

Meeting Minutes  
May 8, 2023



# Certified Professional Guardianship and Conservatorship Board

Monday, May 8, 2023  
Zoom Meeting  
7:30 a.m. – 9:00 a.m.

## MEETING MINUTES

### Members Present

Judge Diana Kiesel, Chair  
Judge Grant Blinn  
Judge Cadine Ferguson-Brown<sup>1</sup>  
Judge Robert Lewis  
Ms. Lynda Clark<sup>2</sup>  
Ms. Kristina Hammond  
Ms. Lisa Malpass  
Ms. Melanie Maxwell<sup>3</sup>  
Mr. William Reeves  
Dr. K. Penney Sanders  
Mr. Dan Smerken  
Ms. Anita Souza

### Members Absent

Ms. Susie Starfield

### Staff Present

Ms. Stacey Johnson  
Ms. Kathy Bowman  
Ms. Thai Kien  
Ms. Kay King  
Mr. Samar Malik  
Ms. Maureen Roberts  
Ms. Rhonda Scott  
Ms. Sherri White

**Guests** – See last page

### 1. Meeting Called to Order

Judge Diana Kiesel called the May 8, 2023 Certified Professional Guardianship and Conservatorship Board meeting to order at 7:33 a.m.

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

Judge Kiesel welcomed all present

Motion: It was moved and seconded to approve the April 10, 2023 Board meeting minutes. The motion passed. Not present: Melanie Maxwell, Judge Ferguson-Brown.

### 3. Executive Session (Closed to Public)

### 4. Reconvene (Open to Public)

### 5. Chair's Report

Judge Kiesel thanked the stakeholder who submitted comments on the bylaws. The Bylaws Committee has decided that the Board's bylaws will need substantial updates.

<sup>1</sup> Judge Ferguson-Brown joined at 7:55 a.m.

<sup>2</sup> Lynda Clark joined at 7:35 a.m.

<sup>3</sup> Melanie Maxwell joined at 7:40 a.m.

Judge Kiesel acknowledged potential conflict of interested with her role in a legislative committee and offered to stop work on the committee until after her service with the Board if a conflict is perceived.

## **6. Grievance Report**

Ms. Scott reported six (6) grievances were received during the month of April. At April's meeting, the Board dismissed one (1) grievance and forwarded one (1) grievances to superior court. A total thirty-nine (39) grievances are currently unresolved. Currently, there are two hundred fifty-one (251) active CPGCs.

## **7. Vote on Executive Session Discussion**

On behalf of the Applications Committee, Judge Robert Lewis presented the following applications for certification. The Application Committee abstained.

Motion: It was moved and seconded to deny Jill Larsen's application for certification for lack of experience with decision making or use of independent judgement on the behalf of others. The motion failed.

Motion: It was moved and seconded to conditionally approve Jill Larsen's application for certification, conditioned on the completion of mandatory training, with transferable skills in social services. The motion passed.

Motion: It was moved and seconded to deny Roslynn Jackson's application for certification for lack of experience with decision making or use of independent judgement on behalf of others. The motion passed.

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.

Motion: It was moved and seconded to dismiss grievance 2023-017 for no jurisdiction. The motion passed.

Motion: It was moved and seconded to forward complete grievance 2023-018 to court.

Motion: It was moved and seconded to forward complete grievance 2023-019 to court. The motion passed.

Motion: It was moved and seconded to forward complete grievance 2023-020 to court. The motion passed.

Motion: It was moved and seconded to have staff investigate complete grievance 2023-021 under GR23. The motion passed. Dan Smerken opposed.

Motion: It was moved and seconded to forward complete grievance 2023-022 to court. The motion passed.

Motion: It was moved and seconded to forward complete grievance 2023-023 to court. The motion passed.

Motion: It was moved and seconded to dismiss grievance 2022-026 based on findings and conclusions received from superior court.

Motion: It was moved and seconded to have staff investigate 2022-070 / 2022-072 as there were no findings entered by superior court. The motion passed. Dan Smerken and Judge Kiesel opposed.

Motion: It was moved and seconded to dismiss grievance 2023-009 based on findings received from superior court. The motion passed.

## 8. Wrap Up/Adjourn

With no other business to discuss, the May 8, 2023 CPGC Board meeting was adjourned at 8:27 a.m. The next Board meeting will be hybrid and take place both on site at the SeaTac Office Center and via Zoom on June 12, 2023 beginning at 9:00 a.m.

### Recap of Motions:

MOTION SUMMARY		STATUS
Motion:	It was moved and seconded to approve the minutes of the April 10, 2023 Board meeting.	Passed
Motion:	It was moved and seconded to deny Jill Larsen's application for lack of transferable skills.	Failed
Motion:	It was moved and seconded to conditionally approve Jill Larsen's application with transferrable skills in social services.	Passed
Motion:	It was moved and seconded to deny Roslynn Jackson's application for lack of transferable skills.	Passed
Motion:	It was moved and seconded to dismiss grievance 2023-017 for no jurisdiction.	Passed
Motion:	It was moved and seconded to forward complete grievance 2023-018 to court.	Passed
Motion:	It was moved and seconded to forward complete grievance 2023-019 to court.	Passed
Motion:	It was moved and seconded to forward complete grievance 2023-020 to court.	Passed
Motion:	It was moved and seconded to have staff investigate grievance 2023-021. Dan Smerken opposed.	Passed
Motion:	It was moved and seconded to forward complete grievance 2023-022 to court.	Passed
Motion:	It was moved and seconded to forward complete grievance 2023-023 to court.	Passed
Motion:	It was moved and seconded to dismiss grievance 2022-026 based on findings received from superior court.	Passed
Motion:	It was moved and seconded to have staff investigate 2022-070 and 2022-072 as there were no findings entered by superior court. Dan Smerken and Judge Kiesel opposed.	Passed
Motion:	It was moved and seconded to dismiss grievance 2023-009 based on findings received from superior court.	Passed

### Guests:

Samantha Hellwig (AAG)  
 Katlyn Balsam  
 Christopher Fast  
 Mayouta

Brenda Morales  
 Chris Neil  
 Puget Sound Guardians  
 Sarah Tremblay

## GR23 Discussion

## GR 23

### RULE FOR CERTIFYING PROFESSIONAL GUARDIANS AND CONSERVATORS

(a) Purpose and Scope. This rule establishes the standards and criteria for the certification of professional guardians and conservators as defined by RCW 11.130.010 (26) and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians and conservators nor is it a mechanism to appeal a court decision regarding the appointment or statutory duties of a professional guardian or conservator.

(b) Jurisdiction. All professional guardians and conservators who practice in the state of Washington are subject to these rules and regulations. Jurisdiction shall continue whether or not the professional guardian and conservator retains certification under this rule, and regardless of the professional guardian and conservator's residence.

(c) Certified Professional Guardianship and Conservatorship Board.

(1) Establishment.

(i) Membership. The Supreme Court shall appoint a Certified Professional Guardianship and Conservatorship Board (Board) of 12 or more members. The Board shall include representatives from the following areas of expertise: professional guardians and conservators; attorneys; advocates for individuals subject to guardianship and conservatorship; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships and conservatorships.

(ii) Terms. The term for a member of the Board shall be three years. No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

(iii) Leadership. The Supreme Court shall designate the Chair of the Board. The Board shall designate the Vice-Chair, who shall serve in the absence of or at the request of the Chair.

(iv) Vacancies. Any vacancy occurring in the terms of office of Board members shall be filled for the unexpired term.

(2) Authority. The Court authorizes and grants to the Board jurisdiction to oversee the certification, regulation, investigation and discipline of professional guardian and conservators and related agencies.<sup>1</sup>

(3) Duties and Powers.

(i) Applications. The Board shall process applications for professional guardian and conservator certification under this rule. The Board may delay or deny certification if an applicant fails to provide required information.

(ii) Standards of Practice. The Board shall adopt and implement policies or regulations setting forth minimum standards of practice which professional guardians and conservators shall meet.

(iii) Training Program. The Board shall adopt and implement regulations establishing a professional guardian and conservator training program.

(iv) Examination. The Board may adopt and implement regulations governing the preparation and administration of certification examinations.

(v) Recommendation of Certification. The Board may recommend certification to the Supreme Court. The Supreme Court shall review the Board's recommendation and enter an appropriate order.

(vi) Denial of Certification. The Board may deny certification. If the Board denies certification, it shall notify an applicant in writing of the basis for denial of certification and inform the applicant of the appeal process.

(vii) Continuing Education. The Board may adopt and implement regulations for continuing education.

(viii) Grievances and Disciplinary Sanctions. The Board shall adopt and implement procedures to review any allegation that a professional guardian and conservator has violated an applicable statute, fiduciary duty, court order, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians and conservators. The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, court order, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians and conservators. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians and conservators.

<sup>1</sup>This section codifies a central tenet of the Supreme Court's decision re: In the Matter of Disciplinary Proceeding Against Petersen 180 Wn. 2nd 768 (2014)

(ix) Investigation. The Board may investigate to determine whether an applicant for certification meets the certification requirements established in this rule. The Board may also investigate to determine whether a professional guardian and conservator has violated any statute, fiduciary duty, court order, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians and conservators.

(x) Authority to Conduct Hearings. The Board may adopt regulations pertaining to the orderly conduct of hearings.

(a) Subpoenas. The Chair of the Board, Hearing Officer, or a party's attorney shall have the power to issue subpoenas.

(b) Orders. The Chair or Hearing Officer may make such pre-hearing or other orders as are necessary for the orderly conduct of any hearing.

(c) Enforcement. The Board may refer a Subpoena or order to the Supreme Court for enforcement.

(xi) Disclosure of Records. The Board may adopt regulations pertaining to the disclosure of records in the Board's possession.

(xii) Meetings. The Board shall hold meetings as determined to be necessary by the Chair. Meetings of the Board will be open to the public except for executive session, review panel, or disciplinary meetings prior to filing of a disciplinary complaint. The Board may adopt regulations governing the conduct of its meetings.

(xiii) Fees. The Board shall establish and collect fees in such amounts as are necessary to support the duties and responsibilities of the Board.

(4) Board Expenses. Board members shall not be compensated for their services. Consistent with the Office of Financial Management rules, Board members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid pursuant to a budget submitted to and approved by the Supreme Court. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray Board expenses.

(5) Agency. Hearing officers are agents of the Board and are accorded rights of such agency.

(6) Immunity from Liability. The Board, its members, or agents, including duly appointed hearing officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

(7) Conflict of Interest. A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably



be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

(8) Leave of Absence. The Board may adopt regulations specifying that a Board member who is the subject of a disciplinary investigation by the Board must take a leave of absence from the Board. A Board member may not continue to serve as a member of the Board if the Board or Supreme Court has imposed a final disciplinary sanction on the Board member.

(9) Administration. The Administrative Office of the Courts (AOC) shall provide administrative support to the Board and may contract with agencies or organizations to carry out the Board's administrative functions.

(d) Certification Requirements. Applicants, Certified Professional Guardians and Conservators, and Certified Agencies shall comply with the provisions of Chapter 11.130 RCW. In addition, individuals and agencies must meet the following minimum requirements.

(1) Individual Certification. The following requirements apply to applicants. An individual applicant shall:

(i) Be at least 21 years of age;

(ii) Be of sound mind;

(iii) Have no convictions of a crime, or court or administrative proceeding findings, involving dishonesty, neglect, abuse, or use of physical force;

(iv) Have no convictions of a crime, or court or administrative proceeding findings, relevant to the functions the individual would assume as a guardian or conservator;

(iv) Possess a high school degree or GED equivalent and at least five full years' experience working in a discipline pertinent to the provision of guardianship and conservatorship services, or possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship and conservatorship services, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship and conservatorship services, or a Masters, J.D., Ph.D., or equivalent advanced degree from an accredited institution and at least one year's experience working in a discipline pertinent to the provision of guardianship and conservatorship services;

(v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship and conservatorship services and must include decision-making or the use of independent

judgment for the benefit of others, not limited to individuals subject to guardianship or conservatorship, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship and conservatorship services;

(vii) Have completed the mandatory certification training.

(viii) An individual certified under this General Rule prior to January 1, 2022 and in good standing under all Board regulations will automatically continue to be certified as a Certified Professional Guardian and Conservator (CPGC) as of January 1, 2022.

(2) Agency Certification. Agencies must meet the following additional requirements:

(i) All officers and directors of the corporation must meet the qualifications of RCW 11.130.090 for guardians and conservators;

(ii) Each agency shall have at least two (2) individuals in the agency certified as professional guardians and conservators, whose residence or principal place of business is in Washington state and who are so designated in minutes or a resolution from the Board of Directors; and

(iii) Each agency shall file and maintain in every guardianship and conservatorship court file a current designation of each certified professional guardian and conservator with final decision-making authority for the individual subject to guardianship or individual subject to conservatorship.

(3) Training Program and Examination. Applicants must satisfy the Board's training program and examination requirements.

(4) Insurance Coverage. In addition to the bonding requirements of chapter 11.130.040 RCW, applicants must be insured at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

(5) Financial Responsibility. Applicants must provide proof of ability to respond to damages resulting from acts or omissions in the performance of services as a guardian or conservator. Proof of financial responsibility shall be in such form and in such amount as the Board may prescribe by regulation.

(6) Application under Oath. Applicants must execute and file with the Board an approved application under oath.

(7) Application Fees. Applicants must pay fees as the Board may require by regulation.

(8) Disclosure. An applicant for certified professional guardian and conservator or certified agency shall disclose upon application:

(i) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(ii) Any court finding that the applicant has violated its duties as a fiduciary or has violated federal or any state's consumer protection act or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of business;

(iii) Any felony convictions;

(iv) Any criminal convictions, or any court or administrative proceeding findings, involving dishonesty, neglect, abuse, violence, or use of physical force;

(v) Any criminal convictions, or any court or administrative proceeding findings, relevant to the functions assumed as guardian or conservator;

(vi) Any adjudication of the types specified in RCW 43.43.830 and RCW 43.43.842 (laws restricting access to, and professional licensing with respect to working with, vulnerable adults and children);

(vii) Pending or final licensing or disciplinary board actions or findings of violations;

(viii) The existence of a judgment against the applicant within the preceding eight years in any civil action;

(ix) Whether the applicant is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding. Disclosure of a bankruptcy filing may require the applicant or guardian and conservator to provide a personal credit report from a recognized credit reporting bureau satisfactory to the Board;

(x) The existence of a judgment against the applicant or any corporation, partnership or limited liability company for which the applicant was a managing partner, controlling member or majority shareholder within the preceding eight years in any civil action.

(9) Denial of Certification. The Board may deny certification of an individual or agency based on any of the following criteria:

(i) Failure to satisfy certification requirements provided in section (d) of this rule;

(ii) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;

(iii) A court finding that the applicant has violated its fiduciary duties or has violated federal or any state's consumer protection act or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of business;

(iv) Any felony convictions;

(v) Any criminal convictions, or any court or administrative proceeding findings, involving dishonesty, neglect, abuse, violence, or use of physical force;

(vi) Any criminal convictions, or any court or administrative proceeding findings, relevant to the functions assumed as guardian or conservator;

(vii) Any adjudication of the types specified in RCW 43.43.830 and RCW 43.43.842 (laws restricting access to, and professional licensing with respect to working with, vulnerable adults and children);

(viii) Pending or final licensing or disciplinary board actions or findings of violations;

(ix) A Board determination based on specific findings that the applicant lacks the requisite moral character or is otherwise unqualified to practice as a professional guardian and conservator;

(x) A Board determination based on specific findings that the applicant's financial responsibility background is unsatisfactory.

(10) Designation/Title. An individual certified under this rule may use the initials "CPGC" following the individual's name to indicate status as "Certified Professional Guardian and Conservator." An agency certified under this rule may indicate that it is a "Certified Professional Guardian and Conservator Agency" by using the initials "CPGCA" after its name. An individual or agency may not use the term "certified professional guardian and conservator" or "certified professional guardian and conservator agency" as part of a business name.

(e) Guardian and Conservator Disclosure Requirements.

(1) A Certified Professional Guardian and Conservator or Certified Agency shall disclose to the Board in writing within 30 days of occurrence:

(i) The existence of a judgment against the professional guardian and conservator arising from the professional guardian and conservator's performance of services as a fiduciary;

(ii) Any court finding that the professional guardian and conservator violated its fiduciary duties, or has violated federal or any state's consumer protection act or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of business;

- (iii) Any felony convictions;
  - (iv) Any criminal convictions, or any court or administrative proceedings findings, involving dishonesty, neglect, abuse, violence, or use of physical force;
  - (v) Any criminal convictions, or any court or administrative proceedings findings relevant to the functions assumed as guardian or conservator;
  - (vi) Any adjudication of the types specified in RCW 43.43.830 and RCW 43.43.842 (laws restricting access to, and professional licensing with respect to working with, vulnerable adults and children);
  - (vii) Pending licensing or disciplinary actions related to fiduciary responsibilities or final licensing or disciplinary actions resulting in findings of violations;
  - (viii) Residential or business moves or changes in employment; and
  - (ix) Names of Certified Professional Guardians and Conservators and they employ or who leave their employ.
- (2) Not later than June 30 of each year, each professional guardian and conservator and guardian and conservator agency shall complete and submit an annual disclosure statement providing information required by the Board.
- (f) Regulations. The Board shall adopt regulations to implement this rule.
  - (g) Personal Identification Number. The Board shall establish an identification numbering system for professional guardians and conservators. The Personal Identification Number shall be included with the professional guardian's and conservator's signature on documents filed with the court.
  - (h) Ethics Advisory Opinions, Comments, and Best Practices.
    - (1) The Board may issue written ethics advisory opinions, comments and best practices to inform and advise Certified Professional Guardians and Conservators and Certified Agencies of their ethical obligations.
    - (2) Any Certified Professional Guardian and Conservator or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian and Conservator or Certified Agency.

(3) The Board shall publish opinions issued pursuant to this rule in electronic or paper format. The identity of the person requesting an opinion is confidential and not public information.

(i) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to, Title 11 RCW.

[Adopted effective January 25, 2000; amended effective April 30, 2002; April 1, 2003; September 1, 2004; January 13, 2009; September 1, 2010; September 1, 2021, May 3, 2022]

## CPGC Board Recusal Procedure



August 1, 2014

TO: Certified Professional Guardianship Board

FROM: Shirley Bondon, Manager, Office of Guardianship and Elder Services

RE: Conflicts of Interest/Recusal Process

**Background**

During the June 9, 2014 Board meeting, staff was directed to draft a recusal process for Board review. Before drafting, staff reviewed current Board rules and regulations. Although, conflicts of interest are addressed in General Rule 23 and Disciplinary Regulation 500, provided in pertinent part below. These references do not address the full spectrum of conflicts of interest in relationship to the duties of members of the Board.

General Rule 23<sup>1</sup>

“GR 23 (6) Conflict of Interest. A Board member should disqualify himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.”

Disciplinary Regulation 500<sup>2</sup>

507.1 The Conflicts Review Committee (CRC) shall have three members appointed by the Board Chair, who shall also designate the committee chair. CRC members may not be current members of the Board. CRC members shall be familiar with guardianship practice in the state of Washington.

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<sup>1</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr23](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr23)

<sup>2</sup> [http://www.courts.wa.gov/programs\\_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500](http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500)



507.2 The Administrative Office of the Courts (AOC) shall transmit any grievance against a Board member to the CRC. The CRC shall perform the duties that would otherwise be performed by the Standards of Practice Committee (SOPC) under these regulations and AOC shall report to the CRC on any such grievance.

507.3 The CRC may also recommend to the Board Chair that the Board member under investigation be placed on a leave of absence from the Board during its investigation. The CRC will consider the nature of the allegations against the Board member, the available evidence regarding those allegations and the importance of maintaining public trust and confidence in the Board in making its recommendation to the Board Chair. The CRC may make such a recommendation at any time during its investigation and review of the grievance. Except as otherwise set forth in these regulations, the Board Chair shall have the sole discretion to decide whether the Board member should take a leave of absence from the Board and when the Board member may return to the Board.

507.4 If the Board files a complaint against a Board member, the Board member shall take a leave of absence from the Board until the conclusion of the disciplinary proceeding.

507.5 Consistent with the Office of Financial Management rules, CRC members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

509.1.3 A former member of the Board who is also a licensed attorney in Washington shall not represent a professional guardian in proceedings under the Board's regulations until after two (2) years have elapsed following expiration of the Board member's term of office.

512.4.4 Disqualification: The Hearing Officer and all Board members who served on the SOPC are disqualified from participating in the Board's review of the Hearing Officer's decision and from participating in the Board's vote on the matter."

In addition, staff reviewed the Model Code of Ethics for Members of Regulatory Boards for the Licensed Professions<sup>3</sup> that the Board discussed during its June 9, 2014 meeting; Advisory Opinion 96-09<sup>4</sup> prepared by the Washington State Executive Ethics Board, which includes Model Rules for Executive Branch Boards/Commission addressing conflicts of interest and recusal; a memorandum<sup>5</sup> from the Director of the United States

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<sup>3</sup> <http://www.fclb.org/Portals/7/CodeOfEthics.pdf>

<sup>4</sup> <http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updated%20Opinions/updated%20Advop%2096-09A.htm>

<sup>5</sup> <http://www.oge.gov/OGE-Advisories/Legal-Advisories/99x8--Recusal-Obligation-and-Screening-Arrangements/>

Office of Government Ethics regarding Recusal Obligation and Screening Arrangements for executive branch employees; and policies for other governmental bodies. Similar opinions or rules were not located for Judicial Branch boards and commissions.

### **Recommendation:**

Staff submits the following proposed policy for Board review:

## **Proposed Conflict of Interest Policy**

### **A. Introduction**

The Certified Professional Guardianship Board is committed to providing a fair, ethical and accountable environment for the conduct of its internal operations, and the management of its regulatory functions.

Being aware of and managing conflicts of interest are essential for good governance and the integrity of decision-making. It is essential that members understand that their role on the Board and its committees is to represent the interests of the Board and to act in the public interest.

A conflict of interest exists when it is likely that a Board member could be influenced or perceived to be influenced, by a personal interest when carrying out their public duty. Conflicts of interest can be actual, perceived or potential.

A conflict of interest is defined as having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of a Board member's duties to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner.

An actual conflict of interest involves a direct conflict between a member's Board duties and responsibilities and existing private interests. A perceived or apparent conflict of interest can exist where a reasonable person could perceive that a member's private interest could improperly influence the performance of his or her duties, whether or not this is in fact the case. A potential conflict of interest arises where a member has private interests that could conflict with his or her public duties in the future.

Board members must make public (and recuse themselves from) any actual, perceived and potential conflict of interest to ensure the integrity of the Board and all of its decisions.

***Disclosure and recusal*** are important tools to avoid actual, perceived or potential conflict of interest. Board members must not overuse recusal as an excuse to avoid

conflict in exercising their full responsibilities. The appointment of Board members who will likely need to consistently recuse should be avoided.

## **B. Types of Conflict of Interest**

A private or personal interest may be either pecuniary or non-pecuniary, and includes the personal, professional and business interests of the person and the individuals with whom he or she associates (relative, partner, friend, associate or colleague).

**Personal conflicts** are those actions that may ultimately have a personal or professional consequence that is a direct or indirect effect of a decision or action. No decisions should be made solely to advance the personal benefit of Board members. Some examples of personal conflict include:

- 1) **Personal gain:** Will this decision affect the Board member's personal life in any direct way?
- 2) **Sexual favors:** Will this behavior affect the Board member's position unfairly?
- 3) **Influence:** Will this behavior affect the Board member's position unfairly? Will it result in unwarranted privileges or exemptions?
- 4) **Effects on personal relationship:** Will there be an effect on the Board member's current, past or future personal and professional relationship(s), including memberships and or status in associations or professional organizations.
- 5) **Benefits to those who have a relationship with the Board member:** No decision should be made solely to effect the personal or financial gain of anyone with whom the Board member has a personal or professional relationship.
- 6) **Gift received:** Acceptance of any gift should be perceived as a bribe to influence present or future considerations.

**Financial conflicts** are those in which a Board member or those with whom he or she has a personal or professional relationship, may benefit financially, or be perceived as benefitting financially, from decisions by or the influence of the Board member. Money does not have to change hands for an interest to be financial. A financial interest includes, tangible and intangible assets and benefits. Some examples of financial conflicts include:

- 1) **Employment Gain:** These may include opportunities for consulting, speaking teaching, etc. Employment during and subsequent to Board membership should not appear to be relating to any Board matters.

- 2) **Financial Gain: Effects on the Board member's business.** Decisions and actions must not affect the future financial position of the Board member's business. Contractual and creditor relationships also apply here.
- 3) **Outside Activities:** These may include present employment, investment, and/or business opportunities.
- 4) **Recruitment of other professionals or clients into business opportunities:** Extreme care must be exercised to be certain no actual or perceived leverage of authority with the Board position is used in this area.

### **C. Public Duty**

All Board members have a duty to always put the public interest above their own personal or private interests when carrying out official Board duties. Determining public interest in a particular situation can be complex, but on a practical level a Board member's public duty can best be fulfilled by focusing on the Board's duty to protect the public by ensuring that guardianship services are provided by certified professional guardians in a competent and ethical manner; and identifying any form of conflict of interest that arises and ensuring that it is managed effectively.

### **D. Competing Interests**

At times, members may have multiple roles: in addition to their role with the Board, they may have a principal job in which they are employed by a government agency or a private sector organization. They may be self-employed. They may serve in another public sector or community-based role, such as being a member of a committee or statutory body. They may also serve in a professional organization or association.

In their role as Board member they may have access to confidential information that may be useful or of benefit to their work in one or more of their other roles. The risk in this situation is that there may be a temptation to use the information improperly, or to give advantage to the second organization, or create bias or prejudicial treatment of another group or person.

These conflicts are described as **competing interests** or a **conflict of duty**. These situations should be treated in the same way as potential conflicts of interest, that is, to ensure that decisions are made, and are seen to be made, on proper grounds, for the legitimate reason of protecting the public.

### **E. Participating in Proceedings**

There are generally two main categories of proceedings in which Board members commonly face issues of conflict of interest and bias — quasi-judicial proceedings and quasi-legislative proceedings.

Generally, in quasi-judicial proceedings (grievances and complaints) impartiality due to financial conflict of interest or personal interest is impermissible because an unbiased, impartial decision-maker is essential to due process. However, in quasi-legislative proceedings (rulemaking) ethical guidelines for personal or even financial bias may be less strict depending upon the particular facts and circumstances involved.

#### *“Quasi-Judicial Proceedings”*

Examples of quasi-judicial proceedings include certification decisions, disciplinary hearings, individual appeals from administrative decisions, and most grant awards. In such cases, no "legal bias" or personal, financial or familial interest is allowed. To avoid these types of conflicts, generally a Board member must refrain from participating in the discussion or voting on the matter.

What constitutes "legal bias" is a matter of law and is more appropriately determined on a fact-specific, case-by-case basis by the Board. According to court decisions, however, legal bias may include preconceptions about facts, policy, law, or a person, group or object.

#### *“Quasi-Legislative Proceedings”*

In quasi-legislative matters, (like most rulemaking) Board members should not participate in voting or discussion of matters that involve their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by Board members. Moreover, they should recuse themselves when their impartiality might reasonably be questioned due to their personal relationship with a participant in the proceeding. In such circumstances, general personal affiliations with organizations or groups will normally not preclude a Board member from participating in discussion or voting unless the organization itself is petitioning the Board directly regarding the matter. Depending upon the particular facts of (1) the relationship between the organization and the Board member and (2) the role the organization is playing in relation to issues before the Board, ethical requirements may vary greatly — from requiring that the Board member need only disclose his relationship to the full Board, to requiring that the Board remove himself entirely from the proceeding.

### **F. Managing Conflicts of Interest**

#### **What is recusal?**

Generally, recusal involves disassociation with the matter at hand. The Board member would not participate in the discussion or the deliberations, make recommendations, give advice, consider findings, or in any other way assume responsibility for or attempt to influence the decision-making process. This is different from abstaining, where one participates fully in the matter, but does not vote.

## **What should a Board member do to properly recuse?**

In order to instill confidence in the process, recusal should occur in public and on the record. In some situations, the Board member may choose to leave the room, but generally recusal followed by appropriate inaction is sufficient.

### **Rule #1**

(1) When a Board member is beneficially interested, directly or indirectly, in a contract or grant that may be made by, through or is under the supervision of the Board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract or grant, the member shall:

(a) Recuse him or herself from the Board discussion regarding the specific contract or grant;

(b) Recuse him or herself from the Board vote on the specific contract or grant;  
and

(c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific contract or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1), "any other person" has a beneficial interest in a contract or grant when the other person bids or otherwise seeks to be awarded the contract or grant.

### **EXAMPLE:**

The Certified Professional Guardian Board includes representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; court staff including judicial officers; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships. A Board member is employed by a company that performs surveys. The Board is in the process of selecting a contractor to survey professional guardians. The company that employs a member of the Board is interested in the contract.

The Board member may use his or her general expertise regarding the performance of surveys, but the member is prohibited from participating in the Board's discussion and analysis implementing the criteria for selecting a contractor, and is prohibited from participating in the Board's vote to select a contractor.

## **EXAMPLE:**

The Certified Professional Guardianship Board contracts with King Software to provide computer systems for tracking disciplinary cases. King Software's contract with the Board is almost expired and the Board plans to seek bids from software companies for the next contract period. The Board issues a request for bids to various software companies who offer suitable software, including Medsoft, Inc.

Approximately nine months ago, one Board member worked for Medsoft, Inc. and received compensation from that company. The Board member subsequently left Medsoft, Inc. and went to work for the state. The Board member is not required to recuse herself from selecting a contractor for the Board's disciplinary tracking system because Medsoft did not have a beneficial interest in the Board's contract until it bid on the contract.

Therefore, Medsoft was not a person beneficially interested in the contract when the Board member received the compensation, but the Board members should disclose his or her former relationship with Medsoft. However, if the Board member received delayed compensation from Medsoft after it bid on the contract, that he or she had already earned, this is probably not a conflict of interest, but still should be disclosed. If the Board member continues to work for Medsoft the Board member would be required to disclose the relationship and to recuse himself or herself from the Board's specific discussion and the vote awarding the contract.

## **Rule #2**

(1) When a member of the Board, either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the board, the member shall:

- (a) Recuse him or herself from the Board discussion regarding the specific transaction;
- (b) Recuse him or herself from the Board vote on the specific transaction; and
- (c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) shall not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the Board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, grievance or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of Board action; or

(ii) Is one to which the Board is or will be a party; or

(iii) Is one in which the Board has a direct and substantial proprietary interest.

(b) "Transaction involving the Board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the Board that is the basis for the claim, case, or lawsuit. Rulemaking is not a "transaction involving the Board."

(4) "Board action" means any action on the part of the Board including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A certification, grant, payment, award, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

#### **EXAMPLE:**

The Certified Professional Guardianship Board disciplines certified professional guardians in Washington State. The Board is conducting an investigation involving the guardianship services provided by a guardianship agency. One of the members of the Board sits on the board of directors for that agency or represents the agency in other matters. The member must recuse him or herself from any Board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the agency's guardianship services.

The Certified Professional Guardian Board certifies professional guardians in Washington State. The Board is reviewing an application for certification of an individual who is a relative, partner, friend, associate, or colleague of a member of the Board. The member must recuse him or herself from any review, discussion or deliberation regarding the application for certification.

#### **Rule #3**

If recusal occurs pursuant to model rule #1 or #2, the member of the Board shall disclose to the public the reasons for his or her recusal from any Board action whenever recusal occurs. The Board staff shall record each recusal and the basis for the recusal.

#### **G. Summary**

Considering the guidance provided above, Board members should:

- a. Fully disclose their relationships with any and all individuals and organizations when matters involving those entities come before the board;



- b. Avoid participating in quasi-legislative matters involving their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by other Board members;
- c. Not participate in rulemaking when the organization in which they have a personal interest is the petitioner for the rule in question; and
- d. Not participate in grievances and complaints or other quasi-judicial proceedings involving individuals and organizations with which they are personally interested or where their impartiality might reasonably be questioned as a result of their association with those entities.

Grievance Report  
May, 2023

**Certified Professional Guardian and Conservator  
Grievance Status  
May, 2023**

<b>New Grievances Received in May 2023:</b>	<b>6</b>
<b>2023 Grievances Dismissed by Board on May 8, 2023:</b>	<b>2</b>
<b>2023 Grievances Forwarded to Superior Court on May 8, 2023:</b>	<b>5</b>

	<b>2022</b>	<b>2023</b>
<b>Total Grievances Received:</b>	<b>75</b>	<b>28</b>
<b>Total Grievances Dismissed: No Jurisdiction, Insufficient Grievance</b>	<b>30</b>	<b>7</b>
<b>Total Grievances Forwarded to Superior Court:</b>	<b>39</b>	<b>15</b>
<b>Total Grievances Dismissed Following Court Order:</b>	<b>30</b>	<b>1</b>
<b>Total Grievances Dismissed Following Investigation:</b>	<b>2</b>	<b>0</b>
<b>Total Grievances Open Pending CRC Review:</b>	<b>1</b>	<b>0</b>
<b>Total Grievances Open Pending Investigation:</b>	<b>3</b>	<b>1</b>

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: 251**

## Grievances Pre-UGA

<b>Pre-UGA Grievance Status</b>	<b>2021</b>
Grievances Resolved this Month:	2
Total Grievances Requiring Investigation:	7

<b>Resolution of Pre-UGA Grievances</b>	<b>2021</b>
<b>Total Grievances Received by Year</b>	<b>95</b>
Dismissal No Jurisdiction	9
Dismissal No Actionable Conduct	65
Dismissal Insufficient Grievance	7
Dismissal Administrative	2
Advisory Letter	1
Termination – Administrative Decertification	4
<b>Total 2021 Grievances Resolved:</b>	<b>88</b>

## Guardians/Agencies with Multiple Grievances

May 2023

ID	Year Cert.	Unresolved Grievances	Year(s) Grievances Received
A	2015	3	2022 (1), 2023 (2)
B	2009	2	2021 (2)
C	2001	2	2023 (2)
D	2016	6	2022 (5), 2023, (1)
E	2021	2	2022 (2)
F	2006	4	2021 (2), 2023 (2)
G	2007	2	2023 (2)
H	2011	4	2022 (1), 2023 (3)
I	2017	2	2023 (2)
TOTAL		29	

Of the 40 currently unresolved grievances, 29 involve 9 Certified Professional Guardians and Conservators or Agencies with 2 or more grievances.