

# Meeting Materials

## November 8, 2021

# Meeting Minutes



## Certified Professional Guardianship Board

Monday, October 11, 2021

Zoom Meeting

9:00 a.m. – 1:30 p.m.

### DRAFT Meeting Minutes

#### Members Present

Judge Diana Kiesel, Chair  
Judge Grant E. Blinn<sup>1</sup>  
Judge Robert A. Lewis  
Ms. Kristina Hammond  
Ms. Lisa Malpass  
Ms. Melanie Maxwell  
Mr. William P. Reeves  
Dr. K. Penney Sanders  
Mr. Dan Smerken  
Ms. Susan Starrfield  
Ms. Amanda Witthauer  
Dr. Rachel Wrenn

#### Members Absent

#### Staff Present

Ms. Stacey Johnson  
Ms. Kathy Bowman  
Mr. Christopher Fournier  
Ms. Thai Kien  
Ms. Kay King  
Mr. Samar Malik  
Ms. Rhonda Scott  
Ms. Eileen Schock

**Guests: listed on last page**

#### 1. Meeting Called to Order

Judge Diana Kiesel called the October 11, 2021 CPG Board meeting to order at 9:05 a.m.

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

Judge Kiesel welcomed Board members, staff, and members of the public. The Board re-introduced themselves for the benefit of new Board members Kristina Hammond, Melanie Maxwell, and William Reeves. Ms. Hammond joins the Board as an advocate for incapacitated persons, Ms. Maxwell is the Washington State Bar Association's nominated representative, and Mr. Reeves is DSHS's nominated Adult Protective Service representative.

**Motion:** Hearing no suggested changes or corrections, a motion was made and seconded to approve the minutes of the September 13, 2021 CPG Board meeting as written. The motion passed. Ms. Hammond, Ms. Maxwell, and Mr. Reeves abstained.

#### 3. Chair's Report

Judge Kiesel confirmed the Board will meet for two hours on November 8, beginning at 7:00 a.m., and for one hour on December 13, from 8:00 a.m. to 9:00 a.m. The focus of these additional meetings will be on Regulations. Judge Kiesel also announced the Board will be

<sup>1</sup> Judge Blinn joined the meeting at 9:25 a.m.

meeting each month in 2022, and the Board's 2021-2022 calendar will be updated and redistributed.

#### **4. Presentation of Board Materials**

Staff presented an overview of the Board's bylaws, conflict of interest policy and recusal process. Staff also provided the 2021-2022 Confidentiality Agreement, which must be completed annually by all Board members, and requested the signed agreements be returned to the Office of Guardianship and Elder Services.

#### **5. Grievance Report**

Staff reported there were five (5) new grievances received, and five (5) grievances closed during the month of September. Four (4) grievances were dismissed for no actionable conduct, and one (1) grievance involved a lay guardian and was dismissed for no jurisdiction. There are currently thirty-eight (38) open grievances in investigation status. Twenty-seven (27) of these open grievances concern seven (7) CPGs or CPGAs with two or more grievances.

The Board was asked to provide their input on information to be included in the Grievance Status Report each month. Judge Kiesel said there will be discussion regarding how grievances are reported due to the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) and changes in Certified Professional Guardianship Regulations. Staff was asked to include this topic as an agenda item when other Regulations work is completed

#### **6. Regulations Committee**

Judge Kiesel spoke of the Regulations Committee's review of Standards of Practice Regulations 409, 410, 411, 412, 413, 414 and 415. Stakeholders were thanked for the comments received regarding proposed amendments to Regulation 409, Financial Management, and Regulation 409 will be remanded back to the Regulations Committee for continued discussion.

**Motion:** A motion was made and seconded to post for public comment Regulations 410, 411, 412, 413, 414 and 415. The motion passed.

#### **7. Education Committee Discussion**

On behalf of the Education Committee, Dr. Wrenn expressed her concern over the number of Certified Professional Guardians who have elected to voluntarily surrender their certification this year, and suggested the Board survey CPGs about their reasons for leaving the profession. Staff reported that many voluntary surrenders requested in 2021 were by CPGs out of compliance with CEU requirements. Other reasons offered were retirement, illness, or moving out of state. Staff also provided the number of CPG voluntary surrenders over the past several years. Judge Lewis asked if it was known the number of CPGs who have elected to voluntarily surrender certification in lieu of discipline or decertification.

There were several suggestions made by Board members for surveying CPGs, and it was mentioned that CPGs feel they don't have a resource to turn to with questions. Staff reminded the CPG Board of its role under GR23, and it was suggested that WAPG would be a better resource for these matters as AOC cannot provide legal advice.

Judge Kiesel stated she wanted to hold another stakeholder listening session after the first of the year, and a survey of current and recently surrendered CPGs may be a good way to solicit feedback regarding general concerns.

A motion was made and seconded to survey current and recently surrendered guardians about general concerns. The motion did not come to vote.

It was suggested the Education Committee become involved with creating a survey. Judge Lewis reminded the Board that today's discussion was about asking why CPGs have voluntarily surrendered. He also asked the Board to consider what it would do with the information collected.

Judge Kiesel suggested the earlier motion be restated as to have the Education Committee draft a survey to bring back to the Board for further discussion. The motion was seconded. The motion did not come to a vote.

Judge Kiesel asked staff to research available survey tools. Staff asked for clarification if the survey would be sent to only those CPGs who have voluntarily surrendered, or to all CPGs. Judge Kiesel said the Education Committee will determine whether there is one or two surveys. Dr. Wrenn agreed to discuss this at the next Education Committee meeting, but a good survey takes time to write well.

### **8. UW Program Update**

Judge Lewis mentioned the number of applications the Applications Committee reviews each month and suggested looking at what to do with the number of conditionally approved CPGs. If the UW program is completed prior to application, an applicant has two years to become certified. However, if an application is made prior to completing the UW program, it appears the Regulation is silent on how long conditional approval is valid. If too much time passes, background and credit checks must be redone. Judge Kiesel asked staff to review the Regulations to determine how long a conditional approval can remain valid.

### **9. Cultural Competency Discussion**

To increase the Board's diversity, Judge Kiesel asked if the Board wanted to consider adding another position to the Board. Mr. Smerken advocated for including a specialist who could address all competency issues. Judge Blinn agreed there is significant value in diversifying, but that this could be accomplished with the same number of members on the Board, by taking the time to find the desired qualities in the next open position. Staff noted the Board is currently made up of 13 members, with a position for a Judicial Officer currently vacant. The Board can recommend increasing membership to 14 if it wishes. Dr. Wrenn felt a single person cannot be the answer, but that all Board members should have more training on diversity. Dr. Wrenn proposed informally establishing an ongoing Diversity, Equity and Inclusion (DEI) Committee as a good investment by the Board. Judge Kiesel asked Board members who are interested in joining this Committee to let both her and staff know. Dr. Sanders and Ms. Starrfield indicated their interest in joining the DEI Committee.

### **10. Public Comment**

Members of the public were welcomed to speak at this time. There were no printed materials submitted to the Board.

### **11. Executive Session (Closed to the Public)**

### **12. Reconvene and Vote on Executive Session Discussion (Open to the Public)**

On behalf of the Applications Committee, Judge Lewis presented the following applications for Certified Professional Guardian. Members of the Applications Committee abstained.

**Motion:** A motion was made and seconded to deny Douglas Cassidy's application for certification, due to lack of transferrable skills and experience with decision making on behalf of others. Lisa Malpass opposed. The motion passed.

**Motion:** A motion was made and seconded to conditionally approve Kecia Hedgeman's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in financial and social services. The motion passed.

**Motion:** A motion was made and seconded to conditionally approve Ann Jones' application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in social services. The motion passed.

**Motion:** A motion was made and seconded to conditionally approve Marion Maina's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in health care. The motion passed.

**Motion:** A motion was made and seconded to conditionally approve Hollie Packer's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in social services. The motion passed.

**Motion:** A motion was made and seconded to deny Jane Polinder's application for certification, due to lack of transferrable skills and experience with decision making on behalf of others. Ms. Malpass, Dr. Sanders opposed. The motion passed.

**Motion:** A motion was made and seconded to assemble a three-member Review Panel to hear Mr. Whipple's appeal of administrative decertification for failure to recertify timely. The motion passed.

**Motion:** A motion was made and seconded to allow Meera Shin an extension of the Board's stated CGC test deadline to October 23. Ms. Shin must present a certificate of completion to the Board within three (3) weeks of this deadline. The motion passed.

### 13. Wrap Up/Adjourn

Staff member Christopher Fournier announced he is leaving the Administrative Office of the Courts at the end of the month. Judge Kiesel and the Board thanked him for all his work.

The next Board meeting will be held via Zoom on Monday, November 8, 2021 beginning at 7:00 a.m. With no further business to discuss, the October 11, 2021 CPG Board meeting was adjourned at 1:26 p.m.

### Recap of Motions from October 11, 2021

Motion Summary		Status
<b>Motion:</b>	A motion was made and seconded to approve the minutes of the September 13, 2021 CPG Board meeting. The motion passed. Ms. Hammond, Ms. Maxwell, and Mr. Reeves abstained.	<b>Passed</b>

<b>Motion:</b>	A motion was made and seconded to post for public comment Regulations 410, 411, 412, 413, 414 and 415. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to deny Douglas Cassidy's application for certification, due to lack of transferrable skills and experience with decision making on behalf of others. Lisa Malpass opposed. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to conditionally approve Kecia Hedgeman's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in financial and social services. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to conditionally approve Ann Jones' application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in social services. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to conditionally approve Marion Maina's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in health care. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to conditionally approve Hollie Packer's application for certification, conditioned upon completion of the UW Certification Program, with transferrable skills in social services. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to deny Jane Polinder's application for certification, due to lack of transferrable skills and experience with decision making on behalf of others. Ms. Malpass, Dr. Sanders opposed. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to assemble a three-member Review Panel to hear Mr. Whipple's appeal of administrative decertification for failure to recertify. The motion passed.	<b>Passed</b>
<b>Motion:</b>	A motion was made and seconded to allow Meera Shin an extension of the Board's stated CGC test deadline to October 23. Ms. Shin must present a certificate of completion to the Board within three (3) weeks of this deadline. The motion passed.	<b>Passed</b>

**Guests:**

Amber Collins  
Heather Lucas  
Melissa's ipad  
Glenda Voller

Neil and Neil  
Puget Sound Guardians  
Mark Vohr  
Pete Brulla  
Scott Malavotte  
Ashley Allen  
Lisa Petersen  
Brenda Morales

DRAFT



## Certified Professional Guardianship and Conservatorship Board 2022 Meeting Calendar

Monday, January 10, 2022	Zoom Meeting	9:00 am – 2:00 pm
Monday, February 14, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, March 14, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, April 11, 2022 <i>Annual Planning Meeting</i>	To be determined	9:00 am – 2:00 pm
Monday, May 9, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, June 13, 2022	To be determined	9:00 am – 2:00 pm
Monday, July 11, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, August 8, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, September 12, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, October 10, 2022	To be determined	9:00 am – 2:00 pm
Monday, November 14, 2022	Zoom Meeting	8:00 am – 9:00 am
Monday, December 10, 2022	Zoom Meeting	8:00 am – 9:00 am

Certified Professional Guardianship and Conservatorship Board meetings are open to the public.

For information regarding teleconference meetings, please contact Kathy Bowman at 360.704.5543 or email [Kathy.Bowman@courts.wa.gov](mailto:Kathy.Bowman@courts.wa.gov)

# Grievance Report

## Certified Professional Guardians Grievance Status

Month-End

October 31, 2021

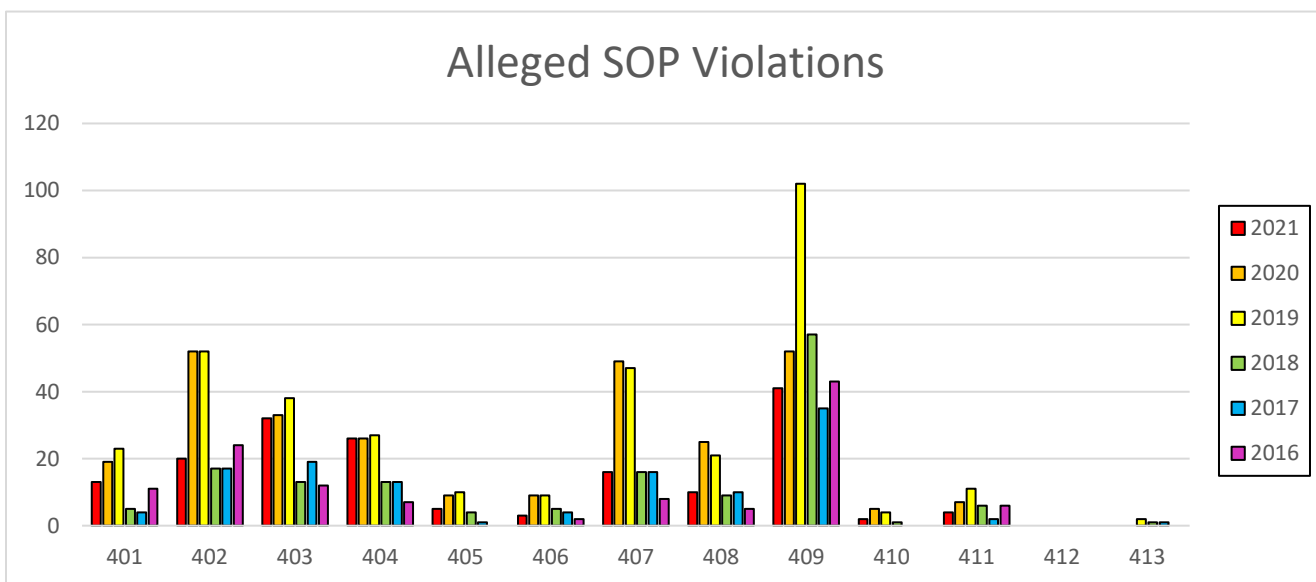
Grievance Status – October 31, 2021	2021	2020	2019	2018	2017	2016	Total
New Grievances Received:	5	0	0	0	0	0	5
Grievances Resolved this Month:	[7]						[7]
Grievances Remaining Requiring Investigation*:	24	7	4	1	0	0	36

Grievances Pending*	2021	2020	2019	2018	2017	2016	Total
Voluntary Surrender/Litigation:							
Conflicts Review Committee:	1		1				2
ARD:						1	1
Complaint/Hearing:							
Administrative Decertification:							
Total Pending:	1		1			1	3

[\*Grievances in Pending status are not counted as Grievances Requiring Investigation.]

Resolution of Grievances – October 31, 2021	2021	2020	2019	2018	2017	2016	Total
Dismissal – No Jurisdiction							
Dismissal – No Actionable Conduct	7						7
Dismissal - Administrative							
Dismissal – Insufficient Grievance							
Mediated – Dismissed							
Advisory Letter 507.1							
ARD - Admonishment							
ARD - Reprimand							
ARD - Suspension							
Terminated – Voluntary Surrender							
Terminated – Administrative Decertification							
Terminated – Decertification							
<b>Total Resolved Grievances: October 31, 2021</b>	<b>7</b>						<b>7</b>

<b>Grievance Resolutions</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>Total</b>
<b>Total Grievances Received</b>	<b>78</b>	<b>80</b>	<b>77</b>	<b>85</b>	<b>104</b>	<b>104</b>	<b>528</b>
Dismissal – No Jurisdiction	6	21	15	22	30	20	114
Dismissal – No Actionable Conduct	40	41	38	51	60	55	285
Dismissal - Miscellaneous							
Dismissal – Insufficient Grievance	5	6	5	3	1	2	22
Mediated – Dismissed							
Advisory Letter 507.1		2	5	3	2	4	16
ARD - Admonishment							
ARD – Reprimand		1		1	1	4	7
ARD - Suspension							
Termination – CPG Death							
Termination – Administrative Decertification	3	1	3	1	1	3	12
Termination – Voluntary Surrender			1	2	8	15	26
Termination – Decertification			5	1	1		7
<b>Grievances Resolved To Date: October 31, 2021</b>	<b>54</b>	<b>72</b>	<b>72</b>	<b>84</b>	<b>104</b>	<b>103</b>	<b>489</b>



#### 400 Standards of Practice Regulations

- 401 Guardian's Duty to Court
- 402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals
- 403 Self-Determination of Incapacitated Person
- 404 Contact with the Incapacitated Person
- 405 General Decision Standards
- 406 Conflicts of Interest
- 407 Residential Decisions
- 408 Medical Decisions
- 409 Financial Management
- 410 Guardian Fees and Expenses
- 411 Changes of Circumstances/Limitation/Termination
- 412 Sale or Purchase of Guardianship Practice
- 413 Responsibilities of Certified Public Guardian Agencies

ID	Year Cert.	Open	Year(s) Grievances Received	Status
A	2015	2	2021 (2)	
B	2016	7	2021 (5)	
C	2014	4	2019 (1), 2020 (2), 2021 (1)	
D	2007	4	2019 (2), 2020 (1), 2021 (1)	
E	2002	2	2021 (2)	
F	2001	6	2018 (1), 2019 (1), 2020 (4)	
G	2018	2	2021 (2)	
		27		

**Of 36 currently open grievances requiring investigation, 27 concern 7 Agencies/CPGs with 2 or more open grievances.**

# Regulations for Consideration of Approval 400, 401, 402, 403, 405, 406, 407, and 408

## Guardianship and Conservatorship Program Rules Regulations

Preamble: These standards of practice incorporate language from the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. References and links to statutory provisions are included in the sections. As a general matter, the authority to act as a guardian and/or conservator in every case is limited to the authority that the court has granted. These standards apply except as modified by court order. If a standard of practice and a court order appear to conflict, the guardian and conservator should bring the matter to the attention of the superior court. The superior court would be the final arbiter. The link to full text of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is below.

### RCW 11.130 Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

#### 400 General

400.1 The following standards apply to all Certified Professional Guardian and Conservators and Certified Professional Guardian and Conservator agencies. These standards apply only to the degree that the court has granted a guardian and conservator the authority contemplated in a given standard.

400.2 Whenever the term “guardian and conservator” is used in these Standards, it is meant to refer to a certified professional guardian and conservator or to a certified professional guardian and conservator agency. If the term “guardian” is used alone, it refers to a certified professional guardian and conservator when acting as a guardian, unless otherwise noted. If the term “conservator” is used alone, it refers to a certified professional guardian and conservator when acting as a conservator, unless otherwise noted.

400.3 Whenever the term “court” is used is in these Standards, it is meant to refer to the Superior Court which has authority over the guardianship and/or conservatorship in which the guardian and conservator has been appointed.

400.4 Whenever the terms “incapacitated person” (IP), “individual subject to guardianship” or “individual subject to conservatorship” is-are used, it-they is-are meant to refer to the incapacitated person/individual for whom the guardian and conservator has been appointed under RCW ~~11.88~~11.130.

400.5 Whenever the term “notice parties” is used, it is meant to refer to those people who ~~have requested special~~ are entitled to notice of proceedings or events under RCW ~~41.92.150~~11.130.

400.6 A guardian is a fiduciary and owes the highest duty of good faith and care to the individual subject to a guardianship. ~~-RCW 11.130.325 (1) A conservator has fiduciary duties of prudence and loyalty to the individual subject to conservatorship.~~ ~~-RCW 11.130.505 (1)~~ A fiduciary has the duty to act primarily for another's benefit. The ~~G~~guardian and conservator shall carry out his or her duties carefully and honestly. The ~~G~~guardian and conservator shall act selflessly, prudently, and with undivided loyalty to the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship.

~~A guardian cannot delegate his or her decision-making authority to another person or agency. This does not preclude employing others to carry out the guardian's decision.~~

400.7 To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, and “should” creates a duty or obligation, but is not absolute, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with “shall not.”<sup>1</sup>

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<sup>1</sup> The Certified Professional Guardianship and Conservatorship Board acknowledges that these Standards of Practice draw from the National Guardianship Association (NGA) Standards of Practice and that the NGA has granted the Board permission to use them.



## 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.

[Link to Related Statutory Section](#)

[RCW 11.130.125 Use of agent by guardian or conservator](#)

## Guardianship and Conservatorship Program Rules Regulations

402 Guardian and conservator's Relationship to Family and Friends of ~~Incapacitated Person~~ Individual Subject to Guardianship and/or Conservatorship and to Other Professionals

402.1 When the guardian and conservator has limited authority the guardian and conservator shall work cooperatively with the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship and/or with others who have authority in other areas for the benefit of the ~~incapacitated person~~ individual.

402.1.1 If a power of attorney for health care or finances is in effect, unless there is a court order to the contrary, the decision of the agent takes precedence over the guardian or conservator, and a guardian or conservator shall cooperate with the agent to the extent feasible.

RCW 11.130.330 (6)

RCW 11.130.335 (1)

RCW 11.130.435 (4)

RCW 11.130.505 (11)

402.2 The guardian and conservator, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship. In determining the best interest of the individual, the guardian and conservator shall consider information received from professionals and persons who demonstrate sufficient interest in the welfare of the individual.

RCW 11.130.325 (5) (a)

402.3 The guardian and conservator shall seek independent professional evaluations, assessments, and opinions when necessary to identify the ~~incapacitated person's~~ individual's needs, functional and cognitive abilities, -and best interests.

402.4 The guardian and conservator shall recognize that ~~his or her~~ their decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian and conservator alone is ultimately responsible for decisions made by the guardian and conservator on behalf of the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship.

402.5 A guardian and conservator shall not disclose personal or other sensitive information about the ~~incapacitated person~~ individual to third parties except: (a) when necessary and relevant to the needs of the ~~incapacitated person~~ individual or (b) as required by these standards or other applicable laws or when directed by the court or the CPGC Board.

402.6 The guardian and conservator must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship to the extent reasonable and necessary.

402.7 The guardian and conservator shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian and conservator shall act to coordinate and monitor services needed by the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship to ensure that the ~~incapacitated person~~ individual is receiving the appropriate care and treatment.

## Guardianship and Conservatorship Program Rules Regulations

### 403 Self-Determination of ~~Incapacitated Person~~ Individual Subject to Guardianship and/or Conservatorship

403.1 The civil rights and liberties of the ~~incapacitated person~~individual subject to guardianship and/or conservatorship shall be protected. The independence, ~~and~~ self-reliance and self-determination of the ~~incapacitated person- individual~~ shall be promoted and maximized to the greatest extent consistent with their protection and safety. The guardian and conservator shall protect the personal and economic interests of the ~~incapacitated person~~individual subject to guardianship and/or conservatorship and foster growth, independence, ~~and~~ self-reliance, and self-determination to the extent reasonably feasible.

403.2 To the extent reasonably feasible, the guardian and conservator shall encourage the individual to participate in decisions, act on their own behalf, and develop or regain the capacity to manage their own personal affairs.

RCW 11.130.325 (2)

RCW 11.130.505 (2)

~~403.2-3~~ Whenever appropriate a guardian and conservator shall consult with the ~~incapacitated person~~individual subject to guardianship and/or conservatorship, and shall treat with respect, the feelings, values, and opinions of the ~~incapacitated person individual.~~ The guardian shall acknowledge the residual capacity and preferences of the incapacitated person. The guardian shall, to the extent reasonably feasible, involve the individual in decisions affecting the individual, including, but not limited to, decisions about the individual's care, dwelling, activities, or social interactions.

RCW 11.130.325 (2) (b)

403.~~34~~ When making decisions on behalf of the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship, the guardian and conservator shall evaluate the alternatives that are available and choose the one that best meets the needs of the ~~incapacitated person~~individual while placing the least restrictions on the ~~incapacitated person's~~ individual's freedom, rights, and ability to control ~~his or her~~ their environment.

403.~~45~~ When appropriate, the guardian and conservator will defer to an ~~incapacitated person's~~ individual's ~~residual~~ capacity to make decisions.

403.56 Unless otherwise directed by the court, the guardian and conservator shall provide copies of all material filed with the court and notice of all hearings in the guardianship and/or conservatorship to the ~~incapacitated person~~individual.

403.67 The guardian and conservator shall, whenever appropriate or required by law, provide other requested information to the ~~incapacitated person~~individual subject to guardianship and/or conservatorship unless the guardian and conservator is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the ~~incapacitated person's~~individual's estate, property and finances, and (c) medical and other personal information related to the care of the ~~incapacitated person~~individual.

403.78 The guardian and conservator shall determine the extent to which the ~~incapacitated person~~individual subject to guardianship and/or conservatorship identifies with particular ethnic, religious, and cultural values and shall consider those values in the guardian and conservator's decision-making to the extent appropriate. The guardian and conservator shall not substitute their moral or religious values, opinions, or philosophical beliefs for those of the individual.

RCW 11.130.325 (1)

403.8-9 Sexual and Gender Expression:

403.89.1 The guardian and conservator shall acknowledge the ~~incapacitated person's~~rights of the individual subject to guardianship and/or conservatorship to interpersonal relationships, ~~and~~sexual expression, and gender expression. The guardian and conservator shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian and conservator shall take reasonable steps to protect the ~~incapacitated person~~individual from victimization.

403.89.2 The guardian shall ensure that the ~~incapacitated person~~individual subject to guardianship is informed of birth control methods and other sexual health information when appropriate.

403.89.3 The guardian shall take reasonable steps to protect the rights of the ~~incapacitated person~~individual subject to guardianship with regard to sexual expression and gender expression~~and preference~~. A review of ethnic, religious, and cultural values may be necessary to uphold the ~~incapacitated person's~~individual's values and customs.

## Guardianship and Conservatorship Program Rules Regulations

### 405 General Decision Standards

All decisions and activities of the guardian and conservator shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian and conservator's determination of the incapacitated person's individual's competent preferences, ~~i.e. what the incapacitated person individual would have decided when he or she had capacity the ability to receive and evaluate information or make and communicate decisions.~~ To determine the decision the individual subject would make if able, the guardian and conservator shall consider the individual's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian and conservator. A guardian and conservator shall make reasonable efforts to ascertain the individual's historic preferences and shall give significant weight to such preferences. Such preferences may be inferred from past statements or action of the individual when the individual had the ability to receive and evaluate information or make and communicate decisions.

405.1.1 In making a decision for an individual subject to guardianship, the guardian shall make the decision the guardian reasonably believes the individual would make if the individual were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the individual.  
RCW 11.130.325 (4)

405.1.2 In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual.  
RCW 11.130.505 (3)

405.2 When a decision cannot be made under the Substituted Judgment Standard, ~~the competent preferences of an incapacitated person cannot be ascertained,~~ the guardian and conservator is responsible for making decisions which are in the best interests of the ~~incapacitated person individual.~~ A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.

405.2.1 In determining the best interests of the individual, the guardian and conservator shall consider:

(a) Information received from professionals and persons who demonstrate sufficient interest in the welfare of the individual-;

(b) Other information the guardian and conservator believes the individual would have considered if the individual were able to act; and

(c) Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

RCW 11.130.325 (5)

RCW 11.130.505 (4)/



## Guardianship and Conservatorship Program Rules Regulations

### 406 Conflicts of Interest

406.1 The guardian and conservator shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the ~~incapacitated person individual~~ and the ~~incapacitated person's individual's~~ estate, property and finances.

406.2 There shall be no self-interest in the management of the estate, property and finances or the management of the person al affairs of the individual by the guardian and conservator; ~~†~~The guardian and conservator shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the ~~incapacitated person individual subject to guardianship and/or conservatorship~~.

406.3 A conflict of interest arises when the guardian and conservator has some personal, family or agency interest that is self-serving or adverse to the interest of the ~~incapacitated person individual~~. If the guardian and conservator intends to proceed in the face of a conflict of interest, a guardian and conservator shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. ~~(Revised 1-9-12)~~

406.4 The role of a guardian and conservator is primarily that of a decision-maker and coordinator of services. The guardian and conservator or agency (or an entity in which a guardian and conservator has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the ~~incapacitated person individual~~ or profit from any transaction made on behalf of the ~~incapacitated person's individual's~~ estate, property or finances. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval, the guardian and conservator must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. ~~(Revised 1-9-12)~~

406.5 A guardian or conservator who is also an attorney may represent themselves or their agency with respect to the administration of a guardianship or conservatorship. The guardian/conservator and the attorney must submit separate statements to the court for approval of fees and costs.

406.~~56~~ A guardian and conservator who is an attorney may provide legal services to the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship only when doing so best meets the needs of the ~~incapacitated person~~ individual and is approved by the court following full disclosure of the conflict of interest. (~~Adopted 1-9-12~~)

406.~~67~~ A guardian and conservator shall not accept a gift from an ~~incapacitated person~~ individual subject to guardianship and/or conservatorship or from their estate, property or finances, other than ordinary social hospitality.

406.~~78~~ Payment of fees or other compensation for guardianship and/or conservatorship services by a party other than the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship is a potential conflict of interest which shall be fully disclosed to the court.

406.~~89~~ The guardian and conservator shall protect the ~~incapacitated person's~~ individual subject to guardianship and/or conservatorship's rights and best interests against infringement by third parties.

406.10 A guardian and conservator shall not petition, nor request or cause counsel to petition, to be appointed as a guardian and/or conservator unless the guardian and conservator follows the guidelines set out in Ethics Advisory Opinion No. 2005-001. Ethics Advisory Opinion No. 2005-001

406.10.1 If a guardian and conservator has already been appointed to serve as guardian or conservator, and has good cause to believe appointment to the other fiduciary role is necessary to protect the person, or their estate, the guardian or conservator may petition for appointment to the other role.

## Guardianship and Conservatorship Program Rules Regulations

### 407 Residential Decisions

407.1 The guardian shall take reasonable measures to implement the residential preferences of the individual subject to guardianship.

407.2 The guardian shall select a residential setting the guardian believes the individual would select if the individual were able, in accordance with the decision-making standards in RCW 11.130.325 (4) and (5) and Regulation 405. If the guardian does not know and cannot reasonably determine what setting the individual probably would choose if able, or the guardian reasonably believes the decision the individual would make would unreasonably harm or endanger the welfare or personal or financial interests of the individual, the guardian shall choose in accordance with RCW 11.130.325(5) and Regulation 405 a residential setting that is consistent with the individual's best interest.

RCW 11.130.330 (5)

~~407.13~~ The guardian shall ensure that the incapacitated person resides in the least restrictive environment that is appropriate and available give priority to a residential setting in a location that will allow the individual to interact with persons important to the individual and meet the individual's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in RCW 11.130.325 (4) and (5) and Regulation 405 .

RCW 11.130.330 (5) (b)

~~407.24~~ The guardian shall acknowledge the need to allow all ~~persons~~ individuals the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the ~~incapacitated person's~~ individual's cultural and life values.

~~407.3~~ The guardian shall take reasonable measures to effectuate the incapacitated person's residential preferences.

~~407.45~~ The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions, including:

407.5.1 Absent a court order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, a guardian may not

consent on behalf of an individual to involuntary detention of the individual in a care setting which provides nursing or other care against the individual's will.  
RCW 11.130.330 (7)

407.5.2 A guardian may establish or move the permanent place of dwelling of the individual to a care setting that places restrictions on the individual's ability to leave or have visitors only if:

(i) The establishment or move is in the guardian's plan under RCW 11.130.340;  
(ii) The court authorizes the establishment or move; or  
(iii) The guardian gives notice of the establishment or move at least fourteen days before the establishment or move to the individual and all persons entitled to notice under RCW 11.130.310(5)(b) or a subsequent order, and no objection is filed.

RCW 11.130.330 (5) (d)

407.5.3 A guardian may take action that would result in the sale of or surrender of the lease to the primary dwelling of the individual only if:

(i) The action is specifically included in the guardian's plan under RCW 11.130.340;  
(ii) The court authorizes the action by specific order; or  
(iii) Notice of the action was given at least fourteen days before the action to the individual and all persons entitled to the notice under RCW 11.130.310(5)(b) or a subsequent order and no objection has been filed

RCW 11.130.330 (5) (f)

407.5.4 The guardian may not establish or move the individual's dwelling outside the state unless consistent with the guardian's plan and specifically authorized by the court.

RCW 11.130.330 (5) (e)

407.~~56~~ The guardian shall not remove the ~~incapacitated person individual~~ from his or her home or separate the ~~incapacitated person individual~~ from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the ~~incapacitated person individual~~ resides at the ~~incapacitated person's individual's~~ home or in a community setting.

407.~~67~~ The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the ~~incapacitated person individual~~, provide the opportunity to maximize the independence of the ~~incapacitated person individual~~, and provide for physical comfort and safety.

407.78 Before relocating the ~~incapacitated person~~ individual to a new residence, the guardian shall consult with, and give timely notices as required by law, to the ~~incapacitated person~~ individual, and should consult with, and give timely notices as required by law, to professionals, notice parties, and other third parties ~~involved with who demonstrate sufficient interest in the welfare of~~ the incapacitated person's individual care to the extent doing so does not put the ~~incapacitated person~~ individual, ~~the~~ guardian, or ~~the~~ guardian's staff at risk of personal harm. Emergency residential decisions to protect the ~~incapacitated person~~ individual may be made without prior consultation.

407.89 The guardian shall, as necessary, thoroughly research and evaluate the ~~incapacitated person's~~ individual's residential alternatives.

407.910 Should the only available residential placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to that placement and shall make reasonable efforts to arrange an appropriate and least restrictive residential alternative.

407.4011 The guardian shall regularly monitor the ~~incapacitated person's~~ individual's residential placement to ensure that it is appropriate and that such placement is the least restrictive alternative. The guardian should consent to changes, as they become necessary, advantageous, or otherwise in the ~~incapacitated person's~~ individual's best interests. The guardian should consider that even changes within an existing residential facility may have an impact on the quality of life of the ~~incapacitated person~~ individual.

## Guardianship and Conservatorship Program Rules Regulations

### 408 Medical Decisions

408.1 Unless a power of attorney for health care is in effect, ~~the~~ guardian shall provide informed consent on behalf of the ~~incapacitated person~~ individual subject to guardianship for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits.

408.1.1 The guardian shall involve the individual subject to guardianship in health care decision making to the extent reasonably feasible and support the individual in understanding the risks and benefits of health care options to the extent reasonably feasible. RCW 11.130.330 (6) (a)

408.2 Unless authorized by the court within the past thirty days, after notice and hearing with counsel for the individual subject to guardianship as required by statute, a guardian may not consent to any of the following procedures for the individual: (a) Therapy or other procedure to induce convulsion; (b) Surgery solely for the purpose of psychosurgery; or(c) Other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.217

RCW 11.130.335 (3)

408.3 A guardian shall be familiar with laws limiting the authority to consent to health care decisions, including reproductive decision making.

~~408.24 The duty to provide informed consent does not prevent a guardian from electing to make code status decisions in advance of need.~~

408.~~354~~ The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment and other end of life decisions.

408.~~465~~ The guardian shall actively promote the health of the ~~incapacitated person~~ individual by arranging for regular preventative care including but not limited to dental

care, diagnostic testing, and routine medical examinations to the extent preventative care and resources are available and to the extent the individual is willing to comply.

408.~~576~~ The guardian shall be available to respond to urgent need for medical decisions. The guardian shall provide instructions regarding treatment or non-treatment to be followed by medical staff in emergencies.

Regulations for Consideration of Publication  
for Notice and Comment  
Series 000, 200, 300, 500, 600, and 700



Guardianship and Conservatorship Program ~~Rules~~  
Regulations

Regulation 000 Administrative Regulations

~~Adopted February 11, 2008~~

**Contents:**

001 Purpose of Administrative Regulations

002 Definitions

003 Public Records

004 Policies

005 Best Practices

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## Guardianship and Conservatorship Program Rules Regulations

### 001 Purpose of Administrative Regulations

The regulations shall include administrative items for the Certified Professional Guardianship and Conservatorship Board (Board) such as definitions applicable to all aspects of professional guardianship and conservatorship related to the Board, public records and records retention, policies, best practices, and related administrative items.

## Guardianship and Conservatorship Program Rules Regulations

### 002 Definitions

These definitions apply to any regulations adopted by the Board unless the context clearly requires otherwise.

002.1 An “Agreement Regarding Discipline” is a written settlement agreement approved by the professional guardian and conservator and the Board of a grievance or complaint against a professional guardian and conservator. The final agreement, approved by the parties, is a public record available for inspection, copying, and disclosure.

002.2 “Certification of an individual” is the process by which an individual becomes qualified to perform services as a professional guardian and conservator as defined in RCW ~~41.88.008~~ 11.130.010 (26). Certification is given to individuals that the Board believes to have attained a minimum level of experience and an understanding of the responsibilities of guardianship and conservatorship; have not been disqualified by prior conduct, such as discharge from other cases, or been shown not to be trustworthy; know how to make decisions for someone else; and who will make those decisions in an ethical manner and in compliance with the standards of practice.

002.3 “Certification of an agency” is the process by which an agency becomes qualified to perform services as a professional guardian and conservator as defined in RCW ~~41.88.090~~ 11.130.010 (26). Certification is given to agencies that meet the requirements for certification of an agency in General Rule of Court (GR) 23.

002.4 A “complaint” is the document filed by the Board during a disciplinary proceeding for the purpose of bringing the matter before a hearing officer for a factual hearing on the issue of whether or not the professional guardian and conservator’s conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian and conservator allegedly violated an applicable statute, fiduciary duty, court order, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.

002.5 “Decertification” of a professional guardian and conservator or agency occurs when the Board or the Supreme Court cancels the certification of a professional guardian and conservator or agency for any reason.

002.6 To “deliberate” is to consult with others in a process of exercising pre-decisional opinions and making recommendations prior to reaching a decision. “Deliberative records” are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.

002.7 “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 and conservator, 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.

002.8 A "disciplinary sanction" is any punitive or remedial action taken by the Board against a professional guardian and conservator as a result of a disciplinary proceeding under the rules and regulations of the Board. A disciplinary sanction may be decertification, suspension, a prohibition on taking new cases, letter of reprimand, or letter of admonition. A disciplinary sanction is also any remedy the Board imposes on the professional guardian and conservator for the purpose of ensuring compliance with the duties of a professional guardian and conservator, such as continuing education, auditing practices, restitution, payment of the costs of an investigation, and any other remedy ordered by the Board.

~~002.9 (Repealed section 8-10-09)~~

002.~~409~~ "Executive session" is a meeting of a quorum of the Board, declared by the Board as an executive session, which meeting is not open to the public.

002.~~4110~~ A "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 and conservator's conduct under the rules and disciplinary regulations applicable to professional guardian and conservators. The grievance must include a description of the conduct of the professional guardian and conservator that the grievant alleges violates a statute, fiduciary duty, court order, standard of practice, rule, regulation, or other authority applicable to professional guardian and conservators, 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.

002.~~121~~ A "hearing" is a proceeding that allows parties an opportunity to be heard regarding an issue. A hearing officer, appointed by the Chair of the Board as set forth in the Disciplinary Regulations, rules on all evidence, procedures, and legal issues. The Board may be represented by an attorney or other staff, and the professional guardian and conservator may be represented by an attorney. Each party may present evidence and argument as directed by these regulations and the hearing officer.

002.~~1342~~ An "incomplete grievance" is one that ~~is unclear or substantially lacking in specificity so as to make the grievance inactionable: i) does not provide sufficient details of alleged conduct to demonstrate that a violation of statute, regulation, standard of practice, or rule, relating to the conduct of a certified professional guardian or conservator, could have occurred, or ii) does not provide the dates the alleged conduct occurred, or iii) is not signed and dated by the person filing the grievance.~~ A grievance is considered signed pursuant to the definition of "sign" in RCW 11.130.010 (34) .

002.143 "Investigative records" are records related to an investigation pursuant to GR 23 and the disciplinary regulations of the Board into the conduct of a professional guardian and conservator prior to the imposition of any disciplinary sanction or dismissal. ~~(Revised 3/8/10)~~.

002.154 "Professional guardian and conservator" is a guardian and conservator as defined by RCW Chapter ~~11.88.008~~ 11.130.010 (26) and includes both the individual and the agency.

002.16 "Revoked" or "revocation" means a professional guardian and conservator'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 and conservator's failure to comply with any Board rule or regulation.

002.17 A "suspension" of a professional guardian and conservator occurs when the Board or the Supreme Court orders that the certification of a professional guardian and conservator or agency be temporarily cancelled for a specified period of time. A suspended professional guardian and conservator or agency may not act as a certified professional guardian or conservator for any person during the period of suspension.

002.18 "Voluntary surrender" means a process where a certified professional guardian and conservator voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.

## Guardianship and Conservatorship Program Rules Regulations

### 003 Public Records

See General Rule 31.1

003.1 Records Retention. Records related to the Certified Professional Guardianship and Conservatorship Board shall be retained in accordance with records retention schedules for the judicial branch and the Washington State Administrative Office of the Courts (AOC). (~~Renumbered 10-14-15~~)

003.2 Posting Records. For a grievance or complaint that results in discipline to a professional guardian and conservator, the grievance or complaint, any response submitted by the professional guardian and conservator, the agreement or order imposing discipline, and any order on appeal by the professional guardian and conservator, shall be posted for public access on the website for the Administrative Office of the Court. (~~Adopted 10-19-15~~)

## Guardianship and Conservatorship Program ~~Rules~~Regulations

### 004 Policies

004.1 Board Attendance. Board members need to participate in a minimum of 80% [to be rounded down] of full Board meetings held during the calendar year. In other words, a member may not have more than two unexcused absences during a calendar year.

### 004.2 ~~Rules- Regulations, Ethics and Appeals~~ Committee (~~Adopted 7-12-04~~)

004.2.1 The Chair of the Board may appoint a ~~Rules- Regulations, Ethics and Appeals~~ Committee, if necessary. The Chair shall designate the members of the committee, the chair of the committee, and the term of the committee members.

004.2.2 The duties of the committee shall be:

004.2.2.1 Coordinate proposed regulation changes for consistency among all regulations.

004.2.2.2 Review of all regulations for necessary updates.

004.2.2.3 Other duties as assigned by the Chair of the Board.

| Guardianship and Conservatorship Program ~~Rules~~ Regulations

005 Best Practices

(Reserved)



## Guardianship and Conservatorship Program Rules Regulations

### 006 General Provisions

#### 006.1 Format for Documents Filed with the Board

006.1.1 All documents filed with the Board, on any matter before the Board, must be on letter-size paper (8 ½ inches by 11 inches). Documents filed may not include any tabs or other dividers, except that colored letter-size paper may be used for dividers between sections.

006.2.2 This rule is not mandatory for exhibits, but the use of exhibits that comply with this regulation is encouraged if it does not impair legibility.

Guardianship and Conservatorship Program  
Rules-Regulations  
Regulation 200 Continuing Education Regulation

~~Adopted as Amended November 12, 2001~~  
~~Renumbered October 10, 2005~~  
~~Effective January 1, 2013~~  
~~Revised October 14, 2019~~

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## 201 Regulation Definitions

As used in these regulations, the following definitions shall apply:

201.1 "Certified Professional Guardian and Conservator" (Guardian and Conservator, or CPGC) shall mean any person admitted to practice as a Guardian and Conservator under Washington Supreme Court Rule GR 23.

201.2 An "approved education activity" shall mean an individual seminar, course, or other continuing education activity approved by the Continuing Education Committee of the Certified Professional Guardianship and Conservatorship Board ("Board" hereinafter).

201.3 A "credit hour" equals one clock hour of actual attendance.

201.4 The "Committee" shall mean the Continuing Education Committee of the Board.

201.5 The "staff" shall mean the staff of the Administrative Office of the Courts (AOC).

201.6 "GR 23" shall mean General Rule 23, which is the Supreme Court Rule adopted for certifying Professional Guardian and Conservators, together with any subsequent amendments thereto, as adopted by the Supreme Court of the state of Washington.

201.7 "Teaching" in an approved continuing education activity shall mean and encompass the preparation and/or delivery of a prepared talk, lecture, or address at such activity.

201.8 "Participating" in an approved continuing education activity shall mean and encompass: 1) acting as a planning and organizing chair of such activity, or 2) taking part in such activity as a member of a panel discussion, without the preparation of written materials or the delivery of a prepared talk, lecture, or address.

201.9 "Reporting period" shall mean a two-year period from January 1 to December 31 the following year.

201.10 To qualify for "ethics credit," a course or subject must deal with the ethical issues and ethical conflicts relative to the legal rights, duties, or responsibilities of Guardian and Conservators or must include discussion, analysis, interpretation, or application of the Standards of Practice, judicial decisions interpreting the Standards of Practice or guardianship and conservatorship ethics, and /or ethics opinion published by the CPGC Board. (~~Amended 4-9-12~~)

201.11 To qualify for "general credit", a course or subject must encompass training and information pertaining to the business side of a Guardian and Conservator's practice, the personal care of Guardian clients, and/or the management of assets, estates and benefits. Topics qualifying for general credit include, but are not limited to the following: the use of forms to assist in the practice, tax and civil liability, insurance and bond issues, relationship with counsel and other professionals, fee issues and billing practices, business development, information pertaining to personal and physical care,

residential placement, medical/psychological/social/family matters, marshalling/management/sale of/maintenance of assets, entitlement to state/federal benefits, estate planning, and other issues and activities with which a Guardian and Conservator should be familiar. It also includes matters that apply generally to guardianship ~~of person and estate~~ and conservatorship such as the roles of-guardians ad litem and court visitors, petitions for direction, general civil procedure or the role of the court. ~~(Revised 4-9-12)~~

201.12 To qualify for “emerging issues credit,” a course or subject must encompass training and information pertaining to a topic specifically identified by the Board. The Board will determine for each reporting period which emerging issue(s) should be addressed in guardianship and conservatorship education. Emerging issues shall be identified by the Board at least five months prior to the topic’s corresponding reporting period. ~~(Adopted 4-9-12)~~ A CEU Sponsor may choose to include with their CEU application a written request that the Board approve a topic outside of the preapproved Emerging Issues categories as Emerging Issues credit. The request must provide explanation as to how the topic is of important significance to the guardianship and conservatorship profession and that the topic or issue has arisen during the current reporting period. AOC Staff have discretion to approve or deny a request for a topic to be approved as an Emerging Issues credit. Any approval or denial of a topic as Emerging Issues must be ratified by the Education Committee. A credit that is denied as an Emerging Issue may be approved as a General credit. ~~(Revised 10-14-19)~~

## 202 Continuing Education Requirements

Each Guardian and Conservator shall complete a minimum of 24 credit hours of approved education during each reporting period, except as exempted by Regulation 213. Credit hours accrue for classes approved by the Education Committee and shall biennially total no fewer than 24 credit hours that must include four Ethics credits, and four Emerging Issues credits. All other credits are categorized as General Credits.

If an active Guardian and Conservator completes more than 24 credit hours in a given reporting period, the excess credit, up to 12 credits will be carried forward and applied to such Guardian and Conservator's education requirement for the next reporting period. Ten (10) General and two (2) Ethics credits, will be carried forward to the next reporting period in their original categories. Excess Emerging Issues credits will be carried forward as General Credits.

Failure to comply with the provisions of this regulation within each reporting period shall subject the Guardian and Conservator to disciplinary action, including decertification for failure to comply. ~~(Revised 4-9-12)~~

### ~~Emergency Regulation Change for 2019-2020 Reporting Period~~

~~Due to impacts of COVID-19 on the availability of approved continuing education credit hours for the 2019-2020 reporting period, each Guardian shall complete a minimum of 12 credit hours of approved education. These 12 credit hours must include two Ethics credits and two Emerging Issues credits. At the end of the 2019-2020 reporting period a Guardian who completes more than 12 credit hours may carry forward 24 credits. These credits carried forward may include four (4) Ethics credit and two (2) Emerging Issues credit.~~

~~These changes will be effective retroactively to January 1, 2019 as of the date these regulations are adopted until the end of the 2019-2020 reporting period on December 31, 2020.~~

~~(Emergency Provisions Approved 10-12-20, Effective 1-1-19, Cutoff 12-31-20)~~

## 203 Credits/Computation

203.1 Continuing education credit may be obtained by attending, teaching, or participating in continuing education activities which have 1) been previously approved by the Committee, or 2) have been afforded retroactive approval by the Committee pursuant to these regulations.

203.2 A credit shall be awarded for each hour actually spent by an active Guardian and Conservator or an inactive guardian and conservator who is planning to become active within the next 12 months in attendance at an approved education activity.

203.3 Credit will not be given for time spent in meal breaks. Credit will not be given for speeches presented at meal functions.

203.4 Excess or "carry-over" credits may be applied to the succeeding reporting period's credit hour requirement. Such credits shall be reported to the Committee on or before January 31 as is required by Regulation 208.1. ~~(Amended 3/8/10)~~

203.5 Credit toward the continuing education requirements set forth in these regulations may be earned through teaching or participating in an approved continuing education activity on the following basis:

203.5.1 An active Guardian and Conservator teaching in an approved education activity shall receive credit on the basis of one credit for each hour or part of an hour actually spent by such Guardian and Conservator teaching. Additionally, an active Guardian and Conservator teaching in such an activity may also be awarded further credit for preparation time in the ratio of three (3) hours of preparation time to one hour of teaching time up to a maximum of nine (9) hours. The ratio of two to one will be applied to teaching presentations of less than one hour. An active guardian and conservator may earn credit only once for teaching in the same accredited course, regardless of the number of times the course is presented.

203.5.2 An active Guardian and Conservator participating in an approved educational activity shall receive credit on the basis of one credit for each hour actually spent by such Guardian and Conservator participating in such activity. Additionally, an active Guardian and Conservator participating in such an activity may also be awarded further credit on the basis of one credit for each hour actually spent in preparation time as defined in Section 201.8, provided that in no event shall more than five hours of credit be awarded for such preparation time in any one such continuing education activity. An active guardian and conservator may earn credit only once for participating in the same accredited course, regardless of the number of times the course is presented.

## 204 Standards for Approval

The following standards shall be met by any course or activity for which approval is sought:

204.1 The course shall have significant intellectual or practical content and its primary objective shall be to increase the attendee's professional competence as a Guardian and Conservator.

204.2 The course shall constitute an organized program of learning dealing with matters directly relating to the guardianship practice and/or to the professional responsibility or ethical obligations of a Guardian or Conservator.

204.3 Each faculty member shall be qualified by practical or academic experience to teach a specific subject.

204.4 Thorough, high quality, readable, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule. Providing students the materials on a computer disk or flash drive is encouraged. ~~(Amended 3-8-10)~~

204.5 Courses should be conducted in a setting physically suitable to the educational activity of the program. A suitable writing surface should be provided where feasible.

204.6 All courses must be open to all certified professional guardian and conservators.

204.7 No course will be approved unless it has met the requirements of 205.1.

204.8 The course shall satisfy curriculum requirements established by the Board. ~~(Revised 8-12-19)~~

## 205 Procedure for Approval of Continuing Education Activities

205.1 An active Guardian and Conservator or sponsoring agency desiring approval of a continuing education activity shall submit to the Committee all information called for by the Continuing Education Activity Credit Approval Form at least 30 days prior to the date scheduled for the class, along with a credit approval fee. If filed less than 30 days before the activity, the applicant must pay a late credit approval fee.

Applications for retroactive approval will be considered if submitted with all the information required by the Continuing Education Activity Credit Approval Form within 30 days of the continuing education activity and with the late credit approval fee. The credit approval fee may be waived, upon request, for court-sponsored training that is designed specifically for guardian or conservators. All fees shall be published annually by the Certified Professional Guardianship and Conservatorship Board no later than September 1 of the preceding year. ~~(Revised 4-9-12)~~

205.2 Approval shall be granted or denied in accordance with the provisions of Regulation 207 herein. Upon approval of the activity, a list of Guardian and Conservators will be provided to the class sponsor if requested in the initial application, along with written acknowledgment of approval.

205.3 As to a course that has been approved, the sponsoring agency may announce, in informational brochures and/or registration materials: "This course has been approved by the Continuing Education Committee of the Professional Guardianship and Conservatorship Certification Board for hours of credit." Sponsors may also delineate as between general, ethics and emerging issues credits in their promotional materials. ~~(Revised 4-9-12)~~

205.4 On the date of the continuing education activity, the sponsoring agency shall give a copy of the Guardian and Conservator course approval form to each Guardian and Conservator attending.

205.5 No later than 30 days following the activity, the sponsoring agency must send the attendance list to the AOC, along with a copy of the completed evaluation. Materials distributed at the activity shall be available to the AOC upon request.

205.6 The Board may, on its own behalf, approve a course or activity for Continuing Education Credit without an application for Continuing Education Credit from an active Guardian and Conservator or sponsoring agency. A continuing education activity approved under this subsection must be granted or denied in accordance with the provisions of Regulation 207. Neither a credit approval fee nor an attendance list will be required for a continuing education activity approved under this subsection 205.6.

205.6.1 A guardian and conservator who chooses to participate in a continuing education activity approved under this subsection must provide the AOC with a certificate of completion, or some other documentation which demonstrates the guardian and conservator's participation in the activity.



205.6.2 A guardian and conservator or other third party must provide an application for approval of continuing education activity in compliance with subsection 205.1 through 205.4 of this section and cannot request the Board approve a continuing education activity on its own behalf in lieu of the third party submitted the required application.

206.1 To facilitate the orderly and prompt administration of GR 23 and these regulations, and to expedite the processes of course approval, teaching and participation credits, and the interpretation of these regulations, the staff of the Administrative Office of the Courts may act on behalf of the Committee under GR 23 and these regulations. Any adverse determinations and all questions of interpretation of these regulations by the staff shall be subject to review by the Committee upon written application by person adversely affected.

206.2 The Committee may organize itself into committees and/or appoint subcommittees for the purpose of considering and deciding matters arising under GR 23 and these regulations.

207.1 Staff of the AOC shall, in accordance with regulations 204 and 206, respond in writing to all written requests for course approval, teaching and participation credits, and interpretation of the continuing education regulations of GR 23. The staff may seek a determination of the Committee before making such response. At each meeting of the Committee, the staff shall report on all determinations made since the last meeting of the Committee.

207.2 The Committee shall review any adverse determination of the staff. An active Guardian and Conservator or the sponsoring agency affected may, at the discretion of the Committee Chair, present information to the Committee in writing, in person, or both. If the Committee finds that the staff has incorrectly interpreted the facts, or the provisions of these regulations, it may take such action as may be appropriate. The Committee shall advise the active Guardian and Conservator or sponsoring agency affected of its findings and any action taken.

208.1 Compliance Report. By January 31 immediately following each reporting period, each Guardian and Conservator shall submit an affidavit to the Committee, at the AOC, setting forth all information required by the Affidavit Reporting CEUs concerning such Guardian and Conservator's completion of approved continuing education during the preceding reporting period. The affidavit shall be submitted in conformity with instructions provided by the Administrative Office of the Courts. Such affidavit shall also contain a report of "carryover" credits, if any, as delineated in Regulation 202. (~~Amended 3/8/10~~).

208.2 Late Compliance Report. If an active Guardian and Conservator has not submitted the minimum education requirement for the preceding reporting period by January 31, or complied with Regulation 208.1, compliance may still be accomplished by:

208.2.1 Late Compliance Report. Submitting by April 1 the affidavit called for by Regulation 208.1, the Affidavit Reporting CEUs, setting forth therein the extent of the active Guardian and Conservator's compliance with the minimum education requirement. All continuing education activities submitted on the Late Compliance Report must have transpired either (a) during the two-year reporting cycle or (b) by March 31<sup>st</sup> immediately following the reporting cycle, with the exception of earned carry-forward credits as described in 202.3. Credits reported on the Late Compliance Report form under 208.2.1 (b) may not be used to comply with the minimum education requirement for any other reporting period. (~~Revised 6-10-19~~)

208.2.2 Paying at the time of filing such Late Compliance Report a special service fee. All fees shall be published annually by the Certified Professional Guardianship and Conservatorship Board no later than September 1 of the preceding year.

208.3 An active Guardian and Conservator who fails to comply with the provisions of this regulation shall be subject to the procedures and provisions of Regulation 211.

An active Guardian and Conservator who seeks credit for teaching or participating in an approved continuing education activity pursuant to Regulation 203.5, shall submit an affidavit to the Committee, at the AOC, setting forth all information required by the appropriate portions of the Affidavit Reporting CEUs, concerning such teaching and/or participating in approved education courses or activities during the preceding reporting period. The affidavit shall be submitted within 30 days of the end of the preceding reporting period. ~~(Amended 3/8/10)~~

The Committee may grant extensions, waivers, or modifications of these regulations in cases of undue hardship, infirmity, or other good cause. Requests for extensions, waivers, or modifications shall be made in writing.

211.1 An active Guardian and Conservator who has not complied with the educational or reporting requirements of GR 23 and these regulations by April 1 of each year, may be decertified by the Board. ~~(Revised 4-9-2012)~~

211.2 To effect such decertification, the Committee shall send to the non-complying Guardian and Conservator by certified mail, directed to the Guardian and Conservator's last known address as maintained on the records of the Administrative Office of the Courts, a written notice of non-compliance. The notice shall advise such active Guardian and Conservator of the pendency of decertification unless within 10 calendar days of receipt of such notice such active Guardian and Conservator completes and returns to the Committee a petition, to which supportive affidavit(s) showing undue hardship, infirmity, administrative error, or other good cause may be attached for extension of time for, or waiver of, compliance with the requirements of GR 23 and these regulations, or for a ruling by the Committee of substantial compliance with the requirements.

211.3 If such petition is not filed, such lack of action shall be deemed acquiescence by the active Guardian and Conservator in the finding of non-compliance. The Committee shall report such fact to the Board with the Committee's recommendations for decertification. The Board shall decertify the Guardian and Conservator.

211.4 If such petition is filed, the Committee may, at its discretion, approve the same without hearing or may enter into an agreement on terms with such active Guardian and Conservator as to time and other requirements for achieving compliance with GR 23 and these regulations.

211.5 If the Committee does not approve such petition or enter into such agreement, the affected Guardian and Conservator may request a hearing on the petition by filing a written request with the Board within ten calendar days of notice of the Committee's decision. The Chair of the Board shall appoint a three-member Review Panel to conduct the hearing. The Review Panel shall enter written findings of fact and a recommendation as to whether or not the petition should be granted. The findings and recommendation of the Review Panel shall be reported to the Board as set forth in the Disciplinary Regulations of the Board.

211.6 The Board shall review the decision of the Review Panel and the Board shall thereafter enter an order either granting or denying the Guardian and Conservator's petition. If the Board denies the petition, the Board shall decertify the Guardian and Conservator. A copy of the Board's decision shall be transmitted by certified mail to the active Guardian and Conservator affected at the address of such member on file with the AOC. Any such order shall be final. The members of the Review Panel shall not participate in the decision of the Board.

A person whose certification is inactive shall not be required to take continuing education course during the period of inactive status. A person who wishes to reactivate his or her certification shall successfully complete continuing education credits for the year immediately preceding his or her reactivation. A person desiring transfer from inactive to active status must comply with the applicable rules and procedures of the Board pertaining to such change of membership status, including the filing of an application with the Board in such form as is prescribed by the Board. The Board shall determine whether such application shall be granted. Compliance with GR 23, the Regulations adopted by the Board in respect of application and certification, and these regulations is only one factor.



If a Guardian and Conservator is admitted during the first year of the reporting period, the Guardian and Conservator needs only to complete 12 credits as described in Regulation 202.2 by the end of the reporting period. If a Guardian and Conservator is admitted to practice in the second year of the reporting period, the Guardian and Conservator is not required to comply with the minimum continuing education credits for that reporting period. ~~(Amended 3/8/10).~~

The Committee, subject to the approval of the Board, has continuing authority to make or amend regulations consistent with GR 23 in furtherance of the development of continuing education for Guardian and Conservator's and the regulation thereof.

RESERVED SEE ADMINISTRATIVE REGULATIONS

301.1. The Certified Professional Guardiansship and Conservatorship Board (Board) may issue written ethics advisory opinions for Certified Professional Guardian and Conservators (Guardian and Conservators) and Certified Professional Guardian and Conservator Agencies (Agencies).

301.2 Any Guardian and Conservator, Agency, or Board member may request in writing that the Board issue an ethics advisory opinion regarding the application of the Standards of Practice to a specific factual circumstance. (~~Amended 3-09-09~~)

301.3 A request for an ethics advisory opinion is confidential and not public information.

302.1 The Chair of the Board shall appoint an Ethics Advisory Committee consisting of at least three Board members. The Chair of the Board shall designate one of the members as the chairperson of the Committee.

302.2 The Committee shall review all requests for ethics advisory opinions and draft responses to those requests the Committee decides to answer. The Committee's decision whether or not to draft an ethics advisory opinion shall be based on whether a specific factual circumstance is presented, whether the opinion would involve the application of the Standards of Practice, whether the opinion would duplicate already-existing public opinions, whether the question involves an issue of general significance, and the resources of the Committee. The Committee and the Board shall be under no obligation to draft an ethics advisory opinion in response to a request. (~~Amended 3-09-09~~)

302.3 Draft ethics advisory opinions may be written by one or more individuals, as determined by the Chair of the Committee.

302.4 Ethics advisory opinions shall be based upon existing law, legal decisions, court rules, regulations, statutes, Standards of Practice, and other information ordinarily relied upon in the course of legal and ethical decision-making.

302.5 The Committee shall send draft ethics advisory opinions to the Board for approval.

303.1 The action of the Board to issue an ethics advisory opinion shall be by majority vote of the entire membership of the Board. For this purpose the Chair of the Board may accept votes in person, by mail, email, or by other means which shall provide a record of the vote cast.

303.2 The Board may approve, disapprove or approve with modifications a proposed ethics advisory opinion presented by the Ethics Advisory Committee. Discussion and action by the Board shall include discussion at a regular public meeting of the Board.

304.1 Ethics advisory opinions that are approved by the Board shall be public information.

304.2 The Board shall distribute regularly Ethics advisory opinions that have been approved by the Board to all Guardian and Conservators, Agencies and others determined by the Board to have a significant interest in these opinions. The Board shall decide the method by which to distribute public ethics advisory opinions.

305.1 After the Board has approved an ethics advisory opinion, the Board may overrule, revise or withdraw an ethics advisory opinion based upon any subsequent change or reinterpretation of the law, legal decisions, court rules, regulations, Standards of Practice or other information.

305.2 The Board shall give notice in a timely manner to Guardian and Conservators and Agencies that an ethics advisory opinion has been overruled, revised or withdrawn by the Board.

305.3 Reliance on an Ethics Advisory Opinion by a Guardian and Conservator or Agency on an Ethics advisory opinion that has not been overruled, revised or withdrawn by the Board may be offered as evidence of good faith in any subsequent disciplinary proceeding involving a Guardian and Conservator or Agency.



Guardianship and Conservatorship Program Rules Regulations  
Regulation 500 Disciplinary Regulations for  
Certified Professional Guardians and Conservators  
~~Revised and Renumbered Effective March 1, 2018~~

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## Guardianship Program Rules Regulations

### 500 DISCIPLINARY REGULATIONS FOR CERTIFIED PROFESSIONAL GUARDIAN AND CONSERVATORS

#### 501 SCOPE, JURISDICTION AND DEFINITIONS

##### 501.1 PURPOSE OF DISCIPLINARY REGULATIONS

1. To assure that Certified Professional Guardian and Conservators (CPGCs) meet and maintain minimum professional standards of practice, which are adopted as regulations under General Rule 23 – Rule for Certifying Professional Guardian and Conservators.
2. To establish a process for the Certified Professional Guardianship and Conservatorship Board (Board) to review grievances of alleged violations of statutes, fiduciary duties, court orders, standards of practice, rules, regulations, any requirement governing the conduct of professional guardian and conservators and any other authority applicable to professional guardian and conservators. The disciplinary procedures for failure to comply with certification requirements are included in the Certification Maintenance and Continuing Education Regulations.
3. To set out the due process protections and other procedures that allow the professional guardian and conservator and the public to be protected.
4. To ensure meaningful access to justice services and promote public trust and confidence in the courts.

##### 501.2 JURISDICTION

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

##### 501.3 GROUNDS FOR DISCIPLINARY ACTION

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

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

1. Violation of or noncompliance with the acceptance of appointment, an oath, applicable violations of statutes, fiduciary duties, court orders, standards of

practice, rules, regulations, and any requirement governing the conduct of professional guardian and conservators.

2. Commission of any act that constitutes a crime involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator~~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 and conservator.
4. Permitting the name of a guardian and conservator certified by the Certified Professional Guardianship and Conservatorship 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 conservatorship or interaction with an incapacitated individual who is unable to receive and evaluate information or make or communicate decisions or other 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 and conservator 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 or conservator, 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 or conservator 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 or conservator.

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.

#### 501.4 DEFINITIONS

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

1. **“Advisory Letter”** is a non-disciplinary letter to notify a professional guardian and conservator that:
  - A. 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 and conservator; or
  - B. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or
  - C. While a certified professional guardian and conservator has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Disciplinary Standards of Practice Committee believes that repetition of the activities that led to the investigation may result in further Disciplinary Standards of Practice Committee action against a CPGC.
2. **“Agreement Regarding Discipline”** (~~Settlement Agreement~~) is a written settlement agreement approved by the professional guardian and conservator and the Board of a disciplinary matter against a professional guardian and conservator. The final agreement, approved by the parties, is a finding of misconduct, is a sanction and is subject to public disclosure.
3. **“AOC”** means staff of the Administrative Office of the Courts.
4. **“Board”** means the Certified Professional Guardianship and Conservatorship Board.
5. **“Chair”** when used alone means the Chair of the Certified Professional Guardianship and Conservatorship Board.
6. **“Contempt of a Board Proceeding”** means:
  - A. 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 ~~b~~Board proceedings;
- B. Disobedience of any lawful judgment, decree, order, or process of the Certified Professional Guardianship and Conservatorship Board;
- C. Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
- D. Refusal, without lawful authority, to produce a record, document, or other object.
7. **“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 and conservator’s conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian and conservator allegedly violated an applicable statute, fiduciary duty, court order, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.
8. **“Court”** unless otherwise specified, means the Supreme Court of Washington.
9. **“CPGC or CPGCA”** when used alone means a Certified Professional Guardian and Conservator or Certified Professional Guardian and Conservator Agency.
10. **“Decertification”** of a professional guardian and conservator or agency occurs when the Board or the Supreme Court revokes the certification of a professional guardian and conservator or agency for any reason.
11. **“Deliberative Records”** are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.
12. **“Designated CPGC”** means the certified professional guardian and conservator working for an agency who has the final decision-making authority for ~~incapacitated persons- individuals subject to guardianship and/or conservatorship~~ or their property, finances and estate on behalf of the agency. The designated CPGC is responsible for the actions of the agency(ies) for which they serve as designated CPGC.
13. **“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 and conservator, 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.

14. **“Disciplinary Action”** encompasses the process described by these disciplinary regulations.
15. **“Disciplinary Counsel”** the Office of the Attorney General serves as disciplinary counsel for complaints, or when otherwise requested by AOC or the Board.
16. **“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 and conservator’s conduct under the statutes, fiduciary duties, court orders, standards of practice, rules, regulations, any requirement governing the conduct of professional guardian or conservators and any other authority applicable to professional guardian or conservators. The grievance must include a description of the conduct of the professional guardian and conservator that the grievant alleges violates a statute, fiduciary duty, court order, standard of practice, rule, regulation, or other authority applicable to professional guardian and conservators, 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.
17. **“Grievant”** means the person or entity who files a grievance against a CPGC.
18. **“Hearing Officer”** means the person appointed by the Board to conduct a disciplinary hearing and render a decision.
- ~~19. **“Incompetent”** means an individual is incapable, inefficient and without the qualities needed to discharge their obligations and duties.~~
- ~~20~~19. **“Investigative Records”** are records related to an investigation pursuant to GR 23 and these disciplinary regulations, into the conduct of the professional guardian and conservator, prior to the imposition of any disciplinary sanction or dismissal.
- ~~24~~0. **“Motion”** means a written request to the Disciplinary Standards of Practice Committee, Board, Hearing Officer or Supreme Court to issue a ruling or order.
- ~~22. **“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.~~
- ~~23~~1. **“Party”** means respondent CPGC and the Board.
- ~~24~~2. **“Punitive Sanction”** means a sanction imposed to punish.



253. **“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.

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

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

286. **“Revoked”** or **“Revocation”** means a professional guardian and conservator'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 and conservator's failure to comply with any statutes, fiduciary duties, court orders, standards of practice, rules, regulations, any requirement governing the conduct of professional guardian or conservators and any other authority applicable to professional guardian or conservators. The Board must specify whether the CPGC is eligible to apply for certification with the AOC guardian and conservator program at a future date.

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

3028. **“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.

3129. **“Suspension”** of a professional guardian and conservator occurs when the Board or the Supreme Court orders that the certification of a professional guardian and conservator or agency be temporarily cancelled for a specified period of time. A suspended professional guardian and conservator or agency may not act as a certified professional guardian or conservator for any person during the period of suspension.

320. **“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.

331. **“Words of Authority”**

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

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

C. “Should” means recommended but not required.

342. “**Voluntary Resign (Surrender)**” means a process where a certified professional guardian and conservator voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.

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

## 501.5 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.

## 502 ORGANIZATION AND STRUCTURE

### 502.1 CERTIFIED PROFESSIONAL GUARDIANSHIP AND CONSERVATORSHIP BOARD (CPGC CB or Board)

The Washington State Certified Professional Guardianship and Conservatorship Board has responsibility in the state to administer CPGC discipline and has inherent power to maintain appropriate standards of practice and to conduct and to dispose of individual cases of CPGC discipline. Persons carrying out the functions set forth in these rules act under the Certified Professional Guardianship and Conservatorship Board’s authority.

1. Function. The Board:

- A. Supervises the general functioning of the ~~Disciplinary Committee~~ Standards of Practice Committee.
- B. Makes appointments, removes those appointed, and fills vacancies as provided in these rules.
- C. 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.
- D. Is responsible for hearing appeals of ~~Disciplinary~~ Standards of Practice Committee decisions that are made appealable pursuant to these rules.

2. Restriction on Representing Respondents. A former member of the Board shall not represent a certified professional guardian and conservator 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 and conservator in proceedings 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).

## **502.2 DISCIPLINARY COMMITTEE STANDARDS OF PRACTICE COMMITTEE**

1. Function. The Disciplinary Standards of Practice 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~~, Agreements Regarding Discipline, officiating over hearings, and imposing disciplinary sanctions. The Standards of Practice Committee may establish a subcommittee for the purpose of initial review of grievances for completeness, and for review of the superior court's disposition of a grievance for purposes of making a recommendation to the Board regarding dismissal or commencing an investigation.

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

2. Membership. The Chair appoints a Disciplinary Standards of Practice Committee of ~~three to four members~~ from among the Board members. At least one of the members must have substantial experience in guardianships and conservatorships. The Chair may change the appointment of members to the Disciplinary Standards of Practice Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee Standards of Practice Committee. The Standards of Practice Committee shall have at least one judicial officer member and one attorney member.
3. Terms of Office. A Board member may serve as a Disciplinary Standards of Practice 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. The Chair of the Standards of Practice Committee may appoint Committee members to serve on a subcommittee for the periods determined to be appropriate by the Chair of the Standards of Practice Committee.
4. Disciplinary Standards of Practice Committee Chair. The Chair of the Board designates one or more members of the Disciplinary Standards of Practice Committee to act as its Chair and Co-chair. The Chair or Co-chair should have experience serving in a judicial, ~~or~~ quasi-judicial capacity or other due process experience.

5. Meetings. The ~~Disciplinary Standards of Practice~~ Committee meets at times and places determined by the ~~Disciplinary Standards of Practice~~ Committee Chair(s). The Standards of Practice subcommittee meets as the times and places determined by the subcommittees members. The subcommittee shall meet at a frequency sufficient to review grievances received within thirty (30) days of receipt or as otherwise required. At the ~~Disciplinary Standards of Practice~~ Committee Chair's discretion, the Committee and subcommittee may meet and act through electronic, telephonic, written, or other means of communication.
  
6. Disqualification of ~~Disciplinary Standards of Practice~~ Committee Members. A ~~Disciplinary Standards of Practice~~ 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:
  - A. The appearance of impropriety is or could reasonably be great or have the appearance of a conflict;
  - B. The member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;
  - C. The member previously served as a lawyer, CPGC, or was a material witness in the matter in controversy;
  - D. A lawyer or CPGC with whom the member works, serves or has previously served as a lawyer or CPGC concerning the matter, or such lawyer or CPGC is or has been a material witness concerning the matter;
  - E. The member has a pending grievance;
  - F. 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

1. 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~~ Agreements

Regarding Discipline, 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.

2. Membership. The Board Chair shall appoint three members who shall not be current members of the Board. CRC members shall be familiar with guardianship and conservatorship practice in the state of Washington.
3. 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 or other due process experience.
4. Confidentiality Agreement. All proposed members of a CRC are required to sign a confidentiality agreement prior to serving.
5. CRC Duties. The AOC shall transmit any grievance against a Board member to the CRC when the superior court has completed its disposition or referred the grievance back to the Board. The CRC shall perform the duties that would otherwise be performed by the Disciplinary Standards of Practice 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.

6. Reimbursement. Consistent with the AOC policy, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.
7. 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.

8. Independence. CRC Members act independently of disciplinary counsel and the Board.
9. 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.

#### 502.4 DISCIPLINARY COUNSEL

The Attorney General's Office will serve as disciplinary counsel on the Board's behalf when a complaint has been filed or when requested by the Board or AOC and performs other duties as required by these rules.

#### 502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN AND CONSERVATOR

1. Right to Representation. A CPGC may be represented by counsel at the CPGC'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 CPGC in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPGC 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 CPGC 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 CPGC may not seek to charge a grievant or an ~~incapacitated person's individual subject to guardianship and/or conservatorship or their property or~~ estate a fee or recover costs from a grievant or ~~incapacitated person's an individual subject to guardianship and/or conservatorship or their property or~~ estate for responding to the CPGC Board regarding a grievance.
4. Medical and Psychological Records. A respondent CPGC must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and conservator and the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship as may be relevant to the investigation or proceeding.

#### 503 RELEASE OF INFORMATION

General Rule (GR) 31.1 controls release of information'

## 504. GENERAL PROCEDURAL RULES

### 504.1 SERVICE OF PAPERS

1. Service Required. Every pleading, every paper relating to discovery, every written motion other than one that may be heard ex parte, and every similar paper or document issued by the Board, disciplinary counsel, the AOC, or the respondent CPGC under these rules must be served on the opposing party. If a hearing is pending, the party also must serve a copy on the Disciplinary Standards of Practice Committee by serving the AOC at:

Administrative Office of the Courts 1112  
Quince St. SE  
PO Box 41170  
Olympia, WA 98504-1170

2. Methods of Service.

#### A. Service by Mail.

- i. All certified professional guardian and conservators agree to accept personal service by registered or certified mail at the address provided by the guardian and conservator. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.
- ii. Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be made by first class mail if:
  - a. The parties so agree;
  - b. The document is a notice of dismissal, deferral or a request for review of dismissal or deferral;
  - c. One or more properly made certified mailings are returned as unclaimed;
- ii. Service is on the AOC on behalf of the Disciplinary Standards of Practice Committee or Board.
- iii. The address for service by mail is as follows:

- a. For the respondent, or his or her attorney of record, the



address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the AOC;

- b. For disciplinary counsel, at the address of the AOC or other address that disciplinary counsel requests.

B. Service by Delivery. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

3. Proof of Service. If personal service is used pursuant to DR 504.1.2, proof of service may be made by affidavit of service, or a signed acknowledgment of service. Proof of service must be filed, but need not be served on the opposing party.

#### **504.2 FILING; ORDERS**

1. Filing Originals. The original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the AOC.
2. Filing and Service of Orders. Any written order, decision or ruling must be filed with the AOC, and the AOC serves it on the respondent lawyer and disciplinary counsel.
3. Electronic filing or service of documents upon the Board or the AOC is permitted with authorization of the Board or the AOC. Electronic service upon a party is not permitted without authorization of the party. Electronic filing and service includes transmission by electronic mail and electronic facsimile transmission.

#### **504.3 PAPERS**

All pleadings or other papers must be word processed or printed, double spaced, on 8½ by 11-inch pages. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

#### **504.4 COMPUTATION OF TIME**

1. Computation. In computing any period of time prescribed or allowed by these rules the day of the act from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

2. Additional Time after Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the



service of a notice or document upon ~~him- them~~ and the notice or document is served upon ~~him- them~~ by mail, three (3) days shall be added to the prescribed period.

#### 504.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent certified professional guardian and conservator, the AOC, and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

#### 504.6 ENFORCEMENT OF 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 Disciplinary Standards of Practice Committee Chair or Hearing Officer.

#### 505 GRIEVANCE REVIEW PROCESS INVESTIGATION

##### 505.1 GRIEVANTS\_

###### 1. Filing of Grievance.

A. Any person or entity, including the Board, may file a grievance, as defined in section 501.4.16 against a certified professional guardian and conservator.

~~B. The Disciplinary Committee Chair may open a grievance based on any information obtained by the AOC or the Board.~~

~~C. B.~~ 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 C or to any other person contacted during the investigation.

- i. 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~~ their identity disclosed, and which the Disciplinary Standards of Practice Committee approves. At the discretion of the Disciplinary Standards of Practice Committee Chair, the grievant's identity may be revealed for good cause.

- ii. 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~~ they brought the grievance may remain confidential.

2. Grievant Rights. A grievant has the following rights:

- A. To be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to communicate with respect to the status of the grievance, and its investigation if such an assignment is made;
- B. To have a reasonable opportunity to speak with the person assigned to communicate with respect to the grievance, by telephone or in person, about the substance of the grievance or its status;
- C. To submit additional supplemental written information or documentation at any time; If a grievance has been referred to the superior court, AOC staff shall forward copies of such additional information and documentation received to the superior court.
- D. To attend any hearing conducted into the grievance;
- E. 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;
- F. To be advised of the disposition of the grievance;
- G. To be advised when his or her identity will no longer be confidential; and
- ~~H. After supplying additional information in reference to the grievance, to request reconsideration of a dismissal of the grievance as provided in DR-506.2. If the grievance is dismissed and the grievant disagrees with the result, be advised that the grievant may file a new grievance.~~

3. Grievant Duties. A grievant has the duty to do the following:

- A. 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;
- B. Assist in securing relevant evidence, which may include signing releases of information; and

- C. Appear and testify at any hearing resulting from the grievance when such testimony is requested by AOC, through disciplinary counsel.

If the grievant fails to do any of the duties above, a grievance may be dismissed.

## **505.2 BOARD'S INITIAL REVIEW OF GRIEVANCE FOR COMPLETENESS; REFERRAL OF GRIEVANCE TO SUPERIOR COURT**

1. The Board shall complete an initial review of grievances received as follows:

A. The Standards of Practice or subcommittee shall review the grievance for completeness within thirty (30) days of receipt. If the Committee or subcommittee determines that the grievance is complete, it shall refer the grievance to the Board for the Board's determination with respect to completeness

B. A grievance is considered complete if it: i) provides sufficient details of alleged conduct to demonstrate that a violation of statute, regulation, standard of practice, or rule, relating to the conduct of a certified professional guardian or conservator, could have occurred, ii) provides the dates the alleged conduct occurred, and iii) is signed and dated by the person filing the grievance. A grievance is considered signed pursuant to the definition of "sign" in RCW 11.130.010 (34)

C. If the Board determines that a grievance is complete, the Board shall refer the grievance to the superior court and provide notice to the CPGC within ten (10) days.

D. Additional Allegations. If, subsequent to the filing of a grievance, information is received by the Board or the AOC that constitutes additional allegations to those contained in the original grievance filed, the additional allegations shall be treated as a new grievance.

## **INVESTIGATION OF GRIEVANCE**

~~1. 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:~~

- ~~i. Provide a copy of the grievance to the respondent certified professional guardian and request a response pursuant to DR 506.3.~~
- ~~ii. Provide a copy of the respondent certified professional guardian's response to the grievant and request a response.~~

~~iii. Interview persons believed to possess relevant information or documents.~~

~~iv. Request and review relevant documents.~~

~~2. 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.~~

~~3. Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance:~~

~~i. The unwillingness of a grievant to continue the grievance;~~

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

~~iii. Restitution by the respondent.~~

~~4. Deferral.~~

~~i. 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;~~

~~i. The allegations are related to pending civil or criminal litigation;~~

~~ii. The respondent CPG is physically or mentally unable to respond to the investigation; or~~

~~ii. For other good cause shown.~~

~~ii. 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.~~

~~5. 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:~~

- ~~i. Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;~~
- ~~ii. Permit inspection and copying of the CPG's business records, files, and accounts that are relevant to the grievance or the proceeding;~~
- ~~iii. Furnish copies of requested records, files, and accounts that are relevant to the grievance or the proceeding; and~~
- ~~iv. Furnish written releases or authorizations if needed to obtain documents or information from third parties.~~

~~6. Failure to Cooperate.~~

- ~~i. 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.~~
- ~~ii. 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.~~

### ~~505.2~~**505.3 PRIVILEGES**

1. Privilege Against Self-Incrimination. A CPG's duty to cooperate is subject to the CPG's privilege against self-incrimination, where applicable.
2. Confidential Information. A CPG may not assert confidentiality under the Standards of ~~Professional Conduct~~ Practice 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.

## **506 REVIEW BY DISCIPLINARY COMMITTEE STANDARDS OF PRACTICE COMMITTEE AND BOARD AFTER SUPERIOR COURT REVIEW; INVESTIGATION; DISPOSITION**

### **506.1 REVIEW OF GRIEVANCE AFTER SUPERIOR COURT DISPOSITION BY STANDARDS OF PRACTICE COMMITTEE AND BOARD**

~~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 Standards of Practice Committee or subcommittee has received the superior court disposition or referral from the superior court, the Standards of Practice Committee or subcommittee shall review the information and make a recommendation to the Board regarding dismissal or initiation of an investigation. The Board shall make the determination to dismiss or initiate an investigation. If an investigation is authorized, the investigation shall proceed pursuant to Section 506.2 under the oversight of the Standards of Practice 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>~~

### **~~506.2 DISMISSAL OF GRIEVANCE BY DISCIPLINARY COMMITTEE~~**

- ~~1. 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 ACO Committee, AOC must notify:
  - A. The respondent of the allegations and dismissal of the grievance; and
  - B. The grievant of the outcome and the procedure for review in this rule.~~
- ~~2. 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. 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.~~
- ~~3. Authority on Review. In reviewing a request to re-open a grievance under this rule, the Standards of Practice Committee may:
  - A. Affirm the dismissal;
  - B. Order further investigation as appropriate.~~

### **506.2 BOARD INVESTIGATION OF GRIEVANCES AFTER SUPERIOR COURT REVIEW AND BOARD AUTHORIZATION OF INVESTIGATION**

1. Board Investigation of Grievances. The Board shall resolve grievances within a reasonable time. Grievances received by the Board shall be investigated after superior court review (during which time the one hundred and eighty days is tolled) and the resolution determined and in process within one hundred eighty days of receipt.
  - A. The one hundred eighty days is also tolled during any period of time when:
    - i. The Board has provided a CPGC an opportunity to respond to a grievance

against them and the Board is awaiting the CPGC's response; or

ii. A Board disciplinary hearing has been requested or is in process and during the time of post-hearing Board review of the hearing officer's recommendations through issuance of a final Board order on the matter

2. Review and Investigation. The AOC must review any alleged or apparent misconduct by a CPGC that the Board has determined requires investigation. The investigation shall commence at such time as the Board has received a superior court's entered order with findings or upon the superior court referring a grievance back to the Board. The Board must accept as facts any finding of fact contained in the order. The Board must act consistently with any finding of fact issued in that order. When appropriate the investigation should include the following:

i. Provide a copy of the grievance to the respondent certified professional guardian and conservator and request a response pursuant to DR 506.2.5.

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

iii. Interview persons believed to possess relevant information or documents

iv. Request and review relevant documents.

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

i. The unwillingness of a grievant to continue the grievance;

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

iii. Restitution by the respondent.

4. Extenuating Circumstances.

i. An investigation into alleged acts of misconduct by a CPGC may be deferred for extenuating circumstances by the Standards of Practice Committee in consultation with the Chair of the Board, if it appears that the deferral will not endanger the public, provided that the deferral does not permit the Board to exceed the 180 day resolution period, and;

i. The allegations are related to pending civil or criminal litigation;

ii. The respondent CPGC is physically or mentally unable to respond to the investigation; or

ii. For other good cause shown.

5. Duty to Furnish Prompt Response. The respondent CPGC 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 CPGC must:

- i. Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;
- ii. Permit inspection and copying of the CPGC's business records, files, and accounts that are relevant to the grievance or the proceeding;
- iii. Furnish copies of requested records, files, and accounts that are relevant to the grievance or the proceeding; and
- iv. Furnish written releases or authorizations if needed to obtain documents or information from third parties.

6. Failure to Cooperate.

- i. Interim Suspension. If a CPGC has not complied with any request made under DR 506.2.5 for more than thirty (30) days, the AOC may notify the CPGC that failure to comply within ten (10) days may subject the CPGC to interim suspension under rule 509.5.
- ii. Grounds for Discipline. A CPGC's failure to cooperate fully and promptly with an investigation as required by DR -506.2.5 is also grounds for discipline.

### **506.3 DISMISSAL OF GRIEVANCE BY STANDARDS OF PRACTICE COMMITTEE AND BOARD AFTER INVESTIGATION**

- 1. If, after investigation, the Standards of Practice Committee has determined it has sufficient information regarding the allegation, it must either recommend dismissal of the grievance to the Board pursuant to 506.3.2 or proceed under DR 507 or DR 508.
- 2. Dismissal. The Standards of Practice Committee may recommend that the Board dismiss grievances after investigation. The Board shall approve or deny the dismissal. On dismissal by the Board, , AOC must notify:
  - A. The respondent of the allegations and dismissal of the grievance; and
  - B. The grievant of the outcome..



## 506.4 RESPONSE TO GRIEVANCE

The certified professional guardian and conservator shall have thirty fifteen (3015) days to respond to the allegations and provide any mitigating information. This response and information shall be sent to the AOC. Should the CPGC require more time to adequately respond, the CPGC shall make a request in writing to AOC stating the reasons for such an extension of time. The Disciplinary Standards of Practice Committee Chair ~~or AOC~~ shall make a determination regarding whether to grant the request for extension within five (5) days of receiving the request

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<sup>4</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.~~

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## 507 RESOLUTION WITHOUT COMPLAINT

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~~ an Agreement Regarding Discipline (DR 507.2), or voluntary ~~resignation~~ ~~(surrender)~~ in lieu of discipline (DR 507.3).

### 507.1 ADVISORY LETTER

An advisory letter may be issued when a complaint is not warranted, but it is appropriate to caution a respondent CPGC concerning his or her conduct. An advisory letter is not confidential and may be subject to a public records request, but will not be posted to the Board's public website. ~~and~~ An advisory letter does not constitute a finding of misconduct, is not a sanction, and is not a disciplinary action. An advisory letter may be issued to notify a certified professional guardian and conservator that:

1. While there is insufficient evidence to support disciplinary action, the Disciplinary Standards of Practice Committee believes that continuation of the activities that led to the investigation may result in further Board action against a respondent certified professional guardian and conservator;
2. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or
3. While a certified professional guardian and conservator has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Disciplinary Standards of Practice Committee believes that repetition of the activities that led to the investigation may result in further Disciplinary Standards of Practice Committee action against a CPGC.

### 507.2 SETTLEMENT AGREEMENTS AGREEMENT REGARDING DISCIPLINE

1. Requirements. Any disciplinary matter or proceeding may be resolved by an an Settlement Agreement ~~(Agreement Regarding Discipline)~~ at any time. The ~~Settlement Agreement~~ Agreement Regarding Discipline must be signed by the respondent CPGC and AOC, and approved by the Disciplinary Standards of Practice Committee and the Board. An Settlement Agreement Agreement Regarding Discipline is a finding of misconduct, is a sanction and is subject to public disclosure.
2. Form. ~~A Settlement Agreement~~ An Agreement Regarding Discipline:
  - A. Must provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Disciplinary Standards of Practice 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 Agreement Regarding Discipline useful in any subsequent disciplinary proceeding against the respondent CPGC;
  - ~~B. Must set forth the respondent's prior disciplinary record;~~

~~C.B.~~ Must set forth the respondent's prior disciplinary record;

~~D.C.~~ Must state that the ~~Settlement Agreement~~ Agreement Regarding Discipline is not binding on the ~~Disciplinary Standards of Practice~~ Committee as a final statement of facts about the respondent's conduct until approved by the Certified Professional Guardianship and Conservatorship Board, and that additional facts may be proved in a subsequent disciplinary proceeding;

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

~~F.E.~~ May impose terms and conditions and any other appropriate provisions.

3. Conditional Approval. The ~~Disciplinary Standards of Practice~~ Committee's approval is conditional, as all ~~Settlement Agreements~~ Agreements Regarding Discipline must be submitted to the Board for their final approval. The Board's decision on whether to approve ~~a Settlement Agreement~~ an Agreement Regarding Discipline shall be reflected in ~~b~~Board minutes.

4. Response. Upon receipt of a proposed ~~Settlement Agreement~~ Agreement Regarding Discipline, the respondent CPGC must respond in writing within thirty (30) days to the proposed ~~Settlement Agreement~~ Agreement Regarding Discipline. The 180 day clock is tolled during the time the Board is awaiting the CPGC's response to a proposed Agreement Regarding Discipline. The CPGC may:

A. Agree to and sign the ~~Settlement Agreement~~ Agreement Regarding Discipline;

B. Propose changes to the ~~Settlement Agreement~~ Agreement Regarding Discipline;

C. Reject the ~~Settlement Agreement~~ Agreement Regarding Discipline and request a hearing;

D. Voluntarily ~~resign~~ surrender certification in lieu of further disciplinary proceedings.

### **507.3 VOLUNTARY ~~RESIGNATION (SURRENDER)~~, IN LIEU of FURTHER DISCIPLINARY PROCEEDINGS**

1. Grounds. A respondent CPGC who desires not to contest or defend against allegations of misconduct may, at any time, voluntarily ~~resign~~ surrender his or her certification as a CPGC in lieu of further disciplinary proceedings.

2. Process. The respondent first notifies the AOC that the respondent intends to submit a voluntary ~~resignation~~ surrender 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~~ surrender their license by submitting to AOC a signed voluntary ~~resignation~~ surrender, sworn to or affirmed under oath and notarized. The signed voluntary ~~resignation~~ surrender must include the following to be accepted for filing:

A. 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;

B. An acknowledgement that the voluntary ~~resignation~~ surrender may be permanent, including the statement, "I understand that my voluntary ~~resignation~~ surrender may be permanent and that any future application by me for reinstatement as a CPGC will consider the circumstances around the voluntary ~~resignation~~ surrender including resolution of the pending disciplinary action."

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

~~C.D.~~ The completion of the steps stated in Regulation 708 regarding Voluntary Surrender of Certification;

~~D.E.~~ A statement that when applying for any employment as a fiduciary, the respondent agrees to disclose the voluntary ~~resignation~~ surrender in response to any question regarding disciplinary action or the status of the respondent's certification;

~~E.F.~~ A statement that the respondent agrees to pay any restitution or additional costs and expenses as may be requested by the Disciplinary Standards of Practice Committee, and attaches payment for costs as described in DR 507.3.5; and

~~F.G.~~ A statement that when the voluntary ~~resignation~~ surrender becomes effective, the respondent will be subject to all restrictions that apply to a CPGC whose certification has been revoked.

3. Public Filing. Upon receipt of a voluntary ~~resignation~~ surrender in lieu of discipline meeting the requirements set forth above, AOC shall file it as a public record of the Disciplinary Standards of Practice Committee. AOC will also notify the superior courts and all other agencies from which the CPGC receives appointments of the voluntary ~~resignation~~ surrender.

4. Effect. A voluntary ~~resignation~~ surrender in lieu of discipline meeting the requirements set forth above, under this rule is effective upon its filing with the AOC and completion of the steps required under Regulation 708 Voluntary Surrender. All disciplinary proceedings against the respondent terminate ~~except the AOC~~ However, the Board 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 unless the respondent agrees not to seek recertification as part of the voluntary surrender in lieu of discipline.

5. Costs and Expenses.

A. With the voluntary ~~resignation~~ surrender, 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~~ surrender, 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~~ surrender, to the Disciplinary Standards of Practice Committee in writing, for the determination of appropriate costs and expenses.

#### **507.4 PROCEDURE IF RESOLUTION NOT REACHED WITHIN 180 DAYS OF GRIEVANCE RECEIPT PLUS TOLLED PERIODS**

507.4.1 If the grievance cannot be resolved within one hundred eighty days plus any tolled periods, the Board shall notify the CPGC.

507.4.2 The CPGC may propose a resolution of the grievance with facts and/or arguments.

507.4.3 The Board may accept the proposed resolution or determine that an additional ninety days are needed to review the grievance.

507.3.4 If the Board has not resolved the grievance within the additional ninety days the CPGC may:

(a) File a motion for a superior court order to compel the Board to resolve the grievance within a reasonable time; or

(b) Move for the superior court to resolve the grievance instead of being resolved by the Board

## **508 RESOLUTION WITH COMPLAINT**

### **508.1 GENERAL PROCEDURE**

1. Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated apply directly.

### **508.2 COMMENCEMENT OF PROCEEDINGS**

1. Complaint.

A. Filing. After a preliminary finding of misconduct by the Disciplinary Standards of Practice Committee pursuant to DR 506, a Complaint may be filed by the Board with AOC.

B. Service. After the Complaint is filed, AOC must serve the Complaint, with a Notice to Answer, on the respondent CPGC.

C. Content. The Complaint must state the respondent CPGC'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.

D. Prior Discipline. Prior disciplinary action against the respondent may be

described in the Complaint.

E. 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 DR508.4.

2. Joinder. The Disciplinary Standards of Practice 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.

**508.3 NOTICE TO ANSWER**

1. Content. The Notice to Answer must be substantially in the following form:

BEFORE THE DISCIPLINARY STANDARDS OF PRACTICE  
COMMITTEE OF THE CERTIFIED PROFESSIONAL  
GUARDIANSHIP AND CONSERVATORSHIP BOARD

In Re )  
 ) NOTICE TO ANSWER  
 )  
 )  
 )  
\_\_\_\_\_ )

To: The above named CPGC:

AND TO: Respondent Attorney

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).

2. 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 and Conservatorship Board, Administrative Office of the Courts, P.O. Box 41170, Olympia, WA 98504-1170. Electronic service or filing is not accepted without prior agreement.

3. 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).

4. 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 and Conservatorship Board, Administrative Office of the Courts, P.O. Box 41170, Olympia, WA 98504-1170. Electronic service or filing is not accepted without prior agreement.

5. Upon receipt of your Answer to Disciplinary Action, a Hearing Officer will be appointed to conduct all further proceedings. The Hearing Officer shall ensure that the parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing.

6. All disciplinary hearings shall be held within the State of Washington at such place and time as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, at the discretion of the Hearing Officer.

7. If you fail to answer within 30 days of the date of service of this Complaint, the Board may proceed to obtain an order of default against you pursuant to DR 508.5. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and you may not participate further in the proceedings unless the order of default is vacated under this regulation.

8. The Certified Professional Guardianship and Conservatorship Board Disciplinary Regulations govern all proceedings and may be found on the Washington Courts website at:

{Updated hyperlink when adopted}

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_

Certified Professional Guardianship and  
Conservatorship Board

By \_\_\_\_\_



## 508.4 ANSWER

1. Time to Answer. Within thirty (30) days of service of the Complaint and Notice to Answer, the respondent CPGC must file and serve an Answer. Failure to file an Answer as required may result in the respondent forfeiting his or her opportunity to present a defense or engage in pre-hearing discovery.
2. Content. The Answer must contain:
  - A. A specific denial or admission of each fact or claim asserted in the Complaint;
  - B. A statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition;
  - C. Any mitigating factors as described in DR 509.1.3.(B); and
  - D. An address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.
3. Filing and Service. The Answer must be mailed to AOC.

## 508.5 ENTRY OF DEFAULT

1. Timing: If a certified professional guardian and conservator (CPGC), after being served with a notice to answer as provided in DR 508.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, the Board's attorney of record in the disciplinary proceeding may serve the CPGC with a written motion for an order of default.
2. Motion: The Board's attorney of record must serve the CPGC with a written motion for an order of default and a copy of this regulation at least five (5) days before entry of the order of default. The motion for an order of default must include the following:
  - A. The dates of filing and service of the notice to answer, formal complaint and any amendments to the complaint; and
  - B. The Board's attorney of record statement that the CPGC has not timely filed an answer as required by DR 508.4 and that the Board's attorney of record seeks an order of default under this regulation.
3. Entry of Order of Default: If the CPGC fails to file a written answer with the Administrative Office of the Courts (AOC) within twenty (20) days of service of the motion for entry of an order of default, the Hearing Officer, or if no Hearing Officer has been assigned, the chair of the Standards of Practice Committee, on proof of proper service of the motion, enters an order finding the CPG in default.
4. Effect of Order of Default: Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the CPGC may not participate further in the proceedings unless the order of default is Page 96 of 137 vacated under this regulation. The Board may proceed to resolve the case without further



notice to, or hearing for the benefit of the CPGC.

5. Proceedings After Entry of an Order of Default.
6. Service: The AOC serves the order of default and a copy of this rule under DR 504.1.
7. Disciplinary Proceeding: Within sixty (60) days of the filing of the order of default, the Board must conduct a disciplinary proceeding to impose disciplinary action based on the allegations and violations established under DR 508.2.1. At the discretion of the Board, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. The attorney of record for the Board may present additional evidence including, but not limited to, requests for admission under DR 508.8 and depositions, affidavits, and declarations regardless of the witness's availability.
8. Motion To Vacate Order of Default: Within thirty (30) days after service of a default order, the CPGC may file a written motion requesting that the order be vacated, on the following grounds:
  - A. Mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
  - B. Erroneous proceedings against a CPGC, who was, at the time of the default, incapable of conducting a defense;
  - C. Newly discovered evidence that by due diligence could not have been previously discovered;
  - D. Fraud, misrepresentation, or other misconduct of an adverse party;
  - E. The order of default is void;
  - F. Unavoidable casualty or misfortune preventing the CPGC from defending;
  - G. Any other reason justifying relief from the operation of the default.
9. Burden of Proof: The CPGC bears the burden of proving the grounds for setting aside the default. If the CPGC proves that the default was entered as a result of a disability which made the CPGC incapable of conducting a defense, the default must be set aside.
10. Service and Contents of Motion: The motion must be filed and served under DR 504 and be accompanied by a copy of CPGC's proposed answer to each formal complaint

for which an order of default has been entered. The proposed answer must state with specificity the CPGC's asserted defenses and any facts the CPGC asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- A. The date on which the CPGC first learned of the entry of the order of default;
- B. The grounds for setting aside the order of default; and
- C. An offer of proof of the facts that the CPGC expects to establish if the order of default is vacated.

11. Response to Motion: Within ten (10) days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.

12. Decision: The Hearing Officer decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the Hearing Officer may order a stay of proceedings not to exceed thirty (30) days. In granting a motion to vacate an order of default, the Hearing Officer has discretion to order appropriate conditions.

13. Appeal of Denial of Motion: A CPGC may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the Hearing Officer's decision. The CPGC must file the notice of appeal within ten (10) days of service on the CPGC of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed thirty (30) days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

14. Decision To Vacate Is Not Subject to Interim Review: An order setting aside an order of default is not subject to interim review by the Board.

## **508.6 SCHEDULING**

1. All disciplinary hearings must be held in Washington State at such time and place as may be directed by the Hearing Officer. Hearings may take place by telephone or other electronic means, in the discretion of the Hearing Officer. If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the Hearing Officer.

2. Scheduling Order. The Hearing Officer must enter an order setting the dates and places of hearings. This order will include any prehearing deadlines the Hearing Officer deems required by the complexity of the case, which may include witness lists, discovery dates, motions, and exhibits. The AOC shall ensure that all parties receive notice of the time and place of the hearing at least thirty (30) days before the hearing, unless this time requirement is waived by all parties. Continuance. Either party may move for a continuance of the hearing date. The Hearing Officer has discretion to grant the motion for good cause shown.

## 508.7 MOTIONS

Motions must be in writing and served on the opposing party. The Hearing Officer shall determine whether a response and reply is called for and the timing of any such response or reply. The Hearing Officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by telephone or other electronic means at the discretion of the Hearing Officer. A ruling on a written motion must be in writing and filed with the AOC.

## 508.8 DISCOVERY AND PREHEARING PROCEDURES

1. General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.
2. Requests for Admission. After a Complaint is filed, the parties may request admissions under Civil Rule 36.
3. 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.
4. 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

1. Respondent CPGC Must Attend. A respondent CPGC given notice of a hearing must attend the hearing. If, after proper notice, the respondent fails to attend the hearing, the Hearing Officer:
  - A. 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
  - B. Must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:
    - i. The facts stated are within the witness's personal knowledge;
    - ii. The facts are set forth with particularity; and
    - iii. It shows affirmatively that the witness could testify competently to the stated facts.
2. 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.

3. 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.

### **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 CPGC 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.

### **508.11 DECISION OF HEARING OFFICER**

Within ninety (90) days after the proceedings are concluded, unless extended by agreement, the Hearing Officer should file with the parties a Decision in the form of findings of fact, conclusions of law, and order recommending disciplinary sanction.

## Guardianship Program Rules

### 509 DISCIPLINARY SANCTIONS

#### 509.1 GUIDELINES FOR IMPOSING DISCIPLINARY SANCTIONS:

Following a determination that a CPGC has engaged in misconduct, disciplinary sanctions may be appropriate. Factors to be considered in imposing disciplinary sanctions, include:

1. Nature of the misconduct;
2. Potential or actual injury caused by the CPGC's misconduct;
3. The existence of aggravating or mitigating factors:
  - A. Aggravating factors include prior disciplinary action by the Board against the same CPGC, substantial experience as a CPGC, intentional, premeditated, knowing, grossly incompetent or grossly negligent act, bad faith or obstruction, dishonest or selfish motives, a pattern of misconduct, multiple offenses, failure to cooperate during the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, indifference to making restitution, and illegal conduct.
  - B. Mitigating factors include the absence of a prior disciplinary record, isolated incident not likely to recur, remoteness of misconduct, inexperience as a CPGC, implementation of remedial measures to mitigate harm or risk of harm, self-reported and voluntary admission of violation, timely good faith efforts to make restitution or rectify consequences of misconduct, and temporary circumstances outside of the CPGC's control.

#### 509.2 TYPES OF DISCIPLINE

Upon a finding that a CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, or the guardian and conservator's fiduciary duty, or violating a court order, the Board may impose one or more of the following:

1. Revocation of certification;
2. Suspension of certification;
3. Prohibition Against Taking New Cases;
4. Reprimand;
5. Probation;
6. Other Disciplinary Sanctions as described in DR 509.7
7. Restitution.

### 509.3 REVOCATION OF CERTIFICATION

1. Applicability of Revocation: Revocation may be imposed when a professional guardian and conservator:
  - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, a court order, or the guardian and conservator'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
  - b. Engages in any act of dishonesty, fraud, deception, conflict of interest, selfishness or misrepresentation that adversely reflects on the guardian and conservator's fitness to practice; or
  - c. 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 individual subject to guardianship or conservatorship's or their conservatorship estate's financial obligations; or
  - d. Engages in conduct or misconduct that adversely impacts an incapacitated person individual subject to guardianship or conservatorship in a highly significant manner. "Highly significant" in this context, means, but is not limited to, a financial loss to an incapacitated person individual or their finances or 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, such individual; or
  - e. Engages in conduct that constitutes any Washington felony-felony or other crime involving dishonesty, abuse, neglect,- or-use of physical force that occurs either while performing duties as a guardian or conservator or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.
  - f. Engages in conduct that constitutes a misdemeanor or gross-misdemeanor involving moral turpitude a crime relevant to the functions the individual assumes as guardian or conservator- that occurs either while performing duties as a guardian or conservator or outside those duties. Revocation of certification may occur even if such conduct did not result in a criminal conviction.
2. Duties of CPGC upon revocation of certification. Upon receipt of the Supreme Court's order revoking the CPGC's certification, the CPGC will submit a complete list of all active guardianships and conservatorships in which the CPGC serves as the court-appointed guardian or standby guardian- conservator to AOC, and must immediately notify the superior court with authority over any of the CPGC's cases of the revocation. The CPGC shall ensure the timely transfer of any active guardianship and conservatorship cases to a new CPGC and cooperate with the court in this process. The CPGC shall

turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional CPGC. If requirements aren't met the Board may file a motion for contempt of court with the Supreme Court.

## 509.4 SUSPENSION

1. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian or conservator may be imposed when a professional guardian and conservator:
  - a. Applicability of Suspension: A suspension for a period of time from performing as a professional guardian or conservator may be imposed when a professional guardian and conservator: Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship and Conservatorship Program rules or regulations, or Washington statutes, a court order, or the guardian's fiduciary duty; or
  - b. Engages in conduct that occurs either while performing duties as a guardian or conservator or outside those duties, that meets the statutory elements of any Washington gross misdemeanor or misdemeanor, and which adversely reflects on the professional guardian and conservator's fitness to practice; or
  - c. Engages in ordinary negligence in the performance of their duties as a guardian. "Ordinary negligence" is defined in this context as a guardian and conservator's failure to exercise reasonable care in the performance of their professional duties.
  - d. Engages in conduct or misconduct that adversely impacts an incapacitated person- individual subject to guardianship or conservatorship in a manner that is not "highly significant" as defined above.
  - e. Suspension may be imposed for conduct or misconduct that does not rise to the level of Revocation.
2. Term of Suspension. A suspension must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. Suspension does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing of declarations, etc.
3. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the suspension period. The request shall include a statement verifying that the conditions of the suspension have been met. With approval of the Disciplinary- Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
4. Duties of CPGC upon suspension. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian or the standby guardian- conservator and must immediately



notify the superior court with authority over any of the CPGC's cases of the suspension. The CPGC shall ensure the timely transfer of any active guardianship or conservatorship cases to a new guardian or conservator and cooperate with the court in this process. The CPGC shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPGC. The CPGC shall immediately cease holding him or herself out to the public as a professional guardian and conservator.

## 509.5 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

### 1. Definitions.

A. "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, or a verdict of guilty, unless the defendant affirmatively shows that the guilty plea or verdict was not accepted or was withdrawn, or upon entry of a

finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted. Conviction does not include findings or verdicts that were disclosed at the time of application.

### B. "Serious Crime" includes any:

- i. Felony;
- ii. Crime, a necessary element of which, as determined by its statutory or common law definition, includes any of the following:
  - a. Commission of an act of violence;
  - b. Interference with the administration of justice;
  - c. Perjury;
  - d. Fraudulent misrepresentation;
  - e. Bribery;
  - f. Extortion;
  - g. Misappropriation;
  - h. Theft.
- ii. Attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

### 2. Procedure upon Conviction.

If a CPGC is convicted of a felony or other serious crime involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator, or, is convicted of a misdemeanor or gross misdemeanor



involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator~~moral turpitude~~, AOC must file with the Board a certified copy of the judgment and sentence that sets out such conviction. The Board shall decertify a professional guardian and conservator upon the conviction of ~~a felony or a misdemeanor or gross misdemeanor involving moral turpitude~~such crimes, under either state or federal law, regardless whether such conviction is after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of any appeal.

AOC must also petition the Disciplinary Standards of Practice Committee Chair for an order suspending the respondent CPGC during the pendency of disciplinary proceedings.

The decertification shall be effective upon the filing of a certified copy of such conviction with the Board. The Board shall file the certified copy of the conviction with other Board records pertaining to the professional guardian's certification. The Board shall provide written notice of the decertification to the professional guardian and conservator by certified mail, directed to the guardian and conservator's last known address maintained by the AOC. The notice shall advise the professional guardian and conservator of the decertification and the reason(s) for the decertification. The notice shall further advise that if the professional guardian and conservator should not have been decertified by the Board, the professional guardian and conservator may file a petition requesting an administrative hearing. The petition shall set forth in detail the facts supporting the professional guardian and conservator's claim that an administrative error has occurred and that the professional guardian and conservator has not been convicted of a felony, or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator~~moral turpitude~~. The petition must be signed by the professional guardian and conservator under penalty of perjury. The professional guardian and conservator must file the petition within 15 days of the date of mailing of the Board's notice of decertification. Any petition not filed within 15 days shall be dismissed by the Board.

If a timely petition is filed by the professional guardian and conservator, the Board Chair shall appoint a three-person Review Panel to conduct a hearing on the petition. The sole issue before the Review Panel shall be to determine whether the professional guardian has been convicted of a felony, or of a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator~~moral turpitude~~. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation about whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the professional guardian and conservator.

The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is approved, then the professional guardian and conservator shall be eligible for recertification, if the professional guardian and conservator shows proof of compliance with all other requirements for certification. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by first-class mail to the

professional guardian. and conservator. Any such order shall be final.

A. If a CPGC is convicted of a crime that is not a felony, a serious crime, or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator ~~moral turpitude~~, the Disciplinary Standards of Practice Committee considers a report of the conviction in the same manner as any other report of possible misconduct by a CPGC.

3. Petition. A petition to the Disciplinary Standards of Practice Committee for suspension under this rule must include a copy of any available document establishing the fact of conviction. AOC may also include additional facts, statements, arguments, affidavits, and documents in the petition. AOC must serve a copy of the petition on the respondent, and proof of service filed with the AOC.

4. Immediate Interim Suspension. If the crime of conviction is a felony or other serious crime or a misdemeanor or gross misdemeanor involving dishonesty, neglect, abuse, or use of physical force, or otherwise relevant to the functions of a guardian or conservator ~~moral turpitude~~, the Disciplinary Standards of Practice Committee must enter an order immediately suspending the respondent's CPGC certification.

A. If suspended, the respondent must comply with DR 509.4.4.

B. Suspension under this rule occurs:

i. Whether the conviction was under a law of this state, any other state, or the United States;

ii. Whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

iii. Regardless of the pendency of an appeal of the underlying conviction.

5. Duration of Interim Suspension. An interim suspension under this rule must terminate when the disciplinary proceedings in response to the complaint are fully completed or after appeal of the Disciplinary Standard of Practice Committee's decision.

6. Termination of Suspension.

A. Petition and Response. A respondent may at any time petition the Disciplinary Standards of Practice Committee to recommend termination of an interim suspension. AOC, through disciplinary counsel, may file a response to the petition.

B. Disciplinary Standards of Practice Committee Recommendation. If either party requests, the Disciplinary Standards of Practice Committee must hear oral arguments on the petition at a time and place and under terms as the Disciplinary Standards of Practice Committee Chair directs. The Disciplinary

Standards of Practice Committee may recommend termination of a suspension only if the Committee makes an affirmative finding of good cause to do so. There is no right of appeal from a ~~Disciplinary Standards of Practice~~ Committee's decision regarding interim suspension.

## 509.6 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

### 1. Types of Interim Suspension.

- A. ~~Disciplinary Standards of Practice~~ Committee Finding of Risk to Public. AOC may petition the ~~Disciplinary Standards of Practice~~ Committee for an order suspending the respondent CPGC during the pendency of any proceeding under these rules if: it appears that a respondent's continued practice as a CPGC poses a substantial threat of serious harm to the public.
- B. ~~Disciplinary Standards of Practice~~ Committee Recommendation for Decertification. When the recommended sanction in a Complaint is decertification, AOC may file a petition for the respondent's suspension during the remainder of the proceedings.
- C. Failure To Cooperate with Investigation. When any CPGC fails without good cause to comply with a request under DR 505.2.5 for information or documents, or with a subpoena issued under DR 504.6, AOC may petition the ~~Disciplinary Standards of Practice~~ Committee for an order suspending the CPGC pending compliance with the request or subpoena. If the CPGC complies with the request or subpoena, the ~~Disciplinary Standards of Practice~~ Committee may lift the suspension on terms the ~~Disciplinary Standards of Practice~~ Committee deems appropriate.

### 2. Procedure.

- A. Petition. A Petition to the ~~Disciplinary Standards of Practice~~ Committee under this rule must set forth the acts of the CPGC constituting grounds for interim suspension. The Petition may be supported by documents or affidavits. The AOC must serve the Petition on the ~~Disciplinary Standards of Practice~~ Committee and respondent CPGC.
- B. Show Cause Order. Upon filing of the Petition, the ~~Disciplinary Standards of Practice~~ Committee Chair orders the CPGC to appear in person or telephonically before the ~~Disciplinary Standards of Practice~~ Committee to show cause why the Petition for interim suspension should not be granted. This Show Cause Hearing cannot occur less than ten (10) days after service on the respondent of the Show Cause Order.
- C. Answer to Petition. The CPGC may answer the Petition. An Answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the Show Cause Hearing.
- D. Filing of Answer. Any Answer must be filed with the AOC within ten (10) days of receipt of the Show Cause Order.

- E. Settlement Agreement. At any time a respondent CPGC and Disciplinary Standards of Practice Committee may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime or a substantial threat of serious harm to the public. Settlement Agreements under this rule are public upon filing with the AOC, but the Disciplinary Standards of Practice Committee may order that supporting materials are confidential. The respondent may petition the Disciplinary Standards of Practice Committee to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Disciplinary Standards of Practice Committee may terminate the interim suspension.
- F. Show Cause Hearing. The respondent may appear before the Disciplinary Standards of Practice Committee at the hearing to show cause why the Petition for interim suspension should not be granted.
- G. Application of Other Rules. If the Disciplinary Standards of Practice Committee enters an interim order suspending the CPGC, the rules relating to suspended CPGCs, including DR 509.4, apply.

## 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 CPGC's name from all public AOC Web site lists of certified professional guardian and conservators.

## 509.8 PROHIBITION AGAINST TAKING NEW APPOINTMENTS

1. Applicability of Prohibition Against Taking New Appointments. A prohibition against taking new appointments may be imposed when a professional guardian and conservator:
  - a. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty; or
  - b. Engages in conduct or misconduct that occurs while performing duties as a guardian or conservator that adversely reflects on the professional guardian and conservator's fitness to practice.
2. Prohibition Against Taking New Appointments may be imposed for conduct or misconduct that does not rise to the level of Revocation.
3. Term of Prohibition Against Taking New Appointments. A prohibition against taking new appointments must be for a fixed period of time and must specifically state what requirements, if any, be completed prior to the respondent's reinstatement. A prohibition against taking new appointments does not affect the requirement to comply with other program policies, such as reporting of continuing education, and Errors & Omissions Insurance, payment of dues, filing

of declarations, etc.

4. Reinstatement. The respondent shall submit to the AOC a request for written reinstatement before the conclusion of the prohibition against taking new appointment period. The request shall include a statement verifying that the conditions of the prohibition against taking new appointment have been met. With approval of the Disciplinary Standards of Practice Committee Chair, the AOC shall reinstate the CPGC.
5. Duties of CPGC upon being prohibited from accepting new appointment. The CPGC will submit a complete list of all active guardianships and conservatorships in which he or she serves as the court-appointed guardian ~~or the standby guardian or conservator~~ and must immediately notify the superior court with authority over any of the CPGC's cases of the prohibition.

#### 509.9 LETTER OF REPRIMAND

1. A letter of reprimand may be imposed when a professional guardian and conservator:
  - A. Fails to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty; or
  - B. The guardian and conservator engages in conduct which does not rise to the level of a Revocation, Suspension or Prohibition Against Taking New Cases.

#### 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, court orders or the guardian's fiduciary duty. Probation shall consist primarily of a monitoring function that seeks to ensure the guardian and conservator:
  - 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, court orders, and guardian's fiduciary duty.
2. The Disciplinary Standards of Practice 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 and conservator 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.

#### **509.11 OTHER DISCIPLINARY SANCTIONS**

1. Upon a finding that a CPGC has failed to comply with the duties, requirements or prohibitions in the Standards of Practice, or Guardianship Program rules or regulations, or Washington statutes, court orders, or the guardian's fiduciary duty, the Board may impose one or more of the following:
  - A. Limitation on practice;
  - B. Requirement that the CPGC attend specific education courses or training, including the initial mandatory training;
  - C. Alcohol or drug treatment;
  - D. Behavior modification classes;
  - E. Professional office practice or management advice and support to help the CPGC correct deficiencies and make decisions.
  - F. Periodic audits or reports;
  - G. Requirement that the CPGC work with a mentor, who is a practicing or retired CPGC or that the CPGC's work be supervised;
  - H. Other requirements consistent with the purposes of discipline;
2. The Board must specify the terms and requirements in writing.
3. Failure to comply with the terms and requirements may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the discipline.

#### **509.12 RESTITUTION**

1. Restitution defined: Restitution is the payment of the victim's out-of-pocket expenses directly related to the respondent's misconduct.
2. Restitution May Be Required. After a finding of misconduct, a respondent CPGC may be ordered to make restitution to persons financially injured by the respondent's conduct.
3. Payment of Restitution.
  - A. A respondent ordered to make restitution must do so within thirty (30) days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.



- B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if:
  - i. The respondent demonstrates in writing present inability to pay restitution; and
  - ii. The AOC consults with the person's owed restitution.
- 4. Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

### **509.13 COSTS AND FEES**

- 1. Assessment. The Board's costs and fees may be assessed as provided in this rule against any respondent CPGC who is disciplined.
- 2. Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except fees as defined below, reasonably and necessarily incurred by the Board in the complete performance of its duties under these rules, whether incurred before or after the filing of a Complaint. Costs include, by way of illustration and not limitation:
  - A. Court reporter charges for attending and transcribing depositions or hearings;
  - B. Necessary travel expenses of the Hearing Officer, disciplinary counsel, AOC staff or witnesses;
  - C. Witness charges;
  - D. Costs of conducting an examination of books and records or an audit;
  - E. Costs incurred in supervising probation imposed under rule 509.5;
  - F. Telephone toll charges;
  - G. Costs for court records;
  - H. Costs for AOC staff professional services;
  - I. Costs of copying materials.
- 3. Fees defined. Fees assessed under this rule may be equal to the actual fees incurred by the AOC.
- 4. Statement of Costs and Fees.
  - A. Content. A statement of costs and fees must state with particularity the nature and amount of the costs claimed and also state the fees requested.

An appropriate AOC staff member must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

B. Service. The AOC serves a copy of the statement on the respondent.

5. Assessment Discretionary. Assessment of any or all costs and fees may be denied if it appears in the interests of justice to do so.

6. Payment of Costs and Fees.

A. A respondent ordered to pay costs and fees must do so within thirty (30) days of the date on which the assessment becomes final, unless the order provides otherwise, the respondent enters into a periodic payment plan with the AOC, or the restitution is stayed pending appeal.

B. The AOC may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and fees.

## **510 BOARD'S REVIEW**

### **510.1 DECISION**

1. Decision. For purposes of this title, "Decision" means the Hearing Officer's findings of fact, conclusions of law, and order recommending disciplinary sanction,.
2. Review of Decision. The Board reviews all Hearing Officer Decisions. Either party may file a written Notice of Review within thirty (30) days of the final Decision. The Disciplinary Standard of Practice Committee members shall recuse themselves from all review proceedings. All Board members shall disqualify themselves as necessary according to the standards set out in DR 502.2.6.
3. Notice of Review. The Notice of Review must include the following:
  - A. A statement that review being requested;
  - B. The portion of the Hearing Officer's decision to be challenged;
  - C. The general basis for the review; and
  - D. Whether a full or partial transcript should be ordered pursuant to 510.3.

### **510.2 TRANSCRIPT OF HEARING**

1. 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.



2. 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.

### **510.3 RECORD ON REVIEW**

1. Generally. The record on review consists of:
  - A. Any hearing transcript or partial transcript; and
  - B. Documents and exhibits admitted into the evidentiary record by the Hearing Officer.
2. References to the Record. Briefs filed must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits and documents. No Additional Evidence. Evidence not presented to the Hearing Officer must not be presented to the Board.
3. The AOC shall prepare and distribute the record on review to the Board.

### **510.4 BRIEFS**

1. When seeking review by the Board, the respondent has the right to file a brief, which shall include a statement in opposition to the Decision of the Hearing Officer, alleging errors of fact, law, or other pertinent matter.
2. Time for Filing Briefs. Briefs, if any, must be filed within twenty (20) days of service on the respondent CPG of a copy of the hearing transcript unless no transcript was requested. If no transcript was requested, briefs must be filed within twenty (20) days of the filing of the Notice of Review.
3. Disciplinary counsel must file a brief within fifteen (15) days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within fifteen (15) days of the expiration of the period for the respondent to file a brief.
4. The respondent may file a reply to disciplinary counsel's brief within ten (10) days of service of that brief on the respondent, unless respondent failed to file an initial brief.

### **510.5 DECISION OF BOARD**

1. Basis for Review. Board review is based on the Hearing Officer's Decision, the parties' briefs, and the record on review.
2. Action by Board. The Chair, by virtue of that office, is not disqualified from participating in the review before the Board or from participating in the Board's vote on a matter. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the Hearing Officer.
3. Board Order. The Board must issue a written Order within ninety (90) days of the hearing on the appeal. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the Hearing Officer, the Board must state the

reasons for its decision in a written Order. A Board member agreeing with the majority's Order may file separate concurring reasons. A Board member dissenting from the majority's Order may set forth in writing the reasons for that dissent. The Order should be prepared as expeditiously as possible and consists of the majority's decision together with any written dissent. A copy of the complete Order is served by the AOC on the parties.

4. Board's Order is Final. The Board's Order is final unless the Board is recommending suspension or decertification, in which case the Supreme Court shall review the Board's Decision. The Board will file its decision and the complete record with the Supreme Court.

## 510.6 CHAIR MAY MODIFY REQUIREMENTS

Upon written motion and for good cause shown, the Chair may modify the time periods in CR 10, and make other orders as appear appropriate to assure fair and orderly Board review.

## 511 SUPREME COURT REVIEW

511.1. Notification of Filing: Upon the filing of the Board's recommendation of suspension or decertification and of the record, the Supreme Court Clerk shall mail written notice to the professional guardian and conservator and counsel.

511.2 Review on the Record: The Supreme Court shall review any Board recommendation for suspension or decertification after consideration of the transmitted record. No oral argument or evidence will be heard by the Supreme Court. The Supreme Court may adopt, modify, or reverse the Board's recommendation by written order. The AOC shall mail a copy of the Supreme Court's order to all parties, counsel, and the Board. Costs, if any, of transcription and preparation of the record for Supreme Court review shall be paid by the Board.

511.3 Finality: The court's order in a disciplinary proceeding is final when filed unless the court specifically provides otherwise.

### 511.4 Decertified or Suspended Professional Guardian and Conservators

511.4.1 Referral to Court: The Supreme Court's order decertifying or suspending a professional guardian and conservator shall include provisions providing for the immediate referral of the matter to the superior court of each county.

511.4.2 Agencies: If the Board has recommended decertification or suspension of a professional guardian and conservator to the Supreme Court, the employer agency, if any, shall, upon notice of the Board's recommendation, promptly appear before the Board to determine how the decertification or

suspension shall affect continuation of the agency's certification. Continuing certification of an agency affected by the suspension or decertification of a professional guardian and conservator shall be determined by the Board. The Board's primary concern shall be the best interests of the ~~incapacitated persons~~ individual subject to guardianship or conservatorship. This provision does not supplant the exclusive jurisdiction of the superior court of each county over guardianship and conservatorship cases.

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

511.4.4 Immediate Cessation of Professional Guardian and Conservator Status: After entry of the order of decertification or suspension, the decertified or suspended professional guardian and conservator shall not accept any new appointments or engage in work as a professional guardian and conservator in any matter, except to assist in the orderly transfer of cases.

511.4.5 Affidavit of Compliance: Within ten (10) days of the effective date of the decertification or suspension order, the decertified or suspended professional guardian and conservator shall file with the AOC:

a) An affidavit attesting to full compliance with the provisions of the order, and with these regulations, including current mailing address.

b) A copy of the notification letter sent to all parties entitled to notice, together with a list of the names and addresses of all persons to whom the notice was sent.

511.4.6 Records Maintained: Proof of compliance with these regulations shall be a condition precedent to any petition for reinstatement.

## **511.5 DECERTIFIED OR SUSPENDED PROFESSIONAL GUARDIAN AND CONSERVATORS**

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 and conservator 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 and conservator shall be determined by the Board. The Board's primary concern shall be the best interests of the ~~incapacitated persons~~ individuals subject to guardianship and conservatorship. Notice to Interested Parties: Within ten (10) days of revocation of certification or suspension, the professional guardian and conservator shall notify all parties entitled to notice in any active or pending guardianship and conservatorship matters of the professional guardian and conservator's revocation of certification or suspension and the anticipated effect on the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship.

3. Immediate Cessation of Professional Guardian and Conservator 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 and conservator in any matter, except to assist in the orderly transfer of cases.

## **512 DISCIPLINE FROM OTHER JURISDICTIONS; DUTY TO SELF-REPORT**

1. Duty To Self-Report Discipline. Within thirty (30) days of being disciplined in another jurisdiction as a certified professional guardian or conservator, whatever term may be appropriate in that other jurisdiction, a CPGC must inform the AOC of the discipline.
2. Obtaining Order. Upon notification from any source that a CPGC certified in this state was disciplined in another jurisdiction, the AOC must obtain a copy of the Order and file it with the ~~Disciplinary Committee~~ Standards of Practice Committee.
3. ~~Disciplinary Standards of Practice~~ Committee Action. Upon receipt of information demonstrating that a CPGC certified in this state has been disciplined in another jurisdiction, the ~~Disciplinary Standards of Practice~~ Committee may order the respondent CPGC to show cause within thirty (30) days of service of the show cause order why it should not impose the identical discipline. The AOC must serve this Order by certified mail, and a copy of the Order from the other jurisdiction, on the respondent.
4. Deferral. If the other jurisdiction has stayed the discipline, any reciprocal discipline in this state is deferred until the stay expires.
5. Discipline to Be Imposed.
  - A. Thirty (30) days after service of the Order under Section (3), the ~~Disciplinary Standards of Practice~~ Committee may impose the identical discipline unless the CPGC demonstrates or the ~~Disciplinary Standards of Practice~~ Committee finds, that it clearly appears on ~~the~~ 116 of 137

face of the record on which the discipline is based, that:

- i. The procedure so lacked notice or opportunity to be heard that it denied due process;
- ii. The proof of misconduct was so weak that the Disciplinary Standards of Practice Committee is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;
- ii. The imposition of the same discipline would result in grave injustice;
- iv. The established misconduct warrants substantially different discipline in this state; or
- v. Appropriate discipline has already been imposed in this jurisdiction for the misconduct.

B. If the Disciplinary Standards of Practice Committee determines that any of the factors in subsection (A) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

6. **Conclusive Effect.** Except as this rule otherwise provides, a final adjudication in another jurisdiction that a CPGC has engaged in misconduct conclusively establishes the misconduct for purposes of a disciplinary proceeding in this state.

7. **Affidavit of Compliance.** Within ten (10) days of the effective date of the decertification or suspension order, the decertified or suspended professional guardian and conservator shall file with the AOC:

A. An affidavit attesting to full compliance with the provisions of the order, and with these regulations, including current mailing address.

B. A copy of the notification letter sent to all parties entitled to notice, together with a list of the names and addresses of all persons to whom the notice was sent.

8. **Records Maintained.** Proof of compliance with these regulations shall be a condition precedent to any petition for reinstatement.

## Guardianship Program Rules

### 513 REVIEW OF SUPERIOR COURT CASE FILINGS

To periodically audit CPGCs' compliance with standards of practice and statutory court filing requirements, the Board directs AOC to select certified professional guardians and conservators at least monthly and review the guardian's and conservators' cases on SCOMIS or other available case information sources. AOC may ~~open~~ file a grievance and conduct an investigation pursuant to these Disciplinary Regulations. [Guardianship Program Rules](#)

### 514 REQUEST FOR DISCIPLINARY RECORD

When an official licensing or disciplinary body of any state with a pending application, investigation or disciplinary action involving a certified professional guardian and conservator in Washington requests disciplinary information from the Board or the AOC, the AOC will certify and transmit the disciplinary record of the certified professional guardian and conservator involved. Notice of the request and the transmitted materials shall be provided to the last known address of the certified professional guardian and conservator. [Guardianship Program Rules](#)

### 515 ADMINISTRATIVE DECERTIFICATION

If the Board decertifies a CPGC for an administrative reason, including but not limited to the certified professional guardian and conservator's failure to: pay required fees satisfy the continuing education requirements, provide proof of insurance or waiver of insurance or file required information with the Board, any pending disciplinary grievance against the CPGC may be dismissed. If the grievance is within the jurisdiction of the Disciplinary Standards of Practice Committee, it may dismiss the grievance. If the Disciplinary Standards of Practice Committee has already sent the grievance to the Board with a recommendation of action, the Board may dismiss the grievance. Information that a grievance was pending at the time of administrative decertification shall be placed in the CPGC's licensing records and shall be available to the public.

## Guardianship and Conservatorship Program Rules Regulations

600 Procedure for Adoption, Amendment, and Repeal of Regulations

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601 Intent. The intent of the Certified Professional Guardianship and Conservatorship Board (Board) is to give notice and the opportunity for public comment whenever the Board intends to adopt, amend, or repeal its regulations, except as otherwise stated in these regulations.



## 602 Notice

602.1 Except as otherwise stated in these regulations, the Board will give notice whenever it intends to adopt, amend, or repeal a regulation (regulation change.) The Board must give notice at least 30 calendar days before the meeting at which the Board intends to act on the proposed change. The notice will include the following information:

602.1.1 The text of the proposed change to the regulations. The notice may also include an explanation of the purpose of the proposed change.

602.1.2 The date, time and place of the meeting at which the Board intends to adopt the proposed change.

602.1.3 The name, address and telephone number of the person to whom written comments on the proposed change may be sent via U.S. mail. In the Board's discretion, the Board also may accept comments via electronic mail.

602.1.4 The date by which comments must be received by the Board.

602.2 To give notice of a proposed regulation change, the Board will do the following:

602.2.1 Publish the notice electronically on the Board's website.

602.2.2 Send the notice to the Washington Association of Professional Guardians.

602.2.3 Send an announcement via electronic mail to the state's certified professional guardians, stating that notice of a proposed regulation change is on the Board's website.

602.2.4 Give notice in any other manner that the Board deems appropriate.

603 Board Action.

After considering the proposed regulation change, any written comments, and any oral testimony given at a Board meeting, the Board may adopt, amend, or reject the regulation change or take such other action as the Board deems appropriate. Regulation changes may go into effect immediately or at the Board's discretion.

#### 604 Emergency Action

The Board may adopt, amend, or repeal a regulation, or take any emergency action with respect to a regulation without following the procedures set forth in these regulations. Upon taking such action, the Board shall give notice of its action in accordance with Regulation 602.2.

## 605 Technical Changes

A technical change to a regulation is one which corrects a clerical mistake or an error arising from oversight or omission. The Board may adopt, amend, or repeal a regulation for the purpose of making a technical change to the regulations without following the procedures set forth in these regulations.

Guardianship and Conservatorship Program ~~Rules~~ Regulations

700 Certification Maintenance Regulations

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## Guardianship and Conservatorship Program ~~Rules~~ Regulations

### 701 Purpose

Once certified, all professional guardian and conservators and agencies must maintain their certification through ongoing continuing education and reporting requirements as identified in these Regulations.

### 702 Definitions

702.1 "Agency" means any legal entity in the State of Washington authorized by its formation documents to act as a fiduciary, guardian or conservator, or limited guardian or limited conservator. (~~Revised 3-8-10~~).

702.2 "Designated CPGC" means the certified professional guardian and conservators within an agency who have the final decision-making authority for ~~incapacitated persons~~ individuals or their property, finances and estate on behalf of the agency. (~~Revised 4-13-15~~)

702.3 "Fees and Filing Requirements Table" refers to the listing of Board-approved fees for the various CPGC and agency application and reporting requirements identified in these Regulations. The Fees and Filing Requirements Table is accessible to the public online at [http://www.courts.wa.gov/programs\\_orgs/guardian](http://www.courts.wa.gov/programs_orgs/guardian) .

702.4 "GR 23" refers to Washington State Court General Rule 23 which establishes the scope and authority of the CPGC Board, minimal qualifications for guardian and conservator and agency applicants, and mandatory ongoing guardian and conservator and agency disclosure requirements. Washington State Court Rules are found at [www.courts.wa.gov/court\\_rules](http://www.courts.wa.gov/court_rules).

### 703 Annual Certification Fee and GR 23(e) Disclosure

703.1 Schedule of Fees. The Board shall determine a schedule of fees for annual certification and other processing as may be required. All fees shall be published annually by the Board in the [Fees and Filing Requirements Table](http://www.courts.wa.gov/programs_orgs/guardian) at [www.courts.wa.gov/programs\\_orgs/guardian](http://www.courts.wa.gov/programs_orgs/guardian). Every certified professional guardian and conservator (CPGC) and Certified Professional Guardian and Conservator Agency (Agency) shall pay one annual fee, based on the state fiscal year (July 1 – June 30), through the Administrative Office of the Courts (AOC). Failure to pay the required fees shall subject the CPGC or Agency to revocation of existing certification or denial of an application for certification.

## 703.2 Annual Certification Fee and GR 23(e) Disclosure

703.2.1 Every CPGC and Agency must pay an annual certification fee, which must be paid to the AOC by August 1 each year. Every certified guardian and conservator and agency must also submit a GR 23(e) Disclosure by this date.

703.2.2 The Board may establish a tiered annual certification fee structure based on guardian and conservators and agencies' exemption from requiring Errors and Omissions Insurance, as described in 704.3. 703.2.3. The annual fee for individuals on inactive status is one-half the full annual fee. In accordance with the state fiscal year, it is due annually on August 1.

703.2.3 Failure to pay the annual certification fee and submit the GR 23(e) Disclosure by August 1 will subject the certified guardian and conservator or agency to a late fee as identified in the Fees and Filing Requirements Table.

## 703.3 Failure to Pay the Annual Certification Fee and File the Required GR 23 (e) Disclosure

703.3.1 Failure to pay the required annual certification fee and late fee and submit the required GR 23 (e) Disclosure by October 1 shall subject the CPGC or Agency to revocation of certification by the Board.

703.3.2 To effect such decertification, the Board shall send a written notice of non-compliance to the CPGC or Agency by certified mail, directed to the CPGC's or Agency's last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPGC or Agency of the pendency of decertification for failure to pay the required annual certification fee and late fee and submit the required declaration. The notice shall further advise the CPGC or Agency that if the CPGC or Agency believes that an administrative error has been made and that the CPGC or Agency is not in default on the obligation to submit the annual certification fee and late fee and the required declaration, the CPGC or Agency may file a petition requesting an administrative hearing. The petition shall set forth in detail the facts supporting the CPGC's or Agency's claim that an administrative error has been made by the Board and must be signed under penalty of perjury. The CPGC or Agency must file the petition within ten calendar days of notice of the pendency of decertification. ~~(Amended 11-8-04)~~

703.3.3 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPGC or Agency. ~~(Amended 11-8-04)~~

~~703.3.4~~ The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPGC or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPGC or Agency. Any such order shall be final. ~~(Amended 11-8-04)~~

## 704 Insurance

704.1 Purpose. The purpose of this regulation is to provide coverage for damages resulting from unintentional errors and omissions of the guardian and conservator and its employees.

704.2 Requirements. Certified professional guardian and conservators (guardian and conservators) and certified professional guardian and conservator agencies (agencies) shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the guardian and conservator or agency, and employees of the guardian and conservator or agency, unless exempted or waived by this regulation.

704.3 Exemptions. Guardian and conservators or agencies with 25 or fewer guardianship and conservatorship case appointments at one time and with less than \$500,000.00 total countable guardianship and conservatorship assets under management are exempt from the requirement of maintaining errors and omissions insurance as set forth in this regulation. With respect to this regulation, only those appointments held in the name of the guardian and conservator or agency shall be counted toward the caseload or monetary limit.

## 704.4 Countable Guardianship and Conservatorship Assets

704.4.1 "Countable guardianship and conservatorship assets" shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship cases and conservatorship estates currently managed by the guardian and conservator or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship and conservatorship assets shall not include burial trusts, pensions, or personal property other than as described in this regulation.

704.4.2 Issues as to whether or not an asset should be included in the countable guardianship and conservatorship assets of a guardian and conservator or agency shall be resolved with a preference toward including the asset as a



countable guardianship or conservatorship asset.

#### 704.5 Annual E & O Insurance Declaration

704.5.1. By August 1 each year, every guardian and conservator and agency shall file with the Board an E & O Insurance Declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian and conservator or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian and conservator or agency to comply with this regulation and the guardian and conservator or agency has provided a satisfactory alternative that meets the purpose of this regulation.

704.5.2. A guardian and conservator or agency who is required by this regulation to carry an errors and omissions policy shall include a declaration page from its policy of errors and omissions insurance of not less than five hundred thousand dollars (\$500,000) with the guardian and conservator's or agency's annual declaration signed under penalty of perjury. 704.5.3 At any time, the Board may request information from the guardian and conservator or agency to determine whether the guardian and conservator or agency meets the requirements of this regulation. Failure of the guardian and conservator or agency to cooperate may subject the guardian and conservator or agency to disciplinary action under this regulation.

#### 704.6 Duty to Report Loss of Insurance or Change of Status

704.6.1 A guardian and conservator or agency shall report to the Board in writing any lapse or cancellation of errors and omission coverage within fifteen (15) calendar days of the notice to the guardian and conservator or agency of that cancellation or lapse and provide a copy of the notice of non-renewal from the insurance company. The guardian and conservator or agency shall have forty-five (45) calendar days from notice to the guardian and conservator or agency of that cancellation or lapse to meet the requirements of this regulation and to file a declaration under penalty of perjury on a form approved by the Board stating that the guardian and conservator or agency meets the requirements of regulation 117.

704.6.2 A guardian and conservator or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian and conservator or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian and conservator or agency meets the requirements of this regulation.

#### 704.7 Failure to Comply

704.7.1 Failure to comply with this regulation in any part may subject the guardian and conservator and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

704.7.2 Failure to submit the required E & O Insurance Declaration by August 1 will subject the guardian and conservator and/or agency to a special service fee if paid before September 1.

704.7.3 In the event of a guardian and conservator's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian and conservator or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPGC or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPGC or Agency that if the CPGC or Agency believes that an administrative error has been made and that the CPGC or Agency is not in default on the obligation to submit the required declaration, the CPGC or Agency may file a petition requesting an administrative hearing. The petition must set forth facts either explaining how the guardian and conservator or agency has complied with this regulation or, if the guardian and conservator or agency acknowledges that there has not been compliance with the regulation, then the facts in support of why the Board should not take disciplinary action against the guardian and conservator or agency. The petition must be signed under penalty of perjury by the guardian. The guardian and conservator or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.

704.7.4 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPGC or Agency.

704.7.5 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPGC or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPGC or Agency. Any such order shall be final.

## 704.8 Waiver

704.8.1 A guardian and conservator may request a waiver from the requirement in this regulation that the guardian and conservator maintain errors and omissions insurance. (The term "guardian and conservator" in this section refers to either an individual or an agency.) To be eligible for a waiver, the guardian and conservator must show that it is impractical for the guardian and conservator to obtain such insurance and that the guardian and conservator will provide a satisfactory alternative to such insurance.

704.8.2 It is impractical for a guardian and conservator to obtain errors and omissions insurance if a guardian and conservator provides documentation and verifies under penalty of perjury that the guardian and conservator has applied and has been rejected by at least two insurance carriers for errors and omissions coverage or that the guardian and conservator has had errors and omissions insurance cancelled by the insurance provider or underwriter. A satisfactory alternative to such insurance is one which provides an adequate guarantee that any damages resulting from the unintentional errors and omissions of a guardian and conservator and its employees will be compensated in like amounts as the amount of coverage required under this regulation for errors and omissions insurance. Such alternatives may include a general purpose bond in the amount of \$500,000, or

evidence of security in the amount of \$500,000, or such other alternative that provides for financial responsibility in the amount of \$500,000.

704.8.3 To request a waiver, the guardian and conservator must file a written petition with the Board stating why it is impractical for the guardian and conservator to obtain insurance and describing the alternative to insurance that the guardian and conservator will provide. The petition must be signed by the guardian and conservator under penalty of perjury. If the petitioner is an agency, one of the designated guardian and conservators for the agency must sign the petition. The petitioner must submit copies of the denial or cancellation of coverage received by the petitioner, and copies of the applications submitted by the guardian and conservator for said coverage. The petitioner may include other written materials in support of its petition. The petitioner must file the petition and supporting materials electronically with the Board unless permission is granted by the Board to file materials in a paper format.

704.8.4 Petitions will be reviewed by the Financial Responsibility Committee of the Board. The members of such committee shall be appointed by the Chair of the Board. The Chair of the Board shall designate one of the members as the Chair of the committee. The term of all members, including the Chair of the committee, shall be one year. The Financial Responsibility Committee shall report to the Board on the merits of the petition.

704.8.5 The Board may approve the petition, with or without conditions, or refer the petition back to the Financial Responsibility Committee for additional information, or deny the petition.

704.8.6 If the Board denies a petition, the petitioner will be given written notice of the denial and the right to appeal under these regulations.

#### 704.9 Right to Appeal the Board's Denial of a Waiver

704.9.1 Every petitioner shall have a right of appeal before an Appeals Panel.

704.9.2 A petitioner may appeal the Board's denial of a waiver of the insurance requirement in this regulation by submitting a written request to:

Certified Professional Guardianship and Conservatorship Board  
Administrative Office of the Courts PO Box 41170  
Olympia WA 98504-1170

The request must:

Be filed within sixty (60) calendar days of the date of the denial of the waiver by the Board; identify the petitioner; and explain fully the grounds on which the petitioner bases an appeal of the denial of waiver.

704.9.3 The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Financial Responsibility Committee. The Chair shall name one member of the panel as the chair of the panel.

704.9.4 The petitioner may submit to the AOC additional written material which may include statements, correspondence, affidavits, and memoranda of law or other information which the petitioner believes will assist the Appeals Panel in reviewing the denial of the waiver. All written materials must be received by the AOC within 30 days after the filing of the notice of appeal. AOC will supply the Appeals Panel with the appeal, all attachments, and all other material relating to the original petition for a waiver and the appeal. The Appeals Panel may use written stipulations. The date of review of the appeal will be not more than sixty (60) calendar days from the date of receipt of the appellant's materials by the AOC. The AOC will notify the appellant of the scheduled date for the consideration of the appeal. An Appeals Panel will not consider any request for appeal that does not strictly comply with the times stated, unless waived by the Appeals Panel. Upon a showing of good cause, the Appeals Panel may waive the time requirements. The assigned Appeals Panel shall consider the written material submitted. The Appeals Panel may, in its sole discretion, make a decision based solely on the written record, or it may request an oral presentation by the appellant. The appellant shall be informed of the place, time, and duration of an oral presentation. Telephone conferences may be held at the discretion of the Appeals Panel.

Within twenty (20) calendar days after the date of review of the appeal, the assigned Appeals Panel shall file with the AOC written findings of fact, conclusions of law, and a recommendation to the Board to approve or deny the appeal. The AOC shall notify the petitioner of the findings, conclusions, and recommendation of the Appeals Panel within five (5) business days.

Within sixty (60) calendar days, the Board shall review the findings, conclusions and recommendation of the Appeals Panel. No further oral or written argument will be allowed the parties, and no further evidence may be submitted to the Board. The Board shall adopt, modify, or reverse the findings, conclusions, and recommendation of the Appeals Panel. A copy of the Board's decision, as set forth in the minutes of the Board meeting or in a separate written decision of the Board, shall be served on the appellant by mail within thirty (30) calendar days.

704.10 An individual may not practice as a professional guardian unless he or she maintains errors and omissions insurance or has been granted a waiver by the Board except during any periods that the Board suspends the requirement to maintain errors and omission insurance.

704.11 Regulation 117 shall not apply to guardian and conservators or agencies if the Board determines that errors and omissions insurance is not generally available, is cost prohibitive, or for any other reason the Board decides to suspend the requirements of this regulation.

## Guardianship and Conservatorship Program ~~Rules~~ Regulations

### 705 Obligation to Disclose

705.1 Pursuant to GR 23(e), a certified professional guardian and conservator or certified agency shall disclose to the Board on a continuing basis the circumstances listed in the rule. Disclosure shall take place in writing within forty-five (45) calendar days of the occurrence of the circumstance. If the event is the issuance of a court order, ruling or judgment, then the forty- five (45) calendar days shall start to run upon entry of the court order, ruling or judgment. ~~(Adopted 5-10-04)~~

705.2 The guardian and conservator shall disclose every court order, ruling or judgment of the type described in GR 23(e) issued by any judicial officer.-  
~~(Adopted 5-10-04)~~

705.3 The guardian and conservator shall disclose every court order, ruling or judgment of the type described in GR 23(e) even if the guardian and conservator or another party has filed a motion for revision, a motion for reconsideration, a notice of appeal, or any other motion or petition requesting a review, reconsideration or appeal of the court order, ruling or judgment. ~~(Adopted 5-10-04)~~

705.4 Failure to disclose pursuant to GR 23(e) or these regulations shall be grounds for discipline of the guardian and conservator. ~~(Adopted 5-10-04)~~ Guardianship and Conservatorship Program ~~Rules~~ Regulations

### 706 Changes in Designated Guardian and Conservators

706.1 Pursuant to General Rule of Court (GR) 23, a certified agency must have at least two individual certified professional guardian and conservators designated as having final decision- making authority for incapacitated persons/individuals or their property, finances and estates (“designated guardian and conservators.”)

706.2 If the agency adds an additional designated CPGC, the agency must provide the AOC with an Acceptance of Designated CPGC form within 30 days of the addition. Failure to do so may result in disciplinary action. ~~(Adopted 1-9-12)~~

706.3 If a change in circumstances results in an agency having only one designated guardian and conservator, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The agency shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian and conservator to the agency. During that sixty- calendar-day period, the agency must file a copy of its board minutes or a board resolution designating an additional guardian and conservator as a person with decision-making authority for incapacitated persons- individuals or their property, finances and estates with the Certified Professional Guardianship and Conservatorship Board. If the agency fails to meet the requirements of GR 23 and these regulations regarding the required number of designated guardian and conservators, the Board may decertify the agency. The Board shall send the agency written notice that the Board intends to decertify the agency at least fifteen (15) calendar days before the Board takes action.

706.4 If a change in circumstances results in an agency no longer having any designated guardian and conservators, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The AOC shall send the agency a notice of noncompliance by mail. The notice shall state that the Board will decertify the agency unless within fifteen (15) calendar days the agency files proof with the Board that the agency has at least one designated guardian and conservator. Said proof shall be in the form of board minutes or a board resolution designating a certified professional guardian and conservator with decision-making authority for ~~incapacitated persons individual~~ or their property, finances or estates. If the agency files proof with the Board that it has one designated guardian and conservator, then Regulation 706.3 shall apply. The sixty-day period referenced in Regulation 706.3 shall be deemed to have commenced on the same date as the fifteen-day period in this regulation. If the agency does not file proof within the fifteen-day period in this regulation that the agency has at least one designated guardian and conservator, then the Board may decertify the agency.

706.5 If a change in circumstances results in an agency having no designated guardian and conservators, the agency shall within ten (10) calendar days notify any Superior Court that has appointed the agency as guardian or conservator in a case that is still an active guardianship or conservatorship case. The agency shall file a notice in each active guardianship case and conservatorship case stating that the agency has no designated certified professional guardian and conservator with final decision-making authority for ~~incapacitated persons individuals~~ or their property, finances or estates. In the notice, the agency shall describe a plan to correct this situation or to transition the guardianships and conservatorship to qualified guardian and conservators or agencies. The agency shall file a copy of this notice with the Board. If the agency fails to file this notice with the court or the Board, the Board may decertify the agency.

706.6 The Board may decertify an agency for its failure to file any notice required under Regulation 706. The Board shall send the agency notice at least fifteen (15) calendar days before the Board intends to take such action.

706.7 When an agency is decertified, the Board shall notify the superior courts of the state.



## Guardianship and Conservatorship Program ~~Rules~~ Regulations

### 707 Inactive Status

707.1 A CPGC or Agency may voluntarily request inactive status by notifying the Board in writing of the date the change in status is to be effective and by complying with the requirements of this regulation. AOC staff is authorized to grant inactive status to CPGCs or Agencies that qualify under these Regulations. AOC staff denials to inactive status request must be reviewed and approved by the Certification and Applications Committee.

707.2 A CPGC on voluntary inactive status by the Board is not required to pay the full annual fee, but shall pay in accordance with Regulation 703.2.3. A CPGC on voluntary inactive status is required to file an E&O Declaration and the GR 23(e) Disclosure.

707.3 A CPGC on voluntary inactive status may return to active status by filing a petition to return to active status with the Board within two (2) years from the date that voluntary inactive status was granted. The CPGC must pay the annual fee and meet any additional requirements for CPGCs.

707.4 A CPGC on inactive status longer than two years from the date of transfer to inactive status can only be returned to active status after review by the Application Committee. The Application Committee may require the Guardian and Conservator to complete all or a portion of the initial certification process.

707.5 Prior to requesting inactive status, the CPGC shall:

707.5.1 Comply with all statutory and court-ordered requirements for discharge from responsibilities as a guardian and conservator in each case in which the CPGC has been appointed, with the exception that a guardian and conservator who is not a member of the ~~incapacitated person's~~ individual's family and who charges fees for carrying out the duties of court-appointed guardian may retain guardianship or conservatorship over two ~~incapacitated persons~~ individuals;

707.5.2 File with the Board an affidavit showing:

707.5.2.1 Compliance with these requirements.

707.5.2.2 The address where communications may be directed to the inactive CPGC or Agency, and acknowledging a requirement to keep their address current with the AOC for 36 months following surrender.

707.5.2.3 After being placed on inactive status, the former CPGC shall not accept any new clients or engage in work as a CPGC until return to active status.

707.5.2.4 The CPGC or Agency shall file the affidavit or declaration required by this regulation within sixty (60) calendar days of the date of the written notice to the Board of the intent to go on inactive status.

707.6 Failure to file the compliance affidavit or failure to comply with other statutory and court-ordered requirement shall subject the CPGC or Agency to revocation of existing certification.

707.7 The CPGC or Agency may revoke the notice of intent to go on inactive status by notifying the Board in writing.

## 708 Voluntary Surrender of Certification

708.1 A CPGC or Agency may voluntarily surrender certification by notifying the Board in writing of the date the surrender is to be effective and by complying with the requirements of this regulation. AOC staff is authorized to grant voluntarily surrender status to CPGs or Agencies that qualify under these Regulations. AOC staff denials to voluntarily surrender status request must be reviewed and approved by the Certification and Application Committee. ~~(Adopted 11-12-01) (Amended 1-13-03)~~

708.2 The surrender of certification shall not be effective until the CPGC or Agency has met the following requirements:

708.2.1 Complied with all statutory and court-ordered requirements for discharge from responsibilities as a guardian or conservator in each case in which the CPGC or Agency has been appointed, with the exception that a guardian and conservator who is not a member of the ~~incapacitated person's individual's~~ family and who charges fees for carrying out the duties of court-appointed guardian or conservator may retain guardianship and/or conservatorship over two-~~incapacitated persons individuals~~;

708.2.2 Filed with the Board an affidavit or declaration signed under penalty of perjury stating:

708.2.2.1 Compliance with these requirements.

708.2.2.2 The address where communications may be directed to the former CPGC or Agency, and acknowledging a requirement to keep their address current with the AOC for 36 months following surrender.

708.2.2.3 That after surrender of certification, the former CPGC or Agency shall not accept any new clients or engage in work as a CPGC or Agency unless recertified following the rules and regulations applicable to new applicants.

708.2.3 The CPGC or Agency shall file the affidavit or declaration required by this regulation within sixty (60) calendar days of the date of the written notice to the Board of the intent to surrender certification.

708.3 Failure to file the affidavit or declaration required by this regulation or failure to



comply with other statutory or court-ordered requirements regarding discharge from responsibilities as a guardian or conservator shall subject the CPGC or Agency to revocation of certification.

708.4 The CPGC or Agency may revoke the notice of intent to surrender certification by notifying the Board in writing.