

WSR 21-04-089
RULES OF COURT
STATE SUPREME COURT
[December 2, 2020]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO GR) NO. 25700-A-1330
23—RULE FOR CERTIFYING)
PROFESSIONAL GUARDIANS AND)
CONSERVATORS)

The Certified Professional Guardianship Board, having recommended the suggested amendment to GR 23—Rule for Certifying Professional Guardians and Conservators, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of December, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE

SUGGESTED AMENDMENTS TO GENERAL RULE (GR) 23
RULE FOR CERTIFYING PROFESSIONAL GUARDIANS

(A) Name of Proponent: Certified Professional Guardianship Board ("Board" herein)

(B) Spokesperson: Judge Rachelle Anderson, Chair, Certified Professional Guardianship Board

(C) Purpose: The suggested amendments aim to align General Rule 23 with changes to nomenclature and qualifications of guardians pursuant to the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (or "UGA") as codified at RCW 11.130. The UGA becomes effective on January 1, 2022, with the exception of the provisions covering minor guardianship, which become effective January 1, 2021. The suggested amendments also propose to change the formal education requirement for professional guardians currently contained in GR 23. The Board requests the Court to consider whether the profession may benefit from allowing individuals to become certified who may have lacked access to higher education, but who possess substantial relevant experience and complete Board required training.

Introduction

A guardian is a person appointed by the superior court to make decisions on behalf of a person who does not possess legal capacity.

A guardian may be appointed to make all decisions on behalf of a person (full guardianship) or a defined decision or subset of decisions (limited guardianship). Further, a guardian may be appointed to make decisions with respect to health, safety and welfare of an individual (guardian of the person) or with respect to an individual's finances (guardian of the estate) or both.

The superior court may appoint as guardian a family member, friend, volunteer, or a "professional guardian." A professional guardian is paid to provide guardianship services to three or more persons under both current law and the UGA. See RCW 11.88.008 and RCW 11.130.010(26).

To qualify for appointment by the superior court, a professional guardian must meet the certification requirements established by the administrator of the courts under current law and the UGA. See RCW 11.88.020(1) and RCW 11.130.090(1) (with limited statutory exceptions). Certification requirements include completion of training as determined by the Board. The Supreme Court delegated authority and responsibility to develop, adopt and implement regulations governing certification, minimum standards of practice, training, and discipline of professional guardians, to protect the public and facilitate the delivery of competent and ethical guardianship services to the Board in General Rule 23.

I. Align GR 23 with nomenclature and guardian qualifications of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA)

The UGA promotes using person-centered language including replacing the terms "ward" and "incapacitated person" with "individual subject to guardianship or conservatorship." The UGA also introduces "conservatorship" in lieu of "guardian of the estate." The UGA includes sections providing for court orders of a protective arrangement for an individual in lieu of guardianship or conservatorship, but based upon the same capacity determinations. The UGA also focuses on lesser restrictive alternatives, including provisions governing supported decision making agreements.

The suggested changes include technical reference to the correct Chapters of the RCW. Suggested changes include replacing the terms "guardian of the estate," "guardianship of the estate" and "incapacitated person" with "conservator," "conservatorship" and "individual subject to guardianship" or "individual subject to conservatorship" respectively. The suggested changes align the age requirements and define the criminal convictions, court or administrative proceedings findings that may disqualify an individual from certification, as well as required disclosures. The suggested title of GR 23 and the Board's name clarify that GR 23 governs both the practice of guardianship, which involves making decisions about the personal affairs of another person, and conservatorship, which involves management of another person's property and financial affairs. The suggested changes restate the functions of the Board as expressed by the Court in case law.

II. Change in the Formal Education Minimum Requirement

Currently, GR 23 requires that an applicant possess a minimum of a two year associates degree to qualify for certification. The Board considered the various complex pros and cons of retaining the formal education minimum requirement. Ultimately, the Board concluded that it would be making an important statement about diversity and inclusion by suggesting changing the requirement. This suggestion acknowledges

that the post-secondary education requirement has acted as a barrier for communities within the state that have historically not had resources and access to higher education. Further, the Board bases its recommendation on the pillars of the substantial relevant experience requirement (five years) and the robust training program that the Board requires applicants to complete, in addition to meeting all other application requirements.

Another key consideration was that of language and cultural competency of CPG services and the needs of underserved communities. The Board took note of the issue of underserved communities across the state. This suggested change may allow Washington's vulnerable populations to be better served by establishing a path for individuals who for historical reasons have not had access to higher education, but bring knowledge, skills and competencies of great value to Washington's diverse population of vulnerable individuals.

Recommendations

The Board considered these suggestions and voted to approve the suggested amendments.

(D) Hearing: None requested.

(E) Expedited Consideration: Is not requested.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

SUGGESTED AMENDMENTS TO GR 23

RULE FOR CERTIFYING PROFESSIONAL GUARDIANS AND CONSERVATORS

(a) Purpose and Scope. This rule establishes the standards and criteria for the certification of professional guardians and conservators as defined by RCW ~~11.88.008~~ 11.130.010(26) and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians and conservators nor is it a mechanism to appeal a court decision regarding the appointment or ~~conduct~~ statutory duties of a professional guardian or conservator.

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

(c) Certified Professional Guardianship and Conservatorship Board.

(1) Establishment.

(i) Membership. The Supreme Court shall appoint a Certified Professional Guardianship and Conservatorship Board (Board) of 12 or more members. The Board shall include representatives from the following areas of expertise: professional guardians and conservators; attorneys; advocates for ~~incapacitated persons~~ individuals subject to guardianship and conservatorship; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships and conservatorships. No more than one-third of the Board membership shall be practicing professional guardians and conservators.

(ii) Terms. The term for a member of the Board shall be three years. No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each

year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

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

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

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

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

~~(23)~~ Duties and Powers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Certification Requirements. Applicants, Certified Professional Guardians and Conservators, and Certified Agencies shall comply with the provisions of Chapter ~~11.88~~ and ~~11.92~~ 11.130 RCW. In addition, individuals and agencies must meet the following minimum requirements.

(1) Individual Certification. The following requirements apply to applicants ~~and do not apply to currently certified professional guardians, except as stated in subsection (d)(1)(vii).~~ An individual applicant shall:

(i) Be at least ~~18~~ 21 years of age;

(ii) Be of sound mind;

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

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

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

~~(v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship and conservatorship services and must include decision-making or the use of independent judgment for the benefit of others, not limited to incapacitated persons individuals subject to guardianship or conservatorship, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship and conservatorship services;~~

~~(vii) Have completed the mandatory certification training.~~

~~(vii) Applicants enrolled in the mandatory certification training on September 12, 2008, and who satisfactorily complete that training, shall meet the certification requirements existing on that date, or the date the applicant submitted a complete application for certification, whichever date is earlier, and not the requirements set forth in this rule.~~

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

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

(i) All officers and directors of the corporation must meet the qualifications of RCW ~~11.88.020~~ 11.130.090 for guardians and conservators;

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

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

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

(4) Insurance Coverage. In addition to the bonding requirements of chapter ~~11.88~~ 11.130.040 RCW, applicants must be insured ~~or bonded~~ at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

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

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

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

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

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

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

(iii) Any felony convictions;

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

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

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

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

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

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

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

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

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

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

(iii) Any court finding that the applicant has violated its fiduciary duties or committed a felony or any crime involving moral turpitude or has violated federal or any state's consumer protection act or

violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of business;

(iv) Any felony convictions;

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

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

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

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

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

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

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

(e) Guardian and Conservator Disclosure Requirements.

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

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

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

(iii) Any felony convictions;

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

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

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

(vii) Pending licensing or disciplinary actions related to fiduciary responsibilities or final licensing or disciplinary actions resulting in findings of violations;

(viii) Residential or business moves or changes in employment;

and

(ix) Names of Certified Professional Guardians and Conservators and they employ or who leave their employ.

(2) Not later than June 30 of each year, each professional guardian and conservator and guardian and conservator agency shall complete and submit an annual disclosure statement providing information required by the Board.

(f) Regulations. The Board shall adopt regulations to implement this rule.

(g) Personal Identification Number. The Board shall establish an identification numbering system for professional guardians and conservators. The Personal Identification Number shall be included with the professional guardian's and conservator's signature on documents filed with the court.

(h) Ethics Advisory Opinions, Comments, and Best Practices.

(1) The Board may issue written ethics advisory opinions, comments and best practices to inform and advise Certified Professional Guardians and Conservators and Certified Agencies of their ethical obligations.

(2) Any Certified Professional Guardian and Conservator or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian and Conservator or Certified Agency.

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

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

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