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State Court Administrator

October 11, 2016

TO: Certified Professional Guardianship Board

FROM: Administrative Office of the Courts Staff

RE: WINGS Standard of Practice Recommendation

Recommendation: A Certified Professional Guardian shall not serve as a Guardian and as a Guardian ad Litem in the same guardianship matter.

Issue/Question: Is it appropriate for a Guardian to serve as the Court- Appointed Guardian in a case where he or she also served as Guardian ad Litem?

Committee Process:

The Standards and Practices Committee addressed this issue at its meeting on October 29, 2016. The Committee universally agreed after a brief discussion that a Guardian could not serve as a guardian in a case where s/he served as a guardian ad litem. It was felt that this raised a clear conflict of interest. While the group felt that the conflict should be obvious to anyone working in the guardianship field that it would be best to incorporate a prohibition against serving in both roles in a single case into a standard. The Chair of the Committee proposed the above language, which was agreed to by all present.

Issue Background:

This was one of several questions involving potential conflicts that were identified as needing consideration at the Initial Wings Conference of Friday, August 7, 2015.

The Committee looked to the Standards of Practice dealing with conflicts of interest, SOP 406, for guidance with this matter.

406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

406.2 There shall be no self interest in the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

406.3 A conflict arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. [Revised 1-9-12]

The Office of Guardianship also conducted research into this question. Under Washington State's GAL rules, a GAL is to "avoid conflicts of interests." Guardian Ad Litem Rule 2(e). A GAL must not "accept or maintain appointment if the performance of the duties of GAL may be materially limited by the GAL's responsibilities to another client or a third person, or by the GAL's own interest." *Id.* Therefore, it would be not be appropriate for a professional guardian to serve as guardian where s/he served as a guardian ad litem since there would be conflicting interests.