound by the Findings of Fact and Conclusions of Law made in the March 25, 2014 Order.

1 ("Board") was represented by Chad C. Standifer, Assistant Attorney General. ECGS and Crystal
2 Jordan did not appear. On September 11, 2014, the Hearing Officer issued Findings of Fact,
3 Conclusions of Law, and Recommendations to the Board ("Recommendations to the Board").
4 The Board received and reviewed a Statement in Support of the Hearing Officer's
5 Recommendations to the Board ("Statement") and a Declaration of Carla A. Montejo in
6 support of the costs incurred by the Board.

7 1.4 In rendering its decision, the Board considered the entire record on review,
8 including, without limitation, any pleadings, testimony, the transcript of the evidentiary
9 hearing held before the Hearing Officer, and the September 11, 2014 Recommendations to
10 the Board, and the arguments of legal counsel.

11 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12 2.1 The Findings of Fact, Conclusions of Law, and Recommendations to the Board
13 submitted by the Hearing Officer Jeff B. Crollard on September 11, 2014, are incorporated by
14 reference and attached at Exhibit A.

15 2.2 The Board affirms the Findings of Facts (paragraphs 1-34) in their entirety. The
16 Board affirms paragraphs 1-34 of the Conclusions of Law, with the exception of paragraph 35.
17 The following Conclusions of Law numbered 35-37 are substituted therein, as follows:

18 35. The sanctions proposed in the present case are proportional to
19 the sanctions imposed in the above disciplinary agreements, based upon
20 the comparative egregiousness of the guardian's misconduct and the presence
21 of aggravating and mitigating factors.

22 36. Board Staff have incurred expenses associated with the
23 administrative adjudication of this matter totaling \$20,414.22, which includes
24 \$10,257.22 for attorney's fees. Declaration of Carla Montejo. The Board may
25 order a professional guardian to pay costs, including the cost of the
26 disciplinary process and any other directly provable expense, including
attorney fees as part of the sanctions imposed. DR 516. A Hearing Officer
may recommend the payment of costs as part of his or her findings and
conclusions. *Id.* In this matter, the Hearing Officer recommended that
the Respondent be ordered to pay the costs. Recommendations to
the Board at 26-27. The Hearing Officer further recommended that the

1 Board cap the costs sanction at an amount of not more than \$7,500, or some
2 other reasonable amount determined by the Board. *Id.* In reliance on the
3 Washington Supreme Court's proportionality analysis in *In re Petersen*, 180
4 Wn.2d 768, 329 P.3d 853 (2014), the Hearing Officer declined to recommend
5 attorney's fees on the basis that the Board has rarely imposed such fees as part
6 of a sanction on a guardian Recommendations to the Board at 27. The Board
7 does not agree with the Hearing Officer's recommendation regarding attorney's
8 fees.

9 37. The Board has only rarely incurred attorney's fees of any
10 significance in prior disciplinary matters. The vast majority of disciplinary
11 matters have been resolved through an Agreement Regarding Discipline prior
12 to hearing and without the need for the services of the Office of the Attorney
13 General. *In re Petersen* was in fact the first Board matter to result in a
14 contested hearing. Because Ms. Jordan contested the suspension of her
15 certification, the services of the Office of the Attorney General were
16 necessary and the Board incurred substantial attorney's fees. Further,
17 although Ms. Jordan was held in default for failing to answer the Disciplinary
18 Proceeding Complaint, the Board was required to hold a hearing and present
19 evidence justifying the sanctions sought in this matter. DR 511.6.3. Like the
20 suspension hearing, substantial attorney's fees were therefore incurred in
21 conjunction with that hearing. In addition, there are numerous aggravating
22 factors present in this matter, including dishonest motives, a pattern of
23 misconduct, failure to cooperate during the disciplinary proceedings, refusal
24 to acknowledge the wrongful nature of the conduct, and the vulnerability of
25 the victim. Requiring Ms. Jordan to reimburse the Board for both its costs and
26 its attorney's fees incurred through this disciplinary matter is appropriate.

III. FINAL RECOMMENDATION

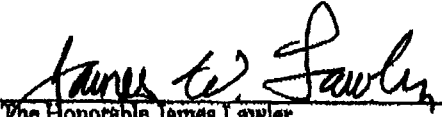
The Board having made Findings of Fact and Conclusions of Law, now, therefore
IT IS HEREBY RECOMMENDED TO THE SUPREME COURT:

- 3.1 That the certifications of ECGS and Crystal Jordan be revoked; and
- 3.2 That ECGS and Crystal Jordan be ordered to, jointly and severally, pay the costs of this disciplinary proceeding in the amount of \$20,414.22.

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APPROVED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD

this 13 day of Jan, 2015.


The Honorable James Lawler
Chair, Certified Professional Guardian Board

FINAL DECISION AND RECOMMENDATION 4
TO THE SUPREME COURT

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
1125 Washington Street SE, PO Box 40110
Olympia, WA 98504-0110
(360) 783-2702

ATTACHMENT D

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF:)
)
 EMERALD CITY GUARDIANSHIP)
 SERVICES, INC., CPGA NO. 11249)
 AND CRYSTAL JORDAN, CPG NO.)
 10941,)
)
 RESPONDENT.)

SUPREME COURT NO.
 91243-2
 ORDER OF
 DECERTIFICATION

Filed
 Washington State Supreme Court
 Ronald R. Carpenter
 Clerk
 MAR 31 2015

On February 4, 2015, the State of Washington Certified Professional Guardian Board (“Board”) filed a “PETITION FOR ORDER OF DECERTIFICATION OF EMERALD CITY GUARDIANSHIP SERVICES/CRYSTAL JORDAN” (“Respondents”). A disciplinary hearing was held on July 16, 2014 before Hearing Officer Jeff B. Crollard. Hearing Officer Jeff B. Crollard recommended that the certifications of Emerald City Guardianship Services and Crystal Jordan be revoked; and that Emerald City Guardianship Services and Crystal Jordan be ordered to, jointly and severally, pay the costs of this disciplinary proceeding. After considering the Hearing Officer’s “Findings of Fact, Conclusions of Law, and Recommendations to the Board” on January 13, 2015, the Board entered it’s “Final Decision and Recommendation to Supreme Court” which recommended that the certifications of Emerald City Guardianship Service and Crystal Jordan be revoked; and that of Emerald City Guardianship Service and Crystal Jordan be ordered to, jointly and severally, pay the costs of this disciplinary proceeding in the amount of \$20,414.22. This matter regarding the decertification of Respondents was forwarded to the Supreme Court of Washington for review pursuant to DR 512.4.4 and received on February 4, 2015. The Court reviewed the petition and files herein and Court determined unanimously that the following order should be entered.

Now, therefore, it is hereby

ORDERED:

The Board’s recommendation for decertification of Emerald City Guardianship Services and Crystal Jordan is adopted. Emerald City Guardianship Services and Crystal Jordan shall both be decertified as a certified professional guardians and their certifications revoked effective immediately. Additionally, Emerald City Guardianship Service and Crystal Jordan are ordered

697/830

ORDER
91243-2
Page 2

to, jointly and severally, pay the costs of this disciplinary proceeding in the amount of \$20,414.22. Pursuant to DR 513.4.1 this matter may be referred to the superior court of each county.

DATED at Olympia, Washington this 31st day of March, 2015.

For the Court,

Madsen, C. J.
CHIEF JUSTICE

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

In the Matter of:

MAUREEN CARROLL,
CPG No. 10908

Respondent.

CPGB NO: 2012-002, 2012-013,
2012-038, 2012-045, 2012-046

RESPONDENT'S REBUTTAL TO
BOARD STAFF'S STATEMENT
REQUESTING PARTIAL
MODIFICATION OF HEARING
OFFICER'S RECOMMENDATIONS
TO THE BOARD

I. INTRODUCTION

Respondent Maureen Carroll never disputed that during the period from 2010 through 2012 she encountered problems filing her guardian reports on time. She corrected all of those errors. The hearing officer found that every delinquent report was completed and filed with the Court and that every report was approved by the Court. Moreover, the hearing officer found and Board Staff does not dispute that no harm resulted from these actions.

Respondent requested a hearing on the grievances brought by Board Staff because the sanction being sought by Board Staff (decertification) went too far. No certified professional guardian has ever been decertified because of late filings when the guardian took corrective action to fix her mistakes. Respondent agreed to accept a lesser sanction. However, Board Staff refused every offer and steadfastly pursued the unprecedented draconian remedy of decertification.

1 Washington law requires any sanction assessed against Respondent to be proportional
2 with sanctions imposed against other guardians for like actions. The hearing officer correctly
3 found that Board Staff's request to decertify Respondent was not proportional and Board
4 Staff's request was denied.

5 This matter proceeded to hearing because Board Staff unreasonably and improperly
6 sought a sanction against Respondent that was not allowed under Washington law.
7 Respondent defended herself against Board Staff's improper efforts to have her decertified.
8 Respondent's defense came with significant costs to her. Unfortunately, despite prevailing at
9 hearing and having Board Staff's request to decertify her denied, Respondent bore those
10 defense costs herself, and will forever be saddened, disillusioned, bruised, and wounded as a
11 result. The costs incurred by Board Staff in this case are the result of their own ignorance of
12 the law and stubbornness. Even now, Board Staff refuses to admit their mistakes in seeking
13 decertification, content rather to pour salt on Respondent's wounds and have her pay for their
14 own mistakes. Such a request insults the foundations of justice and must be denied. If anyone
15 should be reimbursed costs, it is the Respondent.

16 II. AUTHORITY AND DISCUSSION

17 2.1 BOARD STAFF'S STATEMENT IS NOT TIMELY AND SHOULD NOT BE 18 CONSIDERED.

19 Program rules require any statement in opposition to the decision of the hearing officer
20 to be filed within twenty (20) days from the receipt of the hearing transcript, not the decision
21 of the hearing officer. DR 512.2. Board Staff provided Respondent with the hearing
22 transcript on June 3, 2015.¹ Thus, under DR 512.2, any statement in opposition to be filed by
23 Board Staff was due no later than June 25, 2015. Board Staff waited until March 3, 2016 to

24 ¹ A true and correct copy of the June 3, 2015 email from Board Staff transmitting a copy of the hearing transcript to the parties is attached as Exhibit A.

1 file their Statement in Opposition, 252 days past the deadline.² The rule is unambiguous.
2 Because the statement in opposition filed by Board Staff is 252 days past the deadline
3 imposed by DR 512.2, the statement in opposition filed by Board Staff should not be
4 considered and the Board should adopt the hearing officer's ruling and recommendations.

5 2.2 ANY SANCTION AGAINST RESPONDENT MUST BE PROPORTIONAL
6 TO SANCTIONS IMPOSED AGAINST OTHER GUARDIANS IN PAST DISCIPLINARY
7 MATTERS.

8 Before imposing sanctions, "the Board must provide its reasoning for its
9 recommended sanction not just in reference to the conduct of the guardian but also in
10 reference to past disciplinary matters." *In re Disciplinary Proceeding Against Peterson*, 180
11 Wn.2d 768, 791, note 20, 329 P.3d 853 (2014). "This means the Board must consider the
12 penalties that were imposed in past cases that appear to involve similar violations of
13 regulations or similar punishments as that in the present case." *Id*; see also, *Peterson* CPGB
14 No. 2010-005, 2010-006, 2010-007, 2010-008, and 2009-013, Findings of Fact, Conclusions
15 of Law, ad Recommendations, dated January 28, 2015 at § 2.3.1 (holding that "similar
16 situations" inherently means similar facts of the case.").

17 Board Staff wants Respondent to pay a portion of the costs Board Staff incurred when
18 it insisted on pursuing an improper sanction, decertification. Had Board Staff acted
19 reasonably and followed Washington law, their costs would have been far less. Here,
20 imposing any portion of Board Staff's costs against Respondent is not proportional to the
21 sanctions imposed in *any* other Board disciplinary matter as Respondent corrected the
22 behavior.

23 _____
24 ² The hearing in this matter was held on May 6, 2015. The written decision of the hearing officer was not issued until February 12, 2016, 282 days after the hearing.

1 Board Staff must consider how an award of costs against Respondent is proportional to
2 any prior award of costs in past disciplinary matters against other guardians in similar
3 situations. *Peterson*, 180 Wn.2d at 791. Yet Board Staff offers no proportionality analysis on
4 the issue of costs, instead simply citing four prior disciplinary matters against other guardians
5 where the board imposed an award of costs against those guardians. Board staff concludes
6 that these four cases reflect “the Board’s custom of ordering a Respondent to pay at least a
7 portion of the costs of the disciplinary process.” *Statement Requesting a Partial Modification*
8 *of the Hearing Officer’s Recommendations to the Board*, § III(A). No discussion of the
9 commonalities and differences between the current case and prior cases is offered. However,
10 as the Supreme Court made clear in *Peterson*, a sanction against a guardian is not a matter of
11 custom. 180 Wn.2d at 864, note 20. Rather, the Board must fashion a sanction in proportion
12 to the sanctions imposed against other guardians for similar violations. *Id.*

13 Moreover, two of the four cases cited by Board Staff (*In Re Ethicare*³ and *In Re*
14 *Sound Guardianship*⁴) were resolved by agreed settlement, not a ruling by a Court. In
15 *Peterson*, the Supreme Court acknowledged that sanctions imposed by agreed settlement were
16 likely distinguishable in terms of a proportionality analysis from sanctions imposed at the
17 conclusion of an adjudicative hearing. 180 Wn.2d at 864, note 20.

18 Board Staff now argues that the \$3,000 sanctions imposed in *EthiCare* and *Sound*
19 *Guardianship* were “deemed appropriate.” But these were not awards of costs by a trier of
20 fact. No hearing occurred in those cases. Instead, in both *EthiCare* and *Sound Guardianship*,
21 the guardians agreed to a sanction of \$3,000 for their violations. Those amounts reflect only
22 what those guardians were willing to pay, nothing more, and certainly not what some

23 ³ A true and correct copy of the Agreement Regarding Discipline and Stipulated Findings entered in *In re*
EthiCare, CPGB No. 2007-025 is attached as Exhibit B.

24 ⁴ A true and correct copy of the Agreement Regarding Discipline and Stipulated Findings entered in *In re Sound*
Guardianship, CPGB No. 2011-007 and 2011-018 is attached as Exhibit C.

1 independent trier of fact determined to be “appropriate.” In the present case, the hearing
2 officer reviewed all of the pleadings, listened to testimony and argument of counsel, and
3 concluded that no award of costs was appropriate. Neither *EthiCare* nor *Sound Guardianship*
4 is comparable and the Board should follow the hearing officer’s careful reasoning.

5 *Sound Guardianship*, is also dissimilar to the facts in the present case. There the
6 guardian failed to assume responsibility for the incapacitated person’s affairs in a timely
7 manner, acted as guardian prior to having the necessary authority to act with the issuance of
8 her Letters of Guardianship, and improperly restricted visits between the incapacitated person
9 and family members. The guardian also was found to have taken no corrective action to
10 mitigate her violations. Ultimately, she agreed to a reprimand and to reimburse the Board the
11 sum of \$3,000. None of these violations are comparable to the allegations against Respondent
12 in the present case. Further, unlike the guardian in *Sound Guardianship*, Respondent took
13 corrective action and filed all of her late court reports and obtained court approval of each of
14 those reports. The hearing officer found that Respondent took appropriate corrective actions
15 and that no harm resulted from any of her late filings. Thus, the agreed sanction in *Sound*
16 *Guardianship* is in no way comparable to the facts in the instant case, and the Board should
17 hold that *Sound Guardianship* does not support an award of costs against Respondent.

18 *Peterson* and *Emerald City Guardianship Services* are also factually dissimilar. In
19 *Peterson*, the guardian failed to carefully consider the views and opinions of professionals,
20 family, and friends of the incapacitated persons she served, placing the incapacitated persons
21 she served at risk of harm. No such allegations were asserted against Respondent in the
22 instant case. Instead, Respondent failed to file her court reports on time. Respondent never
23 disputed that she was late filing those reports. Unlike the guardian in *Peterson*, Respondent
24 took steps to correct her late filing violations. Every late report was filed with the court and
approved by the court. The hearing officer found that none of the incapacitated person’s

1 served by Respondent were harmed. Because Respondent took necessary steps to correct and
2 cure her late filings and because no harm resulted from the late filings, the instant case is
3 dissimilar to *Peterson*, and an award of costs is not justified in this case.

4 In *Emerald City Guardianship Services*, the guardian (appointed as an agent of the
5 Office of Public Guardian) failed to marshal and account for assets, was found to have
6 financially exploited at least one client, failed to visit at least one client regularly, failed to
7 provide at least one client with adequate clothing, failed to pay at least one client's bills in a
8 timely manner, and failed to request a reduction of participation for nursing home costs for at
9 least one client. The Board also found that the guardian had dishonest motives, was engaged
10 in a pattern of misconduct, failed to cooperate with the disciplinary proceeding, and refused to
11 acknowledge the wrongful nature of her conduct. As a result, the Board imposed costs related
12 to the disciplinary proceeding against the agency and the guardian, jointly and severally, in the
13 amount of \$20,414.22.

14 None of these facts exist in the instant case. Here, Respondent filed some court
15 reports late. Every report was presented to the court for approval and approved. None of her
16 clients were harmed by the late filings. The facts in *Emerald City Guardianship Services* are
17 in no way similar to the instant case. Thus, *Emerald City Guardianship Services* is not
18 comparable to the instant case and does not support an award of costs against Respondent.

19 2.3 BOARD STAFF HAS FAILED TO SHOW THEIR FEES AND COSTS
20 WERE JUST AND REASONABLE.

21 The Board may order a guardian to pay costs, including the costs of the disciplinary
22 process and attorneys' fees as part of the sanction to be imposed on the guardian. DR 516. An
23 award of costs is not mandatory and is within the discretion of the hearing officer and the
24 Board. However, it should be noted that any award of costs must meet the proportionality test
of *Peterson*. 180 Wn.2d at 790-791. As discussed above, in this case, an award of costs

1 against Respondent is not proportional to the sanctions imposed against other guardians in
2 prior disciplinary cases involving similar facts. Accordingly, the hearing officer did not
3 recommend the imposition of costs against Respondent. The Board should adopt the hearing
4 officer's recommendation.

5 Respondent never disputed that she filed court reports late during the period from
6 2012-2012. The only issue she challenged was the appropriateness of Board Staff's efforts to
7 decertify her as a result of the late court filings. The evidence is uncontroverted that every late
8 report was ultimately filed and approved by the Court. No harm came to any of the
9 Respondent's clients as a result of the late filings. Despite the fact that no guardian has ever
10 been decertified for late filings when corrective action has been taken, Board Staff insisted
11 that the only sanction they would accept was decertification. Moreover, Board Staff testified
12 at the hearing that they conducted no analysis of the proportionality of the sanction they
13 sought against Respondent (i.e., decertification) prior to the hearing. The decision by Board
14 Staff to seek decertification only and to not entertain any lesser sanction was draconian and
15 not supported by law. The hearing officer agreed and ruled that decertification was not an
16 appropriate sanction.

17 It should also be noted that an award of costs against Respondent is not proper because
18 Board Staff has not shown that the costs incurred by them were just and reasonable. In
19 guardianship matters, fees and costs must be just and reasonable. RCW 11.92.180; *In re*
20 *Guardianship of Decker*, 188 Wn. App. 429, 447-448, 353 P.3d 669 (2015), *rev. denied*, 184
21 Wn.2d 1015, 360 P.3d 818 (2015).

22 Board Staff wants Respondent to pay all or a portion of the costs associated with its
23 poorly considered decision to insist on decertification. To support their request, Board Staff
24 offers a three paragraph one-page declaration saying the total of the costs associated with the
case is \$41,740.03. Board Staff provides no statements itemizing the services carried out by

1 the Grievance Investigators. Similarly, no itemized statement is provided for the legal
2 services provided by the Attorney General's office or the Hearing Officer⁵. Without itemized
3 statements showing the services provided and the rates charged, it is not possible for the
4 Board to determine that the any of the services provided were just and reasonable. Similarly,
5 it is impossible for the Respondent to challenge any of the services provided as no one knows
6 what those services were. Because Board Staff failed to provide itemized statements showing
7 the specific services provided, Respondent has been deprived of her right to review and
8 comment on the reasonableness of those costs. For this reason, the Board should find that the
9 costs sought by Board Staff are not just and reasonable. In the alternative, the Board should
10 direct Board Staff, the hearing officer, and the Attorney General's Office to submit itemized
11 fee statements that can be reviewed by Respondent, thereby providing her with an opportunity
12 to present specific objections to specific charges that are being sought.

12 III. CONCLUSION

13 Board Staff improperly sought decertification of Respondent due late court filings.
14 Respondent acknowledged the reports were filed late. She took corrective action and filed
15 every delinquent report with the court and obtained approval of each report. None of her
16 clients were harmed by these late filings. Respondent requested a hearing because Board Staff
17 refused to agree to any sanction short of decertification. Board staff ignored the law and
18 stubbornly pushed onward with an ill-fated effort to decertify Respondent. Board Staff bears
19 responsibility for their decision to not negotiate and reach a reasonable settlement in this
20 matter. The hearing officer properly found that decertification was not an appropriate
21 sanction. Apparently not satisfied, and once again without doing any meaningful
22 proportionality analysis, Board Staff now seeks the imposition of its costs against Respondent,

23 _____
24 ⁵ The hearing officer inexplicably waited 282 days to submit his ruling in this matter. It is difficult to see how
such an unwarranted delay in bringing this matter to a close can ever be found to be reasonable.

1 even though Board Staff failed to prevail at the hearing. Any fair proportionality analysis
2 reveals that an award of costs against Respondent is not proper, just or reasonable. Instead,
3 such an analysis would support Board Staff having to pay all or a portion of Respondent's
4 costs in defending herself from their overreaching. For these reasons, Respondent respectfully
5 requests that the Board adopt the hearing officers ruling and recommendations in full.

6 DATED this 11th day of March, 2016.

7 AIKEN, ST. LOUIS & SILJEG, P.S.

8
9 By 

10 Richard L. Furman, WSBA No. 31101
11 Attorneys for Respondent
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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the laws of the State of Washington, that a copy of Respondent's Rebuttal to Board Staff's Statement Requesting Partial Modification of the Hearing Officer's Recommendations to the Board was sent via electronic mail to:

Chad Standifer, Assistant Attorney General
Government Compliance & Enforcement
P.O. Box 40100
Olympia, WA 98504-0100
Attorney for CPG Board
Sent via Email: chads@atg.wa.gov

Certified Professional Guardian Board
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170
Sent via Email: kim.rood@courts.wa.gov



Print Name: Jannavie Chinn
Dated: March 11, 2016
Seattle, Washington

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Richard Furman

From: Rood, Kim [Kim.Rood@courts.wa.gov]
Sent: Wednesday, June 03, 2015 2:14 PM
To: Standifer, Chad (ATG); Richard Furman; Jeff Crollard
Cc: patrick@crollardlaw.com; Rood, Kim; Bondon, Shirley; Montejo, Carla
Subject: Maureen Carroll Hearing transcript
Attachments: Carroll, Maureen verbatim report of proceedings 5-6-15.pdf

Please see attached.

Kim Rood | Office of Guardianship and Elder Services
Administrative Office of the Courts | PO Box 41170 | Olympia, WA 98504-1170
☎ (360) 705-5314 | Kim.Rood@courts.wa.gov | www.courts.wa.gov
Fax (360) 956-5700

EXHIBIT A

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

**EthiCare, Inc., CPGA No. 5133,
George Marcoe, CPG No. 5218,
Terese Marcoe, CPG No. 10009, and
Julie A. Crawford, CPG No. 10408**

CPGB No. 2007-025

**AGREEMENT REGARDING DISCIPLINE
AND STIPULATED FINDINGS**

Disciplinary Regulation 514

The parties, EthiCare, Inc. (EthiCare), CPGA No. 5133, a certified professional guardian agency (CPGA), and George Marcoe (Mr. Marcoe), Certified Profession Guardian (CPG) No. 5218, and Terese Marcoe (Ms. Marcoe), CPG No. 10009, and Julie A. Crawford (Ms. Crawford), CPG No. 10408, and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. (Mr. Marcoe, Ms. Marcoe, and Ms. Crawford will be referred to collectively as "the Guardians" when there is no need to distinguish between them.) EthiCare and the Guardians have committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is subject to approval by the Board. The Agreement will be a part of the professional guardian record of EthiCare and the Guardians and will be a public record and subject to public access.

ORIGINAL

AGREEMENT REGARDING DISCIPLINE
(CPGB No. 2007-025)

EXHIBIT B

1. JURISDICTION

1
2 1.1 At all times relevant herein, George Marcoe was a certified professional guardian pursuant
3 to General Rule (GR) 23, CPG No. 5218. Mr. Marcoe is the President, a board member, and one of
4 the designated certified professional guardians of EthiCare, Inc.

5 1.2 At all times relevant herein, Terese Marcoe was a certified professional guardian pursuant to
6 GR 23, CPG No. 10009. Ms. Marcoe is one of the designated certified professional guardians of
7 EthiCare.

8 1.3 At all times relevant herein, Ms. Crawford was a certified professional guardian pursuant to
9 GR 23, CPG No. 10408. Ms. Crawford is one of the designated certified professional guardians of
10 EthiCare.

11 1.4 At all times relevant herein, EthiCare was a Certified Professional Guardianship Agency
12 pursuant to GR 23, CPG No. 5133.

2. STATEMENT OF FACTS

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15 2.1 On July 8, 2002, the Board entered into a Settlement Agreement with Mr. Marcoe and
16 EthiCare to resolve PGB No. 1999-0001. Mr. Marcoe and EthiCare agreed to clearly identify and
17 disclose any surcharges or fees charged by independent contractors and the method of calculation of
18 such surcharges. *See* Settlement Agreement in Professional Guardian Board (PGB) No. 1999-0001,
19 attached hereto as Attachment A and incorporated herein. Mr. Marcoe and EthiCare also agreed to
20 file a Declaration of Guardian with the court and provide a copy to clients prior to, or at the time,
21 that Mr. Marcoe or EthiCare are appointed to provide guardian services. The Settlement Agreement
22 also provided that a breach of the Agreement may constitute grounds for discipline.

23 2.2 No designated certified professional guardian with EthiCare filed a Declaration of Guardian
24 as required and described in Settlement Agreement PGB No. 1999 0001, prior to, or at the time,
25 EthiCare was appointed as guardian in the following cases:

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#	Case Number	County	Date Appointed
1	05-4-00096-7	Snohomish	4-21-05
2	07-4-01353-4	Snohomish	1-24-08
3	97-4-04034-2 SEA	King	5-20-06
4	02-4-03815-5 KNT	King	12-27-02
5	92-4-03694-8 SEA	King	5-20-05
6	97-4-03035-5 SEA	King	5-20-05
7	05-4-01720-9 SEA	King	5-11-05
8	89-4-03894-1 SEA	King	5-20-05
9	06-4-00865-6	Snohomish	9-21-06

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.1 and 2.2, Ethicare, Mr. Marcoe, Ms. Marcoe, and Ms. Crawford breached the Settlement Agreement in PGB No. 1999-0001. The language of the Settlement Agreement is set forth in pertinent part:

Section 1A:
George Marcoe and Ethicare, Inc., agree that in all cases in which they are retained or appointed to provide services as guardian...they will clearly identify and disclose to their clients and to the court any surcharges added onto the fees or costs...

Section 1B:
George Marcoe and Ethicare, Inc. agree to file a Declaration of Guardian with the court and provide a copy to clients prior to, or at the time that George Marcoe or Ethicare, Inc., are retained or appointed to provide guardian services...The Declaration must contain all information required in the Declaration form that is attached as Exhibit 1 to this Settlement Agreement, and shall meet all court rule requirements for disclosures required in court-appointed guardianship cases.

Section IV:
Breach of this agreement by George Marcoe or Ethicare, Inc., may constitute grounds for discipline. In the event of an alleged breach of this agreement, the Board shall provide notice to George Marcoe and Ethicare, Inc. of the substance of the breach, and George Marcoe and Ethicare, Inc. shall have 30 days to respond to the allegations of breach. If the Board finds that the agreement has been breached, the Board, at its option, may pursue disciplinary action under this complaint or file a separate disciplinary action.

Attachment A, PGB No. 1999-0001.

1 3.2 Based on the facts and violations set forth above in paragraphs 2.1 through 2.2 and 3.1,
2 EthiCare and the Guardians' conduct constitutes grounds for discipline pursuant to
3 GR 23(c)(2)(viii) and Disciplinary Regulations which provide in pertinent part:

4 GR 23(2)(viii) Grievances and Discipline. The Board shall adopt and implement
5 procedures to review any allegation that a professional guardian has violated an applicable
6 statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose
7 sanctions upon a finding of violation. Sanctions may include decertification or lesser
remedies or actions designed to ensure compliance with duties, standards, and requirements
for professional guardians.

8 DR 503 A professional guardian may be subject to disciplinary action for any of the
following:

9 503.3 Failure to perform any duty one is obligated to perform as a professional
guardian.

10 DR 514.4 Failure to comply with the terms of an Agreement Regarding Discipline may
11 constitute additional grounds for discipline.

12 DR 516 The Board may order a professional guardian to pay costs including cost of
13 the discipline process and any other directly provable expense, including attorney fees as
14 part of the sanctions imposed. A Hearing Officer may recommend the payment of costs.
Failure of a professional guardian to pay costs or to pay restitution when ordered to do so, or
failure to comply with the terms entered, may constitute additional grounds for discipline.

15 3.3 EthiCare and the Guardians admit that declarations as required by the settlement agreement
16 were not timely filed in the cases listed in paragraph 2.2, but admit no other wrongdoing. EthiCare
17 and the Guardians note that the declarations were prepared and provided to their attorney, however,
18 the attorney failed to ultimately timely file the declarations with the Court. EthiCare and the
19 Guardians affirmatively acknowledge that they are responsible for the actions of their attorney.

20 4. AGGRAVATING AND MITIGATING FACTORS

21 Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating
22 factors in determining the sanctions to be imposed.

23 4.1 Aggravating Factors. Prior non-disciplinary settlement agreement with the Board.

24 4.2 Mitigating Factors. Absence of dishonesty or selfish motive, remoteness of prior offenses,
25 and implementation of remedial measures to mitigate harm or risk of harm.

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5. PRIOR RECORD OF DISCIPLINE

EthiCare and Mr. Marcoe have a prior record of discipline with the Board that is reflected in the Settlement Agreement, PGB No. 1999-0001.

6. AGREEMENT OF THE PARTIES REGARDING DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on EthiCare, Mr. Marcoe, Ms. Marcoe, and Ms. Crawford for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

6.1 EthiCare and the Guardians agree to provide the Board with copies of the Declaration of Proposed Guardian filed in all new cases in which EthiCare is appointed as a guardian for a period of six months after this Agreement is adopted by the Board. (See attached sample Declaration, attached hereto as Attachment B.)

6.2 EthiCare and the Guardians shall pay the Board \$3,000 towards the Board's costs pursuant to DR 516. Payment shall be made within 30 days of the date this Agreement is approved by the Board.

7. VIOLATION OF AGREEMENT

7.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4.

7.2 In the event of an alleged breach of this Agreement, the Board shall provide notice to EthiCare and the Guardians of the substance of the breach, and EthiCare and the Guardians shall have 30 days to respond to the allegations of the breach.

7.3 If the Board finds that the Agreement has been breached, the Board may pursue disciplinary action, including Suspension Pending Disciplinary Proceedings pursuant to DR 519, against the professional guardian agency for violation of the Agreement.

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8. NOTICE

8.1 This Agreement shall be retained by the AOC in EthiCare's and the Guardians' disciplinary files. This Agreement shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3:2.

9. ENTIRE AGREEMENT

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

10. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

11. LAWS GOVERNING

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.

12. RIGHT TO COUNSEL

EthiCare and the Guardians acknowledge that each has the right to individual counsel for representation in this disciplinary matter, at their own expense, as set forth in DR 509.1.

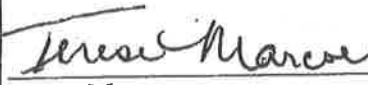
13. PRESENTATION OF AGREEMENT TO THE BOARD

EthiCare and the Guardians understand that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, EthiCare and the

1 Guardians waive any objection to the participation in the final determination of this matter of any
2 Board member who heard the Agreement presentation.

3 **COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:**

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5 
6 _____ 7-23-10
Date
7 George Marcoe,
8 Individually and as Designated CPG of EthiCare, Inc.

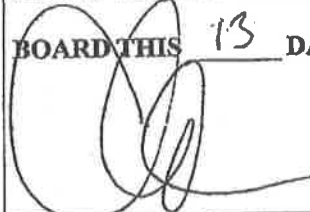
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10 _____ 7-23-10
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11 Terese Marcoe,
12 Individually and as Designated CPG of EthiCare, Inc.

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14 _____ 7-23-10
Date
15 Julie Crawford,
16 Individually and as Designated CPG of EthiCare, Inc.

17 
18 _____ 7-23-10
Date
19 Michael Olver
20 Attorney for EthiCare, Inc.
21 WSBA #7031

22 **APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN**

23 **BOARD THIS** 13 **DAY OF** August, 2010.

24 
25 _____
26 Hon. Chris Wickham
27 Chair, Certified Professional Guardian Board

CERTIFIED PROFESSIONAL GUARDIAN BOARD

)	
)	
Sound Guardianship, LLC	)	CPGB No. 2011-007 and 2011-018
CPGA 10722	)	AGREEMENT REGARDING
and	)	DISCIPLINE AND STIPULATED
Pam Privette, CPG No. 9714,	)	FINDINGS
)	
Respondents.	)	<i>Disciplinary Regulation 514</i>
_____)	

The parties, Sound Guardianship, LLC, (Sound) CPGA No. 10722 and Pam Privette, (Ms. Privette) CPG No. 9714, (Respondents, collectively) and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. Respondents have committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian records of Sound and Ms. Privette and will be a public record and subject to public access.

Agreement Regarding Discipline
(CPGB 2011-007 and 018)
Page 1 of 14

EXHIBIT C

Pursuant to General Rule 23 (GR 23) and the Disciplinary Regulations for Certified Professional Guardians, the Certified Professional Guardian Board ("Board") alleges violations of the Disciplinary Regulations (DR) by Sound Guardianship, LLC and Pam Privette ("Respondents").

1. JURISDICTION

1.1 At all times relevant herein, Ms. Privette was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No.9714. Ms. Privette was certified in August 2001. Ms. Privette is president of Sound Guardianship, LLC.

1.2 At all times relevant herein, Sound Guardianship, LLC was a certified professional guardian agency (CPGA) pursuant to GR 23, CPGA No.10722. Sound was certified in August 2007. At the time of the incident in question, Ms. Privette had final decision-making authority for incapacitated persons on behalf of Sound Guardianship, LLC.

1.3 The Board is responsible for reviewing any allegation that a certified professional guardian or certified professional guardianship agency has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. Pursuant to its Disciplinary Regulations, the Board may impose discipline, sanctions, costs and other remedies upon a finding of violation, or may recommend that the Washington Supreme Court impose discipline, sanctions and costs, when the recommendation is for suspension or decertification of the certified professional guardian or agency.

2. BACKGROUND FACTS

Guardianship of GS, Pierce County Superior Court Case No. 09-4-01399-6

2.1 On or about March 4, 2011, the Board opened a grievance under Certified Professional Guardian Board (CPGB) Number (No.) 2011-007, based on allegations that Respondents did not assume responsibility for GS's financial affairs in a timely manner and improperly restricted visits between the IP and all family and friends for approximately six weeks.

2.2 Due to conflicts between the IP's children and an ongoing investigation into alleged inappropriate conduct and transactions, Ms. Privette was appointed full guardian of the person and estate on December 23, 2009. At the time of appointment Respondent was ordered to obtain a \$50,000 bond.¹ Respondent obtained a \$50,000 bond on March 9, 2010, 76 days after appointment. Subsequently, Letters of Guardianship were issued March 16, 2010, 83 days after appointment.² Between the date of appointment and the date Letters of Guardianship were issued, invoices from Sound Guardianship indicate Respondent performed the following tasks on behalf of GS:

- Conferred with attorneys.
- Applied for a bond.
- Submitted three change of address.
- Met with living facility staff.

¹ A guardianship bond guarantees the legal guardian's performance of all guardianship duties. When required, it acts as a form of insurance that protects the well being of the IP.

² Letters of guardianship are a record of the court's entrustment of care to a guardian. They serve as proof of appointment and authority to take action in a guardianship. Guardians are required to obtain letters of guardianship prior to taking any action in guardianship.

- Prepared initial report.
- Reviewed care plan.
- Obtained bonds, financial information and personal property from attorney.
- Transported GS to physician after a fall.
- Prepared letters to change care.
- Conferred with physician.
- Communicated with company regarding GS's pension.

2.3 On December 28, 2009, five days after appointment, an attorney for one of the IP's children gave Respondent extensive detailed information regarding the financial affairs of the IP, including bank records and evidence of financial exploitation. On May 17, 2010, Respondent filed the Initial Report, Care Plan and Inventory of Guardian which included a preliminary inventory. On February 16, 2011, Respondent filed an Interim Status Report. Both the Initial Report and the Interim Status Report indicated the Respondent had not marshaled all assets (cash and personal property). In addition, more than one year after appointment, Respondent had not been recognized as having the authority to receive information about the IP's financial accounts with Boeing Employees Credit Union (BECU). According to the Respondent, the delay in receiving inform from BECU regarding the accounts related partially to the complex issues concerning acting as a full guardian of the person of GS, due in part to the inappropriate conduct and transactions of some of the IP's children.

2.4 As of March 2011, fifteen months after appointment, the Respondent had not taken any action to investigate the alleged financial exploitation of the IP. On March 7,

2011, one of GS's daughters requested and the court approved appointment of an independent Certified Public Accountant to complete the financial analysis needed to marshal assets. The Respondent did not object to this appointment. No information has been presented to the Board regarding injury or damage having occurred to the IP or the IP's estate based on the Respondent's failure to marshal assets in a timely fashion.

2.5 On or about May 5, 2010, Respondent moved the IP to a senior living community in Puyallup, Washington that provides Alzheimer's and dementia care. According to the Respondent, the IP was moved to provide her with greater structure and supervision and to lessen the pressures from some of her children that preclude her from fully integrating at her prior residence. Family and friends, however, were not informed of the IP's location or given any reason for moving GS. According to the Respondent, the IP's children were told only that she was being moved based on the refusal of her prior facility to allow her to remain there. A letter to the facility, from the Respondent, dated May 14, 2010, informed the facility that per her directive the IP's family and friends were to be given no information about the IP or her location. Per the directive, the IP's family and friends were prohibited from speaking or visiting with the IP for approximately two months. In a letter dated May 19, 2010, Respondent provided similar written instructions to the facility the IP was being moved from. According to Sound Options, the agency responsible for preparing the visit schedule for the IP, all visits by family and friends with the IP were suspended on or about May 5, 2010 to June 17, 2010.

Guardianship of EB, Thurston County Superior Court Case No. 10-4-00620-1

2.6 On or about April 25, 2011, the Board opened a second grievance, CPGB 2011-018, based on allegations that Respondent did not assume responsibility for EB's financial affairs in a timely manner and did not initiate meaningful contact with EB within a reasonable time after appointment.

2.7 On February 28, 2011, Respondent was appointed full guardian of the person and estate. On March 21, 2011, twenty-one days after appointment, Letters of Guardianship were issued to Respondent. Between the date of appointment and the date Letters of Guardianship were issued, invoices from Sound Guardianship indicate Respondent performed the following tasks on behalf of EB.

- Communicated with Guardian ad litem and obtained documents.
- Obtained documents from attorney.
- Phone calls to former caregiver, neighbor and sister.

2.8 Respondent met with the IP personally for the first time on April 11, 2011. A bookkeeper employed by the Respondent met with the IP on March 1, 2011.

Applications Regulations 100

2.12 On or about October 27, 2011 Jean Bohling and Maureen Carroll, certified professional guardians terminated employment with Respondent.

2.13 Pam Privette has been the only certified professional guardian working for Sound Guardianship, LLC from November 1, 2011 to present.

3. VIOLATIONS OF STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.2 and 2.7, Respondent's conduct constitutes grounds for discipline pursuant to RCW 11.88.127, which provides that a guardian may not act on behalf of the incapacitated person without valid letters of guardianship, and pursuant to Standards of Practice 401.1 and 401.4 which provide in pertinent part:

SOP 401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

SOP 401.4 The guardian shall not act outside of the authority granted by the court.

3.2 Based on the facts set forth in paragraph 2.2, Respondent's conduct constitutes grounds for discipline pursuant to RCW 11.88.100, which provides that when a bond is required, it must be obtained and filed before letters of guardianship are issued, and pursuant to Standards of Practice 401.1, 401.4 and 406.2 which provide in pertinent part:

SOP 401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

SOP 401.4 The guardian shall not act outside of the authority granted by the court.

SOP 406.2 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

3.3 Based on the facts set forth in paragraphs 2.3, 2.4, and 2.8, this conduct constitutes grounds for discipline pursuant to Standards of Practice 401.5 which provide in pertinent part:

SOP 401.5 The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

3.4 Based on the facts set forth in paragraph 2.5, the Respondent's conduct constitutes grounds for discipline pursuant to Standards of Practice 401.9 and 404.6 which provide in pertinent part:

SOP 401.9 The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

SOP 404.6 A relocation should include consultation with professionals actively involved in the care of the incapacitated person, the incapacitated person, objective third parties and, whenever possible, appropriately involved family and friends of the incapacitated person.

3.5 Based on the facts set forth in paragraphs 2.9, Respondent's conduct constitutes grounds for discipline pursuant to Standard of Practice 401.15 which provides in pertinent part:

SOP 401.15 Guardians of the Person shall have meaningful in-person contact with their clients as needed and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.

4 VIOLATION OF REGULATIONS

4.1 Based on the facts set forth in paragraphs 2.12 and 2.13, Respondent's conduct constitutes grounds for discipline pursuant to Regulation 119 which provides in pertinent part:

119.1 Pursuant to General Rule of Court (GR) 23, a certified agency must have at least two individual certified professional guardians designated as having final decision-making authority for incapacitated persons or their estates ("designated guardians").

119.2 If a change in circumstances results in an agency having only one designated guardian, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The agency shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian to the agency. During that sixty-day period, the agency must file a copy of its board minutes or a board resolution designating an additional guardian as a person with decision-making authority for incapacitated persons or their estates with the Certified Professional Guardian Board. If the agency fails to meet the requirements of GR 23 and these regulations regarding the required number of designated guardians, the Board may decertify the agency. The Board shall send the agency written notice that the Board intends to decertify the agency at least fifteen (15) calendar days before the Board takes action.

119.3 If a change in circumstances results in an agency no longer having any designated guardians, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The AOC shall send the agency a notice of noncompliance by mail. The notice shall state that the Board will decertify the agency unless within fifteen (15) calendar days the agency files proof with the Board that the agency has at least one designated guardian. Said proof shall be in the form of board minutes or a board resolution designating a certified professional guardian with decision-making authority for incapacitated persons or their estates. If the agency files proof with the Board that it has one designated guardian, then Regulation 119.2 shall apply. The sixty-day period referenced in Regulation 119.2 shall be deemed to have commenced on the same date as the fifteen-day period in this regulation. If the agency does not file proof within the fifteen-day period in this regulation that the agency has at least one designated guardian, then the Board may decertify the agency.

119.4 If a change in circumstances results in an agency having no designated guardians, the agency shall within ten (10) calendar days notify any Superior

Court that has appointed the agency as guardian in a case that is still an active guardianship case. The agency shall file a notice in each active guardianship case stating that the agency has no designated certified professional guardian with final decision-making authority for incapacitated persons or their estates. In the notice, the agency shall describe a plan to correct this situation or to transition the guardianships to qualified guardians or agencies. The agency shall file a copy of this notice with the Board. If the agency fails to file this notice with the court or the Board, the Board may decertify the agency.

119.5 The Board may decertify an agency for its failure to file any notice required under Regulation 119. The Board shall send the agency notice at least fifteen (15) calendar days before the Board intends to take such action.

4.2 Based on the facts and violations set forth above, Respondent's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board...

(2) Duties and Powers....

(viii) Grievances and Discipline. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

DR 503 A professional guardian may be subject to disciplinary action for any of the following:

DR 503.1 Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

DR 503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

DR 503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

5. AGGRAVATING AND MITIGATING FACTORS

Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating factors in determining the sanctions to be imposed.

5.1 Aggravating Factors. None.

5.2 Mitigating Factors. None.

6. PRIOR RECORD OF DISCIPLINE

Ms. Privette has no prior record of discipline with the Board.

7. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on Respondents for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

7.1 Letter of Reprimand. The Board hereby imposes a letter of reprimand on Respondents. This Agreement constitutes the letter of reprimand and shall be placed in the Board's disciplinary files for Respondents.

7.2 Revocation of Certification. Sound Guardianship, LLC will be decertified for failure to have two designated guardians. Ms. Privette will revise all Orders Appointing and Letters of Guardianship for Sound Guardianship, LLC to reflect appointment of Pam Privette as an individual certified professional guardian. Ms. Privette will submit official copies of revised documents to the Board within 90 days of this signed agreement.

8. COSTS

8.1 Reimbursement. Respondents shall not assess IPs fees for responding to grievances CPGB 2011-007 and CPGB 2011-018 or complaints that flowed from said grievances. Respondent shall reimburse the Board \$3,000.00.

9. VIOLATION OF AGREEMENT

9.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, failing to have current letters of guardianship, failing to have meaningful contact with any incapacitated person for whom they serve as guardians, and failure to assume responsibility to protect and preserve the guardianship estate of any incapacitated person for whom they serve as guardian.

9.2 In the event of an alleged breach of this Agreement, the Board will issue a Complaint pursuant to its Disciplinary Regulations, providing notice and an opportunity for a hearing to the certified professional guardian agency and to the certified professional guardians alleged to be in breach of the Agreement. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

9.3 This Agreement is binding as a statement of all known facts relating to the conduct of Respondents but any additional existing acts may be proven in any subsequent disciplinary proceedings.

10. NOTICE

This Agreement shall be retained by the AOC in Respondents' disciplinary files. This Agreement is a public document and shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

11. ENTIRE AGREEMENT

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

12. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

13. LAWS GOVERNING

This Agreement shall be governed by the laws of the state of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.


14. RIGHT TO COUNSEL

Respondents acknowledge that they have the right to individual counsel for representation in this disciplinary matter, at their own expense, as set forth in Disciplinary Regulation 509.1.

15. PRESENTATION OF AGREEMENT TO THE BOARD

Respondents understand that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Respondents waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation.


COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:



Pam Privette, CPG #~~0610~~ 9714
Individually and as the President and one of the designated CPGs of Sound Guardianship LLC.

3/12/13

Date



N. Joseph Lynch
Attorney for Respondent
WSBA #7481

3/12/13

Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

8 day of April, 2013.



Honorable James Lawler, Chair
Certified Professional Guardian Board

Agreement Regarding Discipline
(CPGB 2011-007 and 018)
Page 14 of 14

Complaint and Answer

CERTIFIED PROFESSIONAL GUARDIAN BOARD

MAUREEN CARROLL,
CPG No. 10908,

Respondent.

CPGB No. 2012-002, 2012-013, 2012-038,
2012-045, and 2012-046

Complaint Regarding Disciplinary Action
Disciplinary Regulation 510

The Certified Professional Guardian Board (“Board”) alleges that Maureen Carroll, CPG No. 10908 (“Respondent”), has violated the Standards of Practice (SOP). The Board hereby initiates this disciplinary proceeding pursuant to General Rule (GR) 23 and Disciplinary Regulations (DR) 510 for Certified Professional Guardians.

1. JURISDICTION

1.1 At all times relevant herein, Maureen Carroll, CPG No. 10908 (“Respondent”), was a certified professional guardian pursuant to GR 23 practicing in the state of Washington. The Washington Supreme Court certified Respondent on April 16, 2009.

1.2 All professional guardians who practice in the state of Washington are subject to the rules and regulations established pursuant to GR 23.

1.3 The Board has the duty and power to review any allegation that a certified professional guardian or certified professional guardianship agency has violated any applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. Pursuant to DR 510.1, the Board has grievances captioned above and approved the filing of a complaint regarding disciplinary action against Respondent.

1.4 The Board may impose sanctions upon a finding of a violation, including decertification or lesser remedies or actions. GR 23(c)(2)(viii).

2. STATEMENT OF FACTS

2.1 Grievance No. 2012-002 -- Guardianship of R.R. The court appointed Respondent guardian of R.R. on March 4, 2011.

2.1.1 Respondent did not file the Inventory within the 3-month statutory filing period ending June 6, 2011. Respondent did not file the Designation of a Standby Guardian within the 90-day statutory filing period ending June 2, 2011.

2.1.2 King County Superior Court issued four orders regarding Respondent's noncompliance, including an Order on Show Cause and Citation for Contempt of Court for failure to appear on February 3, 2012.

2.1.3 On or about February 8, 2012, the Board received a copy of the Order on Show Cause and Citation for Contempt of Court from King County Superior Court. Upon review, the Board opened Certified Professional Guardian Board (CPGB) Grievance No. 2012-002 regarding Respondent's noncompliance and failure to appear in the *Guardianship of R.R.*

2.1.4 Respondent did not file the Guardian's First Annual Report within the 90-days after anniversary statutory filing period ending June 4, 2012. King County Superior Court issued

another five orders regarding Respondent's noncompliance, including another Order on Show Cause and Citation for Contempt of Court for failure to appear on November 15, 2012.

2.1.5 Respondent did not file the Guardian's Second Annual Report within the 90-days after anniversary statutory filing period ending June 3, 2013.

2.2 Grievance No. 2012-013 -- Guardianship of C.B. The court appointed Respondent guardian of C.B. on December 3, 2010. C.B. died on May 2, 2011. Respondent filed a Notice of Death on June 2, 2011.

2.2.1 Respondent did not file the Guardian's First and Final Report within the 90-day statutory filing period ending August 31, 2011.

2.2.2 King County Superior Court issued six orders regarding Respondent's noncompliance, including an Order on Show Cause and Citation for Contempt of Court for failure to appear on March 7, 2012.

2.2.3 On or about April 9, 2012, the Board received a copy of the Order on Show Cause and Citation for Contempt of Court from King County Superior Court. Upon review, the Board opened CPGB Grievance No. 2012-013 regarding Respondent's noncompliance and failure to appear in the *Guardianship of C.B.*

2.3 Grievance No. 2012-038 -- Guardianship of J.C. The court appointed Respondent guardian of J.C. on September 13, 2010.

2.3.1 Respondent did not file the Inventory and Personal Care Plan within the 3-month statutory filing period ending December 13, 2010. Respondent did not file the Designation of a Standby Guardian within the 90-day statutory filing period also ending December 13, 2010.

2.3.2 Respondent did not file her Guardian's First Annual Report within the 90-days after anniversary statutory filing period ending December 12, 2011. King County Superior Court

issued seven orders regarding Respondent's noncompliance, including an Order on Show Cause and Citation for Contempt of Court for failure to appear on October 31, 2012.

2.3.3 The Order entered October 31, 2012, also appointed a Guardian ad Litem to investigate Respondent's failure to file guardian's reports and to appear on show cause orders. The court instructed the GAL to recommend whether Respondent should be removed.

2.3.4 On or about November 5, 2012, the Board received a copy of the Order on Show Cause and Citation for Contempt of Court from King County Superior Court. Upon review, the Board opened CPGB Grievance No. 2012-038 regarding Respondent's noncompliance and failure to appear in the *Guardianship of J.C.*

2.3.5 Respondent filed a Notice of Death of J.C. on January 18, 2013. Respondent did not file her Guardian's Final Report within the 90-day statutory filing period ending April 18, 2013. The court issued another order regarding Respondent's noncompliance before Respondent filed her Final Report.

2.4 Grievance No. 2012-045 -- Guardianship of L.B. The court appointed Respondent successor guardian for L.B. on February 28, 2011.

2.4.1 Respondent did not file the Inventory and Personal Care Plan within the 3-month statutory filing period ending May 31, 2011. Respondent did not file the Designation of a Standby Guardian within the 90-day statutory filing period also ending May 31, 2011.

2.4.2 Respondent filed a Notice of Death of L.B. on April 4, 2012. Respondent did not file her Guardian's First and Final Report within the 90-day statutory filing period ending July 3, 2012. The court issued four orders regarding Respondent's noncompliance, including an Order to Show Cause and Citation for Contempt of Court for failure to appear on October 23, 2012.

2.4.3 On or about November 7, 2012, the Board received a copy of the Order on Show Cause and Citation for Contempt of Court from King County Superior Court. Upon review, the Board opened CPGB Grievance No. 2012-045 regarding Respondent's noncompliance and failure to appear in the *Guardianship of L.B.*

2.5 Grievance No. 2012-046 -- Guardianship of E.J. The court appointed Respondent guardian for E.J. on February 10, 2011.

2.5.1 Respondent did not file the Inventory and Personal Care Plan within the 3-month statutory filing period ending May 10, 2011.

2.5.2 Respondent did not file her Guardian's First Annual Report within the 90-days after anniversary statutory filing period ending May 10, 2012.

2.5.3 The court issued ten orders regarding Respondent's noncompliance, including an Order on Show Cause and Citation for Contempt of Court for failure to appear on November 15, 2012.

2.5.4 On or about November 27, 2012, the Board received a copy of the Order on Show Cause and Citation for Contempt of Court from the King County Superior Court. Upon review, the Board opened CPGB Grievance No. 2012-046 regarding Respondent's noncompliance and failure to appear before the court in the *Guardianship of E.J.*

2.5.5 Respondent filed her Guardian's First Annual Report on December 20, 2012. Respondent, however, still had not filed the Inventory and Personal Care Plan. The court issued four more orders regarding Respondent's noncompliance. Over two years after her appointment, Respondent finally filed the Inventory and Personal Care Plan on May 6, 2013.

2.5.6 Respondent did not file her Guardian's Second Annual Report within the 90-days after anniversary statutory filing period ending May 13, 2013.

2.6 Audit. As part of its investigation of the grievances noted above, on December 11, 2012, AOC requested a list of Respondent's active cases. A response was not received until January 15, 2013.

2.6.1 On November 25, 2013, AOC staff completed an audit of Respondent's active cases as of January 15, 2013. The audit reviewed the court dockets of Respondent's active cases to assure timely filing of inventories, personal care plans, designations of standby guardians, and annual reports. The audit concluded that the majority of Respondent's reports were filed late and that two cases were then delinquent.

2.6.2 AOC notified Respondent of the delinquencies by letter dated November 26, 2013. Respondent failed to promptly correct these delinquencies.

2.6.3 On January 17, 2014, AOC requested an updated active case list from Respondent. Upon receipt, AOC staff completed a second audit that confirmed that Respondent continued to file her reports late.

2.7 Failure to Comply. The Standards of Practice Committee of the Board reviewed the investigation reports prepared for CPGB Grievance No. 2012-002 and 2013-013 on September 20, 2012. Unaware of the existence of the other three grievances, the SOPC recommended that Respondent obtain additional training on court rules and procedures. Respondent agreed to take an additional training course in December 2012. Because of a change in the training's location, Respondent did not attend; however, Respondent has not completed any comparable training since then.

2.8 Errors & Omissions Insurance. Respondent declared under penalty of perjury in her Annual Renewal filed on July 27, 2013, that she had 25 or fewer cases and, therefore, was exempt from Certification Maintenance Regulation (CMR) 704.1 requiring CPG's to maintain Errors and Omissions (E&O) insurance.

2.8.1 Respondent's attorney submitted an updated list of active cases to AOC on January 27, 2014. On that date, Respondent had thirty (30) active cases.

2.8.2 Respondent did not notify AOC when the number of her active cases exceeded 25 and did not provide proof of E&O insurance.

2.9 Prior Disciplinary Action. Respondent failed to complete and report her Continuing Education Requirements for the reporting period ending on December 31, 2010. Respondent entered into an Agreement Regarding Discipline that placed a remedy of probation on Respondent for two years, from October 11, 2011, through October 11, 2013.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

The Board hereby alleges that Respondent has violated the following Standards of Practice:

3.1 Guardian's Duty to the Court.

3.1.1 The Board hereby incorporates by reference the facts set forth in paragraphs 2.1 through 2.6, and all subparagraphs therein.

3.1.2 The Board alleges that Respondent violated her duty to the court as required in Standards of Practice (SOP) 401.1, 401.3, and 401.5, which provide in pertinent part:

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.3 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian in the management of the affairs of an incapacitated person.

401.5 The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements.

3.2 Guardian's Duty to Appoint a Standby Guardian.

3.2.1 The Board hereby incorporates by reference the facts set forth in paragraphs 2.1.1, 2.3.1, and 2.4.1 above.

3.2.2 The Board alleges that Respondent violated her duty to appoint a standby guardian as required in SOP 401.6, which provides in pertinent part:

401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian.

3.3 Guardian's Duty to Report Change of Status.

3.3.1 The Board hereby incorporates by reference the facts set forth in paragraph 2.8 above.

3.3.2 The Board alleges that Respondent violated her duty to report a change of status as required in CMR 704.6, which provides in pertinent part:

704.6 Duty to Report Loss of Insurance or Change of Status

704.6.2 A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

3.3.3 Failure to comply with this regulation may constitute separate grounds for imposition of the sanctions of suspension or revocation of certification. CMR 704.7.1.

4. DISCIPLINARY SANCTIONS

4.1 Based on the facts and violations as stated above, Respondent's conduct constitutes grounds for discipline pursuant to Disciplinary Regulation (DR) 503, which provides in pertinent part:

DR 503 A professional guardian may be subject to disciplinary action for any of the following:

503.1 Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

503.9 Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.

503.11 Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.

503.13 Failing to cooperate during the course of an investigation as required by the Board's regulations.

4.2 **Aggravating Factors.** Aggravating factors as stated at DR 515.1.4.1 may be considered in the imposition of sanctions, including:

4.2.1 Prior disciplinary action by the Board against the same professional guardian;

4.2.2 A pattern of misconduct and multiple offenses;

4.2.3 Failure to cooperate with a disciplinary proceeding; and

4.2.4 Refusal to acknowledge the wrongful nature of the conduct.

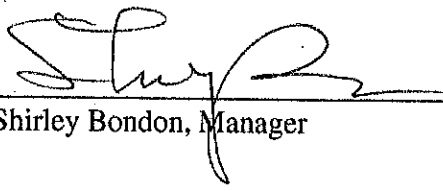
4.3 **Mitigating Factors.** Mitigating factors as stated at DR 515.1.4.2 may also be considered in the imposition of sanctions. None are identified.

4.4 **Imposition of Sanctions.** Based on the foregoing, it is requested that Respondent be found in violation of the regulations cited above and that the disciplinary sanctions of decertification and costs, including attorney fees and other provable expenses, be imposed on Respondent in accordance with the Disciplinary Regulations.

DATED this 9th day of April, 2014.

CERTIFIED PROFESSIONAL GUARDIAN BOARD

By: _____


Shirley Bondon, Manager

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5 STATE OF WASHINGTON
6 CERTIFIED PROFESSIONAL GUARDIAN BOARD

7
8 In re Disciplinary Proceedings
9 Against

10 MAUREEN CARROLL,
11 CPG #10908

CPGB NO: 2012-002, 2012-013,
2012-038, 2012-045, and 2012-046

ANSWER TO COMPLAINT
REGARDING DISCIPLINARY
ACTION *DISCIPLINARY*
REGULATION 510

12
13 COMES NOW, Maureen Carroll, by and through her attorneys of record, Jonathan P.
14 McQuade and Aiken, St. Louis & Siljeg, P.S., and answers the Complaint Regarding
15 Disciplinary Action as follows;

16 **I. JURISDICTION**

17 1.1 Admit.

18 1.2 Admit.

19 1.3 The respondent is without sufficient knowledge to confirm the veracity of the
20 allegation contained herein and therefore denies the same.

21 1.4 GR 23(c)(2)(viii) speaks for itself and therefore no response is required.

22 **II. STATEMENT OF FACTS**

23 2.1 Admit.
24

1 2.1.1 Admit that Respondent did not file the Inventory by June 6, 2011. Admit that
2 Respondent did not file the Designation of a Standby Guardian by June 2, 2011. Respondent
3 further alleges that she filed a Personal Care Plan, Inventory, and Designation of a Standby
4 Guardian and all were accepted and approved by the King County Superior Court. As to any
5 remaining allegations contained herein, those allegations are denied.

6 2.1.2 Deny.

7 2.1.3 Respondent is without knowledge to confirm or deny when the Board received
8 a copy of the Order on Show Cause and Citation for Contempt of Court from the King County
9 Superior Court, when the Board initiated its review, or whether that was the basis for the
10 review. Respondent does admit that CPGB Grievance No. 2012-002 was opened by the
11 Board. As to any remaining allegations contained herein, those allegations are denied.

12 2.1.4 Admit that Respondent did not file the Guardian's First Annual Report before
13 September 4, 2012. Respondent further alleges that the Guardian's Annual Report was
14 approved by the King County Superior Court. As to any remaining allegations contained
15 herein, those allegations are denied.

16 2.1.5 Respondent cannot understand what is being stated in this allegation.
17 Respondent did file the Guardian's Second Annual Report that was approved by the King
18 County Superior Court.

19 2.2 Admit.

20 2.2.1 Deny.

21 2.2.2 Deny.

22 2.2.3 Respondent is without knowledge to confirm or deny when the Board received
23 a copy of the Order on Show Cause and Citation for Contempt of Court from the King County
24 Superior Court, when the Board initiated its review, or whether that was the basis for the

1 review. Respondent does admit that CPGB Grievance No. 2012-013 was opened by the
2 Board. As to any remaining allegations contained herein, those allegations are denied.

3 2.3 Deny.

4 2.3.1 Deny.

5 2.3.2 Deny.

6 2.3.3 The Order dated October 31, 2012 speaks for itself. To the extent this
7 allegation contains statements that are outside that Order, those allegations are denied.

8 2.3.4 Respondent is without knowledge to confirm or deny when the Board received
9 a copy of the Order on Show Cause and Citation for Contempt of Court from the King County
10 Superior Court, when the Board initiated its review, or whether that was the basis for the
11 review. Respondent does admit that CPGB Grievance No. 2012-038 was opened by the
12 Board.

13 2.3.5 Admit that Respondent filed a Notice of Death of J.C. on January 18, 2013. As
14 to the other allegations contained herein, those allegations are denied.

15 2.4 Admit.

16 2.4.1 Admit that Respondent did not file the Inventory, Care Plan, or Designation of
17 Standby Guardian by May 31, 2011. Respondent further alleges that the Guardian's
18 Inventory, Care Plan, and Designation of Standby Guardian were filed and approved by the
19 King County Superior Court. As to any remaining allegations contained herein, those
20 allegations are denied.

21 2.4.2 Admit that Respondent filed a Notice of Death of L.B. on April 4, 2012. Deny
22 that the Court issued an Order to Show Cause and Citation for Contempt of Court for failure
23 to appear on October 26, 2012. All remaining allegations herein are denied.

24 2.4.3 Respondent is without knowledge to confirm or deny when the Board received
a copy of the Order on Show Cause and Citation for Contempt of Court from the King County

1 Superior Court, when the Board initiated its review, or whether that was the basis for the
2 review. Respondent does admit that CPGB Grievance No. 2012-045 was opened by the
3 Board.

4 2.5 Admit.

5 2.5.1 Deny.

6 2.5.2 Deny.

7 2.5.3 Admit that the court issued an Order on Show Cause and Citation for
8 Contempt of Court for failure to appear on November 15, 2012. Respondent further alleges
9 that no contempt order was ever issued by the court. As to all other allegations contained
10 herein, those allegations are denied.

11 2.5.4 Respondent is without knowledge to confirm or deny when the Board received
12 a copy of the Order on Show Cause and Citation for Contempt of Court from the King County
13 Superior Court, when the Board initiated its review, or whether that was the basis for the
14 review. Respondent does admit that CPGB Grievance No. 2012-046 was opened by the
15 Board.

16 2.5.5 Admit that Respondent filed her Guardian's First Annual Report on December
17 20, 2012. As to all remaining allegations contained herein, those allegations are denied.

18 2.5.6 Deny.

19 2.6 Respondent is without knowledge to confirm or deny why the AOC requested a
20 list of Respondent's active cases. Respondent admits that it prepared a list of cases for the
21 AOC and sent it to them within the timeframe required by law. As to any remaining
22 allegations contained herein, those allegations are denied.

23 2.6.1 Respondent is without knowledge to confirm or deny the veracity of the
24 allegations contained herein and therefore denies the same.

1 2.6.2 Respondent admits that she received a letter from the AOC dated November
2 26, 2013. All other allegations contained herein are denied. Respondent further alleges that
3 she notified the Board on December 10, 2013 to explain all the steps that she was currently
4 taking to ensure reports were filed on time, including the hiring of legal counsel.

5 2.6.3 Respondent admits that the AOC requested an updated active case list on
6 January 17, 2014. Respondent is without knowledge to confirm or deny whether the AOC
7 staff completed a second audit or the results therefrom. Respondent also cannot respond to
8 much of this allegation because there is no indication of what “reports were filed late” and
9 what “two cases were then delinquent.” As to the remaining allegations contained in this
10 section 2.6.3, those allegations are denied.

11 2.7 Respondent cannot confirm or deny when the Standards of Practice Committee
12 of the Board reviewed the investigation reports prepared for CPGB Grievance No. 2012-002
13 and 2013-013. Respondent cannot also confirm or deny whether the SOPC was aware of the
14 other three grievances. Respondent admits that the SOPC made an informal recommendation
15 that the Respondent obtain additional training on court rules and procedures, that Respondent
16 informally agree to take an additional training course but due to a change in the location that
17 Respondent was unaware of, Respondent did not attend that training course. As to any
18 remaining allegations contained herein, those allegations are denied.

19 2.8 Admit.

20 2.8.1 Admit.

21 2.8.2 Deny. Respondent further alleges that she was covered by E&O since June 1,
22 2013, something the Board was notified of on many occasions.

23 2.9 Admit that Respondent entered into an Agreement Regarding Discipline.
24 Respondent further alleges that she did complete her Continuing Education Requirements for

1 the reporting period ending on December 31, 2010. As to all remaining allegations contained
2 herein, those allegations are denied.

3 III. VIOLATIONS OF THE STANDARDS OF PRACTICE

4 3.1.1 No response is required.

5 3.1.2 Admit that the Board alleges that Respondent violated her duty to the court as
6 required in Standards of Practice (SOP) 401.1, 401.3, and 401.5. Respondent denies that she
7 violated her duty to the court as alleged by the Board.

8 3.2.1 No response is required.

9 3.2.2 Admit that the Board alleges that Respondent violated her duty to appoint a
10 standby guardian. Respondent denies that she violated her duty to appoint the standby
11 guardian.

12 3.3.1 No response is required.

13 3.3.2 Admit that the Board alleges that Respondent violated her duty to report a
14 change of status. Respondent denies that she violated her duty to report a change of status.

15 3.3.3 CMR 704.7.1 speaks for itself. To the extent this section 3.3.3 contains the
16 language or an interpretation outside of the plain meaning of the statute, that allegation is
17 denied.

18 IV. DISCIPLINARY SANCTIONS

19 4.1 Deny.

20 4.2 DR 515.1.4.1 speaks for itself.

21 4.3 Admit that mitigating factors may also be considered in the imposition of
22 sanctions. All other allegations contained herein are denied.

23 4.4 No response is required.
24

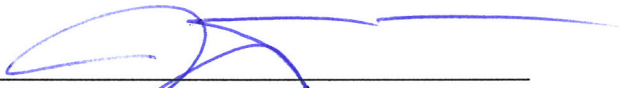
V. REQUEST FOR RELIEF

Having responded to the Board's Complaint and all allegations contained herein, Respondent requests the following relief:

- 1. That this Board complaint be dismissed with prejudice.
- 2. That all disciplinary actions concerning Maureen Carroll, as referenced in this Complaint, be dismissed with prejudice.
- 3. That Respondent be awarded her reasonable attorneys' fees and costs as allowed by the Disciplinary Regulations, statute, or in equity.
- 4. Any other relief deemed just and reasonable under the circumstances.

DATED this ___ day of May, 2014.

AIKEN, ST. LOUIS & SILJEG, P.S.

By 
 Richard L. Furman, WSBA No. 31101
 Jonathan P. McQuade, WSBA No. 37214
 Attorneys for Guardian

CERTIFICATE OF SERVICE

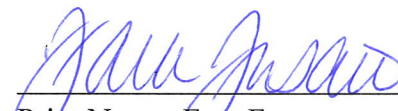
I hereby certify, under penalty of perjury under the laws of the State of Washington,
that the Answer to Complaint Regarding Disciplinary Action was sent, as indicated below, to:

Kim Rood
Certified Professional Guardian Board
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Shirley Bondon
Certified Professional Guardian Board
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Via First Class U.S. Mail, postage prepaid

Via E-mail: Shirley.bondon@courts.wa.gov



Print Name: Fara Fusaro

Dated: May 13, 2014

Seattle, Washington

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UW Guardianship Certificate April 2016

Enrollment Statistics

Program Dates	Cap	# Approved	# in 1 st course	# successful completion	Convert %	Success %
10/2010 - 5/2011	36	44	27	24	61	89
4/2011 - 8/2011	36	30	16	16	53	100
10/2011 - 6/2012	36	40	31	26	78	84
10/2012 - 6/2013	40	44	35	25	80	71
10/2013 - 5/2014	35	34	27	23	79	85
10/2014 - 6/2015	35	42	29	23	69	79
10/2015 - 6/2016	35	47	35	N/A	74	N/A

Student Demographics

Field	2011-12	2013-14	2015-16
Healthcare provider	12%	4%	28%
Financial Services	21%	0%	14%
Social Worker	26%	25%	8%
Administrator – Social Services, Healthcare	24%	25%	14%
Legal professional	3%	25%	14%
Pastor	9%	0%	0%
Guardian Ad Litem/ Guardian	Not a category	Not a category	8%
Other	3%	21%	14%
Highest Education			
AA	18%	11%	22%
Bachelor's	82%	89%	36%
Graduate Degree	44%	43%	42%
Gender			
Female		71%	80%
Male		29%	20%
Age			
<30		7%	8%
31-40		7%	11%
41-50		43%	36%
>50		43%	44%
Geography			
King/Pierce		39%	53%
NW WA		25%	14%
SW WA		31%	14%
Eastern WA		14%	19%

Data from applications

Course Evaluations (based on a 5-point scale)

Course/Quarter	Instructor	2012-13 ratings*			2013-14 ratings*			2014-15 ratings*			2015-16 ratings*		
		1-4	18	19	1-4	18	19	1-4	18	19	1-4	18	19
Autumn: 101	Leesa Camerota	x	x	x	x	x	X	3.9	3.4	3.8	N/A	N/A	N/A
	Penney Sanders	N/A	N/A	N/A	N/A	N/A	N/A	4.0	4.9	4.6	3.9	3.8	3.8
	Jamie Shirley	3.4	3.3	3.1	4	4.1	4.1	4.5	4	4.8	4.0	3.9	3.8
Winter: 102	Jamie Shirley	4.1	4.2	4.1	x	x	x	4.3	4.1	4.2			
Spring: 103	Jamie Shirley	4.5	4.3	4.6	4.2	4	4.3	x	x	x			
	Penney Sanders	N/A	N/A	N/A	N/A	N/A	N/A	4.1	4	4.4			

**Ratings provided include average of #1-4 (the course as a whole was; the course content was; the instructor's contribution to the course was; the instructor's effectiveness in teaching the subject matter was), #18 amount learned and #19 relevance and usefulness of course content*

N/A = not taught by that instructor

x = could not find evaluation

Travel Stipend

For the 2015-16 year, we provided a travel stipend of \$150 for students who travel 1.5 hours or more to attend the live sessions in Bellevue. The stipend was provided to 15 students and the process went very smoothly.

Curriculum Review

For the 2015-16 year, we switched to a new online learning platform called Canvas. Prior to that, the focus was on addressing problems and changing or adding lessons or assignments. For the 2016-17 year, we plan to do a thorough review of the entire curriculum and make the updates needed to ensure that everything is up-to-date, accurate and consistent.

Instructors

For the 2015-16 year, the lead instructors are Jamie Shirley and Penney Sanders. Leesa Arther is a guest lecturer and provides consultative services to the instructors on curriculum and complex question but she is not grading or leading any instruction. Leesa will be hired to do the curriculum review work described in the previous section.

Information about the CPG Profession

I field a lot of phone calls from people exploring the CPG profession. They have questions about business models, average salary, how CPGs are appointed, demand for CPGs, etc. I do my best to answer their questions and then suggest that they do informational interviews with other CPGs in their area. I would recommend that either WAPG or the State CPG Program provide more information about the profession to people who are trying to learn about it as a career option.

2015

Certified Professional Guardianship Board



Grievance Report

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CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD GRIEVANCE REPORT 2015

INTRODUCTION

We are pleased to present the 2015 Certified Professional Guardianship Grievance Report. We make this report available to all with the goal of increasing public awareness of the grievance process. We hope that the disclosure of these grievances will facilitate understanding of the rules and standards applied and the most common concerns of grievants.

Pursuant to legislative mandate, the Washington State Supreme Court established a certification process and procedure for professional guardians by promulgating General Rule (GR) 23. GR 23 created a Certified Professional Guardianship Board¹ to implement the activities necessary to develop a process to certify individuals who choose to become professional guardians. The Supreme Court, however, retains primary jurisdiction over the Board and its functions:

- The Supreme Courts retains jurisdiction over all professional guardians who practice in the state of Washington. GR 23(b).
- The Supreme Court appoints all members to the Board. GR 23(c)(1)(i).
- The Supreme Court designates the Chair of the Board. GR 23(c)(1)(iii).
- The Supreme Court enters the order certifying an individual or agency as a certified professional guardian. GR 23(c)(2)(v).
- The Board may seek Supreme Court enforcement of an order or subpoena that it issued. GR 23(c)(2)(x)(c).
- The Supreme Court approves the Board's expense budget. GR 23(c)(3).
- The Supreme Court, pursuant to its statutory authority to direct the administrative office of the courts, instructs the Administrative Office of the Courts (AOC) to provide administrative support to the Board and authorizes AOC to contract with other agencies or organizations on behalf of the Board. GR 23(c)(8).
- The Supreme Court extends quasi-judicial immunity to the Board where the Supreme Court would have immunity in performing the same functions. GR 23(c)(5).

The Board is charged with all the substantive duties of certification:

- Processing applications
- Implementing standards of practice
- Establishing a training program
- Adopting regulations for continuing education
- Approving or denying certification
- Investigating grievances and issuing disciplinary sanctions.

In any certification program, a grievance process is requisite to maintaining the standards and integrity of the process. The role of the professional guardian is to protect the incapacitated person. By definition, the incapacitated person may not be able to understand or execute the

¹ The Board is a board of the judicial branch and is therefore exempt from compliance with the Washington Administrative Procedures Act. RCW 34.05.010.

actions needed to protect himself or herself. It is vital to protecting the public that a professional guardian's actions be open to review:

The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

Standards of Practice 402.1.

This report summarizes the Board's efforts to investigate grievances received from the public regarding certified professional guardians or certified professional guardian agencies.

THE GRIEVANCE PROCESS

Purpose and Scope

GR 23(a) recites its purpose and scope as:

This rule establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.

GR 23(c)(2) outlines in greater detail the duties assigned to the Board in receiving and reviewing grievances:

(viii) Grievances and Disciplinary Sanctions. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

Among the many regulations governing the certified professional guardians are the Disciplinary Regulations 500 et seq. These regulations detail the grounds for disciplinary action and the procedures for investigation, review, settlement and hearing.

How the Grievance Process Works

Knowing how the Board defines a grievance and a complaint is key to understanding the grievance process.

A “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.

A “complaint” is the document filed by the Board during a disciplinary proceeding for the purpose of bringing the matter before a hearing officer for a factual hearing on the issue of whether or not the professional guardian’s conduct provides grounds for the imposition of disciplinary sanctions by the Board.

If a grievance is not dismissed or resolved without a formal proceeding, it will become a complaint.

Any person may file a grievance with the Administrative Office of the Courts (AOC) regarding a certified professional guardian or a certified professional guardian agency. Grievances may be completed on-line on the Washington Courts website at www.courts.wa.gov, or by submitting a written grievance to AOC.

AOC staff reviews the grievance and makes an initial determination if the Board has jurisdiction over the issues raised. AOC provides the professional guardian or agency identified with a copy of the grievance and requests a response.

To ensure that the Standards of Practice Committee (SOPC), the committee of Board members responsible for supervising the grievance process, has the information needed to determine if a grievance should be dismissed or action taken, AOC may perform other necessary investigation of the grievance including interviewing the grievant, interviewing the professional guardian, and obtaining relevant records or documentation from any person or entity. AOC then reports the results of its investigation to the Standards of Practice Committee (SOPC).²

The SOPC reviews the reports and takes action on the grievance. The SOPC may request further action as designated from AOC staff, dismiss the grievance, request that the Board file a complaint, or request that the Board enter into an Agreement Regarding Discipline.

AOC forwards a grievance involving an active guardianship case that is not dismissed by the Board’s disciplinary committee to the appropriate superior court with a request that the court review the matter, take any action necessary including modification, removal of the guardian, and clarification of rights and duties and report to the Board.

An Agreement Regarding Discipline (ARD) is a conditional settlement agreement negotiated between the SOPC and the certified professional guardian (or agency). Once an agreement has been reached, it is presented to the Board in Executive Session for review. The Board then votes to approve or deny the Agreement in open session. The Board’s decision is recorded in the meeting minutes. Approved Agreements are posted on the Washington Courts website for public disclosure.

² The Standards of Practice Committee is comprised of at least three (3) members of the Board including at least one judicial officer or attorney and at least one certified professional guardian. DR 505.1.

If a settlement cannot be reached, the SOPC may request that the Board file a complaint regarding disciplinary action against the certified professional guardian. Filing of a complaint commences a hearing process not dissimilar to an administrative hearing. Once filed, the complaint is of public record and is posted on the website. All subsequent proceedings are open to the public.

The Administrative Office of the Courts (AOC) contracts with a hearing officer (administrative law judge) to conduct the remainder of the hearing proceedings. The administrative law judge must prepare a written findings of fact, conclusions of law, and recommendations to the Board regardless of the disposition of the matter. The Board then reviews the findings, conclusions, and recommendation and determines what further action to take.

Impact of Newly Implemented GR 31.1

GR 31.1, the Supreme Court's rule governing access to administrative records, was adopted with an effective date of January 1, 2016.

Per GR 31.1, standards for public access to records of the Certified Professional Guardianship Board have been revised to allow for greater access to records concerning grievances filed against certified professional guardians.

A grievance is now open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

New Posting Rule

The Board adopted the following rule for posting grievances and complaints. According to the proposal, dismissed grievances will not be posted.

Posting Records. For a grievance or complaint that results in discipline to a professional guardian, the grievance or complaint, any response submitted by the professional guardian, the agreement or order imposing discipline, and any order on appeal by the professional guardian, shall be posted for public access on the website for the Administrative Office of the Court.

Flow chart of grievance process.



Structure and Funding

The Supreme Court delegated primary responsibility to the Board to investigate and sanction professional guardians regarding continued certification. The Supreme Court retains primary jurisdiction over professional guardians practicing in the state of Washington. Any Board recommendation of suspension or decertification resulting from a disciplinary proceeding must be filed with the Supreme Court. The Supreme Court must review such a recommendation after consideration of the transmitted record. By written order, the Court may adopt, modify, or reverse the Board's recommendation.

Funds from application fees, annual recertification fees, and any other revenue are used to defray Board expenses. Board members do not receive any compensation for service. Board members are only reimbursed for actual and necessary expenses incurred in the performance of their duties.

The Supreme Court has instructed the Administrative Office of the Courts (AOC) to provide administrative support to the Board. Staff members who provide support to the Board are AOC employees and receive compensation and benefits according to the human resources policies of AOC at large.

Disciplinary Actions/Sanctions

Any disciplinary sanction against a certified professional guardian or agency is undertaken with only the utmost gravity. A sanction is only appropriate upon a finding of a preponderance of the evidence that the guardian has engaged in professional conduct in violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians, and that conduct caused, or potentially could cause, harm to the incapacitated person, the public, or a legal proceeding. Alternatively, any conduct that adversely reflects on the guardian's fitness to serve as a guardian, such as criminal activities or deceit, may result in disciplinary action or sanctions regardless of actual or potential harm.

Disciplinary Regulations (DR) 515 Sanctions and Remedies authorize five types of sanctions to be issued against a certified professional guardian:

- Decertification
- Suspension
- Prohibition against taking new cases
- Reprimand
- Admonishment

All five sanctions constitute disciplinary action and are open to public disclosure. If the Board approves of a sanction against a certified public guardian, an announcement of disciplinary action is sent to all superior courts in Washington. The disciplinary action is maintained in the guardian's file and posted on the Washington Courts website at:

http://www.courts.wa.gov/programs_orgs/guardian/

Decertification

Decertification is the most severe sanction. If a professional guardian is decertified, RCW 11.88.008 limits the number of guardianship cases for which a guardian may accept compensation to two (2).

The Disciplinary Regulations describe factors to be considered for decertification:

DR 515.2.1 Decertification is generally appropriate when a professional guardian engages in:

515.2.1.1 Professional misconduct; or deceive the court; or cause serious or potentially serious injury to a party...,

515.2.1.2 Felonious criminal conduct,

515.2.1.3 Any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation...,

515.2.1.4 Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the SOPs, and where the guardian has not corrected the behavior despite previous attempts by the courts or the Board to correct the behavior.

To warrant the sanction of decertification, the guardian actions must have intentionally violated one or more Standards of Practice or other specified regulation. As a fiduciary, a guardian has the duty to act primarily for another's benefit, selflessly, and with undivided loyalty. Conduct intended to benefit his/herself or involving dishonesty, fraud, deceit or misrepresentation may result in decertification.

A guardian may also be decertified for gross incompetence. The certification process is to establish a baseline of competency among professional guardians. Professional conduct that falls below such a baseline may be deemed "gross incompetence." In considering whether actions constitute gross incompetence, the Board may apply a "reasonableness" standard.

A guardian who has demonstrated a pattern and practice of a particular behavior that falls below the Standards of Practice may also be decertified for gross incompetence. DR 506.4 authorizes the Standards of Practice Committee to direct a guardian to take corrective actions where an issue is of minor significance or of a nature not potentially harmful to clients or other persons. However, repeated failure to meet a SOP may rise to the level of gross incompetence.

For example, a guardian may not file an annual report on time. A few instances are likely correctible and unlikely to cause a client harm. The SOPC may request that the guardian participate in additional training, audit the guardian's cases on a frequent basis, or set up monitoring by an independent third party for a period of time.

However, if the guardian's conduct persists despite these or other attempts to correct the behavior, the pattern and practice of late filing may arise to the level of gross incompetence and warrant decertification.

Administrative Decertification

Guardians are required to renew their certification annually and complete 24 credit hours of continuing education biennially. Failure to comply with these professional responsibilities may result in administrative decertification.

DR 522 Administrative Decertification

If the board decertifies a professional guardian for an administrative reason, including but not limited to the professional guardian's failure to: pay required fees, satisfy the continuing education requirements, provide proof of insurance or waiver of insurance, or file required information with the board, any pending disciplinary grievance against the professional guardian may be dismissed. ... Information that a grievance was pending at the time of administrative decertification shall be placed in the guardian's licensing records and shall be available to the public.

Once the renewal deadline has passed, AOC provides a notice to the guardian to comply. In addition to completing the renewal process, the guardian may be required to pay a late fee. Failure to timely complete these actions and file the appropriate applications and disclosures with AOC is a basis for disciplinary action against a guardian for noncompliance. If the guardian fails to comply, the guardian may be decertified upon approval of the Board.

Prohibition on Taking New Cases/Suspension

In some cases, an appropriate sanction may be to place limits on the professional guardian's on-going practice. These limitations may be temporary pending a change in the guardian's circumstances or an ongoing limitation or suspension of the guardian's practice.

DR 515.2.2 Prohibition against taking new cases or suspension for a period of time, or both, is generally appropriate when a professional guardian engages in:

515.2.2.1 Professional conduct incompatible with the Standards of Practice and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceedings, or

515.2.2.2 Criminal conduct that seriously adversely reflects on the professional guardian's fitness to serve.

Reprimand

A reprimand typically does not disrupt a guardian's practice; however, it indicates a serious error in a guardian's conduct. Repeated actions that warrant multiple reprimands may rise to the level of gross incompetence and subject the guardian to decertification.

DR 515.2.3 A letter of reprimand is generally appropriate when a professional guardian engages in:

515.2.3.1 Professional misconduct incompatible with the Standards of Practice and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding, or

515.2.3.2 Any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the professional guardian's fitness to practice.

Admonishment

Admonishment is the lowest sanction available. Admonishment is appropriate in minor or single events of misconduct.

DR 515.2.4 A letter of admonishment is generally appropriate when a professional guardian engages in professional misconduct incompatible with the standards of practice and not rising to the level justifying a reprimand.

Remedies

In addition to the five sanctions, the Board may implement various remedies for the purpose of ensuring the guardian complies with the duties, standards, and requirements of a professional guardian. For example, the Board may place a guardian on probation, prohibit the guardian from taking new cases, or require the guardian complete additional training. The Board may also require monitoring on a periodic basis or mentoring with regular reports back. Finally, the Board may always review a guardian's caseload through internal audit.

Dismissal

All grievances received by the Administrative Office of the Courts (AOC) are investigated as appropriate. AOC may dismiss grievances in limited circumstances: administratively and for lack of jurisdiction.

AOC may dismiss a grievance for administrative reasons. The most common administrative dismissal occurs because the grievant decides not to pursue the grievance. The withdrawal of a grievance does not mandate administrative dismissal; however, circumstances may indicate that dismissal is appropriate.

Second, the Board's jurisdiction is limited to certified professional guardians or agencies acting in the capacity of a guardian.³ For example, grievances may be filed regarding a guardian ad litem's investigation and report. Some certified professional guardians also act as trustees. However, the Board has no jurisdiction to investigate a grievance in these circumstances. If the Board clearly has no jurisdiction, AOC will promptly dismiss the grievance and may notify the entity with jurisdiction.

The most common basis for dismissal is that the guardian's conduct does not rise to the level of a violation of a Standard of Practice. Following AOC's investigation and report, the SOPC may dismiss any grievance and is not required to obtain Board approval. However, the SOPC may present a grievance to the Board if there has not been a clear consensus on dismissal, or the SOPC believes that the Board should be consulted for other reasons.

In some grievances, the SOPC determines that a guardian's conduct may not clearly violate a Standard of Practice; however, the guardian's conduct or practice may be improved with additional training, counseling, or other remedial steps. If the guardian complies with the SOPC's direction, the matter is then reported to the Board for approval of the correction. If the Board approves of the SOPC's actions, the grievance may be dismissed with no sanction reported on the guardian's file.

Alternatively, if the guardian does not comply with the SOPC's recommendation, the SOPC may reconsider the grievance, request additional investigation, and the noncompliance may constitute an addition factor in whether to proceed to the level of a sanction.

Termination

Termination of a grievance is distinguished from dismissal as discussed above. Termination is not based on an investigation and determination on the merits of a grievance. Termination of open grievances serves primarily to conserve the Board's efforts once a CPG is no longer acting as a professional guardian.

As discussed above, a CPG may be decertified for either violation of a Standard of Practice or noncompliance with certification maintenance requirements, including annual certification fee and disclosure, continuing education, or E&O insurance requirements. Once the CPG has been decertified and no longer acting as a guardian, there is no longer a substantial risk of harm to the public.

³ The limited exception is if the guardian's conduct indicates a lack of fitness to be a guardian, such as criminal actions or fraud unrelated to their guardian duties.

Similarly, a CPG may request to be on inactive status or to voluntarily surrender of his/her certification. The CPG must comply with all statutory and court-ordered requirements for discharge as a guardian prior to completing transition to inactive status or surrender. Once the former CPG has been discharged, s/he may not accept any new clients or engage in work as a CPG.

A former CPG may petition for reinstatement or return to active status. At that time, AOC may reinitiate investigation in any terminated grievance pursuant to DR 504.1.

GRIEVANCES AT A GLANCE 2015

In 2015 the Board opened sixty-five (65) grievances. Ten (10) cases were closed for lack of jurisdiction. Three additional cases were terminated. The majority of the cases dismissed for lack of jurisdiction – nine (9) did not involve Certified Professional Guardians (CPG). One (1) involved a trustee, three (3) involved lay guardians, and two (2) involved Guardian Ad Litem. In three of the cases there was no jurisdiction because the underlying matters involved out of state court matters. Two (2) of the cases lacked jurisdiction both because a CPG was not involved, and the matters arose in other states.

Fifty-three (53) grievances required resolution on the merits. Ten (10) were closed by the end of the year for no actionable conduct. Ten (10) cases were investigated. At the end of 2015 thirty three (33) grievances remained requiring investigation. The grievances involved twenty-six (26) guardians or guardianship agencies, approximately 9.6% of the professional guardians in Washington State. In 2015 there were two hundred and seventy (270) active professional guardians in Washington State. Several guardians were involved in multiple grievances⁴.

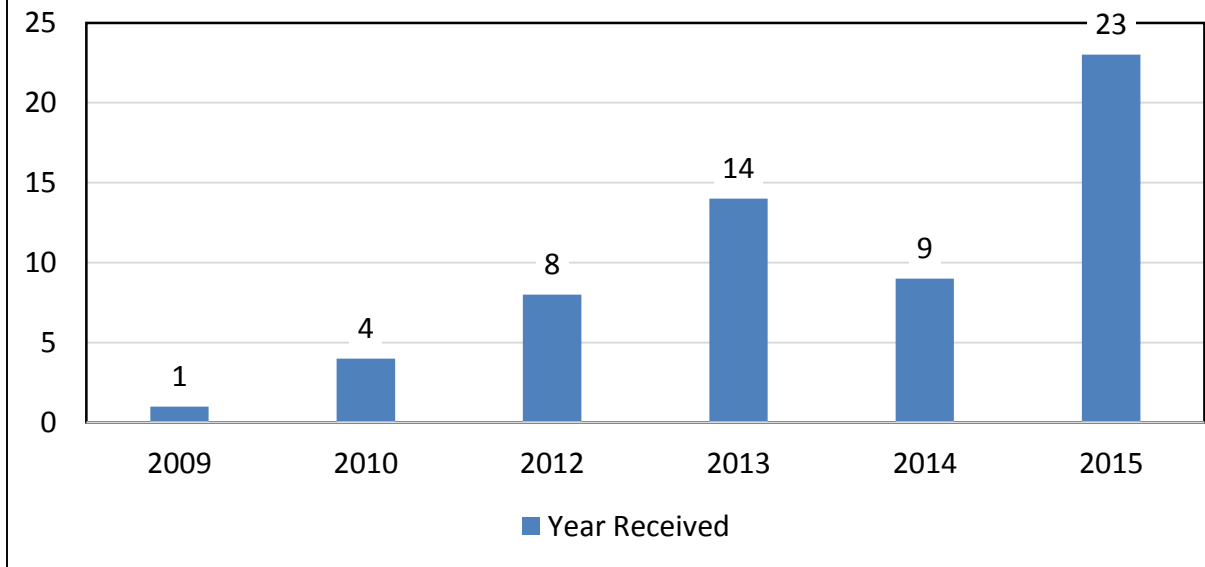
2015 CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES

Grievances	2015
Total Opened	65
Total Closed	20
Total Terminated	3
Total Investigated	10
Total Needing Investigation	33

The chart below shows the total number of grievances closed in 2015 by year opened. Grievances that proceed to hearing require substantially more time.

⁴ A chart showing guardians/guardianship agencies with more than one grievance out of the Board's total pending grievances for 2015 is attached below.

Grievances Resolved in 2015



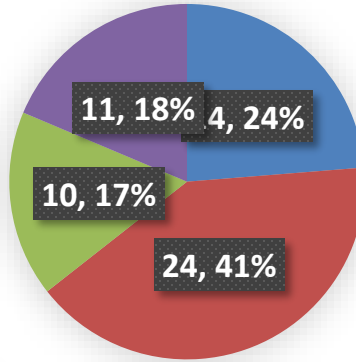
Resolution

Fifty-nine (59) grievances were closed in 2015 that had been received between 2009 and 2015. Thirty eight (38) of the grievances closed were dismissed; twenty-four (24) for no actionable conduct, one (1) for insufficient allegations, and thirteen (13) for lack of jurisdiction. Ten (10) grievances were terminated, either because the guardian died, or because the guardian voluntarily surrendered his or her certification. In eleven (11) cases sanctions were imposed. Four of the grievances resulting in a sanction for a single guardian (Suspension) were from 2010 and one was from 2009; these had gone to a hearing and then through an appeal process before resulting in a sanction for the guardian.

Resolution ⁵	2009	2010	2012	2013	2014	2015	Total
Dismissal - No actionable conduct			5	7	2	10	24
Dismissal - No jurisdiction				2	1	10	13
Insufficient grievance					1		1
Voluntary surrender				2	1		3
Admonishment			2				2
Suspension	1	4					5
Decertification			1				1
Termination				3	4	3	10
Total Closed	1	4	8	14	9	23	59

⁵ The data on resolution is calculated on each individual grievance closed. A sanction against a single professional guardian, however, may have been based on multiple grievances. For example, there were six grievances that were opened in 2011 which were closed in 2014, but there were two CPGs involved in one of the grievances, each of whom received a different sanction. Therefore, there were 7 sanctions in those six cases.

Grievances Resolved in 2015

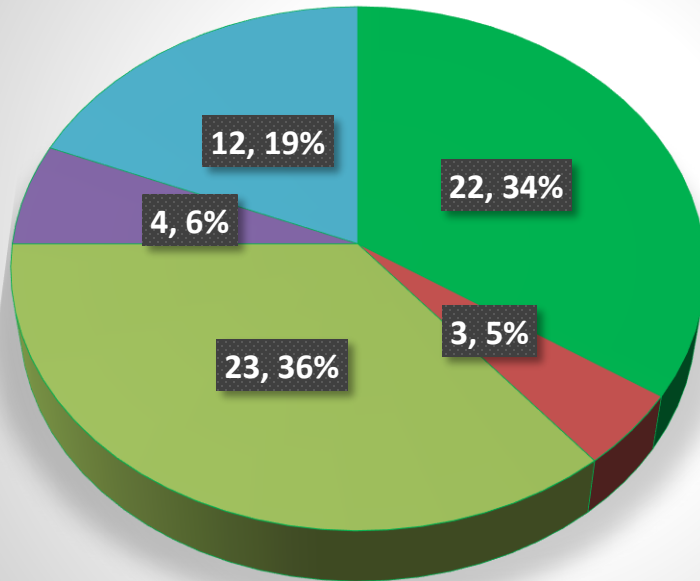


- Dismissed: No Jurisdictions
- Dismissed: No Actionable Conduct
- Termination
- Sanctioned

Sources of Grievances.

Any person may file a grievance regarding the conduct of a certified professional guardian. The Board may on its own authority file a grievance against a guardian either as a result of a random audit or concerns that have been brought to the Board's attention.

Source of Grievances Received in 2015



- Family/Friend
- IP
- Social Service
- Court
- Facility

In 2015 34% grievances were submitted by social services personnel or agencies. This group includes Adult Protective Services (APS), Developmental Disability, social workers, and medical personnel. The Board refers matters raising the possibility of abuse, neglect or exploitation to APS, which has its own intake and investigation process. Although both APS and the Board are concerned about the protection of vulnerable individuals, their purposes and remedies are different.

The second most common group who submitted grievances were family members. A third significant source for grievances is residential facilities in which the Incapacitated Person resides. It is not surprising that the three most common sources with the most frequent and the closest contact with the incapacitated person are most likely to see conduct that causes them concern.

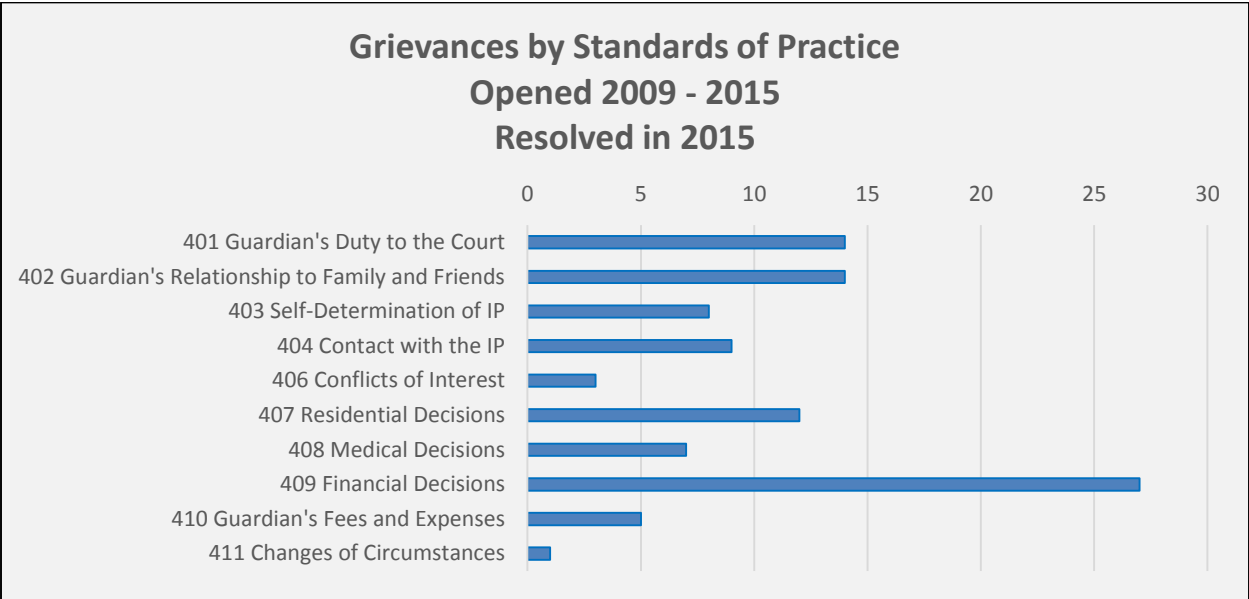
Grievances by Standards of Practice

Grievances are evaluated against the Standards of Practice, which are fairly comprehensive statements of the professional conduct expected from professional guardians. The Standards of Practice may be found in their entirety at:

http://www.courts.wa.gov/content/publicUpload/CPG/20131014_SOP_Regulations.pdf

The Standards of Practice cover the broad range of a professional guardian's responsibilities. In 2014 the two largest number of grievance violations involved either the failure to manage the Incapacitated Person's financial affairs, or for the guardian to appropriately carry out his/her duties and follow all laws.

Generally grievances about financial matters fall into one or more of these subcategories: 1) mismanagement of the estate; 2) failure to timely pay bills; or 3) failure to apply for public benefits. The other significant category of violations arose from the guardian's failure to perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court. A guardian's duty to the court includes timely filing of all required annual reports to the court, maintaining current letters of guardianship, and timely filing of a designation of stand-by guardian.



GRIEVANCE CASE SUMMARIES

Grievances Resolved in 2015

Below are brief summaries for the grievances investigated and closed by the Certified Professional Guardian Board in 2015. Also included is a category of pending grievances, which should be resolved early in 2016.

Matters resolved by disciplinary proceeding are listed, as those resolved by Agreements Regarding Discipline. Agreements Regarding Discipline (sanctions) are of public record and posted on the Washington Courts website at: http://www.courts.wa.gov/programs_orgs/guardian/.

The five types of sanctions authorized in the Disciplinary Regulations are set out below, as well as Voluntary Surrender, a possible disciplinary remedy. As briefly discussed in footnote 4 above, some guardians receive sanctions based on multiple grievances. All grievances associated with a particular sanction are noted in each entry below.

We include a discussion of dismissals with a summary of the allegations and SOP violations.

Pending – Admonishment

CPGB 2012-002, 2012-013, 2012-038, 2012-045 and 2012-046 Maureen Carroll [CPG No. 10908] [King County], seeking admonishment for failure to file timely reports and to appoint standby guardian. SOP 401.1, 401.3, 401.5, and 401.6.

Decertification

CPGB No. 2012-039 Emerald City Guardianship Services [CPGA No.11249] and Crystal Jordan [CPG No. 10941] [King County], decertified for failure to have designated two certified professional guardians for the agency and to notify the Board within five days of not having two CPGs; to charge guardian fees in addition to compensation received from the Office of Public Guardianship; to provide IP with basic clothing; to visit the IP regularly or make arrangements

for qualified visits; to properly manage the financial affairs of the IP to meet his personal needs; and for making multiple false statements under oath. SOP 404.1, 404.1.1, 404.2, 406.1, 406.2, 409.1, 409.2, 409.3, 409.4, 410.2, CMR 706.1, CMR 706.3, DR 515.2.1.1 and DR 515.2.1.3.

Suspension

CPGB No. 2010-005, 2010-006, 2010-007, 2010-008 and 2009-013 Lori Petersen [CPG No. 9713] [Spokane County], suspended for failure to consider the views and opinions of professionals, family and friends knowledgeable about the IP, to consult with IP and respect the feelings, values and opinions of the IP, and to consult with IP before relocating to a new residence. SOP 402.2, 403.2, and 407.7. The CPG appealed the suspension to the Supreme Court. The Supreme Court affirmed the findings, but remanded the case to the Board for consideration of the proportionality of the discipline imposed. The Board reviewed the case. It petitioned the Supreme Court 1) to affirm the Board's sanction against Lori A. Petersen of one year suspension as proportional; 2) to affirm the Board's recommendations for the remedy of monitoring for 24 months following the end of the suspension at Lori A. Petersen's expense; and 3) to affirm the Board's recommendation that the CPG pay costs to the Board in the amount of \$7,500.00. The Board's recommendations to the Supreme Court were affirmed and adopted.

Admonishment

CPGB No. 2012-012 Constance O'Hara [CPG 11396] [Spokane County], admonished for failure and significant delays in making court ordered payments to the IP's wife, making court ordered payments for the IP's participation, medical insurance, and personal needs expenses, late filings of reports, and for serving as guardian with expired letters of guardianship. SOP 401.1, 409.1, 409.4 and 409.5.

CPGB No. 2012-044 Holly Surface [CPG 11393], [King County], admonished for working simultaneously as a paralegal on the IP's guardianship, while functioning as guardian and for not notifying the court of a potential conflict or exploring other alternatives to providing direct services. SOP 406.2 and 406.4.

Voluntary Surrender

CPGB No. 2013-052, 2013-060 and 2014-003 Pamela Privette [CPG No. 9714] [Thurston County], voluntarily surrendered her certification for not providing complete and accurate court reports, for not applying for public benefits in a timely manner, for failing to advance herself fees without court approval, and for failing to assure competent management of the property and income of the estate. SOP 401.1, 401.2, 401.3, 401.5, 409.1, 409.4, 410.2 and 410.3.

Dismissal

CPGB 2012-025 [Clark County], alleged failure to reduce the IP's participation so that he would have enough income to pay the facility for the cost of care; dismissed for no actionable conduct. SOP 409.7.

CPGB 2012-029 [King County], alleged failure to follow a court order regarding distribution of the IP's personal belongings after he had to move out of his long-term residence; dismissed for no actionable conduct. SOP 401.1.

CPGB 2012-032 [Cowlitz County], alleged failure to respect the IP's wishes regarding residential placement, preferred caregivers and IP's wishes; dismissed for no actionable conduct. SOP 403.1, 403.2, 403.3 and 409.1

CPGB 2012-033 [Clark County], alleged failure to respect the IP's wishes regarding residential placement, failure to visit the IP, failure to submit an Annual Report that met accounting standards; dismissed for no actionable conduct. SOP 404.1; 407.1, 407.3, and 409.1.

CPGB No. 2012-048 [Pierce County], alleged failure to place the IP in an appropriate residential placement near to family, failure to work cooperatively with the family, failure to arrange for necessary treatment, and failure to competently manage the IP's property; dismissed for no actionable conduct. SOP 402.1, 407.5, 408.1, and 409.1.

CPGB 2013-001 [King County], alleged failure to ascertain the market price of the IP's home and to instead sell it to a business associate at a lower price; dismissed for no actionable conduct. SOP 401.1, 409.1, and 409.2.

CPGB 2013-009 [King County], alleged failure to work cooperatively with the co-guardian and to seek consideration of court ordered attorney's fees from the IP's Medicaid participation; dismissed for no actionable conduct. SOP 401.1, 401.4, 409.1 and 409.2.

CPGB No. 2013-016 [Pierce County], alleged failure to visit the IP for seven months and failure to spend funds authorized by the court on the IP; dismissed for no actionable conduct. SOP 401.1, 404.1.1 and 409.1.

CPGB No. 2013-018 [Clark County], alleged failure to visit the IP and to return his calls; dismissed for lack of jurisdiction. SOP 404.1 and 403.2.

CPGB No. 2013-019 [Clark County], alleged failure to keep accurate records of billings and to accurately reflect activities being billed, and to timely file all required reports; dismissed for no actionable conduct. SOP 410.2 and 401.5.

CPGB No. 2013-022 [Spokane County], alleged failure to ensure appropriate medical treatment for child; dismissed for lack of jurisdiction. SOP 408.1.

CPGB No. 2013-027 [King County], alleged failure to pay a caretaker's bill; dismissed for no actionable conduct. SOP 409.1

CPGB No. 2013-028 [Pierce County], alleged failure to address abuse of IP in her AFH and to move the IP back to the more suitable family residence; dismissed for no actionable conduct. SOP 402.1, 407.1 and 407.5.

CPGB 2013-054 [King County], alleged failure to consult with the IP about a change in residence, to move the IP in a reasonable amount of time from an unsuitable residence, to fail to arrange necessary and preventive medical care, to visit the IP, and to charge reasonable fees; dismissed for no actionable conduct. SOP 402.1, 402.7, 403.2, 403.6, 404.1, 407.1, 407.3, 408.4, and 410.

CPGB No. 2014-029 [Clark County], alleged problems with short term memory and general judgment and inability to manage the financial affairs of the IP; dismissed for lack of jurisdiction. SOP 409.1.

CPGB No. 2014-047 [King County], alleged false advertisement on CPG's website of belonging to organizations that he did not belong to; dismissed for no actionable conduct. SOP 401.1.

CPGB 2014-049 [Lewis County], alleged problems with the guardian taking the IP's property; dismissed for no actionable conduct. SOP 409.1.

CPGB No. 2014-060 [Clark County], alleged failure to cooperate with Trustee of IP's special needs trust and to provide necessary information regarding expenses; dismissed for insufficient grievance. SOP 402.1 and 409.1.

CPGB No. 2015-001 [Clark County], alleged failure to respect wishes of the IP or of the family, and mismanagement of family trust; dismissed for no actionable conduct. SOP 402.1, 407.3, and 409.1.

CPGB No. 2015-011 [King County], alleged failure to fill prescription ordered by a physician due to CPG disagreement with treatment; dismissed for no actionable conduct. SOP 408.4 and 402.6.

CPGB No. 2015-013 [Spokane County], alleged failure to pay the cost of care with result that the IP is threatened with a notice of eviction by non-Certified Professional Guardian; dismissed for lack of jurisdiction. SOP 409.1.

CPGB No. 2015-020 [Kitsap County], alleged failure to set up a bank account for the IP, pay the IP's bills, or to give the IP a monthly allowance; dismissed for lack of jurisdiction. SOP 409.1.

CPGB No. 2015-021 [Palm Beach County], alleged failure to file timely annual report, to supervise caregiver, and to maintain the IP in a suitable residential placement; dismissed for lack of jurisdiction. SOP 409.1

CPGB 2015-022 [King County], alleged failure to pay the cost of care and to make an appropriate residential placement in the AFH; dismissed for no actionable conduct. SOP 407.1, 409.1.

CPGB No. 2015-024 [Kitsap County], alleged failure of guardian to be reached by medical care facilities seeking to discharge the IP to suitable residential placement; dismissed for lack of jurisdiction. SOP 407.1, 407.6. and 407.7.

CPGB No. 2015-026 [Benton County], alleged failure of the guardian to respect the residential preferences of the IP or to permit the IP to visit with family and friends, to properly manage the IP's finances, or to report substantial change in the IP's condition to the court; dismissed for lack of jurisdiction. SOP 402.1, 403.1, 407.1, 409.1 and 411.1.

CPGB No. 2015-027 [Pierce County], alleged failure of the guardian to work with the family, facility and medical providers to ensure that the IP had suitable hearing aid, and to ensure that the facility safeguarded the hearing aid; dismissed for no actionable conduct. SOP 402.1 and 408.4.

CPGB No. 2015-030 [King County], alleged failure of the guardian to plan removal of all of the IP's belongings from his rental at the end of the rental period; dismissed for no actionable conduct. SOP 401.1 and 409.1.

CPGB No. 2015-035 [King County], alleged failure of an individual who was not a certified professional guardian to visit the IP in two years, nor to respond to emergency calls from

hospital and AFH regarding hospitalization of the IP; dismissed for no jurisdiction. SOP 404.1., 404.3 and 408.1.

CPGB No. 2015-049 [Skagit County], alleged failure of a guardian ad litem to listen to all the parties in conducting his investigation; dismissed for no jurisdiction. SOP 402.2.

CPGB 2015-050 [Snohomish County], alleged failure of the guardian to give the IP all of his allotted spending money; dismissed for no actionable conduct. SOP 403.1 and 409.1.

CPGB 2015-051 [King County], alleged failure of the guardian to provide the IP with sufficient money to meet her discretionary needs; dismissed for no actionable conduct. SOP 409.1.

CPGB 2015-054 [Clark County], alleged failure of the guardian to return phone calls from the IP's family or to permit reasonable visitation between the IP and his wife; dismissed for no actionable conduct. SOP 404.1.2., and SOP 407.5

CPGB 2015-056 [Clark County] alleged failure of an individual who was not a certified professional guardian to respect the IP's refusal of treatment; dismissed for no jurisdiction. SOP 403.1 and 403.2.

CPGB 2015-060 [Clark County] alleged theft of the IP's property by an individual who was not a certified professional guardian; dismissed for no jurisdiction. SOP 409.1, and 409.4.

CPGB 2015-061 [King County] alleged that the CPG failed to properly monitor the IP's medical care and that CPG improperly had itself appointed as the trustee for the IP's trust; dismissed for no actionable conduct. SOP 401.1, 408.4 and 409.1.

CPGB 2015-062 [Clark County] alleged failure of the CPG to comply with DSHS requirements for IP's receipt of benefits and failure to promptly return DSHS calls and emails; dismissed for no actionable conduct. SOP 402.1, 402.7 and 409.7.

CPGB 2015-064 [Grays Harbor] alleged failure of GAL to file timely reports, or investigate thoroughly; dismissed for no jurisdiction. SOP 404.1.1, and 401.5.

Termination

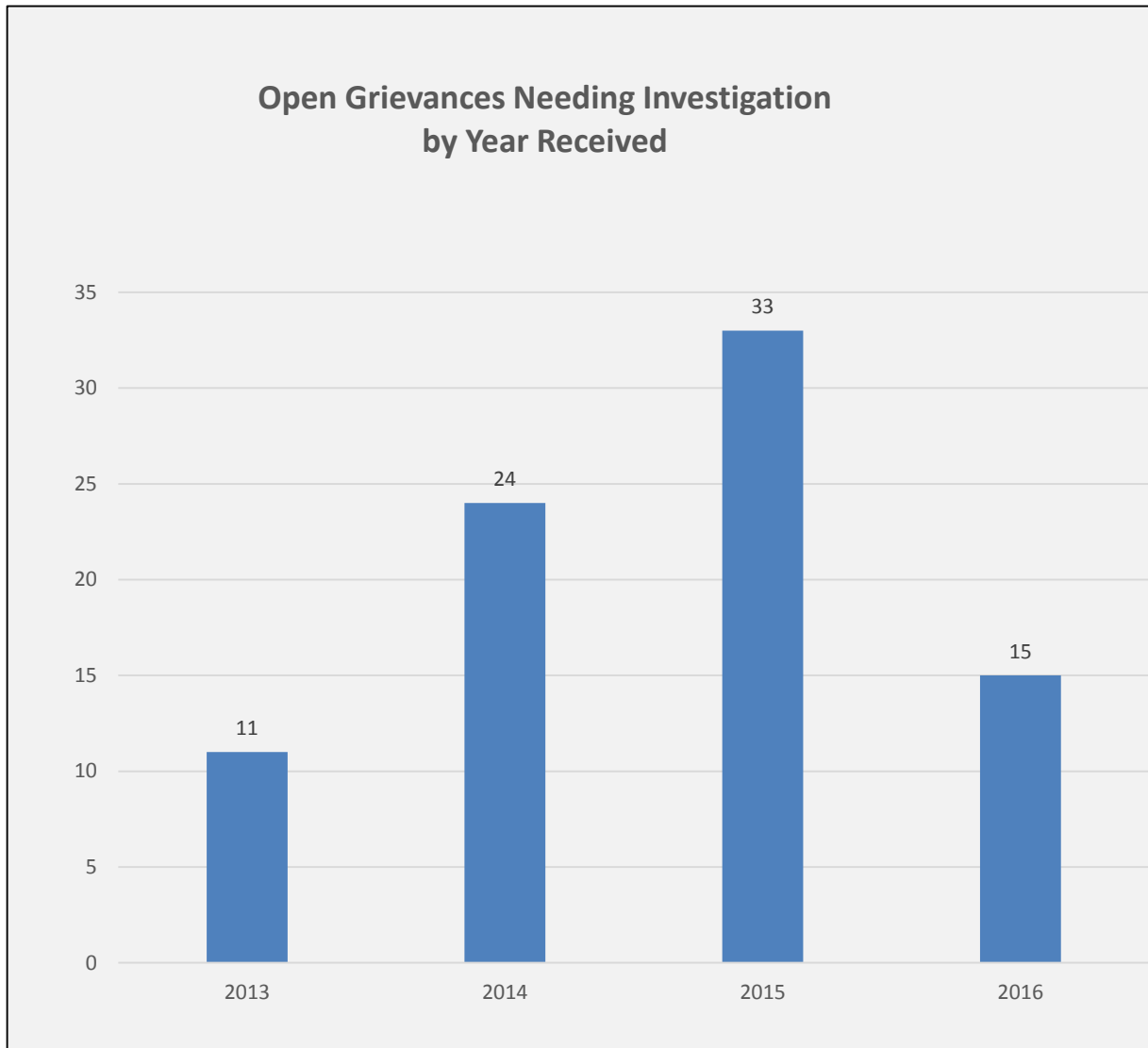
2013-010, 2013-058, 2014-008, 2014-028 Ester Mihet [CPG No. 10612] [Snohomish County], terminated after CPG voluntarily surrendered her certification. SOPs 401.1, 401.3, 406.2, 409.1, 409.4, 409.7, 410.1, 410.2, and 410.3.

2013-036, 2014-056 and 2015-010 Pamela Privette, [CPG No. 9714] [Thurston County], terminated after CPG voluntarily surrendered her certification. SOPs 402.7, 404.1, 404.9, and 409.4.

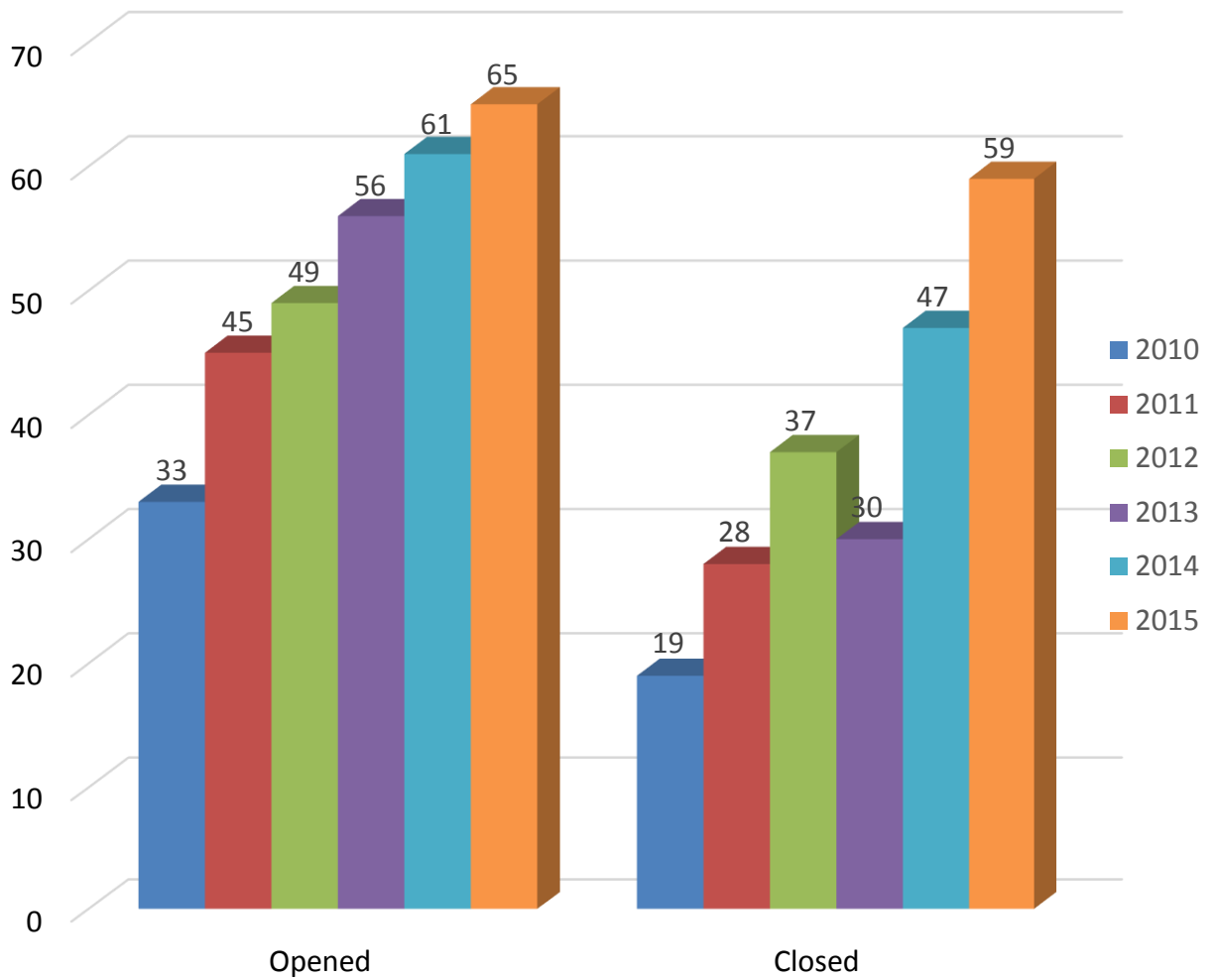
CPGB No. 2014-036 Barbara Webster [CPG 4759] [Pierce County], terminated after CPG voluntarily surrendered her certification. SOPs 402.1.

2015-002 and 2015-046 Carolyn Ohlberg [CPG 11567] [King County], terminated after death of CPG. SOPs 401.1 and 409.1.

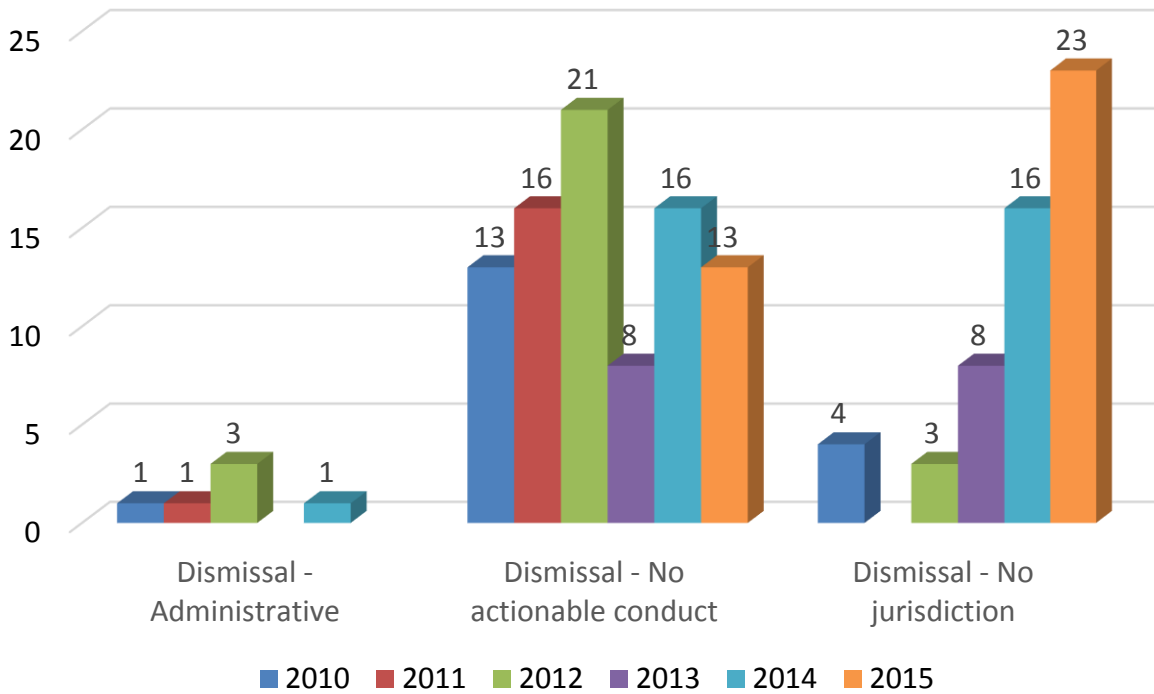
Appendix A



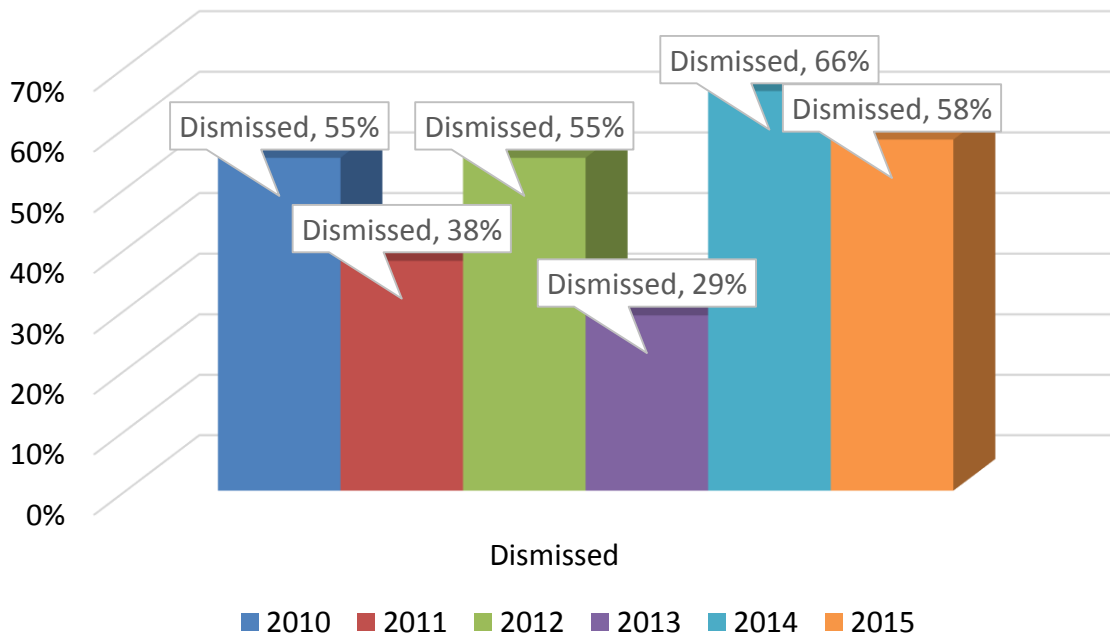
Five Year Comparison of Opened and Closed Grievances



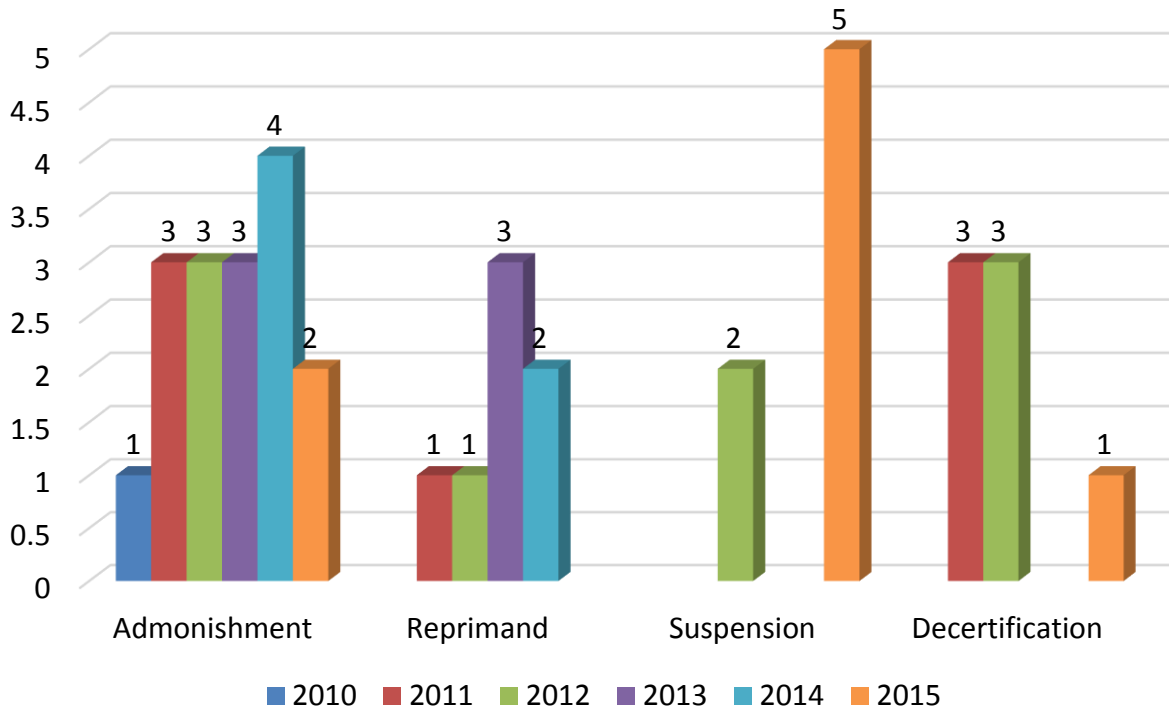
Five Year Comparison of Dismissals



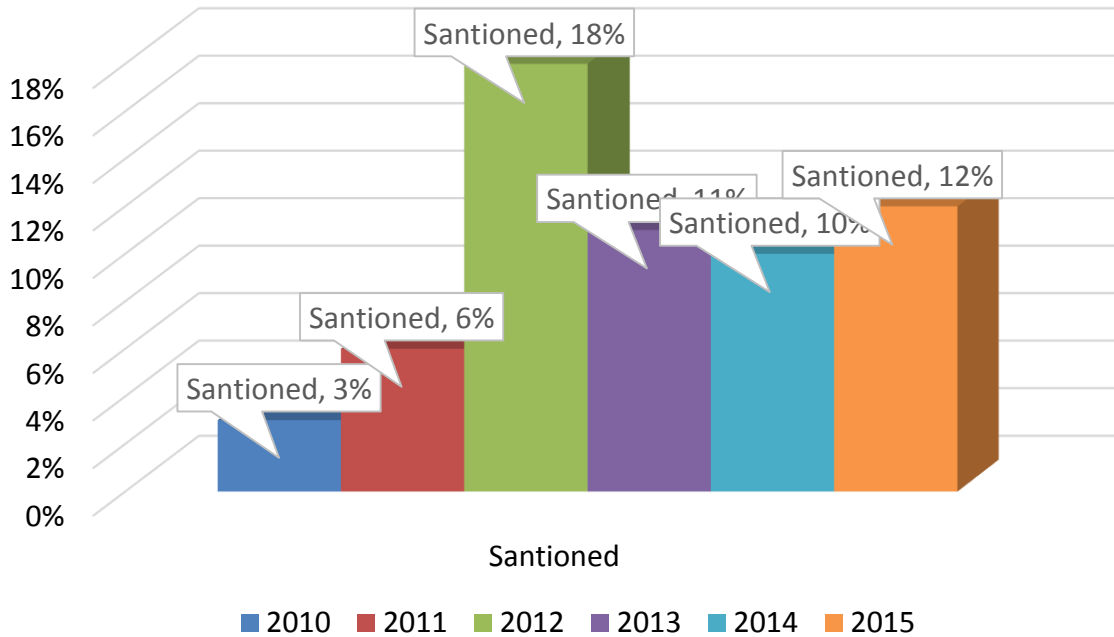
Five Year Comparison of the Percentage of Dismissed Grievances



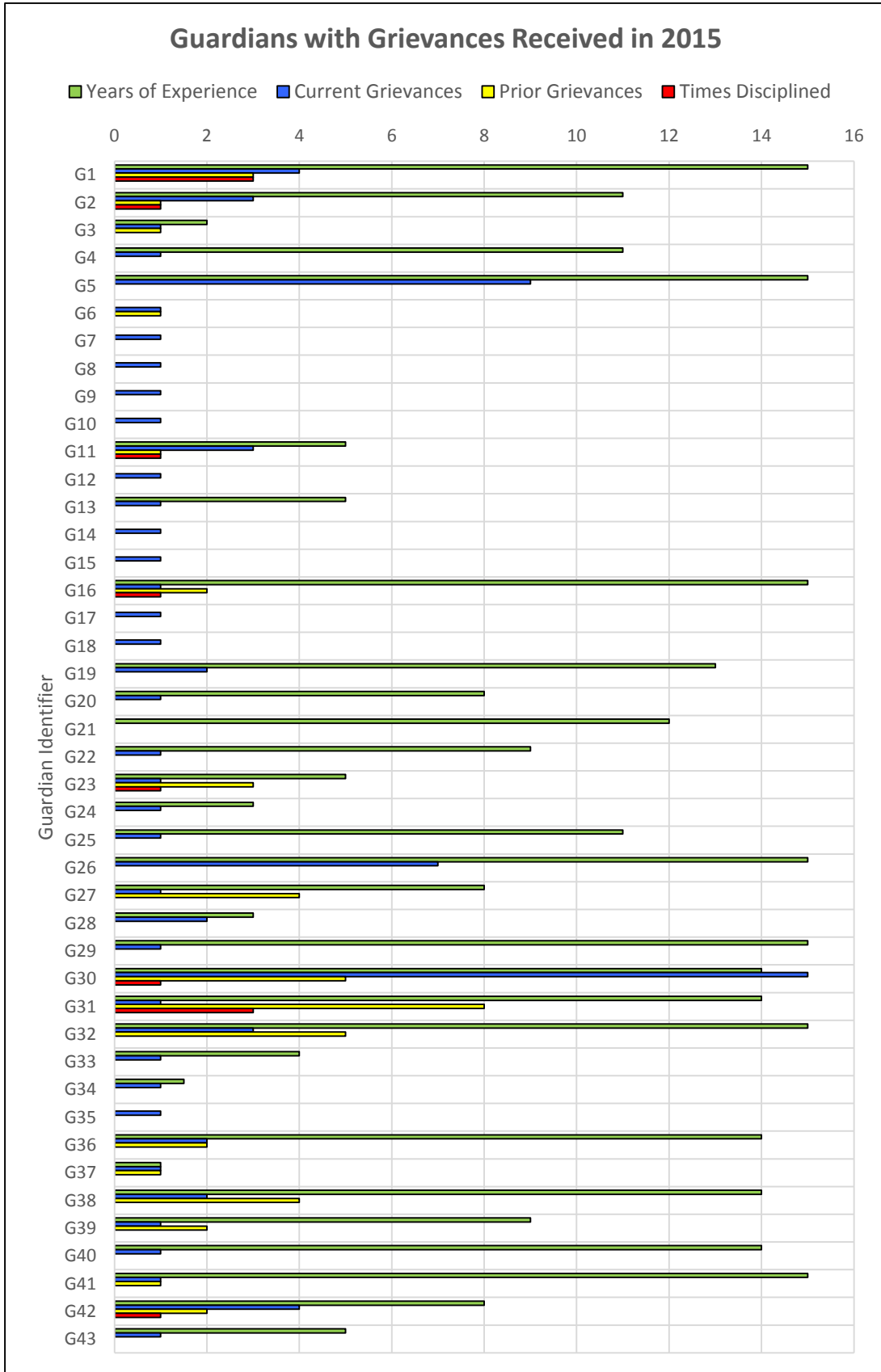
Five Year Comparison of Sanctions



Five Year Comparison of Percentage of Grievances that Result in Sanction



Appendix B



RCW 11.88.120

Modification or termination of guardianship—Procedure.

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad

faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare[,] in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

Update on 11.88.120 Guardianship Complaint Process

	Date Submitted	County	Lay or CPG	Grievant	Allegations	Received Court/Grievant
1.	08/27/2015	Kitsap	Lay	Family	<ul style="list-style-type: none"> Excessive spending Drug abuse 	
2.	09/15/2015	Cowlitz	CPG	Family	<ul style="list-style-type: none"> Refuse to allow family to participate in discussions with physician 	Grievant
3.	10/07/2015	King	Lay			
4.	12/10/2015	Spokane	Lay	Family	<ul style="list-style-type: none"> Leaves IP home alone. Hygiene of IP is not good. Refuses to replace worn out mattress. Spends the IPs funds on items for guardian. Isolated from other persons with disabilities. 	<ul style="list-style-type: none">
5.	12/14/2015	Clark	CPG	IP	<ul style="list-style-type: none"> Guardianship not needed. 	<ul style="list-style-type: none">
6.	01/15/2016	Clark	CPG	Family	<ul style="list-style-type: none"> Failure to monitor living conditions. Failure to scheduled physician appointments. Failure to purchase hygiene items Emotional abuse. Failure to pay bills. 	<ul style="list-style-type: none">
7.	01/19/2016	King	Lay	Family	<ul style="list-style-type: none"> Failure to manage IPs assets Failure to pay bills. 	Grievant
8.	01/25/2016	Skagit	Lay	Facility	<ul style="list-style-type: none"> Failure to pay bills. 	Grievant

	Date Submitted	County	Lay or CPG	Grievant	Allegations	Received Court/Grievant
9.	02/01/2016	Kitsap	CPG	IP	<ul style="list-style-type: none"> Misuse of Funds 	
10.	02/02/2016	King	Lay			
11.	02/04/2016	King	Lay			
12.	02/08/2016	Clark	CPG	IP	<ul style="list-style-type: none"> Don't need a guardian. 	
13.	02/10/2016	Okanogan	CPG			
14.	02/17/2016	Kitsap	CPG	Caregiver	<ul style="list-style-type: none"> Failure to communicate 	Grievant
15.	03/22/2016	Kitsap	CPG	Facility	<ul style="list-style-type: none"> Failure to attend physician appointments Moving IPs 	Grievant

Summary

Complaints regarding the conduct of a CPG – 8

Complaints regarding the conduct of a lay guardian - 7



ADMINISTRATIVE OFFICE OF THE COURTS

Callie T. Dietz
State Court Administrator

STATE AND NATIONAL DECISIONAL SUPPORT UPDATES

April 2016

WASHINGTON UPDATE

Update on 2016 State Legislation

Bills Signed Into (Description provided by Megan S. Farr, WSBA Elder Law Section)

The Uniform Fiduciary Access to Digital Assets Act, ESSB 5029, was signed by Governor Inslee on March 31st. Its effective date is **June 9, 2016**. You can find the entire bill, as passed by the legislature here: <http://lawfilesextd.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5029-S.PL.pdf>. A synopsis of the bill can be found here: <http://lawfilesextd.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5029-S.E%20SBR%20FBR%2016.pdf>.

The Uniform Fiduciary Access to Digital Assets Act (UFADAA) as passed in Washington sets standards for the custodians of digital assets to follow when a fiduciary (agent/attorney-in-fact, trustee, guardian, personal representative) acting on behalf of the owner of the digital assets, or on behalf of his or her estate, requires access to those assets. Digital assets consist of any content or media, in any form, maintained and accessed electronically. Examples of digital assets include electronic information in online banking, investment accounts, medical records (such as "Explanation of Benefits"), photos, emails, and social media accounts.

In the past, a fiduciary would be advised to sort through a deceased or incapacitated person's files and the mail delivered to the decedent's or incapacitated person's residence to marshal the assets, determine known creditors, and find information regarding health care (such as insurance, history, and providers). Now that much, if not all, of such information is kept electronically, there are fewer paper trails to follow to the source.

Privacy advocates and companies in the technology sector have concerns regarding unintended access to sensitive personal information. However, fiduciaries need access

to digital assets to pay expenses or protect an incapacitated person from exploitation. This legislation is a compromise between these competing interests.

The Uniform Power of Attorney Act, ESSB 5635, was signed by Governor Inslee on April 1st. Its effective date is January 1, 2017. You can find the entire bill, as passed by the legislature, here: <http://lawfilesexxt.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5635-S.PL.pdf>. A synopsis of the bill can be found here: <http://lawfilesexxt.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5635-S.E%20SBR%20FBR%2016.pdf>.

Washington's Power of Attorney Act has been in effect since January 1, 1985 (codified at RCW 11.94). The Uniform Law Commission approved a new Uniform Power of Attorney Act ("UPAA") in 2006 in order to mitigate the growing divergence among the various states' treatment of powers of attorney and to provide additional safeguards to protect incapacitated persons. Washington is the 19th state to adopt the UPAA. To date, 18 states have adopted the UPAA.^[1]

Beginning in 2009, the WSBA's Real Property, Probate & Trust Section and Elder Law Section analyzed the UPAA. It was concluded that the UPAA should be adopted in Washington with certain modifications. Senator Jamie Pedersen introduced the bill that is now law during the 2015 session. This law increases the usefulness of a durable power of attorney, includes provisions to prevent elder abuse, clarifies the role of an agent, and protects third parties who deal with an agent.

NATIONAL PROJECTS

Older Americans Act Reauthorization Act of 2015 passes US Senate ¹

April 7, 2016, Congress passed the Reauthorization of the Older Americans Act. The bill will now be sent to President Obama for his signature.

Among other provisions, the reauthorization would:

- Provide services to Americans age 60 and over, targeting those with the greatest social and economic need;
- Provide home-delivered nutrition services, group meals, family caregiver support, and community service employment;
- Ensure all long-term care residents have access to the long-term care ombudsman program which advocates and resolves complaints for residents; and
- Provide services to prevent the abuse and neglect of seniors.

^[1] Alabama, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Maine, Maryland, Montana, Nebraska, Nevada, New Mexico, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

¹ Description summarized from a press release from the US Special Committee on Aging

Congress first passed the Older Americans Act (OAA) in 1965 in response to concern by policymakers about a lack of community social services for older persons. The original legislation established authority for grants to States for community planning and social services, research and development projects, and personnel training in the field of aging. The law also established the Administration on Aging (AoA) to administer the newly created grant programs and to serve as the Federal focal point on matters concerning older persons.