



February 13, 2013

Honorable Barbara A. Madsen
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Dear Chief Justice Madsen:

Re: Applicability of the Uniform Disciplinary Act to Guardian Complaints

Issue

The Court recently received public comments about proposed GR 31.1 (governing public access to the judiciary's administrative records). Several of the comments were written to support a proposal to amend proposed GR 31.1 so that public access to professional guardian records would be governed by standards that are set forth in the Uniform Disciplinary Act (UDA), Chapter 18.130 RCW, rather than by the standards and practices currently used by the Board. The Court asked the Board to submit a written public comment responding to this proposal. In particular, the Board was asked to indicate why, or why not, public access to the Board's professional guardian records should be governed by standards based on those found in the UDA RCW 18.130.095(1)(a).

Background

The Board is a regulatory body which functions similarly to Lawyer Admissions, Licensing and Discipline administered by the Washington State Bar Association (WSBA) for the Washington State Supreme Court and Judicial Discipline administered by the Commission on Judicial Conduct. The Board administers the application or credentialing process for guardian certification, including appeal of denials, annual recertification and the disciplinary process.

Unlike professions governed by the UDA, professional guardians are appointed officials of the court system, selected by the court and supervised both by the Board and the court. The court scrutinizes the actions of a professional guardian in a specific guardianship and the Board scrutinizes a guardian's aggregate conduct across his or her caseload.

Comparison of Pertinent UDA Provisions to Board Public Disclosure Policy:

RCW 18.130.095(1)(a) (UDA in pertinent part):

The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a license holder, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A license holder must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

UDA Provision 1: Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority.

Board: The Board's policy is currently consistent with UDA Provision 1. Grievances¹ which have not been assessed and determined to warrant an investigation are exempt from public disclosure.

¹ Terms used by the UDA and the Board are not consistent. The term "complaint" used by the UDA has the same meaning as the term "grievance" used by the Board.

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.

UDA Provision 2: Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department.

Board: The Board's policy is currently consistent with UDA Provision 2. Grievances which are determined not to warrant an investigation are dismissed, but remain in the Board's records and tracking system.

UDA Provision 3: Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection.

UDA Provision 4: Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

Board: The Board's policy is not consistent with UDA Provisions 3 and 4. The Board treats grievances dismissed without investigation and those dismissed after an investigation similarly. Information about grievances that did not warrant an investigation and those investigated but did not warrant action are 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 must cover a specified time period of not less than 12 months.

The Board is attempting to create a mechanism to balance the conflict between privacy and access to public records. In the practice of guardianship, there are competing concerns. All stakeholders must act to appropriately protect incapacitated persons from potential abuse and exploitation, thus limiting access to certain information is necessary to protect persons subject to guardianship. At the same time, the public has the right to information that will assist them evaluate the guardianship system, and individual guardians and agencies have the right to protect information which could harm their reputations unjustly. The Board has determined that releasing dismissed grievances with specific information redacted achieves the necessary balance of protecting incapacitated

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.

individuals, providing the information needed to assess the system while reducing potential harm to practitioners.

Tracking and Analyzing Grievances to Inform Guardianship Policy Decisions

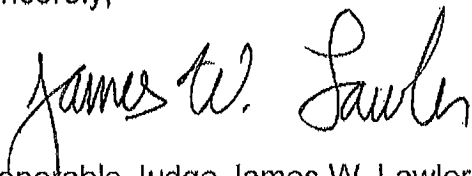
The Board supports tracking and analyzing grievances to inform guardianship policy decisions. The Board's current public disclosure policies do not inhibit tracking and analyzing for systemic change. Redacted information such as identifying information about the grievant, incapacitated person, and professional guardian and/or agency isn't necessary for system analysis.

The Board's ability to analyze data is constrained by resource availability. Board members are volunteers, all with other jobs and responsibilities, and the staff provided by the AOC is overextended making it difficult to perform more than required prioritized tasks associated with certification and grievance investigation. Additional resources would be appreciated.

Request

The Certified Professional Guardian Board (Board) reviewed the BJA Public Records Work Group's proposed changes to General Rule (GR) 31 and the provisions of the UDA. The Board respectfully requests that Board public disclosure provisions remain in GR 31 as currently proposed.

Sincerely,

A handwritten signature in black ink that reads "James W. Lawler". The signature is written in a cursive style with a large initial "J" and "L".

Honorable Judge James W. Lawler, Chair
Certified Professional Guardian Board