

Additional Materials
Section 401.6

Guardianship and Conservatorship Program ~~Rules~~ Regulations

401 Guardian and Conservator's Duty to Court

401.1 The guardian and conservator shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.2 The guardian and conservator shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian and conservator is aware of a court order that may be in conflict with these standards, the guardian and conservator shall bring the conflict to the attention of the court and seek the court's direction.

401.3 The guardian and conservator shall at all times be thoroughly familiar with RCW ~~11.88~~11.130, ~~RCW 11.92~~, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian and conservator in the management of the affairs of an ~~incapacitated person~~ individual subject to guardianship and/or conservatorship.

401.4 The guardian and conservator shall seek legal advice as necessary to know how the law applies to specific decisions.

401.5 The guardian and conservator shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

~~401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian.~~

~~401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court appointed guardian per statutory requirements.~~

~~401.6.2 The certified professional guardian will make available to the standby guardian those records and information needed to address the needs of the incapacitated person in the event of a planned or unplanned absence.~~

401.6 A guardian and conservator should develop adequate contingency planning to provide coverage of services for their clients given the specific situations of the guardian and conservator. A guardian and conservator has the responsibility to plan for their fiduciary duties to be carried out to meet the needs of their clients as authorized by the court. Identification of a responsible party should be in any periodic reports to the court.

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Comments Submitted by
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June 9, 2021

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June 9, 2021

Certified Professional Guardian Board
c/o Administrative Office of the Courts
PO Box 41170
Olympia WA 98504-1170

Re: Proposed Changes to SOP 401

Dear CPG Board:

I appreciate the Board is trying to replicate the idea of a standby guardian (RCW 11.88.125) with the change to SOP 401.6. I question whether the standby guardian idea was ever really that useful. I think the proposed language does not create a "bright line rule" and is subject to interpretation. For example, how would the Guardian know, or the Board determine, if a contingency plan was "adequate"? How can a guardian/conservator address all the possible circumstances that could arise? How can a guardian/conservator "ensure" that their fiduciary duties are carried out in their absence? A Guardian cannot guarantee another's performance.

In my experience as an attorney for guardians (both lay and professional) and as a Guardian ad Litem for nearly 20 years, I have never sought letters of guardianship for a standby guardian per RCW 11.88.125 nor seen anyone else apply for letters for a standby guardian. I have had clients pass away, but was always able to timely find a family member (sometimes the person named as standby, but often not) to become the successor guardian.

Agency guardians are required to have two designated CPGs, in effect a standby guardian for each other. They often have staff, who while they may not be CPGs, are certainly more informed about the agency cases than some outside CPG standby guardian.

Starting in January 2022, if a CPG becomes unable to effectively perform their duties, the UGA allows for the appointment of temporary guardians. (RCW 11.130.130). The court may appoint a temporary guardian or conservator for up to six months if the guardian/conservator is not effectively performing their duties.

Appointment of a temporary guardian is similar to the concept of a standby guardian, with the added due process protection of a court hearing and notice to the person under guardianship/conservatorship. Unlike the standby guardianship statute, it results in a guardian/conservator who is ready and willing to undertake the duties.

Additionally, the temporary guardian provision allows the court to vet the qualifications of the temporary guardian.

The UGA also allows a guardian or conservator to delegate power to an agent under RCW 11.130.125. While the guardian or conservator cannot delegate all power to an agent, they could delegate sufficient power to cover any planned absences.

Instead of the language currently proposed, I would suggest the following:

401.6 A guardian or conservator should identify a staff member or outside professional guardian or conservator to act on their behalf for planned absences or when unavailable for decision-making and delegate the authority needed to that agent.

Thank you for your consideration.

Very truly yours,



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Comments Submitted by
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September 9, 2021

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September 9, 2021

Re: Regulation Changes

To: CPG Board

I am writing to comment on one of the proposed regulation changes, specifically:

401.6 A guardian and conservator shall identify a responsible party (staff member, attorney, other outside professional, an attorney in fact, or a guardian and conservator) to act on their behalf for planned absences or when unavailable for decision-making, and delegate the authority needed to that agent. Identification of a responsible party shall be in any periodic reports to the court. RCW 11.130.345(1)

The proposed regulation appears to be intended to address the fact that the UGA no longer requires a guardian/conservator to name a standby. I understand the Board wants some mechanism that would require CPGs to name the equivalent of a standby, given that the UGA totally eliminated the concept.

The section you have chosen to create as an analog for the Standby Guardian provision is the new delegation statute (RCW 11.130.125). In my opinion this is **not** the right choice if the Board's goal is to create a replacement for the old standby guardian concept. Here are two reasons why:

- (1) RCW 11.130.125(3) states that a guardian or conservator may not delegate all powers to an agent. If the goal is to have someone who can "replace" the guardian/conservator when unavailable or for a planned absence, that person would need to be able to make **all** decisions, otherwise there would be a gap in coverage. Standby Guardians were fully authorized guardians. UGA delegates are not.
- (2) The second reason is that the delegation statute provides no mechanism for the appointed delegate to demonstrate to any third party that they have authority. Standby Guardians, on the other hand, were issued Letters of Guardianship to identify their authority. Letters of office are the only way to be guaranteed the authority needed to act in the guardian/conservator's place if they are absent or unavailable. The RCW 11.130.125 delegation process has no mechanism for obtaining letters and no authority for issuing letters to an agent.

The better choice for addressing the Board's goal of creating a standby guardian analog

from the elements in the UGA is to use the sections allowing appointment of a co-guardian/conservator and successor guardian/conservator. Appointing a co-guardian/conservator would work for planned absences and designating a successor would work for those unexpected events when a CPG can no longer carry out their duties. In both cases the “standby” would have a mechanism to document their authority, and without documentation the authority is meaningless in the real world.

Here is how it would work in practice.

Co-Guardian/Co-Conservator:¹ If a guardian/conservator had a planned absence, they could petition to have a co-guardian/co-conservator appointed. The co-guardian/co-conservator would be issued letters once they filed an acceptance of appointment. The co-guardian/co-conservator could have all the authority of the guardian/conservator for a designated period of time.

Importantly, the co-guardian/co-conservator could also be appointed when a designated event occurs. For example, at the time of appointment the guardian/conservator could designate a co-guardian/co-conservator to be appointed for the guardian/conservator’s annual Grand Canyon rafting trip. It would still require a petition to the court to have the co-guardian/co-conservator appointed with some kind of proof that the designated event had occurred.

Successor Guardian/Successor Conservator:² If a CPG named another CPG (this would be unnecessary for agencies) to be appointed successor in the event they were incapacitated for more than some specified time period or otherwise unable to serve, the court would be able to appoint the successor upon notice and proof of the designated event.

So, my proposal would be to replace the current proposed 401.6 with the following:

401.6 Certified Professional Guardian/Conservators appointed in their personal capacity as guardian and/or conservator shall identify another Certified Professional Guardian/Conservator (individual or agency) to be appointed as co-guardian and/or co-conservator in the event of a planned absence or when a designated event occurs. Identification of the CPGC and a description of the designated event shall be in any periodic reports to the court. RCW 11.130.050, RCW 11.130.345(1)(n), RCW 11.130.530(2)(h)

401.7 Certified Professional Guardian/Conservators appointed in their personal capacity as guardian and/or conservator, shall identify another

¹ RCW 11.130.050

² RCW 11.130.055

Certified Professional Guardian/Conservator(individual or agency) to be appointed as successor guardian/conservator upon the occurrence of a designated event, such as the individual CPG's death or long-term disability of the solo guardian and/or conservator. The identification of the CPGC and a description of the designated event shall be in any periodic reports to the court. RCW 11.130.055, RCW 11.130.345(1)(n), RCW 11.130.530(2)(h)

It appears the Board will be developing further regulations regarding a guardian and/or conservator's ability to delegate authority. Delegation will be a useful tool, but because it does not allow delegation of *all* authority and provides no mechanism to verify the authority delegated (such as obtaining letters), it is not a good analog for the standby guardian provisions of the old law.

Thank you for considering my comments.

Very truly yours,



DEBORAH JAMESON