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ADMINISTRATIVE OFFICE OF THE COURTS

Nan
Certified Professional Guardian Board

January 11, 2012

Honorable Charles W. Johnson, Chair
Supreme Court Rules Committee
Washington State Supreme Court
P O Box 40929
Olympia, WA 98504-0929

RE: GR 31A

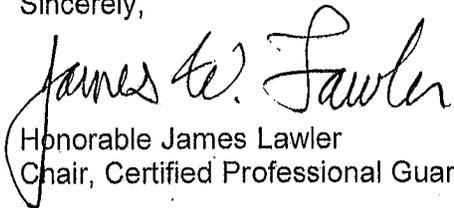
Dear Justice Johnson:

As chair of the Certified Professional Guardian (CPG) Board, I am writing to provide the board's position on the proposed amendments to GR 31A. As originally proposed, the CPG Board was exempted from the effect of the rule as our records are controlled by our own rules promulgated pursuant to GR 23. We adopted regulations relative to public records in 2008 and amended those regulations in 2010, and specifically provided for the release of certain documents. Of concern to the board was the release of information about unfounded complaints against individual Certified Professional Guardians or Agencies. After much discussion we arrived at our current rules for disclosure, a copy of which is attached for your information.

We were recently notified by Jeff Hall, State Court Administrator, that the exemption from GR 31A for the Certified Professional Guardian Board was opposed by some, and he proposed language that would simply include our disclosure rules in GR 31A. Our position is that the CPG Board should be exempt as our current rules adequately provide for release of public information, and we would like to be able to modify our rules should that become necessary in the future. If exemption is ultimately found to be unacceptable, we would strongly urge that the language from our Administrative Regulation 003 be included verbatim in GR 31A as it applies to the Certified Professional Guardian Board.

I thank you for your consideration of this matter.

Sincerely,


Honorable James Lawler
Chair, Certified Professional Guardian Board

Enclosure: CPGB Administrative Regulations

Administrative Regulations

Adopted 2-11-08

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000 Administrative Regulations

001 Purpose of Administrative Regulations

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

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 the Board of a grievance or complaint against a professional guardian. 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 as defined in RCW 11.88.008. 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; 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 as defined in RCW 11.88.008. 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's conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian allegedly violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.
- 002.5 "Decertification" of a professional guardian or agency occurs when the Board or the Supreme Court cancels the certification of a professional guardian or agency for any reason.
- 002.6 To "deliberate" is to consult with others in a process of exercising predecisional 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, 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 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 for the purpose of ensuring compliance with the duties of a professional guardian, 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)
- 002.10 "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.
- 002.11 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's conduct under the rules and disciplinary regulations applicable to professional guardians. The grievance must include a description of the conduct of the professional guardian that the grievant alleges violates a statute, fiduciary duty, standard of practice, rule, regulation, or other authority applicable to professional guardians, including the approximate date(s) of the conduct.
- 002.12 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 may be represented by an attorney. Each party may present evidence and argument as directed by these regulations and the hearing officer.

- 002.13 An "incomplete grievance" is one that is unclear or substantially lacking in specificity so as to make the grievance inactionable.
- 002.14 "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 prior to the imposition of any disciplinary sanction or dismissal. (Revised 3/8/10).
- 002.15 "Professional guardian" is a guardian as defined by RCW Chapter 11.88.008 and includes both the individual and the agency.
- 002.16 "Revoked" or "revocation" means a professional guardian's certification is cancelled by the Board or the Washington State Supreme Court pursuant to the procedures set forth in these disciplinary regulations or any other regulations of the Board, as a result of the professional guardian's failure to comply with any Board rule or regulation.
- 002.17 A "suspension" of a professional guardian occurs when the Board or the Supreme Court orders that the certification of a professional guardian or agency be temporarily cancelled for a specified period of time. A suspended professional guardian or agency may not act as a certified professional guardian for any person during the period of suspension.
- 002.18 "Voluntary surrender" means a process where a certified professional guardian voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.

003 Public Records

- 003.1 Disclosure. Existing records that are prepared, owned, used, or retained by the Board shall be disclosed upon request using established procedures for inspection, copying, and disclosure except as otherwise provided in rules, regulations of the Board, or other authority.
- 003.2 Exemptions from Disclosure. The following records are exempt from public inspection, copying, and disclosure:
- 003.2.1 Test questions, scoring keys, test results, test answers test scores and other examination data used to administer a certification or license examination.
- 003.2.2 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.
- 003.2.3 Investigative records compiled by the Board, the nondisclosure of which is essential to effective law enforcement.
- 003.2.4 Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.
- 003.2.5 Deliberative records of the Board, a hearing officer or hearing panel, review panel, or board committee made confidential by a court order.

003.2.6 Personal information, including, but not limited to, home address, home telephone number, financial information, health information, Social Security number, and date of birth.

003.2.7 Certain personal and other records of an individual such that disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public.

003.2.8 Other records related to the Certified Professional Guardian Board that are required by law, rule, regulation, court order, or other authority to be confidential.

003.3 Other Records.

003.3.1 Dismissed grievances shall be disclosed upon written request using established procedures for inspection, copying, and disclosure with identifying information about the grievant, incapacitated person, and professional guardian and/or agency redacted. A request for dismissed grievances shall cover a specified time period of not less than 12 months. (Amended 6/14/10)

003.3.2 The identity of a person requesting an ethics advisory opinion is confidential and not subject to public disclosure.

003.4 Records Retention. Records related to the Certified Professional Guardian Board shall be retained in accordance with records retention schedules for the judicial branch and the Washington State Administrative Office of the Courts (AOC).

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 Committee (Adopted 7-12-04)

004.2.1 The Chair of the Board may appoint a Rules 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.

005 Best Practices

(RESERVED)

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.