

Meeting Minutes
January 9, 2023



Certified Professional Guardianship and Conservatorship Board

Monday, January 9, 2023
Zoom Meeting
9:00 a.m. – 1:00 p.m.

MEETING MINUTES	
Members Present	Staff Present
Judge Diana Kiesel, Chair	Ms. Stacey Johnson
Judge Grant Blinn	Ms. Thai Kien
Judge Robert Lewis	Mr. Samar Malik
Mr. William Reeves	Ms. Sherri White
Dr. K. Penney Sanders	Ms. Kay King
Ms. Susie Starrfield	Ms. Rhonda Scott
Mr. Dan Smerken	Ms. Linda Vass
Dr. Anita Souza	Ms. Maureen Roberts
Ms. Lisa Malpass	
Ms. Melanie Maxwell ¹	Members Absent
	Judge Ferguson-Brown
	Ms. Kristina Hammond

Guests – See last page

1. Meeting Called to Order

Judge Diana Kiesel called the January 9, 2023 Certified Professional Guardianship and Conservatorship Board meeting to order at 9:03 a.m.

2. Welcome, Roll Call & Approval of Minutes

Judge Kiesel welcomed all present.

Motion: It was moved and seconded to approve the December 12, 2022 Board meeting minutes. The motion passed.

3. Executive Session (Closed to Public)

4. Reconvene (Open to Public)

¹ Ms. Maxwell joined at 9.35.a.m.

5. Chair's Report

Judge Kiesel presented the Chair's report, saying great things happened in 2022, but the greatest has been serving as Chair of this Board. It was announced Judge Lewis will become new Chair of the Board in October 2023. For future meetings, the Board will shorten the base time for executive session to thirty minutes and ask for more time as needed. Judge Lewis has agreed to act as Parliamentarian to assure Executive Session discussion reserves public topics for the Public portion of meetings. The Education Committee is coordinating a CEU for the April long meeting. Suggestions for speakers or topics are welcome. Please submit ideas to Stacey Johnson.

Grievance Report

Staff reported three (3) grievances were received during the month of December. A total forty-four (44) grievances are currently unresolved. A total of five hundred twenty-four (524) grievances from 2016-2021 have been resolved.

6. Public Comment Period

The Chair opened the meeting to comments from the public. No comments were received.

7. Education Committee

On behalf of the Education Committee, Ms. Malpass presented the following CEUs for approval, both of which were submitted more than 30 days following the presentations.

Motion: It was moved and seconded to approve the Spokane County Bar Association's Title 11 Annual Training for 5.5 General and 1.0 Ethics credits and the WSBA Elder Law Fall Conference for 4.0 General and 1.0 Emerging Issues credits. The motion passed.

8. Vote on Executive Session Discussion

On behalf of the Standards of Practice Committee, Judge Grant Blinn presented the following grievances for Board action. Members of the Standards of Practice Committee abstained.²

Motion: It was moved and seconded to approve the proposed order prepared for the court by AAG Manning regarding grievance 2016-087. The motion passed.

Motion: It was moved and seconded to pursue a Motion for Default regarding grievances: 2019-028, 2019-031, and 2020-005. The motion passed.

Motion: It was moved and seconded to dismiss grievance 2022-073 for no jurisdiction. The motion passed.

Motion: It was moved and seconded to forward grievance 2022-074 to the superior court. The motion passed.

² Ms. Maxwell was not present on Zoom when the Board voted on issues discussed during Executive Session.

Motion: It was moved and seconded to dismiss grievance 2022-075 as incomplete. The motion passed.

9. Guest Presenter

Judge Kiesel introduced Sven Nelson, the Pierce County Deputy Prosecuting Attorney, who presented on elder abuse. This presentation was offered as a CEU.

10. Wrap Up/Adjourn

With no other business to discuss, the January 9, 2023 CPGC Board meeting was adjourned at 12:34 p.m. Next Meeting Date: Monday, February 13, 2023 at 7:30 a.m. via Zoom.

Recap of Motions:

MOTION SUMMARY		STATUS
Motion:	It was moved and seconded to approve the minutes of the December 12, 2022 Board meeting.	Passed
Motion:	It was moved and seconded to approve two applications for CEU.	Passed
Motion:	It was moved and seconded to approve the proposed order prepared by AAG Manning regarding grievance 2016-087.	Passed
Motion:	It was moved and seconded to pursue a motion for default relating to grievances 2019-028, 2019-031, and 2020-005.	Passed
Motion:	It was moved and seconded to dismiss grievance 2022-073 for no jurisdiction.	Passed
Motion:	It was moved and seconded to forward grievance 2022-074 to the superior court.	Passed
Motion:	It was moved and seconded to dismiss grievance 2022-075 as incomplete.	Passed

Guests:

- | | |
|---------------------|-----------------------|
| Lisa Petersen (AAG) | Stephen Manning (AAG) |
| Karen Klem Newland | Glenda Voller |
| William Jaback | Coya Kirby |
| Deborah Jameson | Sarah Tremblay |
| Kecia Hedgeman | Scott Malavotte |
| Brenda Morales | Sven Nelson |

Grievance Report
January, 2023

**Certified Professional Guardians and Conservators
Grievance Status
January 31, 2023**

New Grievances Received in January 2023:	7
2022 Grievances Dismissed by Board on January 12, 2023:	2
2022 Grievances Forwarded to Superior Court on January 12, 2023:	1

	2022	2023
Total Grievances Received:	75	7
Total Grievances Dismissed: No Jurisdiction, Insufficient Grievance	25	0
Total Grievances Forwarded to Superior Court:	41	0
Total Grievances Dismissed Following Court Order:	23	0
Total Grievances Open Pending CRC Review:	1	0
Total Grievances Open Pending Investigation:	1	0

Please note that the numbers reported in this section will not necessarily be equal to the total number of grievances received; this is due to the timing of when new grievances are received and in process of review by the Board.

Active CPGCs: 253

2016-2021 Grievance Status – January 2023	2021	2020	2019	2018	2017	2016	Total
Grievances Resolved this Month:							
Grievances Remaining Requiring Investigation:	17	0	0	0	0	0	17

2016-2021 Grievances Pending*	2021	2020	2019	2018	2017	2016	Total
Default		1	2				3
Conflicts Review Committee:							0
ARD:							0
Complaint/Hearing:						1	1
Administrative Decertification:							0
Total Pending:	0	1	2	0	0	1	4

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

Resolution of 2016-2021 Grievances	2021	2020	2019	2018	2017	2016	Total
Total Grievances Received by Year	95	80	77	85	104	104	545
Dismissal – No Jurisdiction	9	21	15	22	30	20	117
Dismissal – No Actionable Conduct	58	44	41	52	60	55	310
Dismissal – Miscellaneous		1					1
Dismissal – Insufficient Grievance	7	6	5	3	1	2	24
Dismissal – Following Court Order (UGA)		3					3
Advisory Letter 507.1		2	5	3	2	4	16
ARD - Admonishment							0
ARD – Reprimand		1		1	1	4	7
ARD - Suspension							0
Termination – Administrative Decertification	4	1	3	1	1	3	13
Termination – Voluntary Surrender			1	2	8	15	26
Termination – Decertification			5	1	1		7
Total Pre-2023 Grievances <u>Resolved</u>:	78	79	75	85	104	103	524

Guardians/Agencies with Multiple Grievances

January 2023

ID	Year Cert.	Unresolved Grievances	Year(s) Grievances Received
A	2015	2	2021 (1), 2022 (1)
B	2009	2	2021 (2)
C	2001	2	2023 (2)
D	2016	9	2021 (4), 2022 (5)
E	2011	2	2021 (2)
F	2007	4	2019 (2), 2020 (1), 2021 (1)
G	2021	2	2022 (2)
H	2011	2	2021 (1), 2022 (1)
I	2001	3	2022 (3)
J	2006	2	2021 (2)
K	2011	4	2022 (3), 2023 (1)
		34	

Of the 48 currently unresolved grievances, 34 involve 11 Certified Professional Guardians and Conservators or Agencies with 2 or more grievances.

Regulations Committee

New Regulation 007

Guardianship and Conservatorship Program Regulations

007 Board Meetings

007.1 The Board shall hold meetings as determined to be necessary by the Chair. The Board, its members, committees, and any action taken to further the Board's purpose, including but not limited to holding meetings, are not subject to chapter 42.30 RCW, the Open Public Meetings Act. Nothing in these regulations should be construed to imply that the Board is subject to the Open Public Meetings Act. The following guidelines should not impede the Board's ability to fulfill its obligations and duties as defined in these regulations.

007.2 Meetings of the Board will be open to the public except for executive sessions. The Board may meet in executive session for the following: application and certification matters, disciplinary matters, enforcement actions, litigation, potential litigation, and other attorney-client privileged communications. The Board may also meet in executive session for any other matter that is deemed privileged or confidential. The decision to deem a matter privileged or confidential shall be by vote of a quorum of the Board.

007.3 The Board shall publish the date and time of its regular meetings on the AOC guardianship portal website. The Board shall publish the date and time of its regular meetings at least thirty (30) days in advance. In the event of changes due to emergent circumstances, the Board shall provide notice as soon as reasonably practicable. A public comment session will occur at the Board's January, April, June and October meetings. The public may submit written comments to the Board at any time. The Board shall promulgate regulations regarding notice and comment requirements for regulations adoption, amendment and repeal that provide for stakeholder notice and comment.

007.4 Before convening in executive session, the meeting chair shall publicly inform the public that it is initiating a meeting that excludes the public, and the time when that executive session will conclude. The meeting chair may extend the executive session by informing the public of the adjusted timeframe.

GERALD W. NEIL
CHRISTOPHER E. NEIL
DEBORAH J. JAMESON

NEIL & NEIL, P.S.
ATTORNEYS AT LAW
5302 PACIFIC AVENUE
TACOMA, WASHINGTON 98408
(253) 475-8600
(253) 473-5746 FAX

January 13, 2023

Sent by email only to avoid delay

Re: Comments on Proposed Regulation 007

Dear CPGC Board:

Thank you for the opportunity to comment on the changes to Regulation 007. I appreciate the Board's addressing the matters that can be discussed in executive session in light of the recent discussions with the Supreme Court about GR 23. I also appreciate the Board's recent decision to have a Board member responsible for tracking the discussions in executive session to ensure they do not stray from the fairly narrow range of topics to be addressed in executive session.

I propose the following changes to Regulation 007:

Paragraph 007.1 I do not believe paragraph 007.1 is necessary. The issue of whether the Board is subject to the Open Public Meetings Act has not been resolved because there has been no Supreme Court decision on the topic as there was for the Washington State Bar Association in the *Beauregard* case. The paragraph does serve a purpose in stating AOC's position on the issue. If paragraph 007.1 is retained, I would suggest the Board consider amending Regulation 003 to provide a similar explanation of why the Board is not subject to the Public Records Act.

Paragraph 007.2 The proposed regulation should be amended to make it consistent with GR 23 and GR 31.1. The proposed regulation is too broad in its inclusion of all disciplinary matters. GR 23 requires all meetings to be open to the public except for executive session (undefined), review panel, or disciplinary prior to the filing of a disciplinary complaint (meaning disciplinary matters post complaint should be in open session).

The Supreme Court has already defined the public's access to Board records in GR31.1. GR 31.1(I)(12) describes which Board records are not public records, namely: application, disciplinary and deliberative records but only while the investigation is in process. Boards regulations must be consistent with the existing rule on public access to Board documents. Therefore, Board discussions of these three kinds of records should be in executive sessions (not in public session) only while the investigation is in process. Once the investigation is no longer in process, the records and discussions about them are public. (See GR 31.1(I)(12) attached)

The last two sentences of paragraph 007.2, as proposed, create an exception that – as they say – “swallows the rule”. If the Board can deem anything to be privileged or confidential, then there is no discernable standard or check on the Board’s discussions in executive session. Having the decision be subject to a vote of a quorum of the Board raises at least two questions: (1) which Board members could constitute a quorum given that Board members of the involved committees usually cannot vote; and (2) would the vote have to be moved and recorded in open session, as other executive decisions are?

Paragraph 007.3 This paragraph is unnecessary. GR 23 allows the Board to hold meetings as determined to be necessary by the Chair. The Board has always provided sufficient notice of meetings and materials to stakeholders. The Board publishes its meeting schedule every year. There is no need for more regulations regarding notice and comment requirements than are already in Regulation 600.

Final Thoughts: I believe that part of the public’s concern about the executive session is because the Board has very few substantive discussions during its public sessions on any topic. A review of the Board’s records will show the vast majority of board meeting time in the past few years has been conducted in executive session. Over the 20+ year history of the Board, discussions during public session were much more robust, with most Board members commenting on proposed regulations and almost all agenda items. I hope the Board will go back to freely sharing their thoughts in the public portion of the meetings to the extent permitted by GR 23 and regulation.

Very truly yours,



CHRISTOPHER NEIL



DEBORAH JAMESON

GR 31.1 (I)

(12) The following records of the Certified Professional Guardian Board [*are exempt from public access*]:

(i) Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process. Investigative records related to a grievance become open to public inspection once the investigation is completed.

(ii) Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.

(iii) A grievance shall be open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

Changes are in aqua.

Guardianship and Conservatorship Program Regulations

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- ~~(a) Those records, or discussions related to records, exempt from public disclosure as set forth in GR 31.1(l)(12);~~
- ~~(b) Litigation by or against the Board;~~
- ~~(c) Potential litigation by or against the Board that has been identified and described in writing with particularity and which a majority of the Board has determined is likely to occur in the near future and is not speculative;~~
- ~~(d) Attorney-client privileged communications regarding litigation by or against the Board and potential litigation as described in (c) above; and~~
- ~~(e) Application records that cannot be anonymized.~~

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No markup version.

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