

# Meeting Minutes

# Certified Professional Guardianship Board

Monday, November 13, 2017

Teleconference

8:00 am – 9:00 am

## DRAFT Meeting Minutes

### Members Present

Commissioner Rachelle Anderson  
Dr. Barbara Cochran  
Ms. Annette Cook  
Mr. Jerald Fireman  
Judge Gayle Harthcock  
Mr. William Jaback  
Ms. Victoria Kesala  
Dr. K. Penney Sanders  
Ms. Carol Sloan  
Ms. Barbara West

### Members Absent

Judge James Lawler, Chair  
Ms. Rosslyn Bethmann  
Commissioner Diana Kiesel  
Ms. Amanda Witthauer

### Staff

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

### Online Guest

Mr. Tom Goldsmith

### 1. Meeting Called to Order

In Judge Lawler's absence, Commissioner Rachelle Anderson called the meeting of the Certified Professional Guardianship Board (CPGB) to order at 8:05 am.

### 2. Welcome, Roll Call and Approval of Minutes

Commissioner Anderson called the roll for the record. She requested a motion to approve the minutes of the October 16, 2017 CPGB meeting. A motion was made and seconded to approve the minutes. Ms. West, Mr. Firestone and Mr. Jaback abstained. The motion passed.

**Motion:** *A motion was made and seconded to approve the October 16, 2017 CPG Board meeting minutes as written. The motion passed. Abstaining: Ms. West, Mr. Firestone and Mr. Jaback.*

### 3. Updates – Grievance Status Report

Nine new grievances were opened since the last report. Four of these grievances were dismissed for no jurisdiction. There are currently 140 open grievances needing investigation.

Staff reported that AOC is exploring options to obtain assistance with grievance investigations in Ms. Schock's absence. Commissioner Anderson noted that with the current case load, there is enough work for four full time guardian grievance investigators.

Mr. Fireman proposed that the Board work at the legislative level to increase the 2019-2021 budget to include additional staffing. Staff advised the Board to begin with AOC and gain Supreme Court approval. Commissioner Anderson will speak with Staff and/or AOC about next steps.

Grievance Diversion options such as mediation and financial audits are being pursued. The mediation letter has been revised to more clearly state the goals of mediation. Hopefully the new letter will eliminate Guardian concerns.

**4. UW Guardianship Certificate Program**

The Education Committee and the Board decided to conduct a separate evaluation of the UW Guardianship Certificate Program and questions have been drafted. Both Presenters and Students will be asked to complete this evaluation of the program. The Board will utilize the UW’s end-of-course evaluation as the questions asked by the UW are very similar to those asked by the Education Committee.

**Motion:** *A motion was made and seconded to approve the Education Committee’s UW Guardianship Certificate Program survey as written. The motion passed. No one abstained.*

**5. Disciplinary Regulation 500:**

Staff reported that all approved revisions have been made. November 5 was the deadline for public comments, and no other comments have been received. The Regulation Committee was thanked for their long, hard work.

**Motion:** *A motion to made and seconded that the changes to Disciplinary Regulation 500 be effective January 1, 2018. There were no abstentions. The motion passed.*

**6. Executive Session (There was no agenda for discussion by the Executive Committee.)**

**7. Wrap Up/Adjourn**

The Board wished Ms. Bondon good luck at her new job. The next CPGB meeting will be held in person at the SeaTac facility on January 8, 2018. The meeting was adjourned

**Recap of Motions from November 13, 2017 Teleconference**

<b>Motion Summary</b>	<b>Status</b>
<b>Motion:</b> <i>A motion was made and seconded to approve the October 16, 2017 minutes. Mr. Firestone, Mr. Jaback and Ms. West abstained. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve the Education Committee’s UW Guardianship Certificate Program survey as written. The motion passed.</i>	Passed

# Grievance Update

**CERTIFIED PROFESSIONAL GUARDIAN GRIEVANCES**  
December 31, 2017

<b>Investigations</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>Total</b>
Grievances Requiring Investigation: <b>10/31/2017</b>	<b>58</b>	<b>50</b>	<b>18</b>	<b>11</b>	<b>3</b>	<b>140</b>
Resolved w/o ARD or Hearing	<b>[6]</b>	<b>[1]</b>	<b>[2]</b>	<b>[1]</b>		<b>[10]</b>
Resolved w/ARD						
Resolved w/Hearing						
New Grievances (Opened Since Last Report)	<b>16</b>					<b>16</b>
Re-Opened Grievances						
<b>Grievances Requiring Investigation: 12/31/2017</b>	<b>68</b>	<b>49</b>	<b>16</b>	<b>10</b>	<b>3</b>	<b>146</b>

<b>Resolutions</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>Total</b>
Dismissal – No Jurisdiction	<b>4</b>					<b>4</b>
Dismissal – No Actionable Conduct	<b>2</b>	<b>1</b>	<b>2</b>	<b>1</b>		<b>6</b>
Dismissal – Insufficient Grievance						
Dismissal – Administrative						
Voluntary Surrender						
Admonishment						
Reprimand						
Suspension						
Administrative Decertification						
Decertification						
<b>Closed Since Last Report</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>1</b>		<b>10</b>

CPG ID	Year Certified	Grievances	Year(s) Grievances Received	Status
A	2015	7	2016 (3), 2017 (4)	
<b>B</b>	<b>2011</b>	<b>5</b>	<b>2014 (1), 2016 (3), 2017 (1)</b>	<b>Assigned to Investigator</b>
C	2002	4	2014 (1), 2016 (1), 2017 (2)	
D	2010	3	2016 (1), 2017 (2)	
E	2005	5	2014 (2), 2015 (1), 2016 (1), 2017 (1)	
F	2004	2	2015 (1), 2017 (1)	
G	2014	5	2015 (1), 2016 (1) 2017 (3)	
H	2012	6	2016 (2), 2017 (4)	
<b>I</b>	<b>2010</b>	<b>6</b>	<b>2016 (3), 2017 (3)</b>	<b>Investigation Complete</b>
J	2001	3	2014 (1), 2015 (1), 2016 (1)	
K	2011	2	2015 (1), 2016 (1)	
L	2003	2	2015 (2)	
M	2003	3	2015 (1), 2016 (2)	
N	2007	5	2015 (1), 2016 (2), 2017 (2)	
O	2010	3	2014 (1), 2015 (1), 2017 (1)	
P	2003	2	2016 (2)	
<b>Q</b>	<b>2001</b>	<b>4</b>	<b>2013 (1), 2016 (2), 2017 (1)</b>	<b>Voluntary Surrender Pending</b>
<b>R</b>	<b>2001</b>	<b>9</b>	<b>2015 (1) 2016 (7), 2017 (1)</b>	<b>Assigned to Investigator</b>
<b>S</b>	<b>2011</b>	<b>6</b>	<b>2015 (1), 2016 (2), 2017 (3)</b>	<b>Assigned to Investigator</b>
<b>T</b>	<b>2001</b>	<b>4</b>	<b>2014 (1), 2016 (1), 2017 (2)</b>	<b>Voluntary Surrender Pending</b>
U	2007	2	2016 (2)	
V	2014	2	2016 (1), 2017 (1)	
W	2001	3	2016 (2), 2017 (1)	
X	2015	2	2016 (1), 2017 (1)	
Y	2010	3	2015 (1), 2016 (1), 2017 (1)	
Z	2014	2	2017 (2)	
AA	2014	2	2016 (1), 2017 (2)	
AB	2011	2	2016 (1), 2017 (1)	

**Total**                      **102\*\***

\*\*104 of 147 open grievances concern 28 CPGs with 2 or more grievances.

	Year Certified	# of Guardians
<b>Before UW Certificate Program 122</b>	2001	5
	2002	1
	2003	3
	2004	1
	2005	1
	2006	
	2007	2
	2008	
	<b>Total</b>	<b>13</b>
<b>UW Certificate Program 147</b>		
	2009	
	2010	4
	2011	4
	2012	1
	2013	1
	2014	6
	2015	2
	2016	
	<b>Total</b>	<b>19</b>

Year	Grievance by Year
2013	1
2014	7
2015	13
2016	44
2017	39

# Regulation 500



### 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:

1. Violation of or noncompliance with the oath, applicable violations of statutes, fiduciary duties, standards of practice, rules, regulations, and any requirement governing the conduct of professional guardians.
2. Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.
3. Failure to perform any duty one is obligated to perform as a professional guardian.
4. Permitting the name of a guardian certified by the Certified Professional Guardianship Board to be used by an uncertified person or agency.
5. Misrepresentation or concealment of a material fact made in the application for certification.
6. Suspension, revocation of certification, 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.
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.
8. Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.
9. Making a false statement under oath.
10. 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.
11. Working as a professional guardian while on inactive status.

12. Failing to cooperate during the course of an investigation as required by the Board's regulations.
  13. Incompetence in the performance of the duties of a guardian.
  14. Failure to appear for a scheduled court proceeding without good cause.
  15. Failure to comply with the terms of a signed Agreement Regarding Discipline.
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#### **501.4 DEFINITIONS**

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

**“Advisory Letter”** is a non-disciplinary letter to notify a professional that guardian:

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

The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or

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.

**“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.

**“AOC”** means staff of the Administrative Office of the Courts. **“Board”** means the Certified Professional Guardianship Board.

**“Chair”** when used alone means the Chair of the Certified Professional Guardianship Board.

**“Contempt of a Board Proceeding”** 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 hearing or other board proceedings;

Disobedience of any lawful judgment, decree, order, or process of the Certified Professional Guardianship Board;

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.

**“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.

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

**“CPG or CPGA”** when used alone means a Certified Professional Guardian or Certified Professional Guardian Agency.

**“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.

**“Deliberative Records”** are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.

**“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.

**“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.

**“Disciplinary Action”** encompasses the process described by these disciplinary regulations.

**“Disciplinary Counsel”** the Office of the Attorney General serves as disciplinary counsel for complaints, or when otherwise requested by AOC or the Board.

**“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. 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.

**“Grievant”** means the person or entity who files a grievance against a CPG.

**“Hearing Officer”** means the person appointed by the Board to conduct a disciplinary hearing and render a decision.

**“Incompetent”** means an individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.

**“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.

**“Motion”** means a written request to the Disciplinary Committee, Board, Hearing Officer or Supreme Court to issue a ruling or order.

**“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.

**“Party”** means respondent CPG and the Board.

**“Punitive Sanction”** means a sanction imposed to punish.

**“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.

**“Resignation”** is the act or instance of resigning something, surrendering; the formal notification of resigning.

**“Respondent”** means a CPG or CPG agency and a designated CPG against whom a grievance is filed.

**“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.

**“Standard of Practice”** means a model of established practice as promulgated by the Certified Professional Guardianship Board.

**“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.

**“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 as a certified professional guardian for any person during the period of suspension.

**“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.

**“Words of Authority”**

“May” means “has discretion to,” “has a right to,” or “is permitted to”.

“Must” and “shall” mean “is required to”.

“Should” means recommended but not required.

**“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.

**“Voluntary Resign (Surrender) in Lieu of Discipline”** means a process where a certified professional guardian surrenders certification with a statement of charges for dismissal.

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## **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 shall 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 shall not allow family, social, business or other relationships to influence their conduct or judgment.

**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.

**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.

**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.

**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 meet and act through electronic, telephonic, written, or other means of communication.

**Disqualification of Disciplinary Committee Members.** A Disciplinary Committee member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including but not limited to instances in which:

The appearance of impropriety is or could reasonably be great or have the appearance of a conflict;

The member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

The member previously served as a lawyer, CPG, or was a material witness in the matter in controversy;

A lawyer or CPG with whom the member works, serves or has previously served as a lawyer or CPG concerning the matter, or such lawyer or CPG is or has been a material witness concerning the matter;

The member has a pending grievance;

The member or relative person residing in the member's household has an economic interest in the subject matter in controversy or is a party to the matter, or has any other interest that could be substantially affected by the outcome of the matter.

### **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 shall 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 shall not allow family, social, business, or other relationships to influence their conduct or judgment.

**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.

**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.

**Confidentiality Agreement.** All proposed members of a CRC are required to sign a confidentiality agreement prior to serving.

**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.

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.

**Reimbursement.** Consistent with the AOC policy, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

**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.

**Independence.** CRC Members act independently of disciplinary counsel and the Board.

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.

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### **502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN**

1. 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.

2. 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.

3. 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.

4. 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.

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### **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:

Provide a copy of the grievance to the respondent certified professional guardian and request a response pursuant to DR 506.3.

Provide a copy of the respondent certified professional guardian's response to the grievant and request a response.

Interview persons believed to possess relevant information or documents.

Request and review relevant documents.

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.

Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance:

The unwillingness of a grievant to continue the grievance;

The withdrawal of the grievance, a compromise between the grievant and the respondent; or

Restitution by the respondent.

Deferral.

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.

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.

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. Upon inquiry or request, the respondent CPG must:

Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

Permit inspection and copying of the CPG's business records, files, and accounts that are relevant to the grievance or the proceeding;

Furnish copies of requested records, files, and accounts that are relevant to the grievance or the proceeding; and

Furnish written releases or authorizations if needed to obtain documents or information from third parties.

Failure to Cooperate.

Interim Suspension. If a CPG has not complied with any request made under DR 505.2.5 for more than thirty (30) days, the AOC may notify the CPG that failure to comply within ten (10) days may subject the CPG to interim suspension under rule 509.5.

Grounds for Discipline. A CPG's failure to cooperate fully and promptly with an investigation as required by DR 505.2.5 is also grounds for discipline.

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### **506.1 REVIEW OF GRIEVANCE**

Within one hundred twenty (120) days of the AOC receiving the written grievance, the Disciplinary Committee shall attempt to review all initial investigations not dismissed pursuant to DR 505.2.2. If the Disciplinary Committee feels that there is insufficient information, it may request the AOC to conduct further investigation. The AOC shall attempt to complete its investigation and to present the investigation's results to the committee for its review within two hundred ten (210) days after receiving the written grievance. Once the Disciplinary Committee has determined that it has sufficient information regarding the allegation, it must either dismiss the grievance pursuant to DR 506.2 or proceed under DR 507 or DR 508. <sup>1</sup>

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### **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.

Form. A Settlement Agreement:

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;

Must state that the Settlement Agreement is not binding on the Disciplinary Committee as a final statement of facts about the respondent's conduct until approved by the

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<sup>1</sup> Due to existing resources, the deadlines set out in Regulation 506.1 are aspirational, rather than mandatory. Although the deadlines in Regulation 506.1 are aspirational, the Disciplinary Committee and AOC will attempt to comply with those deadlines to the extent that existing resources allow for compliance.

Certified Professional Guardianship Board, and that additional facts may be proved in a subsequent disciplinary proceeding;

Must fix the amount of costs and expenses, if any, to be paid by the respondent;

May impose terms and conditions and any other appropriate provisions.

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 approve a Settlement Agreement shall be reflected in board minutes.

Response. Upon receipt of a proposed Settlement Agreement, the respondent CPG must respond in writing within thirty (30) days to the proposed Settlement Agreement. 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.

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## **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.

Requests for Admission. After a Complaint is filed, the parties may request admissions under Civil Rule 36.

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.

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.

## **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.

Witnesses. Witnesses must testify under oath administered by the Hearing Officer. 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.

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.

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### **509.7 NOTIFICATION OF INTERIM SUSPENSION**

Upon entry of an order for interim suspension, the AOC shall notify all superior court presiding judges, court administrators, and county clerks, the Social Security Administration, the Veteran's Administration and the Department of Social and Health Services of the interim suspension. The AOC shall also remove the respondent CPG's name from all public AOC Web site lists of certified professional guardians.

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### **509.10 PROBATION**

1. Probation is a remedy that will be imposed for a period of time that is not less than six months or more than one year in duration when a professional guardian 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. Probation shall consist primarily of a monitoring function that seeks to ensure the guardian:

- A. Fully complies with any sanctions, remedies or other actions imposed by the Board, a court or a judicial officer; and
- B. Fully complies with the duties, requirements or prohibitions in the Standards of Practice, Guardianship Program rules and regulations, Washington statutes, and guardian's fiduciary duty.

2. The Disciplinary Committee Chair may appoint a suitable person to monitor the conditions of the probation are being met. Cooperation with a person so appointed is a condition of the probation. The guardian will be responsible for compensating the appointed monitor.

3. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

4. Probation may be imposed in conjunction with any disciplinary action except Revocation.

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## **510.2 TRANSCRIPT OF HEARING**

Ordering Transcript. AOC must order the entire transcript for an evidentiary hearing held before a Hearing Officer when testimony is heard and suspension or revocation of certification is recommended by the Hearing Officer.

Filing and Service. The original of the transcript is filed with the AOC and AOC must serve it on the respondent except if the respondent ordered the transcript.

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## **511.5 DECERTIFIED OR SUSPENDED PROFESSIONAL GUARDIANS**

1. Referral to Superior Court: Upon receipt of the Supreme Court's order decertifying or suspending a professional guardian, the AOC shall notify all superior court presiding judges, court administrators, and county clerks, the Social Security Administration, the Veteran's Administration and the Department of Social and Health Services.

2. Agencies: If the Board has recommended revocation of certification or suspension of a professional guardian to the Supreme Court, the employer agency, if any, shall, upon notice of the Supreme Court order contact AOC to determine how the revocation of certification or suspension shall affect continuation of the agency's certification. Continuing certification of an agency affected by the suspension or revocation of certification of a professional guardian shall be determined by the Board. The Board's primary concern shall be the best interests of the incapacitated persons.

3. Notice to Interested Parties: Within ten (10) days of revocation of certification or suspension, the professional guardian shall notify all parties entitled to notice in any active or pending guardianship matters of the professional guardian's revocation of certification or suspension and the anticipated effect on the incapacitated person.

4. Immediate Cessation of Professional Guardian Status: After entry of the Order of Revocation of Certification or suspension, the decertified or suspended professional guardian shall not accept any new appointments or engage in work as a professional guardian in any matter, except to assist in the orderly transfer of cases.

C. A list of all guardian and standby guardian appointments;

D. 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;

E. 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

F. 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.

3. 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.

4. 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.

5. Costs and Expenses.

A. With the voluntary resignation, the respondent may be required to pay all actual costs for which AOC provides documentation.

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.

6. 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.

## 508.10 HEARINGS

1. Scope of the Hearings. To limit the scope of hearings, parties may stipulate to specific facts, whether misconduct occurred, and/or disciplinary sanctions. The Hearing Officer may determine whether both facts surrounding the alleged misconduct and disciplinary sanctions shall be litigated at the same hearing, or whether they shall be addressed at separate hearings.
  2. Upon agreement by both parties, and approval by the Hearing Officer, hearings may be limited to the disciplinary sanction only.
  3. Burden of Proof. The Board has the burden of establishing an act of misconduct by a preponderance of the evidence.
  4. Proceeding Based on Criminal Conviction. If a Complaint charges a respondent CPG with an act of misconduct for which the respondent has been convicted in a criminal proceeding, a certified copy of the Judgement and Sentence is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.
  5. Rules of Evidence. The rules of evidence shall be those set forth in Chapter 34.05 RCW, the Administrative Procedures Act.
  6. Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the Hearing Officer files a decision.
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# Annual Planning Meeting

## Agenda Topics



## **Proposed 2018 Planning Meeting Topics**

1. UW Guardianship Certificate Program Annual Report
2. Washington State Supreme Court Budget Process
3. Annual Grievance Report – Include 11.88.120 Complaint Process
4. Diversion Program Report