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Subject: FW: proposed amendment to GR 23
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From: Victoria Kesala [mailto:vkesala@gmail.com]
Sent: Friday, February 25, 2022 3:09 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: proposed amendment to GR 23

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Good afternoon,

I am writing to express my support for the amendments to GR 23, which would increase the representation of Certified Professional Guardians (CPGs) on the Certified Professional Guardian Board.

I served on this Board. I have practiced in this area of law since 2010. I formerly worked for the courts.

Representation

I share the view of the author of the proposal that the limitation on the number of CPGs is too low. I think the CPGs should be at least 50% of the CPG Board. I have two basic reasons for this: judicial domination and knowledge.

Judicial Domination / Intimidation

My impression in the meetings was that CPGs were intimidated by other board members. I found the Board to be consistently dominated by the judicial members. My experience was that there was not a lot of room for differences of opinion, or we were given cues as to whether a topic was actually open to free discussion or not. The tone of the chair (always a judge) dictated the process and decisions of the Board to an extent that was not conducive to expansive thinking, creative problem solving or free expression of a variety of views. I felt intimidated and even unwillingly silenced at times and I am an attorney who is accustomed to being an advocate in an adversarial process. The place for judicial domination is the courtroom, not the CPG Board. An inclusive style can make for a more inclusive process and a less inclusive style can make for a less inclusive process. I observed both styles during my time on the Board. The structure of the Board should be changed to prevent an inherent power imbalance and suppression of CPG views.

Knowledge of Practical Matters

My experience on the Board led me to believe that only CPGs and attorneys who represent CPGs really understand the practical realities, challenges and limitations of what CPGs can

realistically be expected to do. I found the views of some staff members and some non-CPG members of the Board to be uninformed and unrealistic. This is especially true for cases involving indigent individuals subject to guardianship / conservatorship. The level of ignorance on the Board regarding what CPGs actually do, what is a reasonable caseload for a CPG to run a sustainable business, how CPGs get paid and how they get things done was troubling to me during the time I served on the Board. This led, in my opinion, to decisions that were unrealistic and burdensome for CPGs. Principles are very important, but reality needs to be factored into regulatory decisions. In my view, there has been too much emphasis on aspirational principles and not enough emphasis on how things actually can work (or not work) in practice for the regulated individuals. Regulations need to provide clear direction as to expectations as opposed to listing lofty idealistic goals that require a lot of interpretation in practice. There is a divide between the perceptions of practitioners and non-practitioners. The high level of scrutiny of CPGs without a corresponding level of empowerment and participation in the Board has led, in my opinion, to good people deciding this line of work is just too hard. They can see the complaints process becomes skewed against the professional when decisions are made by people who do not fully understand the work that is being regulated. This applies to the Public Guardian contract in particular - the case cap is very low, the pay is not adequate on an aggregate level or an individual case level, and the cases are difficult, making it unappealing.

Executive Session

I observed during my time on the Board that sometimes various sensitive matters are discussed in Executive Session. I understand that some information needs to be handled confidentially and I don't disagree with the use of Executive Session to address this need. However, it is my impression that the Executive Session has often been used to discuss policy matters that could have been included in the open session, in my opinion. I agree with the proposed amendment.

I am available to clarify and/or discuss my feedback if desired. Thank you.

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