



Certified Professional Guardianship Board Annual Planning Meeting

Monday, April 11, 2016 (9:00 a.m. - 3:00 p.m.)
SeaTac Office Center, 18000 International Blvd., Suite 1106,
SeaTac, WA

Members Present

Judge James Lawler, Chair
Commissioner Rachelle Anderson
Ms. Rosslyn Bethmann
Dr. Barbara Cochrane
Mr. Jerald Fireman
Judge Gayle Harthcock
Mr. Bill Jaback
Ms. Victoria Kesala
Commissioner Diana Kiesel
Dr. K. Penney Sanders
Ms. Carol Sloan

Members Absent

Ms. Barbara West
Ms. Amanda Witthauer

UW Guardianship Certificate Program

Ms. Kate Lorenzen

Staff

Ms. Shirley Bondon
Ms. Kathy Bowman
Mr. Christopher Fournier
Ms. Carla Montejo
Ms. Kim Rood

1. Welcome, Introductions and Public Comments

Judge James Lawler welcomed all present for the public comment and dialog portion of the meeting in Lower Plaza (LP) 16 at 9:00 a.m. Board Members each took a moment to introduce themselves.

Following the discussion of a number of topics introduced by members of the public, Judge Lawler called a break at 11:00 a.m. and informed everyone that the regular Board Meeting would convene at 11:15 a.m. in Suite 1106.

Written comments provided by the public are located at the end of these minutes.

2. Meeting Called to Order

Judge Lawler called the regular Certified Professional Guardianship Board meeting to order at 11:15 am.

3. Chair's Report

Judge Lawler entertained a motion to approve the minutes of the March 13, 2017 meeting. A motion to approve the minutes was made and seconded. There were no corrections or additions. The minutes were approved. Ms. Bethmann abstained as she was not present at the March 13, 2017 meeting.

Motion: *A motion was made and seconded to approve the March 13, 2017 meeting minutes. The motion passed. Ms. Bethmann abstained.*

4. UW Guardianship Certificate Program Update

Kate Lorenzen, program manager for the UW Guardianship Certificate Program was present to report updates made to improve the three courses, including new articles and a review and revision of online course information. She reported that there continues to be a consistent pool of qualified applicants for Certificate Program. The Board inquired how applicants are informed about board requirements for certification. Ms. Lorenzen noted that the UW informs applicants during informational sessions that the UW Guardianship Certificate Program is independent of guardianship certification and applicants are encouraged to apply to the Board for guardianship certification before taking the UW Guardianship Certificate Program. Staff explained that the Board had recently approved guidelines about the credit score needed for certification. Staff agreed to share that guidance with Ms. Lorenzen.

A board member encouraged UW to give applicants a realistic outlook of the actual business of being a CPG, both timewise and financially. Staff recalled developing a list of tips that should help to provide a realistic outlook and agreed to send the tips to Ms. Lorenzen who was encouraged to give this information to applicants before they begin the Guardianship Certificate Program.

Ms. Lorenzen asked board members if they thought that too many applicants were completing the guardianship certificate program or if more guardians were needed. Board members indicated that more qualified guardians were needed. A board member inquired if UW would consider revising the program to include electronic delivery of the in-person portion of the Certificate Program in eastern Washington. Ms. Lorenzen recalled having both quality and connectivity issues when UW attempted distance training in the past and stated that UW wasn't optimistic that they could address the technology challenges at this time.

Judge Lawler asked and Ms. Lorenzen confirmed that the program covers "after death" issues such as probate, final reports and closing the guardianship. Ms. Lorenzen announced that Roxanne Ray will now be the new program manager.

Staff explained that a bill had been dropped and then not pursued during the Legislative Session that would have made the curriculum for the Guardianship Certificate Program public information. Apparently some members of the public wanted full access to the curriculum, which UW did not provide because the training materials were considered proprietary and thus exempt from release.

5. Executive Session (Closed to Public)

6. Reconvene and Vote on Executive Session Discussion (Open to Public)

Applications Committee

On behalf of the Applications Committee, Mr. Jaback presented the following applications for Board approval. Members of the Applications Committee abstained.

Motion: *A motion was made and seconded to approve Ilie Burcheci's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.*

Motion: *A motion was made and seconded to approve Kathrine Cooley's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.*

Motion: *A motion was made and seconded to deny Charles Hall's application for certification, due to lack of demonstrated financial responsibility and for failure to disclose information. The motion passed.*

Motion: *A motion was made and seconded to approve Julie Johnson's application for certification. The motion passed.*

Motion: *A motion was made and seconded to approve Nicole Jordan's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.*

Motion: *A motion was made and seconded to approve Michael Parrott's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.*

7. CPGs with Multiple Grievances

Staff explained that several CPGs had four or more pending grievances. Staff was becoming concerned and was trying to determine if a different investigative process should be developed for these circumstances. To address their concerns, staff requested guidance from the Board. Following discussion, the Board decided that CPGs with multiple grievances should follow the regular investigation process.

8. Ethics Advisory Opinions

Staff reported that board members had agreed to discuss reconvening the Ethics Advisory Committee. Staff provided a brief history of Ethic Advisory Opinions. Generally, Ethics Advisory Opinions should be case specific, fact-based and apply to a single person. Standards of Practice are written more broadly.

Ethics Advisory Opinions are usually not binding, but if followed, can provide evidence of an individual's intent to follow a recognized process. The opinion and name of the requestor for an advisory opinion cannot be withheld per administrative public records

regulation GR 31.1. A board member indicated that they were not sure that the Board should be involved in writing ethics advisory opinions. This seemed inconsistent with the Board's regulatory mission. Staff referred the Board to Attachment E of the meeting materials. There is a conflict between Regulation 301.3 and GR 31.1, regarding whether the name of the requestor could be withheld. This conflict and others have not been corrected because the Board is reluctant to make changes to the SOPs; however, GR 31.1 supersedes Regulation 301.3.

9. Proposed Standard of Practice Posted for Public Comment

WINGS submitted a proposed standard of practice that would prohibit a CPG from serving as the court-appointed guardian in a case he or she investigated as a Title 11 GAL. The Board published this proposed SOP for comment. Comments were all over the board. Most respondents believed CPGs should not serve as the court-appointed guardian in a case he or she investigated as a Title 11 GAL. However, some recognized that many courts feel they have no other options due to the shortage of individuals qualified and willing to serve as a guardian in rural counties. Judge Lawler stated that it is incumbent on the courts to assure that the reason for assigning guardianship to a GAL is well documented in the record. The Board took no action on the proposed standard of practice.

10. Grievances

Staff presented the annual 2016 Grievance Report to the Board. Judge Lawler confirmed that while the number of grievances closed in 2016 is higher than usual, the number of grievances received in 2016 was also higher. The new Diversion process was discussed, with the Board asking about the timing, and status of agreements with mediators and auditors. Staff reported that the program was on track and would begin with court reporting audits, which can be done in house. Approximately 35 grievances have been determined as appropriate for diversion or dismissal.

11. Disciplinary Regulation 500

After spending approximately five years revising Regulation 500, the Board is now ready to post it for public comment. Because the changes are significant, using tracked changes was not possible. The regulation would not be readable if tracked changes was used, so a clean copy and a side-by-side comparison of the existing regulation and the proposed regulation will be posted for public comment. Comments will be accepted at any time on sections, although discussion will focus on specific sections that are identified in the schedule provided.

12. Wrap Up and Adjourn

Judge Lawler thanked AOC Extern Christopher Fournier for his work with the Board. Mr. Fournier's externship will come to an end on May 4. As there was no other

business, the meeting was adjourned at 2:25 pm. The next Certified Professional Guardianship Meeting will take place via teleconference on May 8, 2017 at 8:00 am.

Recap of Motions from April 10, 2017 Meeting

Motion Summary	Status
Motion: <i>A motion was made and seconded to approve the minutes of the March 13, 2017 teleconference. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve Ilie Burcheci's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve Kathrine Cooley's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to deny Charles Hall's application for certification due to lack of demonstrated financial responsibility; and due to failure to disclose information. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve Julie Johnson's application for certification. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve Nicole Jordan's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve Michael Parrott's application for certification, conditional upon completion of the UW Guardianship Program. The motion passed.</i>	<i>Passed</i>

Guests Present: Mr. Tom Goldsmith
 Mr. Mike Parrott
 Ms. Mindi Blanchard
 Ms. Claudia Donnelly

Public Comments

Materials submitted by Claudia Donnelly

1 individual needs and wishes. The legislature also recognizes that
2 these services are less expensive than guardianship for the state,
3 the courts, and for individuals with limited capacity and their
4 families.

5 **Sec. 2.** RCW 2.72.010 and 2007 c 364 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Office" means the office of public guardianship.

10 (2) "Public guardian" means an individual or entity providing
11 public guardianship services.

12 (3) "Public guardianship services" means the services provided by
13 a guardian or limited guardian appointed under chapters 11.88 and
14 11.92 RCW, who is compensated under a contract with the office of
15 public guardianship.

16 (4) "Long-term care services" means services provided through the
17 department of social and health services either in a hospital or
18 skilled nursing facility, or in another setting under a home and
19 community-based waiver authorized under 42 U.S.C. Sec. 1396n.

20 (5) "Supported decision-making assistance" means support for an
21 individual with diminished decision-making ability in making
22 decisions affecting health or safety or to manage financial affairs.
23 Assistance includes, without limitation, acting as a representative
24 payee, an attorney-in-fact, a trustee, and a public guardian.

25 (6) "Representative payee" means the designated agent for a
26 recipient of government benefits whom a government agency has
27 determined to be incapable of managing his or her benefits.

28 (7) "Attorney-in-fact" means an agent authorized by an individual
29 to act on his or her behalf pursuant to a power of attorney.

30 (8) "Trustee" means a person or organization named in a trust
31 agreement to handle trust property for the benefit of one or more
32 beneficiaries in accordance with the terms of the agreement.

33 **Sec. 3.** RCW 2.72.020 and 2007 c 364 s 3 are each amended to read
34 as follows:

35 (1) There is created an office of public guardianship within the
36 administrative office of the courts.

37 (2) The supreme court shall appoint a public guardianship
38 administrator to establish and administer a public guardianship.

RCW 11.92.190

Detention of person in residential placement facility against will prohibited —
Effect of court order — Service of notice of residential placement.

No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incapacitated person shall be void and of no force or effect. This section does not apply to the detention of a minor as provided in chapter 70.96A or 71.34 RCW.

Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record.

[1996 c 249 § 11; 1977 ex.s. c 309 § 14.]

RCW 71.05.040

Detention or judicial commitment of persons with developmental disabilities, impaired by chronic alcoholism or drug abuse, or suffering from dementia.

Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm: Provided however, That persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone.

[2004 c 166 § 2; 1997 c 112 § 4; 1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

Notes:

From: Michael/Claudia Donnelly <thedonnelys@oo.net>
Subject: **Fwd: [nngp] Raven Versus DSHS opinion**
Date: October 20, 2013 9:57:36 AM PDT

Begin forwarded message:

The Seattle Times

Local News

[Low-graphic news index](#) | [Mobile site](#)

Friday, July 19, 2013 - Page updated at 09:00 p.m.

Court: Not forcing nursing care isn't neglect

By **DONNA GORDON BLANKINSHIP**
The Associated Press

The Washington Supreme Court on Thursday ruled that the guardian of an elderly Pierce County woman was not negligent when she didn't force her into a nursing home against her wishes. The court explained in the unanimous ruling that even if the bed-bound woman could have gotten better care in such an institution, she should not have been forced to move into one. Following her wishes was not neglect.

In a unanimous ruling, the Supreme Court reversed a decision by the Washington Court of Appeals, citing the Legislature's mandate against placing incapacitated persons against their will.

The court did not agree with the guardian, however, that she was entitled to be reimbursed for her attorney's fees. The justices said the Department of Social and Health Services was justified in its investigation, but incorrect in its findings.

The guardian's attorney, Jeff Crollard, said he thought the Supreme Court decision will be a good guide for guardians in the future.

"I think, in a very sensitive and comprehensive way, the court affirmed the difficulty of the circumstances," he said. "I don't think she (Resa Raven, the plaintiff) acted perfectly, but I think she did a

pretty darn good job.”

The Department of Social and Health Services said the case highlights the challenges of caring for the elderly.

“The justices indicated that everyone concerned was sincerely acting with the best interests of this elderly woman at heart,” DSHS spokesman Thomas Shapley said. “It’s an opportunity for all of us to think about and plan for how we will care for our family elders and how we will want to be cared for ourselves.”

The elderly woman, whom the court calls Ida in its ruling, is described as a retired nurse with a long history of independence and reliance on naturopathic and alternative medicine. Since a fall that fractured a bone in her knee, she had suffered from chronic pain as well as several serious and debilitating ailments.

“Ida was resistant to medical care and was combative, violent, hostile and uncooperative with her caregivers,” Justice Debra L. Stephens wrote in the court’s opinion on *Resa Raven v.*

Department of Social and Health Services. Her medical history shows ups and downs, including medical crises and episodes of neglect.

She was assigned a guardian, Resa Raven, in 2004, at the age of 83. After reviewing her medical history and talking with Ida and her family, the guardian identified in the ruling as Raven determined that when Ida was competent, she consistently refused to be placed in a nursing home or other long-term-care facility.

Ida’s health and health care continued to be inconsistent and her behavior continued to be combative, which made keeping caregivers more challenging.

“One of the difficulties of this case from the perspective of Ida’s care team is that Ida often required more care than could be delivered in a home setting,” Stephens wrote.

“But in matters of consent, though a ward may choose a course of action that would strike many as unreasonable, if the guardian can determine that the ward would choose such an action if competent, the guardian is bound to advocate for that position.”

Raven sued the state after DSHS determined she had failed as a guardian and neglected Ida.

The Supreme Court ruling cites previous cases that endorsed a similar ruling, including a decision from 1984 in which a guardian sought a court ruling to force a woman to have a laryngectomy for

cancer treatment instead of her preference for radiation. The court ruled that even though the guardian's preference was more likely to be a successful treatment, it would also likely cause her to lose her vocal chords. The goal was to do what the individual would want if she were competent and understand her options, not what most people would do or what the court believes is the wise thing to do.

nngp mailing list

nngp@argate.net

<http://www.argate.net/mailman/listinfo/nngp>

WHAT IS A GUARDIAN PROHIBITED FROM DOING?

A Guardian May Not Force an Incapacitated Person to Stay in a Particular Residential Setting

A guardian of the person is responsible for selecting, and if necessary advocating for, a safe and appropriate residence for the IP. In order to carry out this duty the guardian must do some research and learn what residential options are available in the local community. There will normally be a continuum of choices ranging from independent living in a private home to supported living in an assisted living facility, group home or even a skilled nursing facility. The guardian must be familiar with the IP's level of functioning in order to determine the appropriate residential setting. It will be important to know whether the IP will need assistance with preparing meals, personal hygiene or managing medications.

It will be important to confer with the IP to determine his or her current preferences. The IP's current preferences should be honored if doing so will not put him or her at risk of harm. If possible, the guardian should try to determine what choice the IP would make if he or she knew all the present facts and circumstances and still had the capacity to make sound decisions. This might be the case when the IP had capacity through most of his or her life and voiced clear opinions on the subject. However, it is not always possible to obtain this information, such as when the IP has lacked capacity since birth.

A guiding principle is that the guardian must always select the least restrictive residential arrangement that will be safe and appropriate to meet the IP's needs. This may mean leaving the IP where they are, moving them to a more restrictive environment or perhaps even to a less restrictive environment. The goal is to preserve the maximum amount of freedom and independence for the IP while still keeping him or her safe from harm.

There are resources that can assist you in supporting the person in the least restrictive setting. See "[Stay Right Where You Are: Resources for Seniors and Adults with Disabilities Living at Home in Washington State](#)".

A guardian must understand that he or she can only go so far in securing a safe and appropriate residence for the IP. A guardian cannot force the IP to stay in a particular residential setting. The IP is free to leave and may not be locked in or physically restrained from leaving. A special statute (RCW 11.92.190) gives the IP a right not to be detained against his or her will in a residential care facility.

In certain limited situations the guardian may pursue other remedies in order to keep the IP safe. If an IP, as a result of a mental disorder, is acting in a way that presents a danger to him or herself or others or they are gravely disabled from effective self-care, the IP may be detained in a psychiatric facility for evaluation and treatment. Under the Involuntary Treatment Act, the guardian may initiate this process by requesting an evaluation by a county Designated Mental Health professional. There are strict due process protections for the IP in this proceeding, such as the right to be represented by an attorney and to have a jury trial before any extended detention is imposed. Additionally, if the IP is choosing to live with a predatory individual who is exploiting or abusing him or her, the guardian may petition for a Vulnerable Adult Protection Order on behalf of the IP. If successful, this may resolve the residential conflict by ordering the predator to not have any further contact with the IP.

Clearly, things can get complicated if the guardian and the IP don't agree on a safe and appropriate residential setting. If, as guardian, you are not sure how to carry out your duty to select a safe and appropriate residence for the IP, it might be wise for you to consult with an attorney and/or seek guidance from the court by filing a Petition for Instructions. [A form is available on the court website] In light of the rights and freedoms retained by a person subject to guardianship, the guardian cannot be expected to guarantee a safe and appropriate residence for the IP. The guardian must simply use his or her best efforts within the limits of the law.

A Guardian May Not Consent to Some Medical Procedures without a Court Order

While the guardian of the person may consent to most types of medical treatment, there are four medical procedures that require special attention:

1. electro-convulsive therapy;
2. psychosurgery, such as a lobotomy
3. psychotropic medication or mental health procedures that restrict physical freedom of movement; and
4. reproductive surgery, such as sterilization.

In any of these cases, the guardian must seek instructions from the court. The court will want to know the:

1. prognosis if no treatment is provided;
2. prognosis if one treatment is chosen over another;
3. risk of adverse side effects from the proposed treatments;
4. intrusiveness or severity of the proposed treatments;
5. incapacitated person's ability to cooperate and assist with post-treatment therapy;

6. incapacitated person's religious or moral views regarding medical care or the dying process; and
7. wishes of family or friends, if those wishes would influence the incapacitated person's decision.

The Court may consider what most people would do in similar circumstances, but this should not be regarded as controlling.