



DISABILITY RIGHTS WASHINGTON

Formerly known as Washington Protection & Advocacy System

315 - 5th Avenue South, Suite 850
Seattle, WA 98104
T: 206-324-1521 800-562-2702
TTY: 206-957-0728 800-905-0209
F: 206-957-0729
www.DisabilityRightsWA.org

December 31, 2012

Honorable Chief Justice Barbara Madsen
Washington State Supreme Court
P.O. Box 40929, Olympia, WA 98504-0929
By e-mail: denise.foster@courts.wa.gov

Re: Proposed Rule 31.1 – Access to Administrative Records

Dear Chief Justice Madsen,

I am commenting on behalf of Disability Rights Washington (DRW) on proposed GR 31.1. DRW sees a compelling need for greater transparency in the complaint process for certified professional guardians (CPGs). People with disabilities who are subject to guardianship, their families, and others need information about the professional guardians who are proposed or appointed to serve them. We recommend that the Court amend proposed GR 31.1 to allow more access to information about the complaint experience of professional guardians.

Proposed GR 31.1, at subsection (l)(12)(iii), contains significant restrictions on the availability of the records of dismissed complaints. The draft rule requires redaction of “identifying information about the grievant, incapacitated person, and professional guardian and/or agency”. The proposed rule also provides that requests for “dismissed grievances shall cover a specified time period of not less than 12 months.”

DRW recognizes the interest in protecting the privacy of individuals who file grievances and persons who have been found incapacitated, and we support redaction of identifying information with respect to the identity of grievants and persons who are alleged or are found to be incapacitated.

On the other hand, professional guardians are engaged in a regulated trade, and as such we don't see a similar privacy interest with respect to complaints. That said, professional guardians do have a legitimate concern that unfounded grievances might be given credence by unsophisticated individuals who read them, and this may have an unjustified damaging effect on reputations. This concern must be balanced against the interest of people subject to guardianship and their families who are seeking information upon which to judge CPGs who may provide them with guardianship services. Multiple complaints from several different complainants, or a concerning pattern in the nature of allegations or fact patterns can raise valid concerns. The fact that a complaint has been dismissed does not mean the allegation was meritless. Technicalities and problems of proof can result in dismissal. Those who are evaluating potential guardians have very limited information upon which to form judgments, and denying them the ability to

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review these complaints limits the available information still further. Where there are many dismissed grievances, a person who is the subject of a guardianship petition or his or her family may want to advocate that another CPG be appointed.

While we recognize there are conflicting interests, DRW favors disclosure of the identity of the guardian who is the subject of a dismissed grievance. The effect of unfounded or malicious complaints on a guardian's reputation can be mitigated by measures like including a statement from the guardian regarding the dismissed complaint when it is disclosed (as is done with complaints under the Uniform Disciplinary Act – see below).

Others who have commented on this proposed rule have suggested that the handling of complaints against guardians should be made consistent with the Uniform Disciplinary Act (UDA). I do not have experience with how the UDA works in practice, and cannot comment on the effectiveness of the act as applied to the wide range of professionals who are subject to its provisions. However, in reading RCW 18.130.095, I see that the Act provides greater access to complaint information than is available under GR 31.1. The UDA allows access to dismissed complaints, and ensures that complaints - dismissed or not - are tracked:

RCW 18.130.095(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a license holder, applicant, or unlicensed person...

At the earliest point of time the license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department. (emphasis by underlining added)

Clients and patients of medical professionals subject to the UDA have access dismissed complaints. The nature and frequency of prior complaints – including dismissed

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complaints – is obviously useful for patients and clients of medical professionals, and for the quality assurance system for the professions. This information can assist a client in deciding whether or not to hire the professional, or whether to continue to employ him or her. We believe that the nature and frequency of past complaints would be just as useful to those involved in making decisions about whether a particular professional guardian is an appropriate choice.

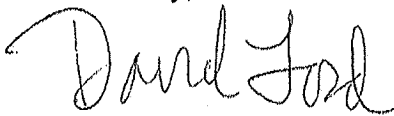
Of course, selection of a professional guardian is different in an important way from hiring a doctor, or other professional, because the decision to appoint the guardian is made by a court, not by a client. However, this difference just makes it *more important* that information about the prospective guardian be available. The person who receives the service is by definition “incapacitated” and therefore less able to assert his or her interests and preferences, in contrast to a patient who hires a medical professional. In addition, once appointed, the professional guardian cannot be “fired” by the incapacitated person, or anyone else, other than the court. An alleged incapacitated person, his family and friends, the Court, and the *guardian ad litem* should have access to at least as much information about the professional guardian who is nominated to serve as a patient or client has about a medical professional who will provide treatment. It is very important to make the right decision about who will be the guardian. It will be much more difficult for the person subject to the guardianship to change guardians than it is for a patient to switch doctors.

DRW strongly supports enhanced quality assurance for certified professional guardians. The UDA provides that dismissed complaints must remain in the records and be tracked, and that there must be an explanation as to why a complaint is dismissed. The Court and the Certified Professional Guardianship Board could improve their quality assurance for CPGs by tracking and analyzing grievances and dismissed grievances, and ensuring that there is documentation of the reasons for dismissing all grievances.

Disability Rights Washington respectfully recommends that the Supreme Court allow access to the information about past complaint experience of certified professional guardians.

Thank you for this opportunity to comment on this proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "David Lord". The signature is written in dark ink and is positioned above the printed name and title.

David Lord

Disability Rights Washington