



WASHINGTON  
COURTS



Certified Professional Guardian Board  
2010 Annual Report

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## ABOUT THE BOARD

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### Board Mission

The Certified Professional Guardian Board, a Board established by Supreme Court General Rule 23, regulates the certification of professional guardians, including the selection, education, and discipline of those guardians. The Board will continue to be a national leader in the certification process and the regulation of guardians, and will continue to hold prospective and current guardians to high standards.

### The Board's Duties Include:

- Reviewing applicants for certification by the Supreme Court;
- Adopting and ensuring compliance with Standards of Practice and other Board regulations;
- Reviewing and investigating grievances, holding disciplinary hearings, and imposing disciplinary sanctions;
- Implementing and approving mandatory training both for initial certification and as an ongoing requirement to maintain certification; and
- Adopting ethics advisory opinions to guide professional guardians in their practice.

### Board Membership

The Washington State Supreme Court appoints the Board chair and members. The Board includes representatives from the following areas of expertise: professional guardians, attorneys, guardian advocates, courts, state agencies, and those employed in medical, social, health, financial or other fields pertinent to guardianships. Currently, the Board has 14 members—four professional guardians, (two of whom are also guardianship attorneys), five judicial officers, one attorney from the Department of Social and Health Services, two professors (one a board certified nurse and the other an attorney), one member from the Arc, and one member from the Alzheimer's Association. The board operates via a committee structure depicted in Figure 1.

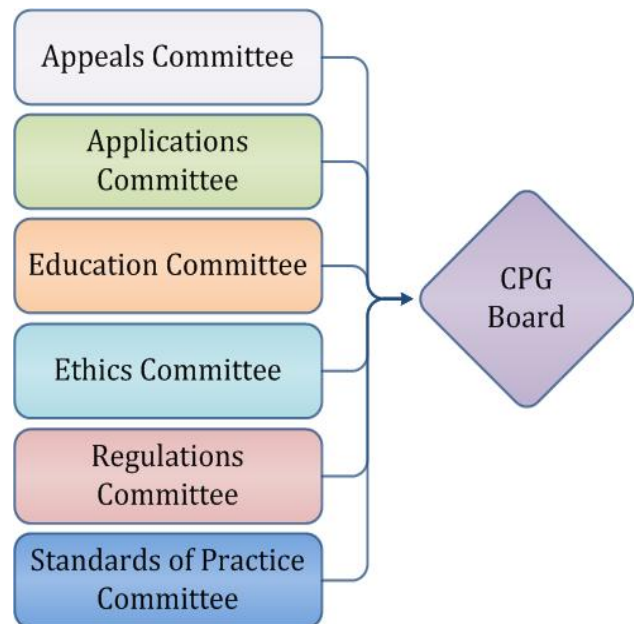


Figure 1  
Committee Structure of Board

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## CHAIR REPORT

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In 2010, the CPG Board ensured that Washington State remained a leader in the certification and regulation of professional guardians. Among the Board's achievements:

- Renewed the contract with the University of Washington Education Outreach (UWEO) program for another three years.
- Completed an audit of all certified professional guardians for timeliness in filing certain reports.
- Revised and re-organized the Standards of Practice with consideration of national standards of practices for professional guardians.
- Revised the Continuing Education Regulations to require certified professional guardians to report continuing education credits on a biennial basis rather than an annual basis.

The Board has set ambitious goals for the next year, including:

- Considering testing of all guardians.
- Maintaining the high standards of the UWEO Guardian Certificate Program and ensuring access to the program.
- Beginning other audits.
- Recruiting new CPGs into the practice and encouraging diversity in the profession.
- Supporting the OPG program.

It has been my pleasure to serve on the CPG Board as the Chair. The work of the Board is critical in ensuring that incapacitated persons have well-trained and well-vetted guardians. The Board is a committed group of volunteers who bring their expertise to focusing on how best to protect the most vulnerable citizens.

## APPLICATIONS COMMITTEE REPORT

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The Applications Committee meets monthly to review applications for professional guardian certification and to make recommendations to the Board. The Applications Committee also considers requests for agencies to be certified and for requests to go on inactive status or to voluntarily surrender certifications. The Committee makes recommendations to the Board in cases in which a guardian fails to pay annual dues or fails to file an annual disclosure.

In 2010, 61 applications for certification were considered, 58 were granted certification, and three were denied.

### 2010 Certification Statistics

Certified Professional Guardians:	242
Certified Professional Guardian Agencies:	41
Voluntary Surrenders of Certification:	6
Requests to become inactive:	7
Decertification for failure to pay dues:	3
Decertification for failure to take continuing education classes:	2

The Applications Committee recommended changes to the application regulations which were adopted by the Board<sup>1</sup>. The changes included:

- allowing any legal entity to become a certified professional guardian agency, not just corporations; and
- requiring solo guardians who have employees to conduct background checks on those employees who come into contact with the incapacitated person or the incapacitated person's estate.

### EDUCATION COMMITTEE REPORT

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The Education Committee oversees the initial mandatory training to become a certified professional guardian and the continuing education classes that each guardian must take to remain certified. The committee meets at least quarterly. The committee reviewed the Administrative Office of the Courts (AOC) staff determinations regarding credit awarded to classes. In 2010, there were 58 classes, some covering multiple days for a total of nearly 300 credit hours<sup>2</sup>.

The committee proposed significant changes to the continuing education regulations in 2010 and those changes were all adopted by the Board<sup>3</sup>. One of the major changes was to require guardians to report continuing education credits every two years instead of every year. The number of credits needed remained the same, but the allocation of credit hours needed was changed. Guardians now need to obtain twenty-four credits every two years as follows:

- Six person credits—the course or subject must encompass training and information pertaining to personal care, physical care, residential placement, care management, medical, psychological, social, and family matters and other issues with which a guardian of the person should be familiar.

<sup>1</sup> For more details about new regulations, please see Appendix F

<sup>2</sup> For more details about classes, please see Appendix E

<sup>3</sup> For more details about new regulations, please see Appendix F

- Six estate credits—the course or subject must encompass training and information about the marshalling, management, and sale of assets; responsibility for maintenance and protection of assets; entitlement to federal, state, and other financial benefits; estate planning, including gifting and transfers of assets; and other financial activities with which a guardian of the estate should be familiar.
- Eight general credits—the course or subject must encompass training and information pertaining to the business side of a guardian’s practice, including the use of forms to assist in the practice, tax and civil liability, insurance and bond issues, relationship with counsel and other professionals, fee issues and billing practices, and business development. It also includes matters that apply generally to guardianship of person and estate, such as the roles of guardians ad litem, petitions for direction, general civil procedure or the role of the court.
- Four ethics credits—the course or subject must deal with the ethical issues and ethical conflicts relative to the legal rights, duties, or responsibilities of guardians.

Guardians will no longer be able to carryover all of the needed credits from one reporting period to the next, but will only be able to carryover half of the needed credits. Regulations are pending to clarify how credits may be carried forward—whether only in the category in which they were earned or transferred to other categories.

Another regulation change was to allow guardians to retroactively request continuing education credits for classes that were held not more than thirty days earlier. The change was developed to allow guardians to take classes from a broader range of providers than the normal class sponsors. For example, some nursing and social work continuing education classes present material that is relevant to guardians, but the class sponsors do not request CPG credit. The regulation change allows a guardian to attend the class and request credit.

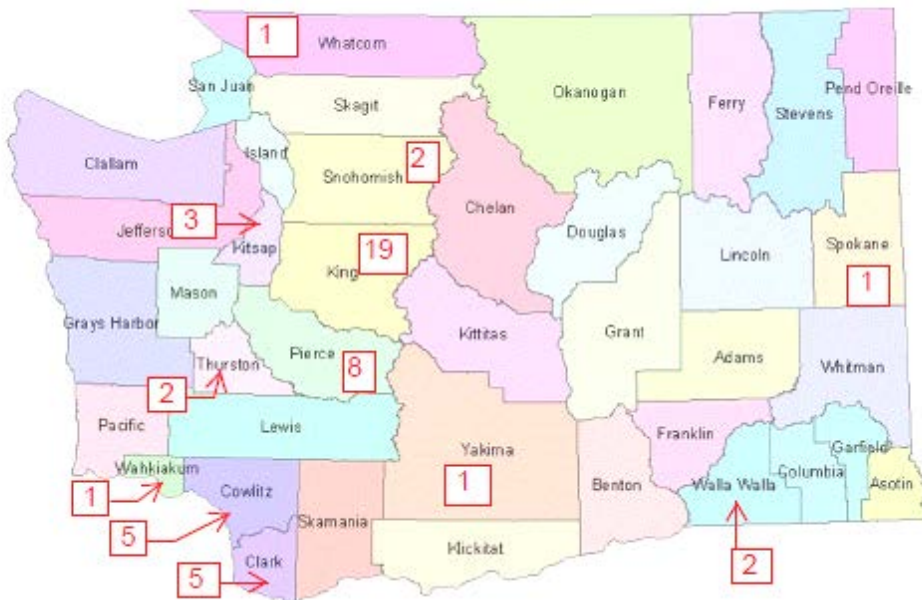
Another change to the regulations clarified the number of credits that may be earned while preparing to teach a continuing education class. The former regulation allowed up to ten hours of credit for preparing a one hour class. The current regulation allows three hours of preparation time for each hour of class time, up to a maximum of nine hours. The changes also clarified that a guardian could earn credit only one time for class preparation time no matter how often the course was presented.

Other changes included creating a form for a guardian to fill out when he or she attended only part of a continuing education class and ending the requirement for sponsors to send copies of class materials to the AOC.

The University of Washington Educational Outreach (UWEO) Program is in the third year of its three-year contract to provide the mandatory training for certified professional guardians. The class semester lasted for a six-month period and was a combination of 56 hours of in-person class time and 44 hours of online learning for a total of 100 contact hours. The instructors are drawn

from the University of Washington, certified professional guardians, advocates, and other professionals.

There have been 50 individuals who have earned a certificate from the UWEO Guardian Certificate Program in the Spring 2010 and Fall 2010 classes. The students' average age is 49 years, with the youngest student being 23 years old and the oldest student being 68 years old. The majority of the students are women (78%). The students have come from twelve counties, predominantly King and Pierce Counties. See the chart below for the students' home of record.



The Education Committee worked with the UWEO on terms for a new three-year contract that will become effective August 2011. One of the major changes to the mandatory training program is that the course will be held only once a year and will run for nine months instead of six months. The UWEO instructors requested the change so that students have more time to complete assignments and more time to integrate the learning. The number of contact hours is expected to remain the same.

### **ETHICS ADVISORY COMMITTEE REPORT**

Under General Rule 23(h), the Board may issue ethics advisory opinions to inform and advise Certified Professional Guardians and Certified Agencies of their ethical obligations. Any Certified Professional Guardian may request an opinion. The committee received one request for an advisory opinion and ultimately decided that the matter was a legal issue best decided by the local court with jurisdiction.

## REGULATIONS COMMITTEE REPORT

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### Standards of Practice Regulations

The Board revived the Regulations Committee (formerly the Rules Committee) in late 2009. The impetus was a decision to review the Standards of Practice in light of the National Guardianship Association Standards, the Council of Accreditation Standards, and a request by the Supreme Court. The Regulations Committee met monthly for nearly a year to work on the Standards of Practice. The committee started with re-organizing the Standards, creating a table of contents and new chapter headings to make finding relevant standards easier. This step also served the purpose of eliminating standards that were duplicative.

The committee then addressed the substance of the Standards and drew heavily on the National Guardianship Association Standards. The changes were brought to the Board and adopted for public comment. The changes to the Standards of Practice generated a significant amount of public comment and the comment period was extended beyond the normal thirty-day period. Approximately fifteen members of the public attended the January 2011 Board meeting when the Standards of Practice first came up for adoption by the Board. The Board has since adopted all of the changes to the Standards.

### CPG Business Names Regulation

One of the more controversial regulation changes proposed was the change to the use of business names by solo guardians. Agency guardians have at least two designated certified professional guardians working for the agency and guardianship appointments are made in the agency's name. Solo guardians almost always create a business structure to run their guardianship practice. The problem was that some of the solo guardians were being appointed on cases in their business name (which was not a CPG agency) and some of the business names appeared to be potentially misleading to the public, giving the impression that there were multiple employees when there was only the one guardian.

The Regulations Committee initially proposed restricting a guardian from operating using an alias, firm name, title or "doing business as" that differed from the name in which the guardian was certified. The Board received numerous comments regarding the common use of a business entity for tax, insurance, marketing, or partnership reasons. The Board considered the comments and passed a regulation that required that:

- all guardians be appointed in the name in which they were certified;
- letters of guardianship be issued in the name of the solo guardian or the name of the agency;
- the use of any business name for a solo guardian be limited to promotional materials; and contact information, provided that the name of the solo guardian be listed; and



- all guardians and guardian agencies refrain from making false or misleading communications about the guardian's services.

### **Errors and Omissions Insurance Compliance Regulations**

All guardians are required to report annually regarding errors and omissions insurance. Any guardian who is appointed as guardian in twenty-five or more cases or manages countable assets (including real property) of more than \$500,000 must carry at least \$500,000 of errors and omissions insurance. Errors and omissions insurance is a type of malpractice insurance which gives physicians, attorneys, architects, accountants and other professionals coverage for claims by patients and clients for alleged professional errors and omissions which amount to negligence.

Prior to the regulation changes, if a guardian filed the errors and omissions insurance declaration late, a review panel had to be appointed to determine what action to take. The change to the errors and omissions insurance regulation created a process similar to that for annual declarations and continuing education declarations—all were due by a specific date and if a guardian filed late, he or she was assessed a special service fee which increased as time went by. Only if the guardian fails to submit a declaration by October 1 will a review panel have to be appointed.

### **STANDARDS OF PRACTICE COMMITTEE REPORT**

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The Standards of Practice Committee (SOPC) meets at least monthly and makes decisions about disciplinary matters. In 2010, the SOPC reviewed grievances and the results of the DR 520 Audit.

#### **Review of Grievances**

The CPG Board received thirty-three new grievances in 2010. Any person may file a grievance against a CPG or the Board may determine on its own that a grievance should be opened.

Grievances involving active guardianship cases are sent to the Superior Court with jurisdiction over the guardianship case for investigation. If the guardianship case has been closed or the grievance does not involve one specific case, the SOPC will initiate its own investigation through the use of Administrative Office of the Courts staff.

Once the investigation by the Superior Court or the AOC is complete, the SOPC will determine what action to take. The SOPC may direct further investigation, dismiss the grievance for lack of actionable conduct, dismiss for failure to allege any violation of the Standards of Practice or other regulations, recommend entering into an Agreement Regarding Discipline, or recommend filing a complaint against the CPG. If the SOPC recommends entering into an Agreement or filing a complaint, the Board must approve.

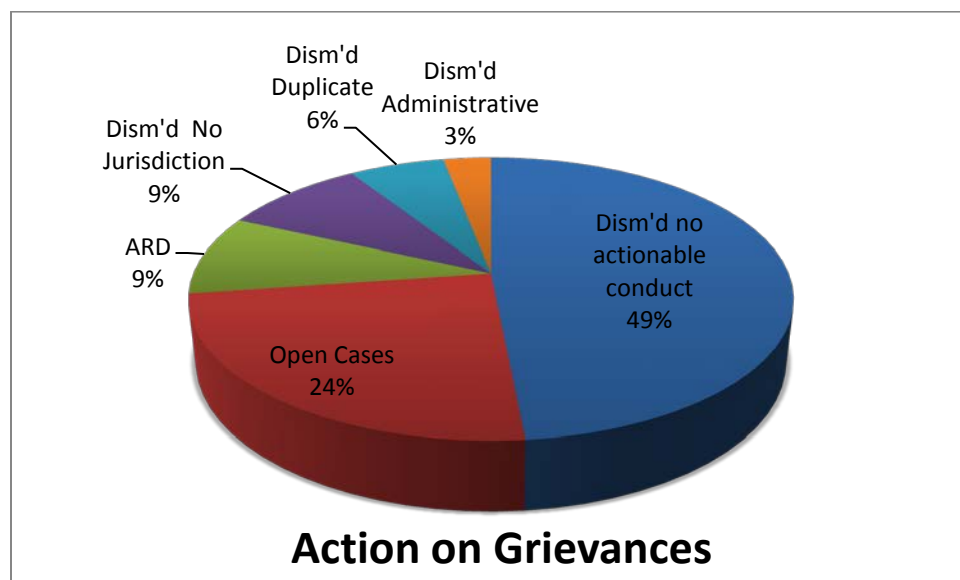
There were several grievances that had been opened in prior years that were closed in 2010.<sup>4</sup> Of the thirty-three grievances opened in 2010:

- Sixteen were dismissed for lack of any actionable conduct on the part of the guardian;
- Eight were still open at the end of 2010;

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<sup>4</sup>For more details, please see Appendix C.

- Three resulted in Agreements Regarding Discipline (ARD);
  - In CPGB No. 2007-025, the guardian failed to follow the terms of an earlier agreement which required the guardian to file a Declaration of Proposed Guardian at the time of appointment. The guardian agreed to provide copies of Declarations in all cases in which the guardian was appointed and to pay the Board's costs. The guardian has complied with the terms of the Agreement and the matter is closed.
  - In CPGB No. 2009-006, the guardian failed to file timely reports in a number of cases. The guardian agreed to accept a letter of admonishment (the lowest form of sanction), be re-audited in six months, create a case tracking system, and pay the Board's costs. The guardian has complied with the terms of the Agreement and the matter is closed.
  - In CPGB No. 2010-018, the guardian obtained court authority to sell personal property of the incapacitated person, but failed to disclose that it was sold to a family member for the blue book value. This was a conflict of interest. The guardian agreed to accept a letter of admonishment.
- Three were dismissed for lack of jurisdiction, that is, the case did not involve a certified professional guardian acting as a guardian;
- Two were dismissed because they were duplicates of prior grievances and the grievant provided no new information; and
- One was administratively dismissed (the grievant withdrew grievance and did not provide sufficient information to establish allegations).



### Disciplinary Regulation (DR) 520 Audit Results

At the end of 2008, the Board decided to audit all CPGs for the timeliness of filing certain reports: inventory, personal care plan, annual accountings, annual status reports, petitions to approve budgets, petitions for final reports, and filing of bonds. The Board determined that 40% of a guardian's or guardian agency's cases (or five cases, whichever was greater) would be audited. The look-back period of the audit was November 2008, when DR 520 was adopted. Guardians were selected monthly by a random process. If a CPG was selected and he or she was a member of a guardian agency, then all guardians in that agency and the agency itself were audited.

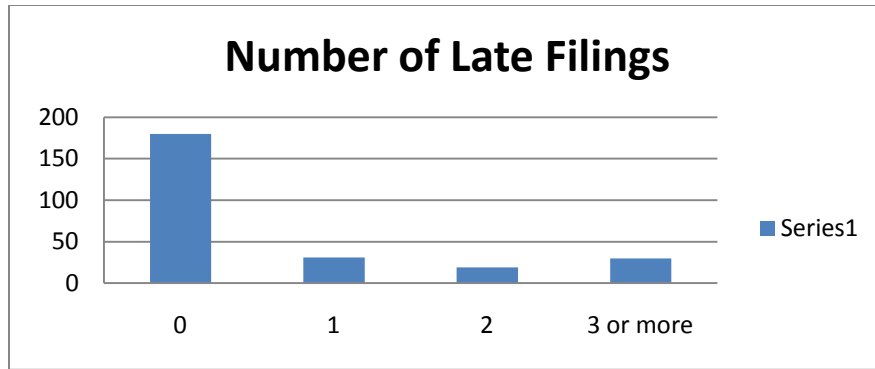
Once the guardian was selected, he or she provided a case list and 40% of the cases were randomly selected to be audited for timeliness. The data on timeliness was gathered by using SCOMIS, the court's case management system. The SOPC took the following actions on review of the case data:

- Cases currently out of compliance: If the audit revealed that a guardian had cases that were out of compliance with the filing requirements of RCW 11.88 or RCW 11.92, an "inquiry" was opened. The guardian and the court received a letter outlining the issues. The guardian had four weeks to come into compliance.
  - If the guardian brought its cases into compliance and there was no determination by the court that further action was required, the SOPC could close the inquiry; or
  - The SOPC could determine that the inquiry should not be closed and that the guardian should be audited again within one year to ensure continued compliance.
- Cases currently in compliance with prior non-compliance: If the guardian had been out of compliance with the filing requirements of RCW 11.88 or RCW 11.92 in the six months prior to the date of the audit, but was currently in compliance, the SOPC could notify the guardian of its concern. The SOPC could also determine that the court should be notified.
- Cases currently in compliance with no prior non-compliance: The audit of the guardian was closed and no further action was taken.

The first selection of guardians took place in July 2009. The DR 520 Audit was completed by the end of August 2010. The audit provided useful data to the Board about the number of cases in which CPGs are appointed, the number of cases per CPG, and the compliance rate of CPGs in terms of report filing.

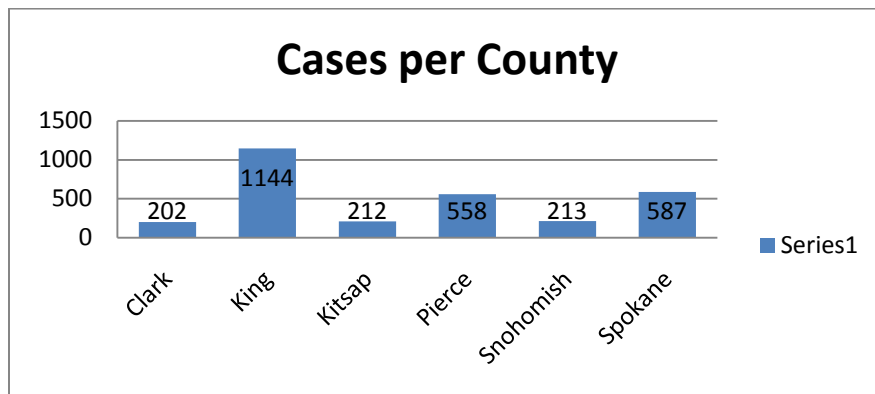
The total number of guardianship cases in which a CPG or CPG Agency is appointed is approximately 3440 cases or about 17% of the total number of Washington guardianship cases. Approximately 884 cases were audited (within the audit period and within 40% of the guardian's case load).

The majority of CPGs audited had no late filings during the audit period. Another thirty-one CPGs had only one late filing during the audit period. There seemed to be no correlation between the number of years in practice and the number of late filings.



The average number of cases managed per CPG was eleven cases and for a CPG Agency the average was forty-nine cases. The median number was five cases per CPG and forty cases per CPG Agency. There were approximately twenty-five individual guardians with more than twenty cases and the highest number of cases managed by an individual guardian (and there were two with the same number) was fifty-two cases. The three largest CPG Agencies had 188, 141, and 130 cases.

Looking at the county information, the vast majority of professional guardian cases are in six counties: Clark, King, Kitsap, Pierce, Snohomish, and Spokane. Only another eleven counties had more than twenty professional guardian cases.



## APPEALS COMMITTEE REPORT

The Appeals Committee is an Ad Hoc Committee that is created when the Board denies an application for certification and the applicant appeals the Board's decision. In 2010, there was only one appeal and that appeal was not successful. The work done by the Board in prior year's to clarify and make the application standards more objective has resulted in fewer appeals.

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APPENDIX B: AOC Staff Members

APPENDIX C: Grievance List

APPENDIX D: Continuing Education Class List

APPENDIX E: New Regulations

**APPENDIX A: CURRENT BOARD MEMBERS**

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**Judge Kimberley Prochnau**

King County Superior Court  
*Board Chair until 6/30/10*  
*Regulations Committee Member*

**Judge Chris Wickham**

Thurston County Superior Court  
*Board Vice-Chair until 6/30/10*  
*Board Chair 7/1/10 to present*  
*Ethics Advisory Committee Member*

**Judge James Lawler**

Lewis County Superior Court  
*Board Vice-Chair from 7/1/10 to present*  
*Regulations Committee Member*  
*Appeals Committee Member*

**Ms. Robin H. Balsam**

Attorney, Robin H. Balsam, P.S., and Certified Professional Guardian, Commencement Bay Guardianship Services  
*Applications Committee Chair*  
*Ethics Committee Member*

**Mr. Gary Beagle**

Certified Professional Guardian, Beagle, Burke & Associates  
*Education Committee Chair*

**Dr. Barbara Cochrane, PhD, RN, FAAN**

Associate Professor, School of Nursing, University of Washington  
*Education Committee Member*  
*Applications Committee Member*

**Ms. Nancy Dapper**

Alzheimer's Association Western & Central Washington State Chapter  
*Long Term Planning Committee Chair*  
*Standards of Practice Committee Member*  
*Ethics Advisory Committee Member*

**Mr. William Jaback**

Certified Professional Guardian, Partners In Care  
*Education Committee Member*  
*Applications Committee Member*  
*Appeals Committee Member*

**Mr. Christopher Neil**

Attorney, Neil, Nettleton and Neil, P.S., and Certified Professional Guardian, Pacific Guardianship Services  
*Regulations Committee Chair*  
*Standards of Practice Committee Member*

**Ms. Emily Rogers**

Arc of Washington  
*Applications Committee Member*

**Prof. Winsor Schmidt, LL.M.**

Endowed Chair in Urban Health Policy  
 Dept. of Family and Geriatric Medicine  
 Univ. of Louisville School of Medicine  
*Ethics Advisory Committee Chair*  
*Education Committee Member*  
*Regulations Committee Member*

**Ms. Carol Sloan**

APS Program Manager, ADOSA, Home & Community Services Division  
*Education Committee Member*

**Judge Robert Swisher**

Benton and Franklin Counties Superior Court  
*Regulations Committee Member*  
*Standards of Practice Committee Member*  
*Appeals Committee Member*

**Comm. Joseph F. Valente**

Spokane County Superior Court  
*Standards of Practice Committee Chair*  
*Regulations Committee Member*

## **APPENDIX B: RETIRING BOARD MEMBERS**

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### **Mr. John Jardine**

Certified Professional Guardian, Unlimited Guardianship Services of Washington

*Education Committee Member*

*Regulations Committee Member*

### **Ms. Ree Ah Bloedow**

Legal Benefits Attorney

Dept. of Social Health Services

*Applications Committee Member*

### **Dr. Ruth F. Craven, EdD, RN, FAAN**

Professor Emeritus, School of Nursing, University of Washington

*Education Committee Member*

## **APPENDIX C: STAFF MEMBERS**

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### **Deborah Jameson**

Guardian Program Coordinator

### **Tina Williamson**

Court Program Assistant

### **Kim Rood**

Court Program Assistant

**APPENDIX D: GRIEVANCE LIST**

CPGB Case #	County	Nature of Allegations	Disposition
2003-011	Spokane	Alleged mismanagement of IP's <sup>5</sup> person and estate and failure to file timely reports	Settlement Agreement—Monitoring completed 3/18/10 <sup>6</sup>
2004-004A 2005-014A	King	Alleged mismanagement of IP's estate	Agreement Regarding Discipline—monitoring compliance
2004-004B 2005-014B	King	Alleged mismanagement of IP's estate	Agreement Regarding Discipline—monitoring compliance
2007-021	Thurston	Alleged mismanagement of IP's person	Investigation ongoing
2007-025	King	Alleged mismanagement of IP's estate and failure to respond to IP or others	Agreement Regarding Discipline—monitoring compliance
2009-004	King, Pierce	Alleged violation of Standards of Practice	Investigation ongoing
2009-006	Snohomish	Alleged mismanagement of IP's estate and failure to respond	Agreement Regarding Discipline—monitoring compliance
2009-009	Grays Harbor	Alleged failure to file timely reports	Agreement Regarding Discipline—monitoring completed
2009-010	King	Alleged mismanagement of IP's person and failure to consult	Dismissed, no actionable conduct
2009-011	Pierce	Allegation that guardian moved IP inappropriately	Dismissed, no actionable conduct
2009-012	Snohomish	Allegation that guardian mismanaged termination of guardianship	Dismissed
2009-013	Spokane	Alleged mismanagement of IP's person and failure to consult	Investigation ongoing
2010-001	Spokane	Allegation that guardian acting as trustee failed to provide timely accountings	Dismissed, no jurisdiction

<sup>5</sup> "IP" stands for incapacitated person.

<sup>6</sup> Agreements are available for review at [www.courts.wa.gov/cpg](http://www.courts.wa.gov/cpg), then go to the right-side of the page and look for "Disciplinary Proceedings"



2010-002	King	Alleged mismanagement of funds	Dismissed, no actionable conduct
2010-003	King	Allegation that guardian fees were too high, and guardian planned to sell property	Dismissed, administrative
2010-004	Spokane	Allegation that guardian was not responsive to care issues	Investigation ongoing
2010-005	Spokane	Allegation that guardian did not keep in contact and moved IP without cause	Investigation ongoing
2010-006	Spokane	Allegation that guardian did not consult with IP prior to move	Investigation ongoing
2010-007	Spokane	Allegation that guardian did not consult with those who knew IP regarding residential placement	Investigation ongoing
2010-008	Spokane	Allegation that guardian was not responsive	Investigation ongoing
2010-009	King	Allegation that guardian did not try to reunify IP with family	Dismissed, no actionable conduct
2010-010	Lewis	Allegation that guardian did not visit IP and was not responsive	Dismissed, no actionable conduct
2010-011	Clark	Allegation that guardian moved IP without consultation	Dismissed, no actionable conduct
2010-012	King	Alleged mismanagement of IP's funds	Dismissed, no actionable conduct
2010-013	Skagit	Allegation that guardian did not apply for benefits	Dismissed, no actionable conduct
2010-014	King	Allegation that guardian's fees are excessive	Dismissed, no actionable conduct
2010-015	Spokane	Allegation that guardian is not managing IP's care issues	Dismissed, no actionable conduct
2010-016	Spokane	Allegation that guardian was not responsive to IP's health needs	Investigation ongoing

2010-017	Kitsap	Allegation that guardian filed reports late	Investigation ongoing
2010-018	Okanogan	Allegation that guardian did not get court waiver of conflict of interest	Agreement Regarding Discipline
2010-019	Clark	Allegation that guardian has conflict of interest	Investigation ongoing
2010-020	Spokane	Alleged mismanagement of IP's funds	Investigation ongoing
2010-021	King	Alleged violation of Department of Licensing statute	Dismissed, no jurisdiction
2010-022	King	Alleged mismanagement of IP's funds	Investigation ongoing
2010-023	King	Allegation that guardian is not responsive and mismanaged funds	Dismissed, no actionable conduct
2010-024	King	Allegation that guardian did not attend to IP's medical needs	Dismissed, no actionable conduct
2010-025	Snohomish, Skagit	Allegation that guardian filed reports late and was not responsive to court	Investigation ongoing
2010-026	Snohomish	Allegation that guardian had been appointed in company name	Dismissed, no actionable conduct
2010-027	Spokane	Allegation that guardian was not paying IP's rent in timely manner	Investigation ongoing
2010-028	Thurston	Allegation that guardian's fees are excessive	Dismissed, no actionable conduct
2010-029	Clallam	Allegation that guardian did not assist IP with move	Investigation ongoing
2010-030	King	Allegation that guardian did not pay off tax liens	Dismissed, no actionable conduct
2010-031	Pierce	Allegation that guardian did not advocate for IP	Investigation ongoing
2010-032	King	Alleged mismanagement of IP's funds	Dismissed, duplicate prior grievance, no new info
2010-033	King	Alleged mismanagement of IP's funds	Dismissed, duplicate prior grievance, no new info

**APPENDIX E: CONTINUING EDUCATION CLASSES**

<b>Date</b>	<b>Hours</b>	<b>Type</b>	<b>Sponsor</b>	<b>Title</b>	<b>Location</b>
1/21/10	1.5	Person	Barbara Green	Psychotherapies and Older Adults	Seattle
1/22/10	1 2.5 2. 1	Ethics Estate Person General	WSBA	Nuts and Bolts of an Elder Law Practice: Elder Law 101	Seattle
1/29/10	3.75	Person	WADSA	Mental Health & the Older Adults: Common Issues & Care Strategies	Tacoma
2/2/10	1 1 1 1	Ethics Estate Person General	NGA	NGA Certification Review Course Webinars	Online
2/9/10	2.5	Estate	MEDS-PDN	Medicaid & Medicaid Planning in WA	Spokane
2/10/10	2.75	Person	WADSA	Working with Elders: An Introduction: How to Identify Skills & Collaborate with Community Professionals	Seattle
2/18/10	1.5	Person	WADSA	Round Table Discussion Group for Advanced Practitioners: Mental Health: Recognizing Alcohol Misuse	Seattle
2/23/10	1.0	Estate	KCBA	Forensic Accounting in the Age of Quickbooks: How Damage Analysis, Business Valuation and Financial Fraud Have Become More Effective and More Efficient (Online Webinar)	Online

3/2/10	2.0	General	NCEA	Worker Safety for APS	Webcast
3/5/10	5.75	Estate	KCBA	Social Security Bootcamp	Seattle
3/11/10	3.0	Person	WADSA	Hoarding: When Collecting Goes Bad	Seattle
3/12/10	4 1 1	Estate Ethics General	NBI, Inc.	Fundamentals of Elder Law	Seattle
3/18/10	1.5	Person	Barbara Green	Round Table Discussion Group for Advanced Practitioners: Family Relationships: Sibling Death and Depressive Symptoms	Seattle
3/19/10	3.75	Person	WADSA	Falls & The Older Adult: A Holistic Approach to Identifying and Managing Risks and Consequences	Olympia
3/19/10	6.0	Estate	KCBA	Medicaid Bootcamp	Seattle
3/23/10	4.25 2.25	Person Ethics	Gray Sage Care Mngmt	Journey's End: Decisions, Ethics, and Care	Bellevue
3/25/10	3 2	Estate Person	Anita Quirk	Caring for the Person and Estate	Kelso
3/26/10	5.75 1.00	General Ethics	Acting Options	Veterans Administration, Medicaid and Asset Preservation	Tukwila
3/30- 3/31	4 2 3 3	Person Estate General Ethics	Bridge Builders	7 <sup>th</sup> Annual Certified Professional Guardian Continuing Education Conference	Bremerton

4/9/10	1 3.75 1 1	Ethics Estate Person General	KCBA	Advanced G'ship Issues: Navigating through Troubled Times	Seattle
4/15/10	1.5	Person	Barbara Green	Round Table Discussion Group for Advanced Practitioners: Planning for the End of Life: the Views of Older People about Advance Care Statements	Seattle
4/15/10	6.0	Person	Alzheimer's Society	25 <sup>th</sup> Annual Alzheimer's Regional Conference	Seattle
4/16/10	4.5	Person	Alzheimer's Society	25 <sup>th</sup> Annual Alzheimer's Regional Conference	Seattle
4/23/10	1.0 5.0	Ethics General	NGA	2010 Colloquium-Handling Worst Case Scenarios	Chicago, IL
4/27/10	1.0	Ethics	Right At Home	Ethics Course for Professional Guardians and Ethics in Litigation	Seattle
5/12/10	1.25 2.0 2.0 .75	Ethics Person Estate General	WAPG	WAPG 2010 Spring Training	Federal Way
5/14/10	5.75	General	KCBA	2010 Title 11 GAL Training, Day 2	Seattle
5/20/10	2.0 4.5	Person General	Kitsap Legal Services	Kitsap County Title 11 GAL Training	Port Orchard
5/20/10	1.5	Person	Barbara Green	Round Table Discussion Group for Advanced Practitioners: Culture and Practice: Ageism	Seattle

5/21/10	.75 4.25 1.75	Ethics Estate General	WSBA	Choosing, Managing and Drafting the Special Needs Trust	Seattle
5/21/10	3.0	Person	WADSA	Diabetes 101: What Every Elder Care Worker Should Know	Tukwila
5/27/10	3.0 3.0	Person General	Cross Country Education	Mastering Defensive Documentation for Long Term Care	Seattle
6/4/10	2.0 .5 1.75 1.5	Person Estate General Ethics	Whatcom County Superior Court	Guardianship GAL Training	Bellingham
6/9/10	2.0 2.0	Person Ethics	Anita Quirk	Working with Assisted Living Facilities and Ethics in the Rules	Kelso
6/24/10	3.0	Person	WADSA	Dementia Specific Activities: Ideas That Really Work	Seattle
7/13/10	1.0	Ethics	Right At Home	Ethics Course for Professional Guardians and Ethics in Litigation	Bellevue
7/22/10	1.0	Ethics	Right At Home	Ethics Course for Professional Guardians and Ethics in Litigation	Kirkland
7/29/10	1.0 2.0 1.0 2.0	Person Estate General Ethics	Anita Quirk	Elder Nutrition, Medical Ethics, the Guardianship Team and Knowing Social Security	Kelso
9/13/10	1.5	Person	Barbara Green	Round Table Discussion: Normal Aging: Balancing Loss and Growth	Seattle
9/23/10	3.0	Person	WADSA	Medications & the Older Adult: Polypharmacy, Pain Management & Chronic Disease	Seattle

10/1 to 10/5	19	Depends on choices	NGA	2010 Conference on Guardianships	Hershey, PA
10/7 and 10/8	4 4 2 2	Person Estate General Ethics	Eagle Guardianship	Fall Guardianship Seminar 2010	Spokane, WA
10/11/10 to 10/14	16 4	Estate General	Cannon Financial Institute	Special Needs Trust School	Myrtle Beach, SC
10/12/10	6	General	KCBA	Internet Investigative Research Strategies for Lawyers and Legal Professionals	Bellevue
10/13/10	1	Person	CareForce	Engaging Sedentary Older Adults in Active Living	Bellevue
10/15/10	1.5 1.75 3.0	Person Estate General	WSBA	13 <sup>th</sup> Annual Fall Elder Law Conference: Recognizing and Resolving Conflicts in Elder Law	Seattle
10/21/10	1.5	Person	Barbara Green	Round Table Discussion: Ethical Dilemmas with Hoarders	Seattle
11/1/10	5.75 1.5	Estate General	WSBA	55 <sup>th</sup> Annual Estate Planning Seminar Day 1	Seattle
11/2/10	2.0 .75 1.0 3.5	Estate General Ethics Con-current Sessions	WSBA	55 <sup>th</sup> Annual Estate Planning Seminar Day 2	Seattle
11/5/10	1.25 .5 4.75	Person Estate General	Washington NAELA	The Reformation of Elder Law: Meeting the Clients through Holistic Legal Advocacy	SeaTac
11/8/10	1.5 .75 2.75 1.5	Person Estate General Ethics	Tacoma Pierce County Bar Assoc.	9 <sup>th</sup> Annual Guardianship Seminar	Tacoma

11/10/10	2.0 2.0 1.25 .75	Person Estate General Ethics	WAPG	WAPG 2010 Fall Training	Federal Way
11/17/10	2 2	General Ethics	KCBA	Lawyer as Detective: Effectively & Ethically Doing Informal Discovery	Seattle
11/18/10	4.0	Estate	Senior Support Services and Inslee Maxwell	Counting the Ducks in a Row	Bellingham
11/18/10	1.5	Person	Barbara Green	Round Table Discussion: Complexity of Home Care	Seattle
11/12/10	3 2 1	Estate General Ethics	NBI	Probate Court Judicial Forum	Seattle
12/2/10	2 3 .75	General Estate Ethics	KCBA	Probate and Real Property: The Parallel Universe	Seattle
12/9/10	2 2 2	Person Estate General	Anita Quirk	Year-End Potpourri	Kelso
12/15/10	1.0 .75 2.25	Person General Ethics	AOC	Guardian Advocacy Training	SeaTac



## APPENDIX F: NEW REGULATIONS

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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.

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.

205.1 An active Guardian or sponsoring agency desiring approval of a continuing education activity shall submit to the Committee all information called for by Form 1 at least 30 days prior to the date scheduled for the class, along with an application fee of \$25.00 for each occurrence. If filed less than 30 days before the activity, the application fee is \$50 for each occurrence. Applications for retroactive approval will be considered if submitted with all the information required by Form 1 within 30 days of the continuing education activity and with the \$50.00 fee.

201.9 "Reporting period" shall mean a two-year period from January 1 to December 31 the following year.

201.11 To qualify for "person credit", a course or subject must encompass training and information pertaining to personal care, physical care, residential placement, care management, medical, psychological, social, and family matters and other issues with which a Guardian of the Person should be familiar.

201.12 To qualify for "estate credit", a course or subject must encompass training and information about the marshalling, management and sale of assets; responsibility for maintenance and protection of assets; entitlement to federal, state, and other financial benefits; estate planning, including gifting and transfers of assets; and other financial activities with which a Guardian of the Estate should be familiar.

201.13 To qualify for "general credit", a course or subject must encompass training and information pertaining to the business side of a Guardian's practice, including the use of forms to assist in the practice, tax and civil liability, insurance and bond issues, relationship with counsel and other professionals, fee issues and billing practices, and business development. It also includes matters that apply generally to guardianship of person and estate such as the roles of guardians ad litem, petitions for direction, general civil procedure or the role of the court.

202.2 Each Guardian shall complete a minimum of 24 credit hours of approved education during each reporting period, except as exempted by Regulation 213. Credit hours accrue for classes approved by the Education Committee and shall biennially total no fewer than 24 credit hours that must include the following: Ethics—4 hours; Person—6 hours; Estate—6 hours; and General—8 hours. (Amended 3/8/10).

202.3 If an active Guardian completes more than 24 credit hours in a given reporting period, the excess credit, up to 12 credits, may be carried forward and applied to such Guardian's education requirement for the next reporting period. General and Ethics credits may be carried forward only as General and Ethics credits, respectively. Credits earned in Person or Estate may be carried over in their original category or may be transferred to General Credits. (Amended 3/8/10).

202.4 Failure to comply with the provisions of this regulation within each reporting period shall subject the Guardian to disciplinary action, including decertification for failure to comply.

203.4 Excess or "carry-over" credits may be applied to the succeeding reporting period's credit hour requirement. Such credits shall be reported to the Committee on or before January 31 as is required by Regulation 208.1. (Amended 3/8/10).

203.5 Credit toward the continuing education requirements set forth in these regulations may be earned through teaching or participating in an approved continuing education activity on the following basis:

203.5.1 An active Guardian teaching in an approved education activity shall receive credit on the basis of one credit for each hour or part of an hour actually spent by such Guardian teaching. Additionally, an active Guardian teaching in such an activity may also be awarded further credit for preparation time in the ratio of three (3) hours of preparation time to one hour of teaching time up to a maximum of nine (9) hours. The ratio of two to one will be applied to teaching presentations of less than one hour. An active guardian may earn credit only once for teaching in the same accredited course, regardless of the number of times the course is presented.

203.5.2 An active Guardian participating in an approved educational activity shall receive credit on the basis of one credit for each hour actually spent by such Guardian participating in such activity. Additionally, an active Guardian participating in such an activity may also be awarded further credit on the basis of one credit for each hour actually spent in preparation time as defined in Section 201.8, provided that in no event shall more than five hours of credit be awarded for such preparation time in any one such continuing education activity. An active guardian may earn credit only once for participating in the same accredited course, regardless of the number of times the course is presented.

204.4 Thorough, high quality, readable, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule. Providing students the materials on a computer disk or flash drive is encouraged.

205.5 No later than 30 days following the activity, the sponsoring agency must send the attendance list to the AOC, along with a copy of the completed evaluation. Materials distributed at the activity shall be available to the AOC upon request.

**208.1 Compliance Report.** Within 30 days from the end of the preceding reporting period, each Guardian shall submit an affidavit to the Committee, at the AOC, setting forth all information required by the Affidavit Reporting CEUs concerning such Guardian's completion of approved continuing education during the preceding reporting period. Such affidavit shall also contain a report of "carryover" credits, if any, as delineated in Regulation 202. (Amended 3/8/10).

**208.2 Supplemental Report.** If an active Guardian has not completed the minimum education requirement for the preceding reporting period, or complied with Regulation 208.1, compliance may still be accomplished by:

209 An active Guardian who seeks credit for teaching or participating in an approved continuing education activity pursuant to Regulation 203.5, shall submit an affidavit to the Committee, at the AOC, setting forth all information required by the appropriate portions of the Affidavit Reporting CEUs, concerning such teaching and/or participating in approved education courses or activities during the preceding reporting period. The affidavit shall be submitted within 30 days of the end of the preceding reporting period.

213 If a Guardian is admitted during the first year of the reporting period, the Guardian needs only to complete 12 credits as described in Regulation 202.3 by the end of the reporting period. If a Guardian is admitted to practice in the second year of the reporting period, the Guardian is not required to comply with the minimum continuing education credits for that reporting period.

102.2 "Agency" means any legal entity in the State of Washington authorized by its formation documents to act as a fiduciary, guardian, or limited guardian.

103.2.6 Submit declaration under penalty of perjury, that the guardian will take steps to ensure the guardian's employees who come into contact with the person or estate of an incapacitated person have passed a criminal history check prior to having contact with the incapacitated person or incapacitated person's estate.

103.3.1 Submit a copy of the formation documents of the legal entity.

103.3.2 Submit declaration under penalty of perjury, that it will take steps to ensure its employees, agents, board members, or anyone formally associated with the agency entity who may come into contact with the person or estate of an incapacitated person has passed a criminal history check prior to having contact with the incapacitated person or their estate, and that all officers and directors meet the qualifications of Chapter 11.88 RCW for guardians.

103.3.3 Submit the names of the agency's board of directors, members, managers, owners, and/or its officers.

103.3.4 Identify all CPGs at the agency (a minimum of two are required), and submit a copy of either meeting minutes or a board resolution designating the CPGs employed by the agency as the persons with final decision-making authority for incapacitated persons or their estate on behalf of the agency.

206.1 To facilitate the orderly and prompt administration of GR 23 and these regulations, and to expedite the processes of course approval, teaching and participation credits, and the interpretation of these regulations, the staff of the Administrative Office of the Courts may act on behalf of the Committee under GR 23 and these regulations. Any adverse determinations and all questions of interpretation of these regulations by the staff shall be subject to review by the Committee upon written application by person adversely affected.

207.1 Staff of the AOC shall, in accordance with regulations 204 and 206, respond in writing to all written requests for course approval, teaching and participation credits, and interpretation of the continuing education regulations of GR 23. The staff may seek a determination of the Committee before making such response. At each meeting of the Committee, the staff shall report on all determinations made since the last meeting of the Committee.

117.5.1 By August 1 each year, every guardian and agency shall file with the Board a declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.

117.7.1 Failure to comply with this regulation in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

117.7.2 Failure to submit the required declaration by August 1 will subject the guardian and/or agency to a special service fee of \$50.00 if paid before September 1.

117.7.3 Failure to submit the required declaration by September 1 will subject the guardian and/or agency to a special service fee of \$100.00 if paid before October 1.

117.7.4 Failure to pay the required annual certification fee and late fee and submit the required declaration by October 1 shall subject the CPG and/or Agency to revocation of certification by the Board.

117.7.5 In the event of a guardian's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPG or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. The petition must set forth facts either explaining how the guardian or agency has complied with this regulation or, if the guardian or agency acknowledges that there has not been compliance with the regulation, then the

facts in support of why the Board should not take disciplinary action against the guardian or agency. The petition must be signed under penalty of perjury by the guardian. The guardian or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.

117.7.6 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency.

117.7.7 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPG or Agency. Any such order shall be final.

108.2 A certified professional guardian or certified professional guardian agency shall be appointed and carry E & O Insurance in the name as certified. A CPG or CPG Agency may include a business name in contact information and promotional materials concerning the provision of guardianship services provided that the name of the CPG or CPG agency is listed.

108.2.1 If an individual certified professional guardian is appointed as guardian, the certified professional guardian shall assure that letters of guardianship are issued to the certified professional guardian individually. If a certified professional guardian agency is appointed as guardian, the agency shall assure that letters of guardianship are issued to the certified professional guardian agency.

108.2.2 A certified professional guardian or certified professional guardian agency shall not make a false or misleading communication about the guardian or the guardian's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, omits a fact necessary to make the communication considered as a whole not materially misleading.

Each certified professional guardian or certified professional guardian agency must come into compliance with regulation 108.2 by January 1, 2012.

111.3.1 The initial certification fee for both individuals and agencies is due sixty (60) days after notice of the application's approval by the Board for certification.

#### 400 General Standards of Practice

The following standards apply to all Certified Professional Guardians and Certified Professional Guardian agencies. These standards apply only to the degree that the court has granted a guardian the authority contemplated in a given standard.

Whenever the term “guardian” is used in these Standards, it is meant to refer to a certified professional guardian or to a certified professional guardian agency.

Whenever the term “court” is used in these Standards, it is meant to refer to the Superior Court which has authority over the guardianship in which the guardian has been appointed.

Whenever the term “incapacitated person” (IP) is used, it is meant to refer to the incapacitated person for whom the guardian has been appointed under RCW 11.88.

Whenever the term “notice parties” is used, it is meant to refer to those people who have requested special notice of proceedings under RCW 11.92.150.

A guardian is a fiduciary. A fiduciary has the duty to act primarily for another's benefit. The Guardian shall carry out his or her duties carefully and honestly. The Guardian shall act selflessly and with undivided loyalty to the incapacitated person.

A guardian cannot delegate his or her decision-making authority to another person or agency. This does not preclude employing others to carry out the guardian’s decision.

To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, and “should” creates a duty or obligation, but is not absolute, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." <sup>7</sup>

#### 401 Guardian’s Duty to Court

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.2 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with these standards, the guardian shall bring the conflict to the attention of the court and seek the court’s direction.

401.3 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian in the management of the affairs of an incapacitated person.

401.4 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.

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<sup>7</sup> The Certified Professional Guardian Board acknowledges that these Standards of Practice draw from the National Guardianship Association (NGA) Standards of Practice and that the NGA has granted the Board permission to use them.

401.5 The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian. In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction.

#### 402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals

402.1 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.

402.2 The guardian, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

402.3 The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.

402.4 The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

402.5 A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except: (a) when necessary and relevant to the needs of the incapacitated person or (b) as required by these standards or other applicable laws or when directed by the court or the CPG Board.

402.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the incapacitated person to the extent reasonable and necessary.

402.7 The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall act to coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

#### 403 Self-Determination of Incapacitated Person

403.1 The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest

extent consistent with their protection and safety. The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

403.2 Whenever appropriate a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the incapacitated person. The guardian shall acknowledge the residual capacity and preferences of the incapacitated person.

403.3 When making decisions on behalf of the incapacitated person, the guardian shall evaluate the alternatives that are available and choose the one that best meets the needs of the incapacitated person while placing the least restrictions on the incapacitated person's freedom, rights, and ability to control his or her environment.

403.4 When appropriate, the guardian will defer to an incapacitated person's residual capacity to make decisions.

403.5 Unless otherwise directed by the court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

403.6 The guardian shall, whenever appropriate or required by law, provide other requested information to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the incapacitated person's estate, and (c) medical and other personal information related to the care of the incapacitated person.

403.7 The guardian shall determine the extent to which the incapacitated person identifies with particular ethnic, religious, and cultural values and shall consider those values in the guardian's decision-making to the extent appropriate.

403.8 Sexual Expression:

403.8.1 The guardian shall acknowledge the incapacitated person's right to interpersonal relationships and sexual expression. The guardian shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian shall take reasonable steps to protect the incapacitated person from victimization.

403.8.2 The guardian shall ensure that the incapacitated person is informed of birth control methods when appropriate.

403.8.3 The guardian shall take reasonable steps to protect the rights of the incapacitated person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the incapacitated person's values and customs.

404 Contact with the Incapacitated Person



404.1 Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in-person contact.

404.1.1 The guardian should, when appropriate, assess the incapacitated person's physical appearance and condition (taking into account the incapacitated person's privacy and dignity) and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian shall maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

404.2 Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements.

404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

#### 405 General Decision Standards

All decisions and activities of the guardian shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian's determination of the incapacitated person's competent preferences, i.e. what the incapacitated person would have decided when he or she had capacity. The guardian shall make reasonable efforts to ascertain the incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person when the incapacitated person had capacity.

405.2 When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.

#### 406 Conflicts of Interest

406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

406.2 There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

406.3 A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval. Any conflict shall be disclosed to the court immediately in writing.

406.4 The guardian or agency (or an entity in which a guardian has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. Some direct services may be approved by the court provided permission of the court is given in advance of the services being provided.

406.5 A guardian shall not accept a gift from an incapacitated person or their estate other than ordinary social hospitality.

406.6 Payment of fees or other compensation for guardianship services by a party other than the incapacitated person is a potential conflict of interest which shall be fully disclosed.

406.7 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.

#### 407 Residential Decisions

407.1 The guardian shall ensure that the incapacitated person resides in the least restrictive environment that is appropriate and available.

407.2 The guardian shall acknowledge the need to allow all persons the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the incapacitated person's cultural and life values.

407.3 The guardian shall take reasonable measures to effectuate the incapacitated person's residential preferences.

407.4 The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions.

407.5 The guardian shall not remove the incapacitated person from his or her home or separate the incapacitated person from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the incapacitated person resides at the incapacitated person's home or in a community setting.

407.6 The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the incapacitated person, provide the opportunity to maximize the independence of the incapacitated person, and provide for physical comfort and safety.

407.7 Before relocating the incapacitated person to a new residence, the guardian shall consult the incapacitated person, and should consult professionals, notice parties, and other third parties involved with the incapacitated person's care to the extent doing so does not put the incapacitated person, guardian, or guardian's staff at risk of personal harm. Emergency residential decisions to protect the incapacitated person may be made without prior consultation.

407.8 The guardian shall, as necessary, thoroughly research and evaluate the incapacitated person's residential alternatives.

407.9 Should the only available residential placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to that placement and shall make reasonable efforts to arrange an appropriate and least restrictive residential alternative.

407.10 The guardian shall regularly monitor the incapacitated person's residential placement to ensure that it is appropriate and that such placement is the least restrictive alternative. The guardian should consent to changes, as they become necessary, advantageous, or otherwise in the incapacitated person's best interests. The guardian should consider that even changes within an existing residential facility may have an impact on the quality of life of the incapacitated person.

408 Medical Decisions

408.1 The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits.

408.2 The duty to provide informed consent does not prevent a guardian from electing to make code status decisions in advance of need.

408.3 The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment.

408.4 The guardian shall actively promote the health of the incapacitated person by arranging for regular preventative care including but not limited to dental care, diagnostic testing, and routine medical examinations to the extent preventative care and resources are available.

408.5 The guardian shall be available to respond to urgent need for medical decisions. The guardian shall provide instructions regarding treatment or non-treatment to be followed by medical staff in emergencies.

#### 409 Financial Management

409.1 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate shall be documented by means of accurate and complete records of all transactions.

409.1.1 The guardian shall meet with the incapacitated person and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the incapacitated person and to obtain historical information about the incapacitated person's prior management of financial affairs.

409.1.2 The guardian shall, subject to court direction, allow the incapacitated person to manage funds to his or her ability when appropriate.

409.2 The guardian shall know and obey the law related to managing an incapacitated person's estate. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.88 and 11.92, and laws relating to employment, income, and taxes. The guardian shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.

409.3 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

409.4 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.

409.5 In certain cases, guardian shall consider the needs of the incapacitated person's dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the incapacitated person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such support or maintenance.

409.6 When the available estate of the incapacitated person is sufficient, the guardian may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the incapacitated person, bearing in mind both foreseeable requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such gifts, including tax consequences.

409.7 The guardian shall apply for all public and insurance benefits for which the incapacitated person is eligible. When implementing necessary changes in the incapacitated person's lifestyle, the guardian shall seek to minimize the stress of any transition.

409.8 The guardian shall exercise prudence in investment, shall periodically review the incapacitated person's situation and assets, and make recommendations regarding appropriate investments. In the exercise of prudence the guardian shall:

409.8.1 Not allow assets to sit idle except for good reasons.

409.8.2 Consider the tax consequences of decisions.

409.8.3 Consider the incapacitated person's long term ability to sustain costs of arrangements made by the guardian.

409.8.4 Consider the incapacitated person's ability to gain the benefits of specific decisions.

409.8.5 Consider the costs incurred in managing investments, including the costs of the guardian, those specialists hired by the guardian, and the costs of the investment vehicles.

409.8.6 Consider the incapacitated person's historical investment pattern and tolerance for risk, lifestyle needs, care and medical needs, estate considerations, tax consequences, and life expectancy.

409.9 A guardian shall not commingle the funds of an incapacitated person with funds of the guardian or the funds of staff. A guardian may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees

paid and accurate individual accounting for each client's funds, provided the guardian has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

409.10 The guardian shall not borrow from an incapacitated person. A guardian shall not lend funds at interest to an incapacitated person.

409.11 The responsibility to protect and preserve the guardianship estate rests with the guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the guardians identified with the Certified Professional Guardian Board as the responsible guardians for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian to provide appropriate oversight and review, in order to preserve the guardianship estate.

409.12 At the death of the incapacitated person, the guardian shall comply with RCW 11.88.150.

409.13 The guardian shall obtain insurance coverage, as appropriate and feasible, for guardianship property.

#### 410 Guardian Fees and Expenses

410.1 The guardian is entitled to reasonable compensation for services rendered on behalf of the incapacitated person. The guardian has a duty to conserve the estate of the incapacitated person. Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty. Services requiring a minimal degree of training, skill and experience should be billed accordingly.

410.2 All compensation for the services and expenses of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court. The guardian shall review each of the following factors in determining the reasonableness of his/her fee: (a) the necessity of the service, (b) the time required, (c) the degree of skill and experience required to perform the service, and (d) the cost of any reasonable alternative.

410.3 When requesting court approval, the guardian shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship case to the court and parties entitled to notice. The guardian shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

410.4 The duties of a guardian to an incapacitated person are not conditioned upon the person's ability to compensate the guardian.

410.5 If the guardian is also an attorney, billings shall be in accordance with RCW 11.92.180.

#### 411 Changes of Circumstances/Limitation/Termination

411.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

411.2 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.

411.3 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.

411.4 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.

411.5 If the guardianship is a limited guardianship, the guardian shall report to the court when there are circumstances in which the incapacitated person appears to require assistance which exceeds the authority of the guardian.

411.6 If the guardianship is of the person only, the guardian shall report to the court when protection of the incapacitated person's estate may be necessary.

411.7 If the guardianship is of the estate only, the guardian shall report to the court when protection of the person may be necessary.

#### 412 Sale or Purchase of Guardianship Practice

412.1 A certified professional guardian may choose to sell all or substantially all of a guardianship practice to another certified professional guardian, including goodwill, subject to the following guideline: to the extent that the sale of the practice contemplates a substitution of guardian for any of the guardian's current clients, court approval, with notice to all incapacitated persons and all notice parties, shall be obtained at least 60 days before completing the sale. Regardless of whether any sale or transfer occurs, a guardian remains subject to all of these standards with respect to any incapacitated persons the guardian is appointed for, including the duty to ensure continuity of care, until the guardian is discharged by the court.