

# November 2016 Meeting Minutes



## Certified Professional Guardianship Board

Monday, November 14, 2016 (8:00 a.m. – 9:00 a.m.)

Teleconference

### Draft Meeting Minutes

**Members Present:**

Commissioner Rachelle Anderson  
Ms. Rosslyn Bethmann  
Dr. Barbara Cochrane  
Mr. Jerald Fireman  
Mr. William Jaback  
Dr. K. Penny Sanders  
Ms. Carol Sloan  
Ms. Amanda Witthauer

**Members Absent:**

Judge James Lawler  
Judge Gayle Harthcock  
Commissioner Diana Kiesel  
Ms. Barbara West

**Staff:**

Ms. Shirley Bondon  
Ms. Carla Montejo  
Ms. Eileen Schock  
Ms. Kim Rood  
Ms. Kathy Bowman

**Online Guests**

See list on last page

### 1. Meeting Called to Order

In Judge Lawler's absence, the meeting was called to order by Commissioner Anderson at 8:06 am.

### 2. Roll Call, Welcome New Member, Approval of Minutes

Roll call was taken and a quorum was determined to be present. Commissioner Anderson welcomed the Board members and the public to the meeting. A special welcome was given to new board member Mr. Jerald Fireman.

A motion was made and seconded to approve the October 17 Board meeting minutes. No changes or corrections were requested. Ms. Carol Sloan and Mr. Jerry Fireman abstained. The motion passed.

### 3. Grievance Status Reports

Staff reported on the status of current grievances under review. Since the last report, 11 new grievances were opened. During this reporting period, four grievances have been dismissed for no actionable conduct. Two grievances were dismissed for no jurisdiction. Two grievances were terminated because the guardian complained about voluntarily surrendered his or her certification.

New charts have been prepared to break down the percentages of grievances per guardian, as well as the percentage of guardians with multiple grievances who have completed the UW Training vs. those who did not. The guardians with the highest number of grievances were found to have been those “grandfathered in” without completing the now-required UW training.

Another report was provided to compare grievances across a number of professions. Although there are no known professions that closely match the relationship between guardian and client, the Board appears to close grievances with a sanction at a higher percentage than the professions reviewed. Twenty-two percent of grievances are resolved with a sanction.

A request was made to include a breakdown by reason for those grievances closed without sanction. It was felt this information would provide the board with greater insight.

#### **4. CPG By-Laws**

Following a short discussion, a motion was made and seconded to adopt the CPG By-Laws as updated, including a new section on confidentiality and the requirement for board members to sign a Confidentiality Agreement annually. The motion passed. Confidentiality Agreements will typically be signed annually at the October meeting. It was agreed that this year’s Confidentiality Agreements will be prepared and provided for signature at the January in-person meeting of the Board in January.

#### **5. Executive Session – Closed to Public**

#### **6. Reconvene and Vote on Executive Session Discussion:**

##### **Applications**

On behalf of the Applications Committee, Ms. Witthauer presented the following application for board approval:

**Motion:** *A motion was made and seconded to approve Denise Meador’s application for certification. The motion passed.*

##### **Appeals**

On behalf of the Appeals Committee, Dr. Cochrane presented the following appeals for board approval:

**Motion:** *A motion was made and seconded to deny Stacie Harris’ appeal of the denial of her application for certification. The motion passed.*

**Motion:** *A motion was made and seconded to deny Kerry Mahoney’s appeal of the denial of her application for certification. The motion passed.*

##### **Complaints/Decertification**

On behalf of the Applications Committee, Mr. Jaback presented the following disciplinary recommendations for board approval:

**Motion:** *A motion was made and seconded to send a letter to CPG Maureen Carroll's attorney as notification she must complete all recertification requirements or comply with the Notice of Intent to Voluntarily Surrender prior to December 1. Failure to comply will result in decertification on December 1, 2016. The motion passed. Ms. Sloan opposed.*

**Motion:** *A motion was made and seconded to decertify CPG Lori Peterson for failure to timely complete her administrative renewal requirements. The motion passed. Ms. Sloan abstained.*

### Recap of Motions from November 14, 2016 Meeting

Motion Summary	Status
<b>Motion:</b> <i>A motion was made and seconded to approve the minutes of the October 28, 2016 meeting. Ms. Carol Sloan and Mr. Jerry Fireman abstained.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve Denise Meador's application for certification.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to deny Stacy Harris' appeal of denial of her application for certification.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to deny Kerry Mahoney's appeal of denial of her application for certification.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to send a letter to CPG Maureen Carroll's attorney as notification she must complete all recertification requirements or comply with the Notice of Intent to Voluntarily Surrender prior to December 1. Failure to comply will result in decertification on December 1, 2016. Ms. Sloan abstained.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to decertify CPG Lori Peterson for failure to timely complete her administrative renewal requirements. Ms. Sloan abstained.</i>	Passed

### Online Guests:

Sopie Nordstrom	Renate Rain
Tom Goldsmith	Tia Reese

# Approved CPGB Confidentiality Agreement

## **Confidentiality Agreement for Members of the Certified Professional Guardianship Board (Board)**

As a member of the Certified Professional Guardianship Board, I understand that I may participate in confidential discussions and have access to confidential information and records in files and databases such as application files and disciplinary records. By signing this statement, I affirm my understanding of my responsibilities to maintain confidentiality and agree to the following:

1. I understand that the application files and disciplinary records may contain confidential, as well as public, information.
2. I understand that I may access, read or handle confidential information to the extent required in, and for the purpose of, performing my assigned duties as a member of the Certified Professional Guardianship Board.
3. I agree not to divulge, publish, or otherwise make known to unauthorized persons or to the public any confidential information obtained from in the course of my term as a Board member.
  - a. I may divulge confidential information to board members, AOC staff, Board counsel, Board disciplinary counsel and hearing officers as necessary to perform my board member duties.
  - b. I may divulge confidential information to others only if specifically authorized to do so by statute, court rule, or court order.
  - c. Maintaining confidentiality includes not discussing confidential information outside of board general, executive and committee meetings.
  - d. After I am no longer a member of the Board I may not divulge confidential information obtained during the course of my service on the Board.
4. I agree to consult the Board chair or staff of the Administrative Office of the Courts on any questions I may have concerning whether particular information may be disclosed.
5. I understand that a breach of confidentiality may be grounds for disciplinary action, and may include termination of my service on the Board.

**Confidentiality Agreement for  
Members of the Certified  
Professional Guardianship Board**

6. I agree to notify the Board chair immediately should I become aware of an actual breach of confidentiality or a situation which could potentially result in a breach, whether this be on my part or on the part of another person.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

# Grievance Update



**CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES**

31-Dec-16

<b>Grievances (Investigations)</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>Total</b>
Open Needing Investigation October 31, 2016	51	29	24	2	106
Resolved w/o ARD or Hearing	7		3		10
Resolved w/ARD					
Resolved w Hearing					
Reopened Grievances					
Terminated, Voluntary Surrender	2	1			3
New Grievances (opened since late report)	24				24
Open Needing Investigation December 30, 2016	66	28	21	2	117

<b>Year Received (Resolutions)</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>Total</b>
Dismissal - Administrative					
Dismissal - No actionable conduct	1		3		4
Dismissal - No jurisdiction	6				6
Dismissal - Insufficient					
Admonishment					
Reprimand (Previously Investigated)					
Suspension					
Decertification					
Termination	2	1			3
Closed Since Last Report	9	1	3		13

<b>Summary Current Activity</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>Total</b>
Opened since last report	24				24
Closed w/o ARD/Hearing	9	1	3		13
Closed w ARD					
Closed w Hearing					0

CPG ID	Year Certified	Grievances	Year(s) Grievances Received	Status
A	2015	3	2016 (3)	
B	2007	3	2014 (1), 2016 (1)	
C	2002	2	2014 (1), 2016 (1)	
D	2007	2	2016 (2)	
E	2005	4	2014 (2), 2015 (1), 2016 (1)	
F	2001	4	2012 (1), 2013 (1), 2015 (1)	
G	2012	3	2016 (3)	
H	2004	2	2016 (2)	
I	2014	6	2015 (1), 2016 (5)	
J	2001	3	2014 (1), 2015 (1), 2016 (1)	
K	2011	2	2015 (1), 2016 (1)	
L	2003	2	2015 (2)	
M	2007	2	2014 (2)	
N	2003	3	2015 (1), 2016 (2)	
O	2003	3	2015 (1), 2016 (2)	
P	2001	3	2016 (3)	
Q	2011	2	2016 (2)	
R	2001	10	2015 (1), 2016 (9)	
S	2011	3	2015 (1), 2016 (2)	
T	2014	4	2015 (2), 2016 (2)	
U	2007	2	2016 (2)	
V	2001	2	2014 (2)	
W	2014	2	2015 (1), 2016 (1)	
X	2001	2	2016 (2)	

Total 73

	Year Certified	# of Guardians
<b>Before UW Certificate Program 122</b>	2001	6
	2002	1
	2003	3
	2004	1
	2005	1
	2006	
	2007	4
	2008	
	<b>Total</b>	<b>16</b>
<b>UW Certificate Program 147</b>	2009	
	2010	
	2011	3
	2012	1
	2013	
	2014	3
	2015	1
	2016	
	<b>Total</b>	<b>8</b>

Year	Grievance by Year
2012	1
2013	1
2014	9
2015	14
2016	48

# Proposed Grievance Diversion Proposal



December 30, 2016

**TO:** Certified Professional Guardianship Board  
**FROM:** Guardian Program Staff  
**RE:** Proposed Grievance Diversion Proposal

**Background:**

Due to a shortage of human resources that has occurred for many years, there is a backlog of grievances that need investigation. The list is provided below.

Year Grievance Received	Number Needing Investigation
2013	2
2014	23
2015	28
2016	60

This year, due to the new court complaint process, the number of new grievances has increased significantly. To-date we have received 91 grievances during the 2016 calendar year. We received 65 grievances in 2015.

Without new resources or a new process staff will not be able to fully address the backlog, while fully investigating new grievances. Staff submits the following proposal to address the backlog and the increase in new grievances. This proposal attempts to address concerns in a manner that is fair, efficient and effective.

**Address the Backlog (Board Action Needed)**

Grievance data indicates that a significant number of grievances involve three issues (1) Communication; (2) Guardian Fees and Payment; and (3) Court Reporting.

We are proposing a diversion process that is corrective and educational rather than punitive. Staff will review the backlog, identify grievances that fit into the categories listed below, and divert them into mediation or auditing. Diversion must be consented to via a written agreement with all relevant parties stating that the grievance can be

resolved using one of the processes listed below. Grievances that cannot be diverted will follow the regular investigation process.

- **Communications Issues**– Divert to Mediation or Eldercaring Coordination by a trained mediator or eldercaring coordinator.
  - Failure to respect self - determination
  - Failure to cooperate with the IP, his or family and friends or other service providers
  - Failure to discuss decisions with the IP, including healthcare and finances

#### **Mediation and Eldercaring Coordination Training**

AOC will arrange and pay for training in Eldercaring Coordination for a small group of individuals identified in collaboration with the Dispute Resolution Centers. Prior to training, participants must agree to mediate grievances, approximately 10 hours, at no cost in exchange for receiving the training at no cost.

To avoid even the appearance of a conflict the following individuals will not be eligible to take the training at no cost or to mediate grievances.

- Certified Professional Guardian
  - Title 11 Guardian ad litem
  - Attorney who represents a CPG
- **Fees and Payment Issues** – Divert to a forensic audit by a student or professional auditor.
    - Failure to pay bills timely
    - Overcharging
      - Does not have a rate schedule based on task performed
    - Minor issues should be corrected
      - Errors, mistakes
    - Major issues will result in sanction
      - Theft and misappropriation of funds

#### **Possible Auditors**

- Forensic Accounting Academic Programs  
<http://www.unixl.com/dir/forensic-accounting/washington-state/>
- Professional Associations

- **Court Reporting** – Divert to court reporting audit by an extern or staff
  - Failure to provide notice of right to file right to receive special notice
  - Late reports
  - Show cause orders

### **Process to Address New Grievances (No Board Action Needed)**

Checklist: Investigating Allegations Regarding the Conduct of a Professional Guardian

#### **Weekly**

1. Review grievances received during the previous week.
2. Identify the Nature of the Grievance

#### **What was violated?**

- Standard of Practice
- Regulation
- Court Rule
- Statute
- Agreement Regarding Discipline

#### **Is there a current or past threat?**

- When did the alleged conduct occur?

**Note:** When possible use first-in, first-out.

- Does the grievance involve an existing guardianship?
- Does the grievance involve a terminated guardianship?
  - Is the guardian complained about still the guardian?
  - Has the guardian complained about been replaced?

**Note:** If grievance involves a certified professional guardian already being investigating, combine grievances and investigate them together.

If grievance concerns a certified professional guardian for who has a past Agreement Regarding Discipline, and the issues complained about are similar, this investigation may occur before others.

#### **What is the nature of the harm?**

**Note:** Whenever there appears to be a need to address an issue immediately, such as physical abuse and potential loss of a benefit, notify the Superior Court where the guardianship appointment occurred immediately in writing.

- Possible physical abuse.
- Possible neglect.
- Possible isolation.
- Possible financial exploitation.
- Possible illegal or criminal conduct?

**Who else should be notified?**

- Superior Court
- Adult Protective Services
- Residential Care Services
- Law Enforcement
- Professional Regulatory Body

**Action Recommended (Two diversions allowed per CPG)**

- Divert
  - Mediation/Eldercaring Coordination
  - Forensic Audit
  - Court Reporting Audit
- Interview Grievant
- Investigate



## Reviewing Applicant Credit Reports



December 30, 2016

TO: Certified Professional Guardian Board (Board)

FROM: Shirley Bondon

RE: Reviewing Applicant Credit Scores

**Issue:**

When reviewing applicant credit information, should the Board employ a bright line rule for credit scores or should the Board use discretion and analyze credit reports?

**AAG's Analysis and Recommendation:**

The "pro" of setting a bright line score of 700 is, of course, that those reviewing the application have a clear criteria to apply, with no room to question an exercise of discretion. That could mean reduced workload, but, on the "con" side, it may also result in fewer certified professional guardians. If the Board establishes a cutoff, with no discretion, it should be prepared to defend how that particular score was set as a cutoff.

Credit scores do vary, although usually not a lot, between the agencies. Establishing a basic qualifying credit score level, but allowing for review or explanation appears to be a more fair approach, due to the variation between scores of the different agencies, and the potential impact of recent events, or very old events, on a person's score.

It is reasonable to advise applicants to check their credit rating before they apply, to enable them to clear or correct negative history that they may not be aware of. Stating on the application form that the Board is looking for a specific credit score, or just informing the applicants that their credit score will be checked, and if their credit score comes in less than a specified score, the board will analyze the applicant's credit report for more information and the applicant will be given the opportunity to explain any negative history seems to be the best approach.

**Background:**

In 2012, the Board adopted a new regulation requiring all applicants to submit a credit report and score. This information is used to determine the financial fitness of applicants. After reviewing credit reports for several months, the Board determined that the credit score did not provide all the information needed, thus often additional

information is needed, such as, the reason for poor credit history and the information reviewed to determine a credit score.

**Relevant Rules, Regulations and Statutes:**

GR 23 in pertinent part;

(d)(4) Insurance Coverage. In addition to the bonding requirements of Chapter 11.88 RCW, applicants must be insured or bonded at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

(d)(5) Financial Responsibility. Applicants must provide proof of ability to respond to damages resulting from acts or omissions in the performance of services as a guardian. Proof of financial responsibility shall be in such form and in such amount as the Board may prescribe by regulation.

(d)(9) Denial of Certification. The Board may deny certification of an individual or agency based on any of the following criteria:

(vii) A Board determination based on specific findings that the applicant's financial responsibility background is unsatisfactory.

**Characteristics of Financial Solvency/Insolvency:**

Generally speaking, financial solvency means being able to pay all financial obligations in a timely manner and still have spending capital remaining. Financially solvent individuals are not burdened by financial debt and generally have a good credit rating. Several credit bureaus define a good credit rating as a credit score of 700 or above.

Financial insolvency usually is evident with bankruptcy and reliance on government assistance. Insolvency occurs when liabilities, or debts, exceed assets and cash flow.

**Determining Financial Solvency:**

**Viability and Liquidity:** *(excerpted from Investopedia)*

Liquidity is the term used to describe how easy it is to convert assets to cash. The most liquid asset, and what everything else is compared to, is cash. This is because it can always be used easily and immediately.

Certificates of deposit are slightly less liquid, because there is usually a penalty for converting them to cash before their maturity date. Savings bonds are also quite liquid, since they can be sold at a bank fairly easily. Finally, shares of stocks, bonds, options and commodities are considered fairly liquid because they can usually be sold readily and you can receive the cash within a few days. Each of the above can be considered

as cash or cash equivalents because they can be converted into cash with little effort, although sometimes with a slight penalty.

**Credit History:** *(excerpted from Getting in Good Financial Health, by Dr. Bernice Wilson)*

The five factors that determine credit health are:

1. *Payment history* - accounting for 35 percent of FICO score;
2. *Dollar amount* - accounting for 30 percent of FICO score;
3. *Length of credit history* - accounting for 15 percent of FICO score;
4. *New credit accounts* - making up 10 percent of FICO score; and
5. *Mix of credit account types* - making up another 10 percent of FICO score.

You are considered to be in good financial health if your FICO is 700 or above. A FICO score below 600 is considered to be high risk and you run the chance of having your credit application turned down. Eighty-five percent of Americans score higher than 600 according to Glasner (2006); Singletary (2006).

There are several types of credit scores developed by credit reporting agencies, independent companies, and other lenders. Therefore, a credit score may differ from lender to lender because credit history may differ from lender to lender.

Specialty credit reports also determine your financial health. The Fair and Accurate Credit Transaction Act of 2003 has permitted consumers to obtain a free copy of specialty reports annually since December 1, 2004. The Federal Trade Commission ensures that organizations carry out this mandate. Specialty reports relate to medical records or payments, check writing history, residential or tenant history, and insurance claims.

### **Things to Consider When Reviewing Negative Credit History:**

***Bankruptcy*** *(excerpted from Debt.org)*

Bankruptcy is the legal status of someone or some company that is unable to pay off debt. It is a status that can only be given by a court, either a state or federal court.

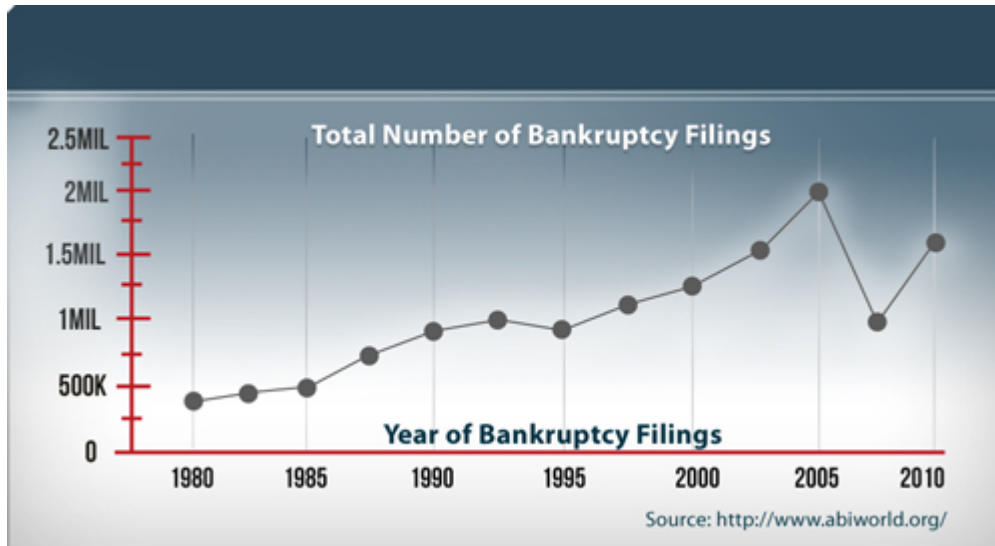
Generally, personal bankruptcy is considered a last resort for people inundated with loans or bills. Although going bankrupt is an effective way to wipe out most or all fiscal obligations, the process leaves long-lasting consequences.

Bankruptcy will negatively affect your credit and future ability to use money. It may prevent or delay foreclosure on a home and repossession of a car. It can also stop wage garnishment and other legal actions of creditors attempting to collect debts.

In addition, filing for bankruptcy can be a complex and costly process. Experts recommend anyone considering bankruptcy to seriously consider other options first. Despite the experts' warnings, the number of people in the United States filing for bankruptcy annually is on the rise.

## Bankruptcy in the United States

In 2011, there were 1,410,653 bankruptcy filings; nearly four times the number filed 30 years prior.



The percentage of bankruptcies filed by consumers has also risen. In the early 1980s, consumer filings made up about 82 to 87 percent of all bankruptcy filings.

By 2011, this number had risen to 97 percent, meaning businesses made up only 3 percent of the total bankruptcy filings.

## Consequences of Bankruptcy

The overriding principle of bankruptcy is that it wipes away debt. Sometimes all debt, oftentimes only a portion of it. The overall consequences of filing for bankruptcy carry a negative impact.

A bankruptcy filing remains on your credit report for 10 years. During this time, it may prevent you from obtaining new lines of credit and may even cause problems when you apply for jobs.

If you are considering bankruptcy, your credit report and credit score are probably already considerably damaged. Because of this your credit report may not endure further injury, especially if you consistently pay your bills after declaring bankruptcy.

Still, because of the long-term effects of bankruptcy some experts believe it may be beneficial only if you have more than \$15,000 in debts.

Bankruptcy does not necessarily erase all financial responsibilities. It typically does not discharge the following types of debts and obligations:

- Alimony
- Child Support
- Debts that arise after bankruptcy is filed
- Loans obtained fraudulently
- Some debts incurred in the six months prior to filing bankruptcy
- Some student loans
- Some taxes

There are several types of bankruptcy for which individuals or married couples can file, the most common being Chapter 7 and Chapter 13.

Chapter 7 bankruptcy filings make up about 70 percent of non-business bankruptcy cases, and under this your debts are discharged and you are no longer responsible for repaying them. Some of your assets may be sold by a court-appointed bankruptcy trustee. The proceeds go towards paying the trustee, covering administrative fees and, if funds allow, repaying your creditors as much as possible.

You are allowed to keep key assets, but property exemptions vary from state to state. You may choose to follow either state law or federal law, which may allow you to keep more possessions.

Under federal law, you are typically entitled to \$16,500 in equity in your home and \$2,575 in equity in your car, as well as certain less valuable items like household items and job-related tools. If you jointly file as a married couple, these amounts double.

You also retain your right to receive pension, Social Security, unemployment, veteran benefits and welfare.

Chapter 13 bankruptcies make up for about 30 percent of non-business bankruptcy filings. A Chapter 13 bankruptcy involves repaying some of your debts to have the rest absolved. This is an option for people who do not want to give up their property or do not qualify for the Chapter 7 filing because their income is too high.

People can only file for bankruptcy under Chapter 13 if their debts do not exceed a certain amount. The specific cutoff is reevaluated periodically. Under Chapter 13, you must design a three-to-five year repayment plan for your creditors. Once you successfully complete the plan, the remaining debts are erased.

### **Understanding a Federal Tax Lien: *(excerpted from IRS.gov)***

A federal tax lien is the government's legal claim against your property when you neglect or fail to pay a tax debt. The lien protects the government's interest in all your property including real estate, personal property and financial assets. A federal tax lien exists after the IRS:

- Assesses your liability;
- Sends you a bill that explains how much you owe (Notice and Demand for Payment); and
- You neglect or refuse to fully pay the debt in time.

The IRS files a public document, the **Notice of Federal Tax Lien**, to alert creditors that the government has a legal right to your property.

### How to Get Rid of a Lien

Paying your tax debt **in full** is the best way to get rid of a federal tax lien. The IRS releases your lien within 30 days after you have paid your tax debt.

**Options:** When conditions are in the best interest of both the government and the taxpayer, other options for reducing the impact of a lien exist:

- **Discharge of property** — Allows property to be sold free of the lien. The seller or buyer can submit [Publication 783, Instructions on How to Apply for Certificate of Discharge From Federal Tax Lien](#) (PDF).
- **Subordination** — Does not remove the lien, but allows other creditors to move ahead of the IRS, which may make it easier to get a loan or mortgage. For more information review [Publication 784, Instructions on How to Apply for a Certificate of Subordination of Federal Tax Lien](#) (PDF).

### How a Lien Affects You

- **Assets** — A lien attaches to all of your assets (such as property, securities, and vehicles) including future assets acquired during the duration of the lien.
- **Credit** — Once the IRS files a Notice of Federal Tax Lien, it may limit your ability to get credit.
- **Business** — The lien attaches to all business property and to all rights to business property, including accounts receivable.
- **Bankruptcy** — If you file for bankruptcy your tax debt, lien, and Notice of Federal Tax Lien may continue after the bankruptcy.

### Avoid a Lien

You can avoid a federal tax lien by simply filing and paying all your taxes in full and on time. If you can't file or pay on time, don't ignore the letters or correspondence you get from the IRS. If you can't pay the full amount you owe, [payment options](#) are available to help you settle your tax debt over time.

## **Lien vs. Levy**

A lien is not a levy. A lien secures the government's interest in your property when you don't pay your tax debt. A [levy](#) actually takes the property to pay the tax debt. If you don't pay or make arrangements to settle your tax debt the IRS can levy, seize and sell any type of real or personal property that you own or have an interest in.

## **Other Considerations**

- Foreclosure
- Medical Bills
- Repossession of Property
- Collection Agency Referral
- Late Payment

## **Ability to be Bonded:**

Surety bonds, while issued by an insurance company, are not insurance. A bond is a third party contractual obligation between the surety, the principal, and the obligee. It is an obligation by the surety to provide financial benefit to the obligee (the entity to whom the bond is issued) on behalf of the principal (the party responsible for completion of the obligation established by the bond). The bond ensures that the conditions or award of money damages will be fulfilled.

Bond cost varies greatly; it is dependent on bond type, the applicant's credit history/ financial performance and the location where the bond is needed. The bond company requires information about credit and financial history as part of the bond application process. An applicant's credit history tells the bonding company whether the applicant can be considered financially reliable. A good credit score means a lower bond fee, but even those with terrible credit may be able to get a bond at a higher premium. These are called "high risk" applicants. The fee for "high risk" applicants can be between 5 and 20 percent or more of the total amount of the bond.

Different states charge different fees, as do different surety companies. For an applicant with good credit history the cost is usually between 1 and 4 percent of the total bond amount needed. The best way to find a cost for a particular bond is to submit an application to the surety company and get a quote.



# WINGS Proposed Standards of Practice



**MEMORANDUM**

**To:** Certified Professional Guardianship Board  
**Date:** December 30, 2016  
**From:** Standards of Practice Committee  
**Re:** Comments on WINGS Proposed Regulations

**I. Threshold Consideration – SOP versus Advisory Opinion**

The Committee recommends that the Certified Professional Guardianship Board consider whether any of the proposals that the Board wishes to adopt would be better implemented as Ethics Advisory Opinions rather than as changes to the regulatory Standards of Practice.

The Committee felt that regulatory changes should be kept to a minimum, as keeping up with frequently changing Standards of Practice regulations is challenging for guardians. In addition, the Committee pointed out that the concern addressed in Section IV below was submitted by a stakeholder seeking an Ethics Advisory Opinion, and that matter would be best handled in that format.

**II. WINGS Standards of Practice Recommendation (1a):**

Any Certified Professional Guardian (CPG) nominated as guardian in a petition to establish a guardianship not filed by the nominated CPG shall only retain legal counsel in that guardianship who does not represent any other party in the guardianship past or present, unless a waiver is obtained by the attorney.

**Committee Comments:**

Committee does not support the Recommendation:

It is the lawyer's responsibility to obtain a waiver under these circumstances. Proposed SOP places the guardians in the position of policing their attorney.

Proposed SOPC may have unintended consequences, including inadvertent violation of the SOPC, in pro bono cases and other situations in which resources are limited.

### **III. WINGS Standards of Practice Recommendation (1.b):**

A professional guardian who self-petitions to be guardian for someone must obtain a signed statement from the attorney general stating the reason the attorney general's office will not petition for guardianship; and engage in an investigation that:

- (1) identifies alternative nominees and provides information as to why alternate nominees who are available are not suitable or able to serve;
- (2) provides a written request from the party requesting the guardianship, which identifies the basis for the request and the basis for the decision by that party not to petition;
- (3) provides documentation from third parties of the facts set out in the petition (such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person);
- (4) provides documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person; and
- (5) discloses to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

#### **Issue/Question:**

*Is it appropriate for an attorney to represent both the petitioner and the professional guardian?*

#### **Committee Comments:**

Committee does not support the Recommendation:

There is already an existing Advisory Opinion addressing the issue. The Committee is concerned as to whether this issue should rise to the level of a SOP.

The Committee feels that this SOP will create significant delays in the guardianship appointment process, especially in smaller counties/regions, as the AG will be required to review and investigate the matter before signing a statement. This SOP could cause harm in small communities.

CPGs are often directly contacted when no one else is available to take a case to file a petition. CPGs may be reluctant or unwilling to take such cases if process is long, cumbersome or too restrictive.

#### **IV. WINGS Standards of Practice Recommendation (3):**

*To add the following language to SOP 406:*

406.5.1 A guardian who is also an attorney shall only represent the guardian in their fiduciary capacity as guardian with respect to the administration of the guardianship for the person under guardianship. The guardian shall account to the court for the costs of its services as guardian and as attorney for the guardian separately.

406.5.2 A guardian for a person under guardianship or an attorney who is also the guardian shall not initiate legal action on behalf of the person under guardianship, or respond to legal action initiated against the person under guardianship, without the express approval of the court with local jurisdiction.

406.5.3 A guardian or an attorney who is a guardian shall not serve as attorney for the person under guardianship.

#### **Issue/Question:**

*May a guardian who is an attorney provide legal services to an individual in a guardianship?*

#### **Existing SOP Language**

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

#### **Committee Comments:**

Committee supported the recommendation with the following suggestions:

1. Board discussion should take place as to whether this should be an Ethics Advisory Opinion or a SOP.
2. Some “wordsmithing” is needed for clarity.

**V. WINGS Standards of Practice Recommendation (4):**

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 Comments:**

Committee did not think the proposed SOP was needed since the dual role would be an obvious conflict.

If this proposal were to be adopted as a Standard of Practice, the Committee feels that language should be added providing for an exception if approved by the court. The Committee believes that there may be extenuating circumstances necessitating approval of the dual roles in some cases.

Callie T. Dietz  
State Court Administrator

October 10, 2016

TO: Certified Professional Guardianship Board

FROM: Administrative Office of the Courts Staff

RE: WINGS Standards of Practice Recommendation

**Recommendation:** Any Certified Professional Guardian (CPG) nominated as guardian in a petition to establish a guardianship not filed by the nominated CPG shall only retain legal counsel in that guardianship who does not represent any other party in the guardianship past or present, unless a waiver is obtained by the attorney.

**Issue/Question:** *Is it appropriate for an attorney to represent both the petitioner and the professional guardian?*

**Committee Process:**

The WINGS Standards of Practice Committee began to discuss the question above at its October 29, 2015 meeting. It is generally agreed in the guardianship arena that an attorney should not represent both the petitioner and the professional guardian.

One member of the Committee who is a guardian commented that she had observed it was common for the attorney for the petitioner to resign, and then represent the guardian. Another Committee member recommended considering a Standard of Practice that precluded a guardian from hiring an attorney who had represented the petitioner in the guardianship.

An Ad Hoc Committee was formed to consider a Standard of Practice regarding this matter. This Committee was to exchange proposals by email during the interim before the November 12, 2015 meeting. One member expressed concern that an absolute prohibition on dual representation was a departure from current law. Ethics Advisory Opinion 2005-001 does allow an attorney to represent the guardian who is also the petitioner when certain requirements are met. He pointed out that there can be efficiencies in retaining an attorney who is familiar with the case as a result of having represented the petitioner, to represent the guardian after a guardianship is established.

Low income individuals could find it easier to retain counsel when it is more efficient for the attorney. Further, attorneys are not prohibited by their professional code from representing both the petitioner and later the guardian. However, another member of the committee commented that there is an inherent conflict when the same attorney represents both the petitioner in a guardianship and then the guardian. The petitioner and the guardian for the person subject to the guardianship have very different roles, which is part of the checks and balances in the law protecting the person under guardianship. The Chair of the Committee pointed out that the purpose of Standards is to put the person under guardianship in the best possible situation. Efficiency is not a major concern. The focus should be the best interest of the person under guardianship. The Chair suggested that it would be a “better practice” for a guardian not to retain counsel who had earlier represented the petitioner in the same guardianship.

The Standards and Practices Committee was unable to reach unanimity at this meeting, so the matter was referred back to the Ad Hoc Committee. The Ad Hoc Committee was asked to try to come up with language that everyone could agree with, and set out the best standards that could be identified. The Chair suggested including any desirable language from the Ethics Advisory Opinion rather than making reference to it. The Standards of Practice Committee met again on December 10, 2015, when several members of the Committee made proposals. The following were the three main proposals:

- A) A guardian shall only retain legal counsel who has not represented any other party in the guardianship proceeding in the past or present, unless the guardian is (1) the petitioner, (2) the nominated guardian, and (3) meets all requirements of the Ethics Advisory Opinion 2005-001.
- B) In any specific guardianship case, a Certified Professional Guardian (CPG) shall not be represented by an attorney with whom the CPG has [a] business relationship when that attorney is also the petitioning attorney.
- C) A guardian shall only retain legal counsel who has not represented any other party in the guardianship proceeding in the past or present, unless the guardian is:
  - (1) the petitioner,
  - (2) the nominated guardian,
  - (3) obtains a signed statement from the AG [attorney general] stating the reason the AG's office will not petition for guardianship,
  - (4) engages in an investigation [and document that investigation] in an Affidavit or Declaration to the court the following pre-filing efforts:
    - a. identifying any alternative nominees and providing information as to why alternate nominees who are available are not suitable or able to serve;
    - b. provides a written request from the party requesting the guardianship which identifies the basis for the request and the basis for the decision by that party not to petition;

- c. provides documentation from third parties of the facts set out in the petition. Such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person;
  - d. provides documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person; [and]
- (5) discloses in the Affidavit or Declaration to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

One Committee member commented that the first and second proposals had similar content. He felt that the one with the clearest language should be adopted. He said that Proposal C was different, and addressed both legal representation and self-petitioning. He asked if the group wanted to address both of these issues. The proponent of "C" explained that she had attempted to take the Chair's directive to the Ad Hoc Committee and incorporate the provisions of the Ethics Opinion. The nine Committee members present voted on the proposals. There was no clear unanimity, so the Chair recommended that the proposals return to the Ad Hoc Committee.

The Standards of Practice Committee met on Thursday, January 7, 2016 to review the Ad Hoc Committees recommendations regarding these proposals. Eight committee members were present. The Committee decided to adopt Proposals A and C, with some refining, as each addressed separate issues. The SOP recommended above, based on Proposal A, is intended to prohibit a guardian from retaining an attorney that has represented the petitioner or any other party.

### **Issue Background:**

The August 7, 2015 WINGS Conference recommended consideration as to whether an attorney should represent the petitioner and the professional guardian. This was a question that had been addressed by the National Guardian Association (Standard 16E and Ethics Advisory Opinion 2005-001 (2006), the Council on Accreditation (Standard 6.03), and the Second National Guardianship Conference among others. All had concluded that an attorney should not engage in dual representation.

### **National Guardianship Association- Standards of Practice Standard 16E**

E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.



**Council on Accreditation, Public Agencies - Adult Guardianship**  
**PA-AG 6 Conflict of Interest**

**Purpose**

Individuals who receive guardianship services maintain a level of independence and self-determination appropriate to their functional capacity, and are at minimized risk of abuse, neglect or exploitation.

**Standard**

The agency establishes the well-being of individuals as its primary responsibility and eliminates the risk, or appearance, of a conflict of interest.

**Interpretation:**

A conflict of interest exists when an action made on behalf of the individuals may be seen as self-serving to the guardianship worker or the agency as a whole.

**PA-AG 6.01**

Whenever possible, the guardianship program:

- a. operates as an independent entity: and
- b. refers individuals to services offered by outside providers.

**Interpretation:**

When the guardianship program is part of a larger agency or entity, it should have the authority to make independent decisions in order to avoid conflicts due to the potentially competing interests of the larger agency or entity. Exceptions to element (b) should be made only:

- 1. when an appropriate outside service provider is unavailable, and
- 2. when the exception is in the best interest of the individual served.

**Research Note:**

When the office of the public guardian falls under the auspices of a larger social service agency that provides direct services to the identified service population, a conflict of interest can arise. In such situations, guardianship workers may not have the autonomy required to advocate on the individual's behalf or assess the quality and appropriateness of the service being provided. The guardianship agency must develop a clear process for assessing the needs of the individual and identifying the service provider who will most effectively meet those needs.

## **PA-AG 6.02**

When the agency refers the individual to services offered by a governmental agency with direct oversight of the guardianship program, reasons for the arrangement should be documented in the case record.

## **PA-AG 6.03**

The agency discloses any potential conflict of interest to all involved parties including the court, the individual, and his or her family as appropriate.

**Interpretation:** *For example, if the agency acts as both guardian and direct service provider, the court should be notified.*

## **PA-AG 6.04**

The agency only petitions the court for its own appointment as guardian when no other entity is available.

### **Research Note:**

The literature strongly suggests that there is an inherent conflict of interest when the agency acts as both petitioner and guardian. The guardian's first responsibility is to protect the rights and assets of the individual, and acting as petitioner could be seen as self-serving. When acting as petitioner, an agency has the power to pick only those cases that would be profitable, or require minimal staff time and avoid cases involving destitute individuals or individuals with significant behavioral issues.

However, it is also important to point out that barriers to finding a petitioner such as a lack of community relationships or an inability to cover court and filing fees could result in individuals going without needed services. Agencies should collaborate with other stakeholders such as nursing homes, police departments, community mental health agencies, family members, adult protective services, hospitals, attorneys, and assisted living facilities to identify potential petitioners with the community. The agency should also be aware of fee waivers in their state that may make petitioning the court more financially viable for community members and service providers.

When the agency must act as petitioner, it should do so based upon a referral from a neutral third party and provide evidence that steps were taken to protect the individual's right to due process including access to quality legal representation.

## **PA-AG 6.05**

All guardianship fees are reported to and approved by the court.

### **The Second National Guardianship Conference – Recommendations** **VI. Lawyers as Fiduciaries or Counsel to Fiduciaries** **Changes in Practice Precepts or Guidelines**

The Conference recommends that:

#### **62.**

A lawyer petitioning for guardianship of his or her client *not* (a) be appointed as the respondent's counsel, (b) be appointed as the respondent's counsel, (c) be appointed as the respondent's guardian ad litem for the guardianship proceeding, and (d) seek to be appointed guardian except in exigent or extraordinary circumstances, or in cases where the client made an informed nomination while having decisional capacity.

Callie T. Dietz  
State Court Administrator

October 10, 2016

TO: Certified Professional Guardian Board  
FROM: Administrative Office of the Courts Staff  
RE: Certified Professional Guardianship Board

**Recommendation:**

A professional guardian who self-petitions to be guardian for someone must obtain a signed statement from the attorney general stating the reason the attorney general's office will not petition for guardianship; and engage in an investigation that:

- (1) identifies alternative nominees and provides information as to why alternate nominees who are available are not suitable or able to serve;
- (2) provides a written request from the party requesting the guardianship, which identifies the basis for the request and the basis for the decision by that party not to petition;
- (3) provides documentation from third parties of the facts set out in the petition (such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person);
- (4) provides documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person; and
- (5) discloses to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

**Issue/Question:** *Is it appropriate for an attorney to represent both the petitioner and the professional guardian?*

**Committee Process:**

The Standards of Practice Committee met on Thursday, January 7, 2016 to review two proposals related to the above question. Eight committee members were present. An Ad Hoc Committee had worked on the proposals in the interim. The Committee decided to adopt two separate standards, as each proposal addressed a separate issue. The SOP above was intended to address the problem of self-petitioning.

**Issue Background:**

There is considerable concern expressed in national statutes and standards regarding the potential for conflict of interest presented by self-petitioning. An ethics advisory opinion of the Washington Certified Professional Guardianship Board provides ““The practice of nominating oneself as guardian automatically raises the appearance of self-dealing.” WASH. CERTIFIED PROF’L GUARDIAN BD., Ethics Advisory Op. 2005-001 (2010).

It is frequently indicated that self-petitioning should be a last resort. A Wingspan Conference recommendation is that:

A lawyer petitioning for guardianship of his or her client not (a) be appointed as the respondent’s counsel, (b) be appointed as the respondent’s guardian ad litem for the guardianship proceeding, and (c) seek to be appointed guardian except in exigent or extraordinary circumstances, or in cases where the client made an informed nomination while having decisional capacity. [Wingspan-The Second Nat’l Guardianship Conference, Recommendations, 31 STETSON L. REV. 595, 608 (2002)].

Similarly, the National Guardianship Association has promulgated a Standard that provides:

“A guardian [CPG] who is not a family guardian may act as petitioner [for appointment of oneself as guardian] only when no other entity is available to act, provided all alternatives have been exhausted.” [National Guardianship Association (NGA) Standard 16(III)(E) (2013)].

The organization [a CPG] only petitions the court for its [the CPG’s] own appointment as guardian when no other entity is available. When the organization must act as petitioner, it should do so based upon a referral from a neutral third party and provide evidence that steps were taken to protect the individual’s right to due process including access to quality legal representation. [Council on Accreditation Adult Guardianship. 6.04 (2016)].

There is also recognition of the possibility of conflict should an office of public guardianship petition for appointment of a guardian. The office [of public guardianship] shall not petition for appointment of a public guardian for any individual. It may develop a proposal for the legislature to make affordable legal assistance available to petition for guardianships. [Wash. Rev. Code section 2.72.030(5)].

“The office of public guardian may: Not initiate a petition of appointment of the office as guardian or conservator.” 2 [2010 Model Public Guardianship Act].

One treatise provides: “Such petitioning could present several conflicts of interest. First, if the program relies on fees for its operation, or if its budget is dependent on the number of individuals served, the program might petition more frequently, regardless of individual needs. On the other hand, the program might . . . ‘only petition for as many guardianships as it desires, perhaps omitting some persons in need of such services.’ Or it could “cherry pick,” petitioning only for those individuals easiest or least costly and time-consuming to serve.” [Teaster, et al., *Public Guardianship: In the Best Interests of Incapacitated People?* (2010), p. 19.]

One alternative widely identified to avoid self-petitioning is to designate the attorney general to petition for guardianship where there is no other alternative. Washington statute so provides: “The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.” [Wash. Rev. Code section 11.88.030(3)(a).]

The above recommendation was intended to ensure that self-petitioning took place as a last resort, when it was documented that the attorney general would not file the guardianship, all other alternatives had been explored, and the petitioner has made full disclosure to the court regarding the circumstances behind the petition and any possible conflict of interest.

Callie T. Dietz  
State Court Administrator

October 10, 2016

TO: Certified Professional Guardian Board  
FROM: Administrative Office of the Courts Staff  
RE: Certified Professional Guardianship Board

***Existing SOP Language***

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

**Recommendation:** *To add the following language:*

406.5.1 A guardian who is also an attorney shall only represent the guardian in their fiduciary capacity as guardian with respect to the administration of the guardianship for the person under guardianship. The guardian shall account to the court for the costs of its services as guardian and as attorney for the guardian separately.

406.5.2 A guardian for a person under guardianship or an attorney who is also the guardian shall not initiate legal action on behalf of the person under guardianship, or respond to legal action initiated against the person under guardianship, without the express approval of the court with local jurisdiction.

406.5.3 A guardian or an attorney who is a guardian shall not serve as attorney for the person under guardianship.

**Issue/Question:**

*May a guardian who is an attorney provide legal services to an individual in a guardianship?*

## **Committee Process:**

The WINGS Standards and Practices Committee held its first meeting on Thursday, October 1, 2015. The Chair reviewed a Request for Ethics Advisory Opinion sent to the Committee. The request for an Ethics Advisory Opinion is set out below. The issue presented was whether a Certified Professional Guardian who is also an attorney can perform and charge for legal services provided to the person under guardianship who has not sought permission from the court to perform legal services for the client. The group discussed the issue in depth. SOP 406.5 addresses legal work for a client by a guardian who is also an attorney. The current version of the regulation is set out above. The Chair designated an ad hoc committee to draft a revised version of SOP 406.5 for discussion at the next meeting.

At the October 15, 2015 meeting the ad hoc committee proposed three new subsections to SOP 406.5.

### **Proposed Revised Standard of Practice**

406.5.1 A guardian who is also an attorney may represent the guardian in their fiduciary capacity as guardian with respect to the administration of the guardianship for the person under guardianship. The guardian shall account to the court for the costs of its services as guardian and as attorney for the guardian separately. A guardian who is also an attorney may not serve as the attorney for the person under guardianship, even if the attorney is not representing the guardian for that person under guardianship.

406.5.2 A guardian for a person under guardianship or an attorney who is also the guardian shall not initiate legal action on behalf of the person under guardianship, or respond to legal action initiated against the person under guardianship, without the express approval of the Court with local jurisdiction.

406.5.3 A guardian or an attorney who is a guardian shall not provide legal services on behalf of the person under guardianship unless doing so best meets the needs of the person under guardianship without first receiving Court approval following full disclosure of the conflict/potential conflict of interest.

The Committee discussed the proposal. There was a difference of opinion among the ad hoc group regarding subsection .3, and whether it was needed. Some felt that a person under guardianship would rarely need an attorney. However, the consensus was that there were times when the client could need legal services, and having the guardian perform the work could be more efficient. Imposing a requirement to seek permission of the Court to perform the services would retain the option, while ensuring protection for the person under guardianship.

The Chair then proposed that the last section of subsection .1 be omitted, as a guardian would have the right to represent him or herself in the guardianship. The group was in agreement. The Chair also proposed some wording changes to the language of



subsection .1. He suggested changing “may” in the first sentence of 406.5.1 to “shall only”, and “may not” in the last sentence of the section to “shall not”. The committee agreed to amend the wording as proposed, which was incorporated into the final version presented above. The Committee approved sending the new SOP 406.5 on to the Board and WINGS Steering Committee.

### **Issue Background:**

The WINGS Committee Stakeholders raised the question as to the propriety of an attorney who is also a guardian for the incapacitated person providing direct legal services to the client. The AOC staff performed research regarding this question.

#### **May a court- appointed guardian who is also an attorney provide legal services to the incapacitated person he is the court-appoint guardian for?**

An attorney as serving as guardian for a client should include clear guidelines at the commencement of the guardianship regarding the duties and responsibilities of the guardian, and whether the attorney will also serve as attorney for the client. Edward D. Spurgeon & Mary Jane Ciccarello, Lawyers Acting As Guardians: Policy and Ethical Considerations, 31 Stetson L. Rev. 791, 845 (2002). The “lawyer/guardian should be compensated for services rendered as guardian, and as lawyer if the lawyer also continues to serve as lawyer.” *Id.*

Also, in regards to offering legal services, or making legal decisions a guardian who is also an attorney should get the court's approval “before making any decisions that could be met with opposition from the family or others later.” Dynamics, Dysfunction, and Disability: Power Play Between Guardians, Conservators, Proxies, and Attorneys in Fact, at 9. For example, if an attorney is serving as a guardian and incapacitated person (IP) that is going through a divorce proceeding, that attorney should ask the court for the appointment of a guardian ad litem (GAL). The neutral GAL can investigate the terms of the IP’s divorce settlement and evaluate for the judge whether or not the terms of the divorce settlement are as good as they could possibly get within reason. *Id.* at 7.

Florida has a provision in their statutes that prohibits an attorney from representing an IP and serving as guardian for the IP. The 2015 Florida Statutes 744.331(c).

Idaho prohibits any attorney representing an AIP from serving as a guardian of the AIP or as counsel for the petitioner for guardianship.  
<http://www.legislature.idaho.gov/idstat/Title15>.

Subsequently, a request for an Ethics Advisory Opinion was submitted to the WINGS Standards of Practices Committee. A Certified Professional Guardian (CPG) who is also an attorney charges fees to incapacitated persons he serves as a guardian for legal services he or she provides. He or she has never sought permission from the Court to perform legal services for the incapacitated persons served. The question

asked was whether the purpose of SOP 406.5 was to ensure that a CPG who is an attorney cannot engage in self-dealing by hiring himself or herself to do legal work that is billed to an IP.

The WINGS Standards of Practice Committee first took this matter up at its initial meeting on October 1, 2015, as discussed above.

Callie T. Dietz  
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 on Friday, August 7, 2015.

The Committee looked to the Standard 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 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.

## CPGB Possible Annual Planning Meeting Topics

## **Possible 2017 Planning Meeting Topics (April 10, 2017)**

1. Annual Grievance Report
2. Disciplinary Regulation 500 Proposed Revision
3. GAO Report
4. UW Training Update