



Certified Professional Guardianship Board

Monday, August 14, 2017

Teleconference

8:00 am – 9:00 am

DRAFT Meeting Minutes

Members Present

Judge James Lawler, Chair
Commissioner Rachelle Anderson
Ms. Rosslyn Bethmann
Dr. Barbara Cochran
Mr. Jerald Fireman
Ms. Victoria Kesala
Dr. K. Penney Sanders
Ms. Barbara West
Ms. Amanda Witthauer

Online Guests – see list on last page.

Members Absent

Judge Gayle Harthcock
Mr. William Jaback
Commissioner Diana Kiesel
Ms. Carol Sloan

Staff

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

1. Meeting Called to Order

A quorum was reached and Judge Lawler called the August 14, 2017 teleconference to order at 8:03 am.

2. Welcome, Roll Call and Approval of Minutes

Judge Lawler welcomed members of the Board and the public to the teleconference. Judge Lawler entertained a motion for approval of the June 12, 2017 Certified Professional Guardianship Board meeting minutes. A motion was made and seconded to approve the minutes as written. Commissioner Anderson and Ms. Witthauer abstained. The motion passed.

Motion: *A motion was made and seconded to approve the June 12, 2017 minutes. The motion passed. Commissioner Anderson and Ms. Witthauer abstained.*

3. Chair's Report

Judge Lawler invited staff to present a proposed 2018 CPG Board Meeting Schedule. There were no changes or concerns regarding the proposed schedule.

4. Updates

Grievance Status Report

Staff reported 23 new complaints were received since the last reporting period in May, 2017, bringing the total from 118 to 133. During this period, 10 cases were resolved without an Agreement Regarding Discipline (ARD) or a Hearing. Of these cases, five were dismissed for no jurisdiction, two were dismissed for no actionable conduct and three were terminated when the guardian voluntarily surrendered their certification.

Staff also reported that the Standard of Practice Committee (SOPC) will be considering eight grievances involving the conduct of one CPG who is listed on the Multiple Grievances Report. A Board member asked why one of the CPGs with five grievances filed against them had not been assigned to an investigator, when an investigator had been assigned to investigate the conduct of a CPG with four grievances filed against them. Staff explained that investigators attempt to investigate the oldest grievance first. Other factors are also considered.¹ Staff also suggested that the new Diversion program will help address a number of the grievances. Staff noted that because the Board now receives grievances that are submitted to the courts, the number of grievances received on an annual basis is not expected to return to the number (60) received two or three years ago. A Board member expressed concern that the Board was understaffed. More investigators are needed to address the number of grievances received.

5. Disciplinary Regulation 500

Staff reported that Regulation 510 recommending the Board always order a transcript of a hearing was submitted to the attorney general for comment. In the opinion of the attorney general, a transcript is not required unless there is a possibility of appeal, such as a suspension or revocation of certification. However, there is nothing that prohibits the other party from ordering a transcript on their own. The Board will table this recommendation for vote until the next in-person meeting when revised language will be available.

A Board member noted that concerns regarding access to records may require further discussion with the Board. Judge Lawler stated that GR 31.1 dictates access to public records. A table has been included in the meeting packet that charts the comments and concerns recently received with the relevant Regulation. This table will be reformatted and included again in the next meeting packet.

6. Executive Session (*Closed to Public*)

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

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

Motion: *A motion was made and seconded to conditionally approve Debbie Conklin's application for re-certification upon completion of the UW Guardianship Certificate Program. The motion passed.*

Motion: *A motion was made and seconded to approve without condition Dawna James' application for certification. The motion passed.*

¹ After the teleconference, the staff followed up via e-mail with the following regarding the Multiple Grievances Report:

- CPGs J and S are assigned an investigator because they have the largest number of grievances.
- CPG R is assigned an investigator because he or she has a 2013 grievance.
- CPG T is assigned an investigator because he or she has agreed to voluntarily surrender their certification and this process needs to occur now.
- CPG B was assigned before CPG F because the 5th grievance for CPG B was received April 11, 2017, three months before CPG F received a 5th grievance on July 19, 2017.

Motion: *A motion was made and seconded to conditionally approve David Weigelt's application for certification upon completion of the UW Guardianship Certificate Program. The motion passed.*

8. Wrap Up/Adjourn

As there was no other topics of discussion, Judge Lawler adjourned the meeting at 8:46 am. The next meeting will be held via Teleconference on Monday, September 11, 2017 at 8 a.m.

Recap of Motions from August 14, 2017 Teleconference

Motion Summary	Status
<i>Motion: A motion was made and seconded to conditionally approve Debbie Conklin's application for re-certification upon completion of UW certification program. Ms. Bethmann opposed. Motion passed.</i>	Passed
<i>Motion: A motion was made and seconded to approve without condition Dawna James' application for certification. Motion passed.</i>	Passed
<i>Motion: A motion was made and seconded to conditionally approve David Weigelt's application for certification upon completion of UW certification program. Motion passed.</i>	Passed

Online Guests:

Sara Walker
Tom Goldsmith
Coya Eubank-Kirby
Tina Baldwin

Grievance Status Report

CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES
August 30, 2017

Investigations	2017	2016	2015	2014	2013	Total
Grievances Needing Investigation: 7/31/2017	47	55	19	9	3	133
Resolved w/o ARD or Hearing	[3]	[5]	[1]			[9]
Resolved w/ARD						
Resolved w/Hearing						
New Grievances (Opened Since Last Report)	5					5
Re-Opened Grievances						
Grievances Needing Investigation: 8/30/2017	49	50	18	9	3	129

Resolutions	2017	2016	2015	2014	2013	Total
Dismissal – No Jurisdiction	1					1
Dismissal – No Actionable Conduct	2	3	1			6
Dismissal – Insufficient Grievance		1				1
Dismissal – Administrative						
Voluntary Surrender		1				1
Admonishment						
Reprimand						
Suspension						
Administrative Decertification						
Decertification						
Closed Since Last Report	3	5	1			9

Pending Grievances Involving Guardians with Multiple Grievances
August 31, 2017

CPG ID	Year Certified	Grievances	Year(s) Grievances Received	Status
A	2015	7	2016 (3), 2017 (4)	
B	2011	5	2014 (1), 2016 (3), 2017 (1)	Assigned to Investigator
C	2002	3	2014 (1), 2016 (1), 2017 (1)	
D	2010	3	2016 (1), 2017 (2)	
E	2011	2	2015 (1), 2016 (1)	(Voluntary Surrender Received)
F	2005	5	2014 (2), 2015 (1), 2016 (1), 2017 (1)	
G	2004	2	2015 (1), 2017 (1)	
H	2014	4	2015 (1), 2016 (1) 2017 (2)	
I	2012	3	2016 (2), 2017 (1)	
J	2010	5	2016 (3), 2017 (2)	Investigation Complete – SOPC Reviewing: 4 Dismissed. 1 new complaint received
K	2001	3	2014 (1), 2015 (1), 2016 (1)	
L	2011	2	2015 (1), 2016 (1)	
M	2003	2	2015 (2)	
N	2003	3	2015 (1), 2016 (2)	
O	2007	4	2015 (1), 2016 (2), 2017 (1)	
P	2010	3	2014 (1), 2015 (1), 2017 (1)	
Q	2003	2	2016 (2)	
R	2001	4	2013 (1), 2016 (2), 2017 (1)	Assigned to Investigator
S	2001	8	2015 (1) 2016 (7)	Assigned to Investigator
T	2001	4	2014 (1), 2016 (1), 2017 (2)	Assigned to Investigator
U	2007	2	2016 (2)	
V	2014	2	2016 (1), 2017 (1)	
W	2001	2	2016 (2)	
X	2011	2	2016 (1), 2017 (1)	
Y	2009	2	2016 (1), 2017 (1)	
Z	2015	2	2016 (1), 2017 (1)	
AA	2013	3	2016 (1), 2017 (2)	
AB	2010	3	2015 (1), 2016 (1), 2017 (1)	

Total **92**

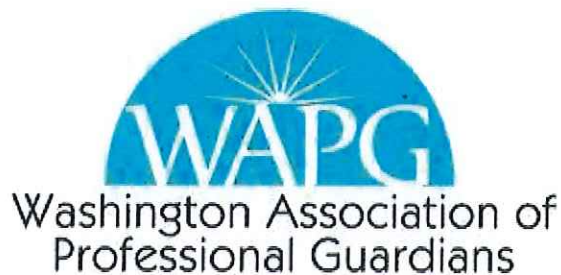
Pending Grievances Involving Guardians with Multiple Grievances
August 31, 2017

	Year Certified	# of Guardians
Before UW Certificate Program 122	2001	5
	2002	1
	2003	3
	2004	1
	2005	1
	2006	
	2007	2
	2008	
	Total	13
UW Certificate Program 147		
	2009	1
	2010	4
	2011	4
	2012	1
	2013	1
	2014	2
	2015	2
	2016	
	Total	15

Year	Grievance by Year
2013	1
2014	7
2015	13
2016	44
2017	27

Disciplinary Regulation 500

Comments Received



August 15, 2017

Honorable Judge Lawler
CPG Board Chair

Dear Judge Lawler and CPG Board Members,

I would like to thank you for the opportunity for the Washington Association of Professional Guardians (WAPG) 120 members to comment on Regulation 500 which is before the CPG Board. As WAPG President and Past CPG Board Member I realize the challenges facing both the CPG and Board.

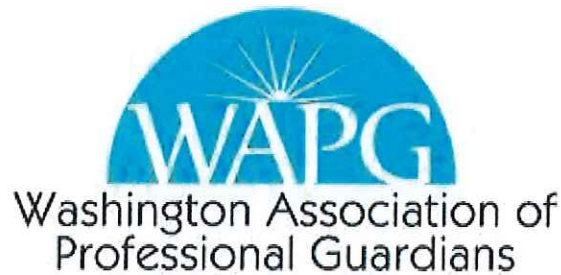
WAPG members are concerned that the CPG Board may be forcing CPG's to elect not to serve as guardians of the person or estate. This is based on the perception that the grievance process is cumbersome and ineffective as well as other factors. CPG's grievances have not been investigated or ruled upon for over a two or three-year span from time the grievance was filed and when a decision is made. This lag time between filing of the grievance and a decision being made creates mistrust from the CPG community as well as the public who have filed the grievance.

All other regulated professions have specific timelines that must be met to ensure the grievance is heard in timely manner. If the CPG Board cannot guarantee grievances are not resolved in a timely manner other options should be pursued and implemented. The CPG Board may want to consider moving the grievance process to another state agency that is well versed and grounded in the grievance process that can provide Washington CPG's the same due process and timelines as other professions practicing in Washington State.

WAPG would request that the CPG Board take in person testimony as in the legislative process before the adoption of Regulation 500 revisions.

Thank you,

Gary Beagle, NMG, CPG, OCPF
Washington Association of Profession Guardians
President



Certified Professional Guardianship Board
Regulation 500 Comments

501.1 – Purpose of Disciplinary Regulations

Comment - This regulation is concise and outlines the purpose in a clear and effective manner.

501.2 – Jurisdiction

Any certified professional guardian (CPG) permitted to engage in the provision of guardianship services in this state is subject to these Disciplinary Regulations. Jurisdiction exists regardless of the CPG's residency.

Comment – The regulation applies to all CPG's who are certified by the CPG Board and can be revised to make the regulation more concise and clear. An alternative may be: Any certified professional guardian (CPG) certified by the Washington State CPG Board and appointed by a Superior Court is subject to these Disciplinary Regulations.

501.3 – Grounds for Disciplinary Action

These rules govern the procedure by which a certified professional guardian may be subjected to disciplinary sanctions or actions for violation of the Certified Professional Guardian Standards of Practice or other regulations adopted by the Board.

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

Violation of or noncompliance with applicable violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians.

Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.

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

Comment – The above statement does not define what duties are to be followed. Would this apply to the Standards of Practice, Model Code of Ethics or Court Orders. The sentence does not add any additional authority to the regulations and is redundant.

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

Comment – The sentence does not add any additional authority to the regulations and is redundant.

Permitting a professional guardian's name to be used by an uncertified person or agency.

Comment -This sentence requires further definition to be more clear and concise. The regulation should not impede on a CPG's ability to utilize their designation in marketing and other collaborative efforts. An alternative may be: Permitting a Certified Professional Guardian's name or certification to be utilized by any person or agency that is not CPG Board Certified.

Misrepresentation or concealment of a material fact made in the application for certification.

Suspension, decertification, or other disciplinary sanction taken by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional guardianship or interaction with an incapacitated or vulnerable person.

Comment – The above section is not clear and concise. The following will require a definition if rule is adopted with the current language.

- 1.) Sanction
- 2.) Competent Authority
- 3.) Foreign Jurisdiction

Assuming the goal of this section is for a CPG or CPG Agency that has been suspended and/or decertified in any federal, state or other certifying body will be subject to these regulations. If this is the correct goal this section leaves room for in interpretation.

Hiring, maintaining an office with, having on a Certified Agency's Board of Directors, or working for or together with any person who has been certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has knowledge of such revocation or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.

Comment – This section is not clear and concise. The goal of this section should be further discussed to ensure the CPG and/or CPG Agency can determine what course of action should be elected to ensure compliance.

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

Making a false statement under oath.

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

Comment - The sentence does not add any additional authority to the regulations and is redundant. This section is already covered in section 501.1.

Working as a professional guardian while on inactive status.

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

Incompetence in the performance of the duties of a guardian.

Comment -A definition of incompetence is suggested. The CPG Board may want to consider how to deal with a CPG who has cognitive deficits and/or substance abuse issues.

Failure to appear for a scheduled court proceeding without good cause. Failure to comply with the terms of a signed Agreement Regarding Discipline.

Comment – An alternative may be: Failure to appear for a scheduled court proceeding without good cause or complying with the terms of an executed and accepted CPG Board Agreement Regarding Discipline.

501.4 - Definitions

"Contempt of Court" means:

Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

Disobedience of any lawful judgment, decree, order, or process of the court or tribunal;

Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

Refusal, without lawful authority, to produce a record, document, or other object.

Comment - Contempt of Court should be determined by the court and not the CPG board. The CPG board should not be substituting its judgment for the court when it comes to a finding of contempt of court. This is a very complicated area involving civil rights and other rights where the court would have jurisdiction.

“Court” unless otherwise specified, means the Supreme Court of Washington.

Comment – The current CPG Board regulations does not allow for an appeal process outside of the administrative court process with only an appeal to the WA State Supreme Court. This limits the CPG's options for a resolution. All other state certification governing agencies allow for lower courts to rule on disciplinary and/or sanctions prior to being heard by the State Supreme Court. By not allowing for this process places an undue financial burden on the CPG to dispute any decision made by the CPG Board.

“Standard of Practice” means a model of established practice that is commonly accepted as correct.

Comment – Standard of Practice should mean SOP’s as promulgated by the board. The vague definition leaves this term open to interpretation.

502.2 DISCIPLINARY COMMITTEE

Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include, but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions.

Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business or other relationships to influence their conduct or judgment.

Comment – It is recommended that should be changed to shall. The CPG Board members should be held to the same standards at the CPG’s that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.

Membership. The Chair appoints a Disciplinary Committee of three to four members from among the Board members. At least one of the members must have substantial experience in guardianships. The Chair may change the appointment of members to the Disciplinary Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee.

Comment – It is recommended that all CPG Board Members appointed to the CPG Disciplinary Committee have substantial experience in guardianships. In all other national and state certification programs, a certified or licensed fiduciary complaint are reviewed by either other professional fiduciaries and/or individuals well versed in the regulation and process

Disciplinary Committee Chair. The Chair of the Board designates one member of the Disciplinary Committee to act as its Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.

Comment – This section anticipates that the disciplinary committee is a judicial proceeding which in most licensing or certification processes this is not presumed. Further discussion should be held that would identify the purpose of this section, criteria for degerming the chair and if this section is required.

502.3 CONFLICTS REVIEW COMMITTEE

Function. The Conflicts Review Committee (CRC) performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include but are not limited to investigation, review, making preliminary

findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions involving a Board member. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not

Comment – – It is recommended that should be changed to shall. The CPG Board members should be held to the same standards at the CPG's that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.

502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN

Right to Representation. A CPG may be represented by counsel at the CPG's own expense during any stage of an investigation or proceeding under these rules.

Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.

Restriction on Charging Fee To Respond to Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person's estate a fee or recover costs from a grievant or incapacitated person's estate for responding to a grievance.

Medical and Psychological Records. A respondent CPG must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.

Comment – It is recommended that there be some standard for filing a grievance, and failing to meet that standard should subject the person filing the grievance to some penalty. While one does not want to produce a chilling effect on individuals who file a legitimate grievance, but a CPG should not be continually defending themselves against frivolous claims and/or grievances. The CPG is appointed for a reason and continually interacts with difficult family members, interested parties and other national guardianship groups. The CPG Board might consider the California Licensing Bureaus protocol in which not all grievances filed are fully vented through the process. In many grievances, the individual filing the grievance has had the issue fully reviewed and a ruling made by the court. The individual filing the grievance is unwilling to accept the court's decision and wants to continue the dispute through the grievance process at no cost to the individual filling the grievance. These grievances and/or issues should be dismissed if a court or other form of judication has resulted in a ruling by the court.

The assumption that only the CPG Board can rule on grievances involving Standards of Practice is no longer valid due to the recent Spokane Superior Court ruling and the Appellate ruling in which findings of fact were made based on the Standards of Practice.

The CPG Board has taken the position that a grievance allows for the review of all clients and procedures of the CPG or CPG Agency instead of reviewing the grievance and deciding based on that sole grievance. This tact as well as not reviewing the merit of the case at the onset of the filing of the grievance is reflected in the CPG Board's backlog of grievances. CPG's grievances have not been investigated or ruled upon for over a two or three-year span from time the grievance was filled and when a decision was made. This lag time between filing of the grievance and a decision being made creates mistrust from the CPG community as well as the public who have filed the grievance. All other regulated professions have specific timelines that must be met to ensure the grievance is heard in timely manner. If the CPG Board cannot guarantee grievances are not resolved in a timely manner other options should be pursued and implemented.

Release of Medical Records

Comment – It is recommended that this provision should allow for the CPG be to obtain consent form the client prior to blanketly giving the CPG Board the authority to access a client's records without limitation. If the client does not agree to the consent a CPG would be requested to obtain direction from the assigned court to proceed with the authorization and/or give limited authority to the CPG Board. This request is an invasion of a client's privacy and may be not warranted if the grievance is not dependent on the information. The CPG's Standard of Practice places this request in directly conflict with blanketly execute the release.

Gary Beagle, NMG, CPG, OCPF

President

Jaimee Lombino

Executive Director

Washington Association of Professional Guardians

Toll Free 1-877-460-5880

Local Tacoma area 253-265-3042

Fax 253.265.3043

LIN D. O'DELL

ATTORNEY AT LAW
1312 N. MONROE
SPOKANE, WA 99201
509-252-6004
lin@linodell.com

LD
O

August 20, 2017

Honorable Judge Lawler
CPG Board Chair

Dear Judge Lawler and CPG Board Members,

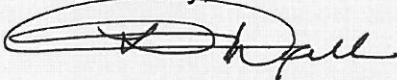
I reviewed the WAPG and Bridge Builders letters of concern. I concur the grievance process needs to be reviewed. Many of the attorney/guardians in my county have retired or are going to retire because of the unreasonable and broad interpretation of the grievance process. I have recently had a CPG grievance filed by the CPGB on their own complaint for a man who has been dead for two years. The court had finalized and dismissed the guardianship.

There needs to be a statute of limitations. The Board closes and reopens grievances no matter how old they are. They file on complaints 3 – 4 years old. What good does that do? I never recommend that anyone become a CPG solely because of the Board's handling of grievances. If you do take a case the AIP needs to have an uncomplicated scenario with no perpetrators. You can bet a perpetrator will file a grievance and the CPGB will take their word as gospel truth. The CPG of course is a consummate liar. I believe the local county court guardianship monitoring programs are fair abet inconsistent.

I have never dealt directly with the AOC until recently. I had appealed a court ruling on due process grounds. The appellate court determined I had to ask for a full evidentiary hearing and I had not. A fair decision – I should have made sure my request was on the record. The AOC has blacked-balled my participation as a guardian or a 11.88 GAL in all agency cases even though I am a licensed attorney and a licensed CPG. It would seem CPGs lose their civil rights if they appeal or maybe we just don't have any to begin with.

Guardians work for \$175.00 per month. The Board complaints are coming fast and furious based partially on the Board's own initiative. I believe the superior court would do a better job. They understand evidence and due process.

Sincerely,



Lin D. O'Dell, RN, JD, CPG

Disciplinary Regulation 500
Staff Response to Comments

The comments in letter form are attached; however comments are also included in the following table along with responses from AOC staff. When specific language is referenced, the language is underlined. When more than one comment is made about a regulation, the comments are numbered, as is the specific language that is referenced. Comments received after the August 14th board meeting are show in blue ink.

Reg No	Current Regulation	Proposed Regulation
Reg 501.1 PURPOSE OF DISCIPLINARY REGULATIONS	<p>The Standards of Practice are designed to assist professional guardians in performing their duties and to protect the public interest. The standards constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of professional guardian misconduct. The standards are designed to promote:</p> <p>Consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;</p> <p>Consideration of the appropriate weight of such factors in light of the stated goals of guardian discipline; and</p> <p>Consistency in the imposition of disciplinary sanctions for the same or similar offenses.</p> <p>The weight given any violation of a standard of practice is set out in the disciplinary regulations.</p>	<p>To assure that Certified Professional Guardians (CPG) meet and maintain minimum professional standards of practice, which are adopted as regulations under General Rule 23 – Rule for Certifying Professional Guardians.</p> <p>To establish a process for the Certified Professional Guardianship Board (Board) to review grievances of alleged violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The disciplinary procedures for failure to comply with certification requirements are included in the Certification Maintenance and Continuing Education Regulations.</p> <p><u>To set out the due process protections and other procedures that allow the professional guardian and the public to be protected.</u></p> <p>To ensure meaningful access to justice services and promote public trust and confidence in the courts.</p>
COMMENTS by Mindi Blanchard and Brenda Carpenter	<p>“To set out the due process protections and other procedures that allow the professional guardian and the public to be protected.”</p> <p>Comment - I looked up the legal definition of “due process” and this is what I’ve found</p> <p>We don’t know where the writer(s) of the proposed regulation got their definition of “due process” but we see a glaring lack of “due process” in the proposed regulation.</p>	

AOC STAFF RESPONSE TO COMMENTS	<ul style="list-style-type: none"> • Due process protections include procedural and substantive due process. Generally speaking, procedural due process refers to a right to notice and an opportunity be heard. These protections are provided throughout Regulation 500 – See 504.1, 504.2, 504.3, 504.4, 504.5, 505.2 etc. and so much more. • Substantive due process prohibits the government from infringing on fundamental constitutional liberties, such as freedom of religion, speech, press, and assembly; guarantee of a speedy jury trial in criminal cases; and protection against excessive bail and cruel and unusual punishment, the right to bear arms etc. Most of these are not applicable.
COMMENT From WAPG	Comment - This regulation is concise and outlines the purpose in a clear and effective manner.
AOC STAFF RESPONSE TO COMMENTS	No response

Reg No	Current Regulation	Proposed Regulation
Reg 501.2	No Equivalent Regulation	501.2 JURISDICTION <u>Any certified professional guardian (CPG) permitted to engage in the provision of guardianship services in this state is subject to these Disciplinary Regulations. Jurisdiction exists regardless of the CPG’s residency.</u>
COMMENT From WAPG	<p>“Any certified professional guardian (CPG) permitted to engage in the provision of guardianship services in this state is subject to these Disciplinary Regulations. Jurisdiction exists regardless of the CPG’s residency”</p> <p>Comment - The regulation applies to all CPGs who are certified by the CPG Board and can be revised to make the regulation more concise and clear. An alternative may be: Any certified professional guardian (CPG) certified by the Washington State CPG Board and appointed by a Superior Court is subject to these Disciplinary Regulations.</p>	
AOC STAFF RESPONSE TO COMMENT	No response.	

Reg No	Current Regulation	Proposed Regulation
<p>Reg 501.3 GROUNDS FOR DISCIPLINARY ACTION</p>	<p>A professional guardian may be subject to disciplinary action for any of the following:</p> <p>(1) <u>Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.</u></p> <p>Commission of a felony or of a misdemeanor or gross misdemeanor involving moral turpitude,</p> <p>(2) <u>whether or not a conviction results.</u></p> <p>(3)<u>Failure to perform any duty one is obligated to perform as a professional guardian.</u></p> <p>(4)<u>Violation of the oath, duties, or standards of practice of a professional guardian.</u></p> <p>(5) <u>Permitting a professional guardian's name to be used by an uncertified person or agency.</u></p> <p>503.6 Misrepresentation or concealment of a material fact made in the application for certification.</p> <p>(6)<u>503.7 Suspension, decertification, or other disciplinary sanction by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional</u></p>	<p>These rules govern the procedure by which a certified professional guardian may be subjected to disciplinary sanctions or actions for violation of the Certified Professional Guardian Standards of Practice or other regulations adopted by the Board.</p> <p>A professional guardian may be subject to disciplinary action for any of the following:</p> <p>Violation of or noncompliance with applicable violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and (1) <u>any other authority applicable to professional guardians.</u></p> <p>Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, (2) <u>whether or not a conviction results.</u></p> <p>(3) <u>Failure to perform any duty one is obligated to perform as a professional guardian.</u></p> <p>(4)<u>Violation of the oath, duties, or standards of practice of a professional guardian.</u></p> <p>(5) <u>Permitting a professional guardian's name to be used by an uncertified person or agency.</u></p> <p>Misrepresentation or concealment of a material fact made in the application for certification.</p>

	<p><u>guardianship or interaction with an incapacitated or vulnerable person.</u></p> <p><u>(7)503.8 Hiring, maintaining an office with, having on a Certified Agency’s Board of Directors, or working for or together with any person who has been decertified or suspended and who is not eligible for re- certification, if the professional guardian has knowledge of such decertification or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.</u></p> <p><u>(8)503.9 Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.</u></p> <p><u>503.10 Making a false statement under oath.</u></p> <p><u>503.11 Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.</u></p> <p><u>(9) 503.12 Working as a professional guardian while on inactive status.</u></p> <p><u>503.13 Failing to cooperate during the course of an investigation as required by the Board’s regulations.</u></p>	<p><u>(6) Suspension, decertification, or other disciplinary sanction taken by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional guardianship or interaction with an incapacitated or vulnerable person.</u></p> <p><u>(7) Hiring, maintaining an office with, having on a Certified Agency’s Board of Directors, or working for or together with any person whose certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has knowledge of such revocation or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.</u></p> <p><u>(8) Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.</u></p> <p><u>Making a false statement under oath.</u></p> <p><u>Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.</u></p> <p><u>(9)Working as a professional guardian while on inactive status.</u></p> <p><u>Failing to cooperate during the course of an investigation as required by the Board’s regulations.</u></p> <p><u>Incompetence in the performance of the duties of a guardian.</u></p> <p><u>(10)Failure to appear for a scheduled court proceeding without good cause.</u></p> <p><u>Failure to comply with the terms of a signed Agreement Regarding Discipline.</u></p>
--	--	---

COMMENT (1) From Mindi Blanchard and Brenda Carpenter	<p>“any other authority applicable to professional guardians”</p> <p>Comment – This phrase makes this change too vague and runs the risk of allowing the AOC and the Disciplinary Committee to overstep its authority and appears that the change is to allow for anything else that could be thought of. This is not a fair process.</p>
STAFF RESPONSE TO COMMENT	The current regulation attempts to provide a list of possible violations; however, the list is not comprehensive and thus can lead someone to believe that if a violation occurs that isn’t listed, investigation and discipline cannot occur. The proposed regulation attempts to make it clear that the Board has broad authority to regulate the conduct of a professional guardian.
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“whether or not a conviction results”</p> <p>Comment - This violates a professional guardian’s right to be considered innocent until proven guilty. Punishing a professional guardian for an act of which they have not been legally convicted, is beyond the authority of the AOC or the CPG Board and violated due process</p>
AOC STAFF RESPONSE TO COMMENT	The words referenced are part of both the current and proposed regulations. In some cases guardians may not be charged for theft etc. even if it can be proven (difficult to get prosecutor’s to charge). Also if a crime is committed prosecutors may defer a matter, move a case to drug court, veteran’s court, agree to a plea of a lesser matter etc. Although, the guardian may not have been charged, the Board retains the authority to discipline a professional guardian for violating a standard of practice.
COMMENT(3) From WAPG	<p>“Failure to perform any duty one is obligated to perform as a professional guardian.”</p> <p>Comment - The above statement does not define what duties are to be followed. Would this apply to the Standards of Practice, Model Code of Ethics or Court Orders? The sentence does not add any additional authority to the regulation and is redundant.</p>
AOC STAFF RESPONSE TO COMMENT	This sentence is not new. The sentence is in the current regulation. The Board has broad authority to regulate any duty.
COMMENT (4) From WAPG	<p>“Violation of the oath, duties, or standards of practice of a professional guardian.”</p> <p>Comment - The sentence does not add any additional authority to the regulations and is redundant.</p>

AOC STAFF RESPONSE TO COMMENT	This sentence is not new. The sentence is in the current regulation. The sentence provides examples.
COMMENT (5) From WAPG	<p>“Permitting a professional guardian's name to be used by an uncertified person or agency. “</p> <p>Comment - This sentence requires further definition to be more clear and concise. The regulation should not impede on a CPG’s ability to utilize their designation in marketing and other collaborative efforts. An alternative may be: Permitting a Certified Professional Guardian’s name or certification to be utilized by any person or agency that is not CPG Board Certified.</p>
AOC STAFF RESPONSE TO COMMENT	This sentence is not new. The sentence is in the current regulation. This statement could be made clearer. The proposed statement works as does - Permitting a professional guardian's name to be used by an uncertified <u>individual guardian</u> person or <u>guardianship</u> agency. “
COMMENT (6) From WAPG	<p>“Misrepresentation or concealment of a material fact made in the application for certification.</p> <p>Suspension, decertification, or other disciplinary sanction taken by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional guardianship or interaction with an incapacitated or vulnerable person.”</p> <p>Comment - The above section is not clear and concise. The following will require a definition if rule is adopted with the current language</p> <ol style="list-style-type: none"> 1. Sanction 2. Competent Authority 3. Foreign Jurisdiction <p>Assuming that this section is for a CPG or CPG Agency that has been suspended and/or decertified in any federal, state or other certifying body will be subject to these regulations. If this is the correct goal this section leaves room for interpretation.</p>
AOC STAFF RESPONSE TO COMMENT	These sentences are not new. These sentences are in the current regulation.
COMMENT (7) From WAPG	“Hiring, maintaining an office with, having on a Certified Agency’s Board of Directors, or working for or together with any person whose certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has

	<p>knowledge of such revocation or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.”</p> <p>Comment - This section is not clear and concise. The goal of this section should be further discussed to ensure the CPG and/or CPG Agency can determine what course of action should be elected to ensure compliance.</p>
AOC STAFF RESPONSE TO COMMENT	A professional guardian who wishes to hire, maintain and office with, have on a Certified Agency’s Board of Directors, work for or together with any person whose certification has been revoked or suspended as a disciplinary sanction, should apply for a waiver.
COMMENT (8) From WAPG	<p>“Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.</p> <p>Making a false statement under oath.</p> <p>Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions”</p> <p>Comment - The sentence does not add any additional authority to the regulations and is redundant. The section is already covered in 501.1</p>
AOC STAFF RESPONSE TO COMMENT	These sentences are not new. These sentences are in the current regulation. These sentences provide examples.
COMMENT (9) From WAPG	<p>“Working as a professional guardian while on inactive status.</p> <p>Failing to cooperate during the course of an investigation as required by the Board’s regulations.</p> <p>Incompetence in the performance of the duties of a guardian.”</p> <p>Comment - A definition of incompetence is suggested. The CPG Board may want to consider how to deal with a CPG who has cognitive deficits and/or substance abuse issues.</p>
AOC STAFF RESPONSE TO COMMENT	<p>Incompetent is defined in Section 501.4 as follow:</p> <p>“Incompetent” means an individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.”</p>

	Anticipate using Sections 502.5 (3) and 509.6 when a CPG may have cognitive deficits or substance abuse issues.	
COMMENT (10) From WAPG	<p>“Failure to appear for a scheduled court proceeding without good cause. Failure to comply with the terms of a signed Agreement Regarding Discipline.”</p> <p>Comment - An alternative may be: Failure to appear for a scheduled court proceeding without good cause or complying with the terms of an executed and accepted CPG Board Agreement Regarding Discipline.</p>	
AOC STAFF RESPONSE TO COMMENT	A signed Agreement Regarding Discipline has been executed and accepted.	
Reg No	Current Regulation	Proposed Regulation
Reg 501.4 DEFINITIONS		<p>Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:</p> <p>“Advisory Letter” is a non-disciplinary letter to notify a professional that:</p> <p>While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against a respondent certified professional guardian; or</p> <p>The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or</p> <p>While a certified professional guardian has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Disciplinary Committee believes that repetition of the activities that led to the investigation may result in further Disciplinary Committee action against a CPG.</p>

		<p>“Agreement Regarding Discipline” (Settlement Agreement) is a written settlement agreement approved by the professional guardian and the Board of a disciplinary matter against a professional guardian. The final agreement, approved by the parties, is a finding of misconduct, is a sanction and is subject to public disclosure.</p> <p>“AOC” means staff of the Administrative Office of the Courts.</p> <p>“Board” means the Certified Professional Guardianship Board.</p> <p>“Chair” when used alone means the Chair of the Certified Professional Guardianship Board.</p> <p><u>(2)"Contempt of Court" means:</u></p> <p><u>Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;</u></p> <p><u>Disobedience of any lawful judgment, decree, order, or process of the court or tribunal;</u></p> <p><u>Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or</u></p> <p><u>Refusal, without lawful authority, to produce a record, document, or other object.</u></p> <p>“Complaint” means the formal document, as described in DR 508.2, filed by the Board with the AOC to initiate a contested hearing before a Hearing Officer for a factual hearing on the issue of whether the professional guardian’s conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian allegedly violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.</p>
--	--	---

		<p><u>(3) “Court” unless otherwise specified, means the Supreme Court of Washington.</u></p> <p>“CPG or CPGA” when used alone means a Certified Professional Guardian or Certified Professional Guardian Agency.</p> <p>“Decertification” of a professional guardian or agency occurs when the Board or the Supreme Court revokes the certification of a professional guardian or agency for any reason.</p> <p>“Deliberative Records” are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.</p> <p>“Designated CPG” means the certified professional guardian working for an agency who has the final decision-making authority for incapacitated persons or their estate on behalf of the agency. The designated CPG is responsible for the actions of the agency (ies) for which they serve as designated CPG.</p> <p>“Disciplinary Records” are the records maintained by the Washington State Administrative Office of the Courts (AOC) of any disciplinary review, sanction, or other action imposed by the Board on the professional guardian, which shall include the reason for the Board’s action. The AOC shall maintain such records as defined by records retention schedules of the judicial branch and the AOC.</p> <p>“Disciplinary Action” encompasses the process described by these disciplinary regulations.</p> <p>“Disciplinary Counsel” the Office of the Attorney General serves as disciplinary counsel for complaints, or when otherwise requested by AOC or the Board.</p>
--	--	--

		<p>Grievance” is a written document filed by any person with the Board, or filed by the Board itself, for the purpose of commencing a review of the professional guardian’s conduct under the statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The grievance must include a description of the conduct of the professional guardian that the grievant alleges violates a statute, fiduciary duty, standard of practice, rule, regulation, or other authority applicable to professional guardians, including the approximate date(s) of the conduct. (1) <u>If the grievant is unable to submit a grievance in written form due to a disability or inability to communicate in written language, it may be communicated orally to AOC staff.</u></p> <p>“Grievant” means the person or entity who files a grievance against a CPG.</p> <p>“Hearing Officer” means the person appointed by the Board to conduct a disciplinary hearing and render a decision.</p> <p>“Incompetent” means an individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.</p> <p>“Investigative Records” are records related to an investigation pursuant to GR 23 and these disciplinary regulations, into the conduct of the professional guardian, prior to the imposition of any disciplinary sanction or dismissal.</p> <p>“Motion” means a written request to the Disciplinary Committee, Board, Hearing Officer or Supreme Court to issue a ruling or order.</p> <p>“No Contest” means the accused will not contest the facts on which the charge is based. It is not an admission of guilt. It is comparable to a guilty plea in authorizing a court to punish the accused.</p>
--	--	---

		<p>“Party” means respondent CPG and the Board.</p> <p>"Punitive Sanction" means a sanction imposed to punish.</p> <p>"Remedial Sanction" means a sanction imposed for the purpose of assurance performance when a failure to perform consists of the omission or refusal to perform an act that is in the person's power to perform.</p> <p>“Resignation” is the act or instance of resigning something, surrendering; the formal notification of resigning.</p> <p>“Respondent” means a CPG or CPG agency and a designated CPG against whom a grievance is filed.</p> <p>“Revoked” or “Revocation” means a professional guardian’s certification is cancelled by the Board or the Washington State Supreme Court pursuant to the procedures set forth in these disciplinary regulations or any other regulations of the Board, as a result of the professional guardian’s failure to comply with any statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians. The Board must specify whether the CPG is eligible to apply for certification with the AOC guardian program at a future date.</p> <p><u>(4) “Standard of Practice” means a model of established practice that is commonly accepted as correct.</u></p> <p>“Summary Judgment’ is a judgment rendered by the court or Hearing Officer prior to a verdict because no material issue of fact exists and one party or the other is entitled to a judgment ascertained through the use of statutes, rules, court decisions, and interpretation of legal principles.</p> <p>“Suspension” of a professional guardian occurs when the Board or the Supreme Court orders that the certification of a professional guardian or agency be temporarily cancelled for a specified period of time. A suspended professional guardian or agency may not act</p>
--	--	--

		<p>as a certified professional guardian for any person during the period of suspension.</p> <p>“To File” means submitting a written document, exhibit, or other information to the AOC regarding a grievance which will be included in the disciplinary record.</p> <p>Words of Authority</p> <p>“May” means “has discretion to,” “has a right to,” or “is permitted to”.</p> <p>“</p> <p>Must” and “shall” mean “is required to”. “Should” means recommended but not required.</p> <p>“</p> <p>Voluntary Resign (Surrender)” means a process where a certified professional guardian voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.</p> <p>“Voluntary Resign (Surrender) in Lieu of Discipline” means a process where a certified professional guardian surrenders certification with a statement of charges for dismissal.</p>
<p>COMMENT(1) From Mindi Blanchard and Brenda Carpenter</p>		<p>“If the grievant is unable to submit a grievance in written form due to a disability or inability to communicate in written language, it may be communicated orally to AOC staff.”</p> <p>Comment - We object to the AOC staff being nominated as accepting a verbal grievance. The complaint should be communicated to a neutral third party and that third party would put it into writing for the grievant.</p>
<p>AOC STAFF RESPONSE TO COMMENT</p>		<p>A “neutral third-party” is defined as one who has no financial, or personal interest in a dispute. To our knowledge, no member of the AOC staff has a financial or personal interest in guardianship grievances. AOC staff members are committed to protecting the public from unethical or dangerous practices that can occur in guardianship practice. Any evidence that a member of AOC staff has a financial or personal interest in a guardianship grievance should be shared with</p>

	the Board. It should be noted that involving an outside party to put grievances in writing would potentially compromise the privacy of both the grievant and the guardian.
COMMENT (2) From WAPG	<p>"Contempt of Court" means:</p> <p>Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;</p> <p>Disobedience of any lawful judgment, decree, order, or process of the court or tribunal;</p> <p>Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or</p> <p>Refusal, without lawful authority, to produce a record, document, or other object."</p> <p>Comment - Contempt of Court should be determined by the court and not the CPG Board. The CPG Board should not be substituting its judgment for the court when it comes to a finding of contempt of court. This is a very complicated area involving civil rights and other rights where the court would have jurisdiction.</p>
AOC STAFF RESPONSE TO COMMENT	<p>The Board is not substituting its judgment for the court. This refers to contempt of a proceeding held by the CPG Board. Perhaps, it should read:</p> <p>"Contempt of a <u>Board Proceeding Court</u>" means:</p> <p>Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial board proceedings;</p> <p>Disobedience of any lawful judgment, decree, order, or process of the <u>Certified Professional Guardianship Board</u> court or tribunal;</p> <p>Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or</p> <p>Refusal, without lawful authority, to produce a record, document, or other object."</p>
COMMENT (3) From WAPG	"Court" unless otherwise specified, means the Supreme Court of Washington."

	Comment - The current CPG Board regulations does not allow for an appeal process outside of the administrative court process with only an appeal to the WA State Supreme Court. This limits the CPG's options for a resolution. All other state certification governing agencies allow for lower courts to rule on disciplinary and/or sanctions prior to being heard by the State Supreme Court. By not allowing for this process places an undue financial burden on the CPG to dispute any decision made by the CPG Board.
AOC STAFF RESPONSE TO COMMENT	The Board's regulatory process is modeled after the regulatory process for the Washington State Bar Association and Licensed Practice Officers. Both only allow appeals to the Supreme Court. The Washington Supreme Court has exclusive authority to administer discipline for attorneys, LPOs and professional guardians. The Supreme Court has appointed the CPG Board to regulate professional guardians.
COMMENT (4) From WAPG	"Standard of Practice" means a model of established practice that is commonly accepted as correct. Comment - Standard of Practice should mean SOP's as promulgated by the board. The vague definition leaves this term open to interpretation.
AOC STAFF RESPONSE TO COMMENT	No response.

Reg No	Current Regulation	Proposed Regulation
Reg 501.5 STATUTE OF LIMITATIONS		<u>No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.</u>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.”</p> <p>Comment - Even criminal acts, except for murder, have limitations and time statutes. No professional guardian should have to worry about a complaint being resurrected ten, twenty, thirty or forty years later.</p>	
AOC STAFF RESPONSE TO COMMENT	See Attachment A Page 71 of meeting materials	
COMMENT From Lin D. O'Dell	See Letter from Lin D. O'Dell Page 16 of meeting materials	

AOC STAFF RESPONSE TO COMMENT	See Attachment A Page 71 of meeting materials
-------------------------------------	--

Reg No	Current Regulation	Proposed Regulation
<p>Reg 502.1 RESTRICTION ON REPRESENTING RESPONDENTS</p>	<p>509.1.3 A former member of the Board who is also a licensed attorney in Washington shall not represent a professional guardian in proceedings under the Board’s regulations until after two (2) years have elapsed following expiration of the Board member's term of office</p>	<p>502.1 CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD (CPGB) The Washington State Certified Professional Guardianship Board has responsibility in the state to administer CPG discipline and has inherent power to maintain appropriate standards of practice and to conduct and to dispose of individual cases of CPG discipline. Persons carrying out the functions set forth in these rules act under the Certified Professional Guardianship Board’s authority. Function. The Board: Supervises the general functioning of the Disciplinary Committee. Makes appointments, removes those appointed, and fills vacancies as provided in these rules. Performs other functions and takes other actions provided in these rules, delegated by the Supreme Court in General Rule 23, or as necessary and proper to carry out its duties. Is responsible for hearing appeals of Disciplinary Committee decisions that are made appealable pursuant to these rules. <u>Restriction on Representing Respondents. A former member of the Board shall not represent a certified professional guardian in proceedings under the Board’s regulations for at least three (3) years following expiration of the Board member’s term of office. Former AOC staff shall not represent a certified professional guardian in proceeding under the Board’s regulations for at least three (3) years after separation from AOC. Former members of the Board are also subject to the restrictions on representing respondents in rule 502.2(6).</u></p>
<p>COMMENT From Mindi Blanchard and Brenda Carpenter</p>	<p>“A former member of the Board shall not represent a certified professional guardian in proceedings under the Board’s regulations for at least three (3) years following expiration of the Board member’s term of office. Former AOC staff shall not represent a certified professional guardian in proceeding under the Board’s regulations for at least three (3) years after separation from AOC. Former members of the Board are also subject to the restrictions on representing respondents in rule 502.2(6).”</p> <p>Comment - The change from two years to three years. There is no reason given for the addition of a 3rd year of separation. It is an arbitrary and unnecessary change to the current.</p>	

STAFF RESPONSE TO COMMENT	<p>Members of the Board and AOC staff have access to confidential information during their tenure with the Board. They should not be involved in representing guardians in a process they were originally involved in investigating. Thus a restriction on representation is essential. Some revisions to Reg 500 model the disciplinary rules for Licensed Practice Officers (LPOs). ELPOC 2.11 includes a 3 year restriction on representation http://wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LPO/Rules%20Regs/Rules%20for%20Enforcement%20of%20LPO%20Conduct%20-%20appr%20Jan%206%202016%20eff%20Mar%201%202016.ashx</p> <p>In the only complaint that was appealed, the grievance was received in 2009, A hearing was held in 2012. An appeal was resolved in 2014 and the guardian sought reinstatement in 2016. One can argue that this was an active matter for a minimum of 5 years (2009 -2014) and a maximum of 7 years (2009 to 2016). Staff suggests that the restriction on representation should be more than three years. Five years is recommended.</p>
------------------------------	--

Reg No	Current Regulation	Proposed Regulation
<p>Reg 502.2 DISCIPLINARY COMMITTEE</p>	<p>505 Standards of Practice Committee (SOPC) The SOPC shall have three members appointed by the Board Chair. (1)At least one member must be a certified professional guardian and at least one member must be an attorney or judicial officer. The Board Chair shall designate one member as the chair of the committee. (2)All committee members will serve a term of one year. The Board Chair shall also appoint at least three alternate members of the SOPC to assist the SOPC in the performance of its duties as requested by the Chair of the SOPC. At least one alternate member shall be a certified professional guardian and one alternate member shall be a judicial officer or attorney.</p> <p>Members of the SOPC shall perform tasks related to the disciplinary process as set forth in these regulations or as assigned by the Board.</p>	<p>502.2 DISCIPLINARY COMMITTEE</p> <p><u>(3) Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include, but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business or other relationships to influence their conduct or judgment.</u></p> <p><u>(4) Membership. The Chair appoints a Disciplinary Committee of three to four members from among the Board members. (1)At least one of the members must have substantial experience in guardianships. The Chair may change the appointment of members to the Disciplinary Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee.</u></p> <p><u>(2) Terms of Office. A board member may serve as a Disciplinary Committee member as long as the member is on the Board or for other shorter terms as determined to be appropriate by the Chair of the Board.</u></p> <p><u>(5) Disciplinary Committee Chair. The Chair of the Board designates one member of the Disciplinary Committee to act as its Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.</u></p> <p>Meetings. The Disciplinary Committee meets at times and places determined by the Disciplinary Committee Chair. At the Disciplinary Committee Chair’s discretion, the Committee may</p>

		meet and act through electronic, telephonic, written, or other means of communication.
COMMENT (1) From Mindi Blanchard and Brenda Carpenter	Comment - The current rule states “ At least one member must be a certified professional guardian and at least one member must be an attorney or judicial officer. ” No one who has never practiced as a professional guardian understands the challenges and nuances of guardianship. The new rule is not appropriate representation for professional guardian.	
RESPONSE TO COMMENT	Guardianship practice requires knowledge in many different areas. Board members are selected for their experience and subject matter expertise in one or more of these areas. Each member brings a perspective that informs the discussion.	
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“Terms of Office. A board member may serve as a Disciplinary Committee member as long as the member is on the Board or for other shorter terms as determined to be appropriate by the Chair of the Board.”</p> <p>Comment - That could be as long as nine years. This is far too long. The current rule is that each board member serves one year. We see no reason to change.</p>	
AOC STAFF RESPONSE TO COMMENT	The current rule does not limit the number of terms a member may serve thus members can currently serve 9, one year terms. Disciplinary members have a learning curve. The longer they serve, the more experience they obtain. Also their ability to serve should only be limited by their ability to serve as a board member.	
COMMENT (3) From WAPG	<p>“Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include, but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions.</p> <p>Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business or other relationships to influence their conduct or judgment.”</p> <p>Comment - It is recommended that should be changed to shall. The CPO Board members should be held to the same standards at the CPG's that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.</p>	
AOC STAFF RESPONSE TO COMMENT	Agree that it is appropriate to replace “should” with “shall”.	

<p>COMMENT (4) From WAPG</p>	<p>“Membership. The Chair appoints a Disciplinary Committee of three to four members from among the Board members. At least one of the members must have substantial experience in guardianships. The Chair may change the appointment of members to the Disciplinary Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee.”</p> <p>Comment - It is recommended that all CPG Board Members appointed to the CPG Disciplinary Committee have substantial experience in guardianships. In all other national and state certification programs, a certified or licensed fiduciary complaint are reviewed by either other professional fiduciaries and/or individuals well versed in the regulation and process.</p>
<p>AOC STAFF RESPONSE TO COMMENT</p>	<p>Many licensing programs include members of the public and other professionals on their disciplinary committees. For example, see the excerpts below from the LPO Disciplinary Committee, and the Bar Disciplinary Review Committee.</p> <p>ELPOC 2.4 DISCIPLINE COMMITTEE</p> <p>(a) Function. The discipline committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.</p> <p>(b) Membership. The Chair appoints a discipline committee of three members from among the Board members. <u>At least one of the members must have substantial experience in the industry.</u> The Chair may change the appointment of members to the discipline committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the discipline committee.</p> <p>ELC 2.4</p> <p style="text-align: center;">REVIEW COMMITTEES</p> <p>(a) Function. A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.</p> <p>(b) Membership. The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and <u>one nonlawyer</u>. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.</p>
<p>COMMENT (5) From WAPG</p>	<p>“Disciplinary Committee Chair. The Chair of the Board designates one member of the Disciplinary Committee to act as its Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.</p> <p>Comment - This section anticipates that the disciplinary committee is a judicial proceeding which in most licensing or certification processes this is not presumed. Further discussion should be held that would identify the purpose of this section, criteria for determining chair and if this section is required.</p>

AOC STAFF RESPONSE TO COMMENT	Neither the WSBA of LPO Board's require the chair of the Disciplinary Committee to have experience serving in a judicial or quasi-judicial capacity. We did not research other disciplinary committees. This is a requirement that was established by the original drafters of the Reg. 500. It is not new.
-------------------------------------	---

Reg No	Current Regulation	Proposed Regulation
Reg 502.3 CONFLICTS REVIEW COMMITTEE	<p>507 Conflicts Review Committee</p> <p>The Conflicts Review Committee (CRC) shall have three members appointed by the Board Chair, who shall also designate the committee chair. CRC members may not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.</p> <p>The AOC shall transmit any grievance against a Board member to the CRC. The CRC shall perform the duties that would otherwise be performed by the SOPC under these regulations and AOC shall report to the CRC on any such grievance.</p> <p>507.3 The CRC may also recommend to the Board Chair that the Board member under investigation be placed on a leave of absence from the Board during its investigation. The CRC will consider the nature of the allegations against the Board member, the available evidence regarding those allegations and the importance of maintaining public trust and confidence in the Board in making its recommendation to the Board Chair. The CRC may make such a recommendation at any time during Its investigation and review of the grievance. Except as otherwise set forth in these regulations, the Board Chair shall have the sole discretion to decide whether the Board member should take a</p>	<p>502.3 CONFLICTS REVIEW COMMITTEE</p> <p><u>Function. The Conflicts Review Committee (CRC) performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions involving a Board member. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business, or other relationships to influence their conduct or judgment.</u></p> <p>Membership. The Board Chair shall appoint three members who shall not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.</p> <p>Chair. The Board Chair shall designate one member of the CRC to serve as Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.</p> <p>Confidentiality Agreement. All proposed members of a CRC are required to sign a confidentiality agreement prior to serving.</p> <p>CRC Duties. The AOC shall transmit any grievance against a Board member to the CRC. The CRC shall perform the duties that would otherwise be performed by the Disciplinary Committee under these regulations and AOC shall support the CRC in any such grievance.</p>

	<p>leave of absence from the Board and when the Board member may return to the Board.</p> <p>507.4 If the Board files a complaint against a Board member, the Board member shall take a leave of absence from the Board until the conclusion of the disciplinary proceeding.</p> <p>507.5 Consistent with the Office of Financial Management rules, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.</p>	<p>The CRC may recommend to the Board Chair that the Board member under investigation be placed on a leave of absence from the Board during its investigation. The CRC will consider the nature of the allegations against the Board member, the available evidence regarding those allegations and the importance of maintaining public trust and confidence in the Board in making its recommendation to the Board Chair. The CRC may make such a recommendation at any time during its investigation and review of the grievance. Except as otherwise set forth in these regulations, the Board Chair shall have the sole discretion to decide whether the Board member should take a leave of absence from the Board and when the Board member may return to the Board.</p> <p>Reimbursement. Consistent with the AOC policy, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.</p> <p>Access to Disciplinary Information. CRC Members have access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules. CRC Members shall return original files to the AOC promptly upon completion of the duties required by these rules and shall not retain copies.</p> <p>Independence. CRC Members act independently of disciplinary counsel and the Board.</p> <p>Board Member Responsibility. If the Board files a complaint against a Board member, the Board member shall take a leave of absence from the Board until the conclusion of the disciplinary proceeding.</p>
<p>COMMENT From WAPG</p>	<p>“Function. The Conflicts Review Committee (CRC) performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include but are not limited to</p>	

	<p>investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions involving a Board member. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. <u>Members should not allow</u> family, social, business, or other relationships to influence their conduct or judgment.”</p> <p>Comment --It is recommended that should be changed to shall. The CPG Board members should be held to the same standards at the CPG's that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.</p>
<p>AOC STAFF RESPONSE TO COMMENT</p>	<p>Agree that it is appropriate to replace “should” with “shall”.</p>

Reg No	Current Regulation	Proposed Regulation
<p>Reg 502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN</p>	<p>509.1.1 A professional guardian may be represented by counsel at the professional guardian’s expense at any stage of any investigation or proceeding under the Board’s regulations.</p> <p>509.1.2 Should the professional guardian seek reimbursement or imposition of fees and costs from a guardianship estate during the pendency of any Board or AOC investigation, the matter must be addressed by the superior court with jurisdiction over the case.</p> <p>(1) <u>509.1.3 A former member of the Board who is also a licensed attorney in Washington shall not represent a professional guardian in proceedings under the Board’s regulations until after two (2) years have elapsed following expiration of the Board member's term of office.</u></p>	<p>502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN Right to Representation. A CPG may be represented by counsel at the CPG’s own expense during any stage of an investigation or proceeding under these rules.</p> <p>(1) <u>Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.</u></p> <p>(2) <u>Restriction on Charging Fee to Respond to Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person’s estate a fee or recover costs from a grievant or incapacitated person’s estate for responding to the CPG Board regarding a grievance.</u></p> <p>(3) <u>Medical and Psychological Records. A respondent CPG must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.</u></p>
<p>COMMENT (1) From Mindi Blanchard and Brenda Carpenter</p>	<p>“Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.”</p> <p>Comment - We feel that the current rule should be kept.</p>	
<p>AOC STAFF RESPONSE TO COMMENT</p>	<p>(Repeating the same response as above). Members of the Board and AOC staff have access to confidential information during their tenure with the Board. They should not be involved in representing guardians in a process they were originally involved in investigating. Thus a restriction on representation is essential. In the only complaint that was appealed, the grievance was received in 2009, A hearing was held in 2012. An appeal was resolved in 2014 and the</p>	

	guardian sought reinstatement in 2016. One can argue that this was an active matter for a minimum of 5 years (2009 - 2014) and a maximum of 7 years (2009 to 2016). Staff suggests that the restriction on representation should be more than three years. Five years is recommended.
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“Restriction on Charging Fee to Respond to Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person’s estate a fee or recover costs from a grievant or incapacitated person’s estate for responding to the CPG Board regarding a grievance. “</p> <p>Comment - We feel that a formal hearing should be required to determine if fees can be charged on a grievance. The proposal would allow frivolous grievances to continue unchecked while the professional guardian bears the financial burden of defending him or herself.</p>
AOC STAFF RESPONSE TO COMMENT	The Board discussed this issue at length during its June meeting. In summary, the Board is confident that its process will identify frivolous grievances. No additional process is needed. SOP 410.2 states that all guardian compensation must be incurred for the incapacitated person’s welfare. Case law also states that guardian fees must be for the benefit of the IP (<i>In re Guardianship of Lamb</i> , 153 Wn. App. 1036 (2009).
COMMENT (3) From Mindi Blanchard and Brenda Carpenter	<p>“Medical and Psychological Records. A respondent CPG must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.”</p> <p>Comment - We feel that this is a violation of our right to privacy without due process. A hearing needs to be required to determine if this is necessary on a case-by-case basis. The CPG Board and/or AOC should not be allowed to arbitrarily determine that this information is needed</p>
AOC STAFF RESPONSE TO COMMENT	<p>In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of professional guardians. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Just as CPGs must have access to the private and confidential records of the people they serve, the CPG Board must have access to the private and confidential records of CPGs. Private information is handled in a safe and secure manner and is only shared on a need to know basis.</p> <p>This is not an uncommon rule with regulatory bodies. Click below and see ELC 8.2 (c) (3) for attorneys http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ELC&ruleid=gaelc0808.02 http://wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LPO/Rules%20Regs/Rules%20for%20Enforcement%20of%20LPO%20Conduct%20-%20appr%20Jan%206%202016%20eff%20Mar%201%202016.ashx ELPIC 8.2 (c) (3)</p>
COMMENT (4) From WAPG	“Right to Representation. A CPG may be represented by counsel at the CPG’s own expense during any stage of an investigation or proceeding under these rules.

“Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.

Restriction on Charging Fee to Respond to Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person’s estate a fee or recover costs from a grievant or incapacitated person’s estate for responding to the CPG Board regarding a grievance.”

Medical and Psychological Records. A respondent CPG must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.”

Comment -It is recommended that there be some standard for filing a grievance, and failing to meet that standard should subject the person filing the grievance to some penalty. While one does not want to produce a chilling effect on individuals who file a legitimate grievance, but a CPG should not be continually defending themselves against frivolous claims and/or grievances. The CPG is appointed for a reason and continually interacts with difficult family members, interested parties and other national guardianship groups. The CPG Board might consider the California Licensing Bureaus protocol in which not all grievances filed are fully vented through the process. In many grievances, the individual filing the grievance has had the issue fully reviewed and a ruling made by the court. The individual filing the grievance is unwilling to accept the court's decision and wants to continue the dispute through the grievance process at no cost to the individual filling the grievance. These grievances and/or issues should be dismissed if a court or other form of judication has resulted in a ruling by the court.

The assumption that only the CPG Board can rule on grievances involving Standards of Practice is no longer valid due to the recent Spokane Superior Court ruling and the Appellate ruling in which findings of fact were made based on the Standards of Practice.

The CPG Board has taken the position that a grievance allows for the review of all clients and procedures of the CPG or CPG Agency instead of reviewing the grievance and deciding based on that sole grievance. This tact as well as not reviewing the merit of the case at the onset of the filing of the grievance is reflected in the CPG Board's backlog of grievances. CPG's grievances have not been investigated or ruled upon for over a two or three-year span from time the grievance was filled and when a decision was made. This lag time between filing of the grievance and a decision being made creates mistrust from the CPG community as well as the public who have filed the grievance. All other regulated

	<p>professions have specific timelines that must be met to ensure the grievance is heard in timely manner. If the CPG Board cannot guarantee grievances are not resolved in a timely manner other options should be pursued and implemented.</p> <p>It is recommended that this provision should allow for the CPG be to obtain consent form the client prior to blanketly giving the CPG Board the authority to access a client's records without limitation. If the client does not agree to the consent a CPG would be requested to obtain direction from the assigned court to proceed with the authorization and/or give limited authority to the CPG Board. This request is an invasion of a client's privacy and may be not warranted if the grievance is not dependent on the information. The CPG's Standard of Practice places this request in directly conflict with blanketly execute the release.</p>
<p>AOC STAFF RESPONSE TO COMMENT</p>	<p>In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of clients. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Private information is handled in a safe and secure manner and is only shared on a need to know basis. Also see GR 22 Comment to (d) (3)</p> <p>https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr22</p>

Reg No	Current Regulation	Proposed Regulation
REG 505.1 FILING A GRIEVANCE	504.1 Any person or entity may file a grievance with the Administrative Office of the Courts (AOC) regarding a professional guardian. The Board may file a grievance in its name if alleged or apparent misconduct comes to the Board's attention without a grievance being filed by a third person.	<p>505.1 GRIEVANTS Filing of Grievance. Any person or entity may file a grievance, as defined in section 501.4.16 against a certified professional guardian.</p> <p>The Disciplinary Committee Chair may open a grievance based on any information obtained by the AOC or the Board.</p> <p>Consent to Disclosure. By filing a grievance, the grievant consents to disclosure of his or her identity, the nature of the allegations of the grievance to the respondent CPG or to any other person contacted during the investigation.</p> <p><u>The identity of the person bringing the grievance is disclosed unless the person submits a written request for confidentiality that explains his or her reasons for not wanting his or her identity disclosed, and which the Disciplinary Committee approves. At the discretion of the Disciplinary Committee Chair, the grievant's identity may be revealed for good cause.</u></p> <p>If the matter goes to a hearing and the grievant's testimony is required, the grievant's identity as a witness is not confidential, the fact that he/she brought the grievance may remain confidential.</p> <p>Grievant Rights. A grievant has the following rights: To be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;</p> <p>To have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;</p>

		<p>To submit additional supplemental written information or documentation at any time;</p> <p>To attend any hearing conducted into the grievance;</p> <p>To provide testimony at any hearing conducted into the grievance, if such testimony is determined by AOC to be appropriate and relevant to the proceeding;</p> <p>To be advised of the disposition of the grievance;</p> <p>To be advised when his or her identity will no longer be confidential; and after supplying additional information in reference to the grievance, to request reconsideration of a dismissal of the grievance as provided in DR 506.2.</p> <p>Grievant Duties. A grievant has the duty to do the following:</p> <p>At the time of filing the grievance or when requested, give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;</p> <p>Assist in securing relevant evidence, which may include signing releases of information; and</p> <p>Appear and testify at any hearing resulting from the grievance when such testimony is requested by AOC, through disciplinary counsel.</p> <p>If the grievant fails to do any of the duties above, a grievance may be dismissed.</p>
<p>COMMENT From Mindi Blanchard and Brenda Carpenter</p>	<p>“The identity of the person bringing the grievance is disclosed unless the person submits a written request for confidentiality that explains his or her reasons for not wanting his or her identity disclosed, and which the Disciplinary Committee approves. At the discretion of the Disciplinary Committee Chair, the grievant’s identity may be revealed for good cause. “</p>	

	<p>Comment - Where is the due process in this? Under no circumstances should a grievant have their identity protected. A CPG should have all relevant knowledge regarding a grievance so that they can prepare and respond to a grievance with all available resources. Not knowing who the grievant is would undermine the CPGs' ability to put the complaint into context and would hamper the CPG's ability to defend him/herself.</p>
<p>STAFF RESPONSE TO COMMENT</p>	<p>Virtually all parties working closely with the elderly, persons with developmental disabilities and mental illness have noted that the overwhelming majority of abuse incidents remain unreported, because individuals often fear retaliation. Entities working to protect persons with disabilities, must weigh the value of receiving an anonymous report that could ultimately protect the welfare and safety of an IP against the potential harm to the reputation of the person complained about. Having the name of the complainant, doesn't change the complaint. The right to face one's accuser is a criminal law matter that generally refers to face-to-face confrontation with witnesses offering testimonial evidence against the accused in the form of cross-examination during a trial. Please note that the proposed rule would permit the CPG to make a motion to the Disciplinary Committee Chair to reveal the identity of the grievant for good cause.</p>

Reg No	Current Regulation	Proposed Regulation
<p>REG 502.2 INVESTIGATION OF GRIEVANCES</p>	<p>504.3 The AOC will review each complaint and may follow up in writing or through other means to obtain all necessary information for the grievance to proceed. This follow-up may include the AOC returning incomplete or unclear grievances to the submitting person or body with an explanation of why the grievance is incomplete and what additional information is necessary.</p> <p>504.4 Unless the Standards of Practice Committee (SOPC) has dismissed the grievance, the AOC shall send a grievance regarding an active guardianship case to the appropriate superior court with a request that the court review the grievance, take any action the court deems necessary, and report back to the AOC.</p> <p>504.5 Unless the SOPC has dismissed the grievance, AOC will send a copy of the grievance to the professional guardian, provide information to the professional guardian about the website location of the Board’s disciplinary regulations and request that the professional guardian respond to the grievance in writing.</p> <p>504.6 AOC may perform other necessary investigation of the grievance, which may include any of the following: interviewing the grievant, interviewing the professional guardian and obtaining relevant records or documentation from any person or entity.</p> <p>504.7 AOC will report the results of its investigation to the SOPC unless the grievance is</p>	<p>505.2 INVESTIGATION OF GRIEVANCE Review and Investigation. The AOC must review any alleged or apparent misconduct by a CPG. AOC shall conduct an initial investigation to ensure that any grievances received are complete, meet jurisdictional requirements as defined in DR 501.3, and provide sufficient factual information to warrant further consideration. When appropriate the initial investigation should include the following:</p> <p>Provide a copy of the grievance to the respondent certified professional guardian and request a response pursuant to DR 506.3.</p> <p>Provide a copy of the respondent certified professional guardian’s response to the grievant and request a response.</p> <p>Interview persons believed to possess relevant information or documents. Request and review relevant documents.</p> <p>Initial Dismissal. AOC may dismiss a grievance that fails to provide sufficient factual information, fails to meet jurisdictional requirements, or fails to identify an action which would result in sanctions. AOC is not required to seek the approval of the Disciplinary Committee or the Board for such dismissals.</p> <p>(1) <u>Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance:</u></p> <p><u>The unwillingness of a grievant to continue the grievance;</u></p> <p><u>The withdrawal of the grievance, a compromise between the grievant and the respondent; or</u></p> <p><u>Restitution by the respondent.</u></p>

	<p>against a Board member, in which case the AOC will report the results of its investigation to the Conflicts Review Committee (CRC) which shall act on the grievance in accord with these regulations.</p>	<p>Deferral.</p> <p>(2) <u>An investigation into alleged acts of misconduct by a CPG may be deferred by the Chair of the Disciplinary Committee or AOC staff with the approval of the Disciplinary Chair, if it appears that the deferral will not endanger the public, and; The allegations are related to pending civil or criminal litigation; The respondent CPG is physically or mentally unable to respond to the investigation; or For other good cause shown.</u></p> <p>The AOC must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, the AOC refers the matter to the Disciplinary Committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Board no later than thirty (30) days after the AOC mails the notice regarding deferral.</p> <p>(3) <u>Duty to Furnish Prompt Response. The respondent CPG must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.</u> Upon inquiry or request, the respondent CPG must:</p> <p>(4) <u>Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;</u></p> <p>(5) <u>Permit inspection and copying of the CPG’s business records, files, and accounts;</u></p>
<p>COMMENT (1) From Mindi Blanchard and Brenda Carpenter</p>	<p>“Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance:</p> <p>The unwillingness of a grievant to continue the grievance;</p>	

	<p>The withdrawal of the grievance, a compromise between the grievant and the respondent; or</p> <p>Restitution by the respondent.”</p> <p>Comment - Where is the due process in this? This is treating CPGs as though they are guilty even when the issue is resolved. The CPG Board and the AOC should not have this power.</p>
STAFF RESPONSE TO COMMENT	<p>At the core of all rules and regulations is the protection of persons subject to guardianship. The Board must consider the ability of someone to exercise undue influence and coerce another to withdraw a grievance. The Board must also consider that the fear of retaliation may cause one to withdraw a grievance. The inability to withdraw a complaint once filed is recognized in any area where the person served is extremely vulnerable, including domestic violence, child and elder abuse. The fact that the grievance proceeds and an investigation occurs does not indicate any predisposition on the merits. It simply ensures Board review of any grievance.</p>
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“An investigation into alleged acts of misconduct by a CPG may be deferred by the Chair of the Disciplinary Committee or AOC staff with the approval of the Disciplinary Chair, if it appears that the deferral will not endanger the public, and; The allegations are related to pending civil or criminal litigation; The respondent CPG is physically or mentally unable to respond to the investigation; or For other good cause shown.”</p> <p>Comment - When is the CPG Board in this section? Are they deferring their responsibilities to the Disciplinary Committee and AOC Staff? Nothing should be decided without CPG approval.</p>
STAFF RESPONSE TO COMMENT	<p>The Board has determined when it must review and approve the decisions of others. The disciplinary process includes many checks and balances. Requiring the full volunteer Board, which meets no more than once a month, to review and approve every action/decision would significantly limit the Board’s ability to function as a regulatory body, thus, reducing its ability to accomplish its mission.</p>
COMMENT (3) From Mindi Blanchard and Brenda Carpenter	<p>“Duty to Furnish Prompt Response. The respondent CPG must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.”</p> <p>Comment - This needs to be defined It is too vague. How long is “promptly”?</p>
STAFF RESPONSE TO COMMENT	<p>Webster defines “promptly” as “with little or no delay; immediately”. If in doubt, conventional wisdom would suggest contacting AOC and explaining when a response will be provided.</p>
COMMENT (4) From Mindi Blanchard and Brenda Carpenter	<p>“Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;</p> <p>Comment - Everything needs to be in writing. Orally is not acceptable</p>

STAFF RESPONSE TO COMMENT	No response.
COMMENT (5) From Mindi Blanchard and Brenda Carpenter	<p>“Permit inspection and copying of the CPG’s business records, files, and accounts;”</p> <p>Comment - Again, this is a privacy violation and should require a hearing to determine the necessity of this information being provided.</p>
STAFF RESPONSE TO COMMENT	In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of professional guardians. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Just as CPGs must have access to the records of the people they serve, the CPG Board must have access to the records of CPGs. Private information is handled in a safe and secure manner and is only shared on a need to know basis.

Reg No	Current Regulation	Proposed Regulation
REG 505.3 PRIVILEGES	It shall be the duty and the obligation of a professional guardian or agency subject to a disciplinary investigation to cooperate with the SOPC, Board, or the AOC staff as requested, subject only to the proper exercise of the professional guardian's privilege against self-incrimination.	<p>Privilege Against Self-Incrimination. A CPG's duty to cooperate is subject to the CPG's privilege against self-incrimination, where applicable.</p> <p><u>Confidential Information. A CPG may not assert confidentiality under the Standards of Professional Conduct or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents.</u></p>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“Confidential Information. A CPG may not assert confidentiality under the Standards of Professional Conduct or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents.”</p> <p>Comment - We interpret this as stripping CPGs and possibly their clients of important rights and should not be allowed</p>	
RESPONSE TO COMMENT	<p>In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of clients. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Private information is handled in a safe and secure manner and is only shared on a need to know basis. Also see GR 22 Comment to (d) (3)</p> <p>https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr22</p>	

Reg No	Current Regulation	Proposed Regulation
REG 506.2 DISMISSAL OF GRIEVANCE BY DISCIPLINARY COMMITTEE	506.2 The SOPC will dismiss the grievance if it determines that the Board has no jurisdiction over the grievance or if the allegations and other information available to the SOPC, do not provide grounds for disciplinary action by the Board. The AOC will notify the grievant in writing that the grievance has been dismissed and the reason for the dismissal.	<p>506.2 DISMISSAL OF GRIEVANCE BY DISCIPLINARY COMMITTEE Dismissal. The Chair of the Disciplinary Committee or AOC (pursuant to DR 505.2) may dismiss grievances. On dismissal by either the Chair of the Disciplinary Committee or AOC, AOC must notify:</p> <p>The respondent of the allegations and dismissal of the grievance; and The grievant of the outcome and the procedure for review in this rule.</p> <p><u>Review of Dismissal. A grievant may request review of dismissal of the grievance, if additional evidence has been obtained since the filing of the grievance.</u> The request for review and the additional evidence to the AOC must be received by AOC no later than thirty (30) days after the date of the dismissal of the grievance. If review is requested, the Chair of the Disciplinary Committee may either reopen the matter on his/her authority for investigation or refer it to the Disciplinary Committee for a decision regarding re-opening. Authority on Review. In reviewing a request to re-open a grievance under this rule, the Disciplinary Committee may:</p> <p>Affirm the dismissal;</p> <p>Order further investigation as appropriate.</p>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“Review of Dismissal. A grievant may request review of dismissal of the grievance, if additional evidence has been obtained since the filing of the grievance.”</p> <p>Comment - If a grievance has been dismissed, it should not be allowed to be re-opened at the request of the grievant or anyone else. If a grievant provides enough additional information for a new grievance, then a new grievance should be opened. A grievance should not be re-opened and certainly not by the Chair of the Disciplinary Committee. It should be the CPG Board’s responsibility to review the evidence.</p>	
STAFF RESPONSE TO COMMENT	<p>If a grievant submits additional evidence that supports a conclusion that the guardian may have violated a Standard of Practice or other rule governing the work as a Certified Professional Guardian, the CPGB’s rules direct an investigation of the grievance. It seems most appropriate to reopen the grievance given that the grievance was not pursued previously for</p>	

	insufficient information, which has been rectified. It is unclear what basis there would be for requiring that a new grievance be opened. There would then be multiple grievances opened for the same matter, skewing Board statistics.
--	---

Reg No	Current Regulation	Proposed Regulation
REG 506.3 RESPONSE TO GRIEVANCES	510.6 Time to Respond: The professional guardian shall be allowed thirty (30) days from the date of service, exclusive of the date of service, to respond to the complaint.	506.3 RESPONSE TO GRIEVANCE The certified professional guardian shall have thirty (30) days to respond to the allegations and provide any mitigating information. This response and information shall be sent to the AOC. Should the CPG require more time to adequately respond, the CPG shall make a request in writing to AOC stating the reasons for such an extension of time. <u>The Disciplinary Committee Chair or AOC shall make a determination regarding whether to grant the request for extension within five (5) days of receiving the request.</u>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p data-bbox="508 534 1854 597">“The Disciplinary Committee Chair or AOC shall make a determination regarding whether to grant the request for extension within five (5) days of receiving the request.”</p> <p data-bbox="508 634 1205 662">Comment - This should be the CPG Board’s responsibility.</p>	
STAFF RESPONSE TO COMMENT	The Board has determined when it must review and approve the decisions of others. The disciplinary process includes many checks and balances. Requiring the full volunteer Board, which meets no more than once a month, to review and approve every action/decision would significantly limit the Board’s ability to function as a regulatory body, thus, reducing its ability to accomplish its mission. Some decisions must be made in the normal course of business, those decisions are delegated to staff.	

Reg No	Current Regulation	Proposed Regulation
REG 507 RESOLUTION WITHOUT COMPLAINT	The SOPC may conditionally settle and dispose of grievances without a hearing, provided a complete report of the conditional disposition of each grievance shall go to the Board for approval. Upon review of the SOPC report, the Board shall take action and make a record of the Board's decision which shall appear in the meeting minutes.	<u>Grievances not dismissed can be resolved without the filing of a complaint, through the following non-exhaustive methods: An advisory letter (DR 507.1), a Settlement Agreement (DR 507.2), or voluntary resignation (surrender) in lieu of discipline (DR 507.3).</u>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“Grievances not dismissed can be resolved without the filing of a complaint, through the following non-exhaustive methods: An advisory letter (DR 507.1), a Settlement Agreement (DR 507.2), or voluntary resignation (surrender) in lieu of discipline (DR 507.3).”</p> <p>Comment - The CPG Board should provide approval as it currently stands in 506.5.</p>	
STAFF RESPONSE TO COMMENT	Similar to the current regulation, the new regulation requires Board approval of Settlement Agreements.	

Reg No	Current Regulation	Proposed Regulation
<p>REG 507.2 SETTLEMENT AGREEMENTS</p>	<p>514 Agreements Regarding Discipline Requirements: Any disciplinary matter may be resolved by an Agreement Regarding Discipline entered into at any time by the professional guardian and by the Board.</p> <p>An Agreement Regarding Discipline shall: State the material facts relating to the particular acts or omissions of the professional guardian. Set forth the guardian's prior record of discipline or any absence of such record.</p> <p><u>514.2.3 State that the Agreement Regarding Discipline is binding as a statement of all known facts relating to the conduct of the professional guardian, but that any additional existing acts may be proven in any subsequent disciplinary proceedings.</u></p> <p>514.2.4 Fix any costs, restitution, and expenses to be paid by any party.</p> <p>514.3 Notice 514.3.1 The Agreement Regarding Discipline shall be retained by the AOC in the professional guardian's disciplinary file.</p> <p>514.3.2 The Agreement Regarding Discipline shall be open to public access and disclosure. Notice of the discipline imposed in such Agreements shall be sent to all superior courts.</p>	<p>507.2 SETTLEMENT AGREEMENTS Requirements. Any disciplinary matter or proceeding may be resolved by a Settlement Agreement (Agreement Regarding Discipline) at any time. The Settlement Agreement must be signed by the respondent CPG and AOC, and approved by the Disciplinary Committee and the Board. A Settlement Agreement is a finding of misconduct, is a sanction and is subject to public disclosure.</p> <p>Form. A Settlement Agreement:</p> <p>Must provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Disciplinary Committee to form an opinion as to the propriety of the proposed resolution, including aggravating and mitigating factors considered, so as to make the Settlement Agreement useful in any subsequent disciplinary proceeding against the respondent CPG; Must set forth the respondent's prior disciplinary record;</p> <p><u>Must state that the Settlement Agreement is not binding on the Disciplinary Committee as a final statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding;</u></p> <p>Must fix the amount of costs and expenses, if any, to be paid by the respondent;</p> <p>May impose terms and conditions and any other appropriate provisions.</p> <p>Conditional Approval. The Disciplinary Committee's approval is conditional, as all Settlement Agreements must be submitted to the Board for their final approval. The Board's decision on whether to</p>

	514.4 Failure to Comply: Failure of a professional guardian to comply with the terms of an Agreement Regarding Discipline may constitute additional grounds for discipline	<p>approve a Settlement Agreement shall be reflected in board minutes.</p> <p>Response. Upon receipt of a proposed Settlement Agreement, the respondent CPG must respond in writing within thirty (30) days to the proposed Settlement Agreement.</p> <p>The CPG may: Agree to and sign the Settlement Agreement; Propose changes to the Settlement Agreement; Reject the Settlement Agreement and request a hearing; Voluntarily resign in lieu of further disciplinary proceedings.</p>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“Must state that the Settlement Agreement is not binding on the Disciplinary Committee as a final statement of facts about the respondent’s conduct, and that additional facts may be proved in a subsequent disciplinary proceeding;”</p> <p>Comment - Any agreement should be binding on both parties.</p>	
STAFF RESPONSE TO COMMENT	The language in the current and the new regulation attempts to explain that if new facts are discovered the agreement can be revised.	

Reg No	Current Regulation	Proposed Regulation
507.3 VOLUNTARY RESIGNATION (SURRENDER), IN LIEU of FURTHER DISCIPLINARY PROCEEDINGS	No equivalent regulation	<p>Grounds. A respondent CPG who desires not to contest or defend against allegations of misconduct may, at any time, voluntarily resign his or her certification as a CPG in lieu of further disciplinary proceedings.</p> <p>Process. The respondent first notifies the AOC that the respondent intends to submit a voluntary resignation request and asks AOC, to prepare a statement of alleged misconduct and a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to AOC a signed voluntary resignation, sworn to or affirmed under oath and notarized. The signed voluntary resignation must include the following to be accepted for filing:</p> <p>AOC’s statement of the alleged misconduct, and either: 1) an admission of that misconduct; or 2) a statement that while not admitting the misconduct the respondent agrees not to contest the facts on which the misconduct is based;</p> <p>(1) <u>An acknowledgement that the voluntary resignation may be permanent, including the statement, “I understand that my voluntary resignation may be permanent and that any future application by me for reinstatement as a CPG will consider the circumstances around the voluntary resignation including resolution of the pending disciplinary action.”</u></p> <p>A list of all guardian and standby guardian appointments; A statement that when applying for any employment as a fiduciary, the respondent agrees to disclose the voluntary resignation in response to any question regarding disciplinary action or the status of the respondent’s certification; A statement that the respondent agrees to pay any restitution or additional costs and expenses as may be requested by the Disciplinary Committee, and attaches payment for costs as described in DR 507.3.5; and</p>

		<p>A statement that when the voluntary resignation becomes effective, the respondent will be subject to all restrictions that apply to a CPG whose certification has been revoked.</p> <p>Public Filing. Upon receipt of a voluntary resignation in lieu of discipline meeting the requirements set forth above, AOC shall file it as a public record of the Disciplinary Committee. AOC will also notify the superior courts and all other agencies from which the CPG receives appointments of the voluntary resignation.</p> <p>(2) <u>Effect. A voluntary resignation in lieu of discipline meeting the requirements set forth above, under this rule is effective upon its filing with the AOC. All disciplinary proceedings against the respondent terminate, except the AOC has the discretion to continue any investigations deemed appropriate under the circumstances to create a sufficient record of the respondent's actions for consideration in the event the respondent seeks certification at a later time.</u></p> <p>Costs and Expenses.</p> <p>A. With the voluntary resignation, the respondent must may be required to pay all actual costs for which AOC provides documentation.</p> <p>B. If additional proceedings are pending at the time respondent serves the notice of intent to voluntarily resign, AOC, through disciplinary counsel, may also file a claim under DR 509.13 for costs and expenses for that proceeding.</p> <p>Review of Costs, Expenses. Any claims for costs and expenses not resolved by agreement between the AOC and the respondent may be submitted at any time including after the voluntary resignation, to the Disciplinary Committee in writing, for the determination of appropriate costs and expenses.</p>
COMMENT (1) From Mindi Blanchard and Brenda Carpenter	<p>“An acknowledgement that the voluntary resignation may be permanent, including the statement, “I understand that my voluntary resignation may be permanent and that any future application by me for reinstatement as a CPG will consider the circumstances around the voluntary resignation including resolution of the pending disciplinary action.”</p>	

	<p>Comment - A CPG may voluntarily resign at any time for any reason. A voluntary resignation is not an admission of guilt. However, the statement proposed assumes guilt.</p>
STAFF RESPONSE TO COMMENT	<p>The ability to voluntarily resign as not changes. The new regulation includes a Voluntary Surrender in lieu of discipline when grievances have not been resolved.</p>
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“Effect. A voluntary resignation in lieu of discipline meeting the requirements set forth above, under this rule is effective upon its filing with the AOC. All disciplinary proceedings against the respondent terminate, except the AOC has the discretion to continue any investigations deemed appropriate under the circumstances to create a sufficient record of the respondent’s actions for consideration in the event the respondent seeks certification at a later time.”</p> <p>Comment - The filed grievances should be sufficient. We see no reason to sue taxpayer dollars to continue to pay AOC staff to investigate something that has become a non-issue at the point of voluntary decertification. We feel that the current 510.1.2 is adequate</p>
STAFF RESPONSE TO COMMENT	<p>Current regulation 510.1.2 is provided below. This regulation does not refer to voluntary surrender.</p> <p>510.1.2 Prior Board disciplinary action against the professional guardian may be set forth in a separate count of the complaint. Prior Board disciplinary action is a factor to be considered in determining any sanction imposed in a disciplinary action.</p>

Reg No	Current Regulation	Proposed Regulation
<p>508.2 COMMENCEMENT OF PROCEEDINGS</p>	<p>506.3 The SOPC may request that a complaint be filed if the Board has jurisdiction over the grievance and the grievance and other information available to the SOPC provide grounds for disciplinary action by the Board.</p> <p>510.1 Complaint</p> <p>510.1.1 Upon the SOPC’s request that a complaint be filed, and upon approval of the Board, the AOC shall sign such a complaint that shall set forth the allegations regarding particular acts or omissions of the professional guardian in such detail as to enable the professional guardian to be informed of the allegations. The complaint shall be filed with the AOC.</p> <p>510.1.2 Prior Board disciplinary action against the professional guardian may be set forth in a separate count of the complaint. <u>(1)Prior Board disciplinary action is a factor to be considered in determining any sanction imposed in a disciplinary action.</u></p>	<p>Complaint.</p> <p>Filing. After a preliminary finding of misconduct by the Disciplinary Committee pursuant to DR 506, a Complaint may be filed by the Board with AOC.</p> <p>Service. After the Complaint is filed, AOC must serve the Complaint, with a Notice to Answer, on the respondent CPG. Content. The Complaint must state the respondent CPG’s acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct and the sanction sought. AOC must sign the Complaint.</p> <p><u>(1)Prior Discipline. Prior disciplinary action against the respondent may be described in the Complaint.</u></p> <p><u>(2) Amendment of Complaint. AOC may amend a Complaint at any time to add facts or charges. AOC shall serve an Amended Complaint on the respondent as provided in DR 508.3.1(B) with a Notice to Answer. A Respondent must answer the amendments to the complaint as described in DR 508.4.</u></p> <p>Joinder. The Disciplinary Committee may, in its discretion, consolidate alleged violations relating to two or more grievances against the same respondent in one Complaint, or may consolidate alleged violations against two or more respondents in one Complaint that relate to the same grievance or grievances</p>
<p>COMMENT (1) From Mindi Blanchard and Brenda Carpenter</p>	<p>“Prior Discipline. Prior disciplinary action against the respondent may be described in the Complaint.”</p> <p>Comment - The complaint should only address the current complaint on its own merit. Describing prior disciplinary action prejudices the investigation.</p>	
<p>STAFF RESPONSE TO COMMENT</p>	<p>Both the current and proposed rules include a provision to consider prior disciplinary action. Prior discipline may show a pattern of behavior and can provide evidence of such behavior. In court, evidence may be excluded if the value of the evidence is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues,</p>	

	misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. This is a decision made on a case-by-case basis.
COMMENT (2) From Mindi Blanchard and Brenda Carpenter	<p>“Amendment of Complaint. AOC may amend a Complaint at any time to add facts or charges. AOC shall serve an Amended Complaint on the respondent as provided in DR 508.3.1(B) with a Notice to Answer. A Respondent must answer the amendments to the complaint as described in DR 508.4”</p> <p>Comment - AOC should not have this authority. The complaint should stand on its own merits. Each grievance should be processed and completed as submitted by the grievant.</p>
STAFF RESPONSE TO COMMENT	Investigations and complaints must be performed and processed in the “interest of justice” – what is fair and equitable to the public good. If new information, concerns, grievances, and evidence is uncovered during an investigation, investigators and the Board are obligated to include this information. A failure to do so could endanger other persons. Not including the information and failing to amend a complaint could be reckless and irresponsible.

Reg No	Current Regulation	Proposed Regulation
508.3 NOTICE TO ANSWER	<p>510.4.1 A copy of the complaint with notice to answer, notice of the location of the Board’s disciplinary regulations on the AOC website, and any pleadings, notices, or other documents shall be served on the professional guardian by registered or certified mail at the address on file with the AOC</p> <p>510.4.2 By applying to be certified, all professional guardians agree to accept personal service by registered or certified mail at the address provided by the professional guardian.</p> <p>510.4.3 Service on the Board of any pleadings, notices, or other documents may be made by delivery or mailing to the Administrative.</p> <p>510.4.4 Proof of service by affidavit or certificate of service, or mailing, sheriff’s return of service, or a signed acknowledgment of service, shall be filed in the office of the AOC</p>	<p>The above named CPG: AND TO: Respondent Attorney</p> <p>1. You are hereby notified that a Complaint Regarding Disciplinary Action (hereinafter, “Complaint”) has been filed against you with the Administrative Office of the Courts, a copy of which is served upon you with this Notice. Pursuant to DR 504.1, service is made by registered or certified mail to your address on file with the Administrative Office of the Courts. Service shall be deemed complete on the third day after mailing in accordance with Civil Rule 5(b) (2).</p> <p>2. <u>You must deliver or mail an original and one copy of your Answer to the Disciplinary Action within 30 days of service (exclusive of the date of service) to the Certified Professional Guardianship Board, Administrative Office of the Courts, P.O. Box 41170, Olympia, WA</u></p> <p>98504-1170. Electronic service or filing is not accepted without prior</p>
COMMENT From Mindi Blanchard and Brenda Carpenter	<p>“You must deliver or mail an original and one copy of your.”</p> <p>Comment - The AOC can make their own copies. The CPG shouldn’t have to supply them.</p>	
STAFF RESPONSE TO COMMENT	<p>No response.</p>	

Reg No	Current Regulation	Proposed Regulation
<p>508.8 DISCOVERY AND PREHEARING PROCEDURE</p>	<p>511.10 Discovery: The parties shall have the following discovery rights, limited only to the extent the Hearing Officer deems just:</p> <p>511.10.1 Admissions from a party under Superior Court Civil Rule (CR) 36.</p> <p>511.10.2 Depositions of another party or witness under Superior Court Civil Rule (CR) 30.</p> <p>511.10.3 Other discovery under the Superior Court Civil Rules, only on motion and under terms and limitations the Hearing Officer deems just or on the parties' stipulation.</p> <p><u>511.12 Exchange of Materials: The parties shall exchange witness lists and exhibits prior to the hearing, as directed by the Hearing Officer. Failure to comply with the case scheduling requirements as directed by the Hearing Officer may result in the exclusion of witnesses and evidence not timely identified.</u></p>	<p>508.8 DISCOVERY AND PREHEARING PROCEDURES General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.</p> <p>Requests for Admission. After a Complaint is filed, the parties may request admissions under Civil Rule 36.</p> <p>Other Discovery. After a Complaint is filed, the parties may obtain other discovery under the Superior Court Civil Rules only on motion and under terms and limitations the Hearing Officer deems just or on the parties' Settlement Agreement.</p>
<p>COMMENT From Mindi Blanchard and Brenda Carpenter</p>	<p>Should keep 511.12 of the current rule.</p>	
<p>STAFF RESPONSE TO COMMENT</p>	<p>No response.</p>	

Reg No	Current Regulation	Proposed Regulation
<p>508.9 PARTICIPATION AT DISCIPLINARY HEARING</p>	<p>511.13 Cooperation: It shall be the duty of the professional guardian and the Board's counsel to timely respond to all requests or directions of the Hearing Officer. Upon a party's failure to do so, the Hearing Officer may recommend to the Board that the professional guardian be decertified for non-compliance with the disciplinary process. Such failure may constitute a separate violation of these regulations. The Hearing Officer may dismiss the complaint with prejudice upon failure of the Board's counsel to timely respond to requests or directions of the Hearing Officer.</p> <p><u>511.11 Testimony: Testimony may be live or taken electronically via telephone, video, or other means at the discretion of the Hearing Officer. Hearings shall be electronically recorded and testimony may be presented through depositions. Witnesses shall testify under oath administered by the Hearing Officer.</u></p> <p>511.9 Subpoenas: Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearings or deposition. The subpoena shall be issued in the name of the Board and shall be signed and subscribed to by the party or the party's attorney of record. Subpoenas shall be served in the same manner as in civil cases in superior court. A failure to attend or produce as required by the subpoena shall be considered contempt of the Supreme Court. A motion to quash or modify the subpoena, on the grounds of unreasonableness or oppression, shall be decided by the Hearing Officer.</p>	<p>508.9 PARTICIPATION AT DISCIPLINARY HEARING Respondent CPG Must Attend. A respondent CPG given notice of a hearing must attend the hearing. If, after proper notice, the respondent fails to attend the hearing, the Hearing Officer: May draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and Must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if: The facts stated are within the witness's personal knowledge; The facts are set forth with particularity; and It shows affirmatively that the witness could testify competently to the stated facts.</p> <p>Witnesses. Witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by Civil Rule 32. Testimony must be recorded by a court reporter or, if allowed by the Disciplinary Committee, by digital or tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.</p> <p>Subpoenas. Any party may issue a subpoena to compel the attendance of witnesses or to produce documents at a hearing or deposition. The subpoena shall be issued in the name of the Board and shall be signed and subscribed to by the party or the party's attorney of record. Subpoenas shall be served in the same manner as in civil cases in superior court. A failure to attend or produce as required by the subpoena shall be considered contempt of the Supreme Court. A motion to quash or modify the subpoena, on the grounds of unreasonableness or oppression, shall be decided by the Hearing Officer.</p>

COMMENT From Mindi Blanchard and Brenda Carpenter	Should keep 511.11 of the current rule.
STAFF RESPONSE TO COMMENT	No response.

Reg No	Current Regulation	Proposed Regulation
509.3 REVOCATION OF CERTIFICATION	<p>515.2 Imposition of Sanctions: Generally, the following sanctions are available.</p> <p>515.2.1 Decertification is generally appropriate when a professional guardian engages in:</p> <p>515.2.1.1 Professional misconduct incompatible with the Standards of Practice with the intent to benefit the professional guardian or another; or deceive the court; or cause serious or potentially serious injury to a party, the public, or the legal system or causes serious or potentially serious interference with a legal proceeding;</p> <p>515.2.1.2 Felonious criminal conduct,</p> <p>515.2.1.3 Any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously, adversely reflects on the professional guardian's fitness to practice, or</p> <p>515.2.1.4 Gross incompetence as demonstrated by a pattern or practice of late filings, accounting errors, case tracking, or other violations of the same Standards of Practice, and where the guardian has not corrected the behavior despite previous attempts by the courts or the Board to correct the behavior. (Adopted 1-9-12)</p>	<p>509.3 REVOCATION OF CERTIFICATION</p> <p>1. Applicability of Revocation: Revocation may be imposed when a professional guardian:</p> <p>Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, or the guardian's fiduciary duty; and was previously disciplined with a sanction, remedy or other remedial action by the Board, a court, or a judicial officer; or Engages in any act of dishonesty, fraud, deception, conflict of interest, selfishness or misrepresentation that adversely reflects on the guardian's fitness to practice; or</p> <p>Engages in gross incompetence, including but not limited to, case tracking, a pattern of late filings, accounting errors, delinquent or late payments of an incapacitated person's or estate's financial obligations; or</p> <p>Engages in conduct or misconduct that adversely impacts an incapacitated person in a highly significant manner. "Highly significant" in this context, means, but is not limited to, a financial loss to an incapacitated person or their estate that is greater than \$ 750.00, or results in any kind of direct physical harm, infirmity or adverse medical condition to an incapacitated person; or Engages in conduct that occurs either while performing duties as a guardian or outside those duties, that constitutes any Washington felony.</p> <p>2. Duties of CPG upon revocation of certification. Upon receipt of the Supreme Court's order revoking the CPG's certification, the CPG will submit a complete list of all active guardianships in which the CPG serves as the court-appointed guardian or standby</p>

		guardian to AOC, and must immediately notify the superior court with authority over any of the CPG’s cases of the revocation. The CPG shall ensure the timely transfer of any active guardianship cases to a new CPG and cooperate with the court in this process. <u>The CPG shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPG.</u> The CPG shall immediately cease holding him or herself out to the public as a professional CPG. If requirements aren’t met the Board may file a motion for contempt of court with the Supreme Court.
COMMENT From Mindi Blanchard and Brenda Carpenter	“The CPG shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPG.”	Comment - Should be “pertinent copies of client records.” Guardians need to keep their records in case a grievance is reopened.
STAFF RESPONSE TO COMMENT	The CPG should turn over ALL client records to the new CPG to facilitate that CPG having all information he or she may need to handle the client’s affairs. The CPG should make copies of any documents that he or she believes might be needed in any further legal matter involving the client.	



WASHINGTON
COURTS

December 19, 2011

TO: CPGB Regulations Committee
FROM: Court Access Programs
RE: Statute of Limitations

West's Encyclopedia of American defines Statute of Limitation in pertinent part:

These statutes are designed to prevent fraudulent and stale claims from arising after all evidence has been lost or after the facts have become obscure through the passage of time or the defective memory, death, or disappearance witnesses.

The statute of limitations is a defense that is ordinarily asserted by the defendant to defeat an action brought against him after the appropriate time has elapsed. Statutes of limitations are enacted by the legislature, which may either extend or reduce the time limits, subject to certain restrictions. A court cannot extend the time period unless the statute provides such authority. With respect to civil lawsuits, a statute must afford a reasonable period in which an action can be brought. A statute of limitations is unconstitutional if it immediately curtails an existing remedy or provides so little time that it deprives an individual of a reasonable opportunity to start her lawsuit. Depending upon the state statute, the parties themselves may either shorten or extend the prescribed time period by agreement, such as a provision in a contract.

Statutes of limitations are designed to aid defendants. A plaintiff, however, can prevent the dismissal of his action for untimeliness by seeking to *toll* the statute. When the statute is tolled, the running of the time period is suspended until some event specified by law takes place. Tolling provisions benefit a plaintiff by extending the time within which he is permitted to bring suit.

Various events or circumstances will toll a statute of limitations. It is tolled when one of the parties is under a legal disability—the lack of legal capacity to do an act—at the time the cause of action accrues. A child or a person with a mental illness is regarded as being incapable of initiating a legal action on her own behalf. Therefore, the time limit will be tolled until some fixed time after the disability has been removed. For example, once a child reaches the age of majority the counting of time will be resumed. A personal disability that postpones the operation of the statute against an individual may

be asserted only by that individual. If a party is under more than one disability, the statute of limitations does not begin to run until all the disabilities are removed. Once the statute begins to run, it will not be suspended by the subsequent disability of any of the parties unless specified by statute.

The unexcused failure to start an action within the statutory period bars the action. Mere ignorance of the existence of a cause of action generally does not toll the statute of limitations, particularly when the facts could have been learned by inquiry or diligence. In cases where a cause of action has been fraudulently concealed, the statute of limitations is tolled until the action is, or could have been, discovered through the exercise of due diligence. Ordinarily, silence or failure to disclose the existence of a cause of action does not toll the statute. The absence of the plaintiff or defendant from the jurisdiction does not suspend the running of the statute of limitations, unless the statute so provides.

Legislatures have created special exceptions to the statute of limitations in circumstances where victims are unable to disclose or communicate the harm, i.e. persons with disabilities, child abuse and guardianships.

RCW 4.16.190 states:

Statute tolled by personal disability

- (1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

Statute of Limitations in other Professions

Healthcare

There is no statutory time limit in which to file a complaint; however, it is possible that a case cannot be acted upon because the information needed to make a decision is no longer available. It is best to report as soon as possible so the records can be obtained and potential witnesses can be located. It is a good idea to make a written note of the circumstances soon after the experience so facts are not forgotten. When submitting a complaint, be as specific as you can with the facts and dates.

WSBA

ELC 1.4 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.