

Two Guardianship Bills Introduced in 2011 - 2012 Legislative Session

House Bill 1053 introduces revisions to RCW 11.88 and RCW 11.92 recommended by the Washington State Bar Association Elder Law Section Executive Committee. The changes to the guardianship statutes proposed in HB 1053 are summarized as follows:

- All letters of guardianship must have an expiration date, and the clerks of the courts must follow a standard format.
- Language is added to the statutes creating a deadline for a review hearing for all inventories, care plans, annual accountings and reports, and final accountings and reports - 120 days from the anniversary of appointment.
- Additional language about the expiration date of letters of guardianship.
- The courts are authorized to require the completion of basic guardianship training before a proposed guardian may be appointed.
- The deadline for filing final reports is lengthened from 30 to 90 days.
- All court orders appointing guardians or approving annual reports must include a standardized "Guardianship Summary" beneath the caption of the order.
- The courts are required to take action against guardians for late filings.

Most of the above-listed proposed amendments would serve to standardize guardianship procedures from county to county, as there are some counties that still have the petitioner's attorney prepare the letters of guardianship for the clerk to sign and certify. The "guardianship summary" places all the important information that needs to be tracked by the clerk's office on the front page of the order, simplifying the guardianship calendar review process. The provision that authorizes the courts to require completion of basic training of proposed guardians appears to be directed at non-professional guardians. Whether this provision will be put into action any time soon is questionable as the training is to be "made available by the court." Currently, it is unlikely that the courts in any county have the funds to set up new training programs.

A complete copy of HB 1053 can be viewed [here](#).

House Bill 1564 seeks to amend RCW 68.150 to add the court-appointed guardian at the time of a decedent's death to the bottom of the list of those given the power of disposition over the decedent's remains. In other words, if a decedent had no spouse, children, parents, or siblings, the new statute would provide the court-appointed guardian with the authority to make funeral arrangements.

A complete copy of HB 1564 can viewed [here](#).

WAPG Membership Meeting

When: February 22, 2011, at 4:00PM **Where:** Home of: Mimi Hudson, Vice President, 748 North 200th, Shoreline, WA 98133. An agenda will follow closer to the date of the meeting.

WAPG Members Submitted Comments on Proposed Application Regulation 108

The comment period on proposed changes to Application Rule 108 ended on December 17, 2010. The proposed rule changes concerned how a CPG may operate a business or the name(s) he or she may operate under. A letter circulated by Dan Smerken, CPG, and signed by twenty-eight WAPG members was sent to the CPG Board. The letter can be viewed on the WAPG website. Additionally, an unknown number of comments were sent in by individual CPGs.

The concerns expressed in the Smerken letter were tentatively adopted as the official position of WAPG.

A decision by the CPGB on the proposed rule is expected at the February 14 CPGB meeting.

Resource of the Month

Senior Services

<http://www.seniorservices.org/>

Senior Services provides direct and indirect services and resources to seniors in King County through a network of senior centers and programs. Senior Services has 250 employees and 3,000 volunteers. In addition to their numerous programs, they serve as a information link for seniors - particularly low-income seniors - seeking resources. Many guardians may have seen their monthly newsletter/resource guide, "Passport," which is mailed out to many seniors.

Want to share your favorite resource? Submit it to fastcj@drizzle.com

The WAPG Newsletter

A monthly publication of the Washington Association of Professional Guardians.

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WAPG

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The Washington Association of Professional Guardians is a 503(C) non-profit organization. WAPG is affiliated with the National Guardianship Association.

The contents of this newsletter do not necessarily represent the views of the Editors, the WAPG Executive Board, or the WAPG membership.

Submissions Guidelines: The Newsletter is published on the third Friday of each month. Article ideas should be discussed in advance with the editor. The deadline for submission is the first of the month. Late submissions will be considered on a space available basis. Submissions should be made in electronic format and emailed to fastcj@drizzle.com. All submissions are subject to editing.

WAPG To File Amicus Brief

The WAPG Board met on December 21, 2010 and received an application for amicus (friend of the court) assistance. The applicant is a nursing facility that petitioned for guardianship for a Medicaid-eligible client. DSHS appeared and opposed petitioner's fees incurred prior to the guardian's appointment. The court decided that the petitioner was entitled to no more than \$700 for attorney fees and no attorney fees at all for responding to the DSHS objection. The petitioner is appealing the superior court decision to the court of appeals.

WAPG has a significant interest in this case. Limiting attorney fees has a chilling effect on bringing petitions and puts vulnerable people at risk. Limiting attorney fees also limits the access to the courts for those who are vulnerable and need that protection. The appointment of a CPG creates systemic savings, reduced risk, increased safety, and preservation of dignity of our vulnerable citizens.

The applicant requested WAPG assistance by (a) paying the costs of appeal of approx. \$1,000, (b) payment of appellant's legal fees of \$5,000, (c) a WAPG "friend of the court" brief to support the appeal.

(a) The Board tentatively decided to pay the costs of appeal up to \$1,000 because of the significant issues at stake, but that the appellant or the attorneys involved should become associate members of WAPG.

(b) The Board also tentatively decided to not pay attorney fees for the appellant.

(c) The Board also tentatively decided that an amicus brief be submitted on behalf of WAPG.

WAPG members are invited to comment as well as make any donations to the cause.

Please send your comments within a few days to Mimi Hudson at soundseniorcare@aol.com

Updates

WAPG Website Under Construction

Website users are reminded that the url "www.wapg.org" directs the user to WAPG's new website which is still under construction. The old website remains operational. At this time, nearly all content has been moved to the new website.

If you are unable to find certain information on the new website, please scroll all the way to the bottom of the www.wapg.org homepage and click on the link marked "here" and your browser will be redirected to the old website.

WAPG Seeking New Treasurer

With his assumption of duties on the CPG Board, Bill Jaback has resigned from his position as Treasurer on the WAPG Board. WAPG is seeking letters of interest for the position of Treasurer. Please send inquiries to Glenda Voller at gvoller_seattle@msn.com.

The Guardianship Cudgel

By Christopher Fast, CPG

Guardianship, and by extension guardians, only seem to receive bad press. Across the country, there are countless newspaper articles exposing this or that bad guardian, and there are websites devoted to exposing all the evil deeds of guardians. In a world of journalism where sensation drives sales and ratings (“If it bleeds, it leads.”) the stories with the happy endings don’t get any coverage. The guardian who quietly goes about his/her job, seeing to their clients’ welfare and properly managing their assets does not get an article in the paper, not even buried deep in section B. The guardian who screws up, or worse, acts dishonestly, gets a nice headline on page 1, perhaps even above the fold.

The general population has as much understanding of the guardianship process as I have of how mortgage-backed securities get bundled and sold to large investment banks, that is, only the most superficial conception. In the mass media, there is usually no differentiation between professional guardians and lay guardians. The broad brush of a scandal paints all guardians. Worse yet, the scandal does not even have to involve a guardian.

Recently, we have heard a lot about DSHS objecting to payment of the pitifully small attorney fees for the petitioner’s attorney in Medicaid cases. It has surely already had a chilling effect on the filing of new petitions for guardianship in cases where the protections of guardianship are necessary. The corollary to this phenomenon is the abusive filing of guardianship petitions by facilities.

I had heard stories and seen examples of questionable petitions for guardianship. And, of course, there are the stories in the blogosphere – accounts of gross abuse of power, lack of oversight, incompetence, and even outright exploitation. But that is all six states away from here.

Recently I met a woman who was the subject of a guardianship petition. It was clear to me within just a few minutes of walking into the Alleged Incapacitated Person’s room that she in no way fit the definition of “incapacitated” under RCW 11.88. Yes, she certainly requires “assistance with managing her affairs,” as it states in the petition, but her disability is mostly of a physical nature. She is unable to walk or perform most of her activities of daily living because of her medical condition, but it does not appear to have affected her intellect to the point that she can not appoint an agent under a power of attorney. Based on my short meeting with her, my non-credentialed assessment is that she has some very minor memory and cognitive deficits, but not such that she would score too much lower than the rest of us on the Wechsler test.

Why, then, did the nursing home file a guardianship petition?

Apparently, the nursing home had not been paid for some time. The Alleged Incapacitated Person in this story has an effective DPOA, and the Attorney-in-Fact who has been managing her affairs for over a

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WAPG invites you to get involved!

Is there a topic of particular concern that you would like to do something about? Join the WAPG committee handling the issue. Go to www.wapg.org to find the contact info for the committee chair(s). Is there no committee handling that issue? Contact Scott Malavotte (425-883-1181 or mal.assoc@verizon.net) or Michael L. Johnson (206-623-3030 or hardmanjohnson@gmail.com) to start your own committee.

Cudgel

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year is an unsophisticated relative with a day job and a family. The A-i-F had slowly spent the Alleged Incapacitated Person's available liquid assets on the costs of care until there non-liquid assets left. The A-i-F made some attempts at liquidating the assets and then gave up, advising the nursing home that she was unable to move forward.

I can sympathize with nursing home administrators. They have income to collect, bills to pay, and budgets to balance like any enterprise, and at times, they must put the squeeze on recalcitrant residents. This nursing home is owned by a large out-of-state corporation which operates scores of facilities across the country. I will hazard a guess that corporate counsel – one of the largest law firms in Washington – received a call from the facility or corporate headquarters. The file was forwarded to an associate attorney who prepared the petition and filed it. Job done, next file.

A little homework by the petitioning attorney would have revealed that the Alleged Incapacitated Person in question is fully capable of appointing a new Attorney-in-Fact and is not, in fact, incapacitated and that numerous less expensive and less invasive options were available to the facility. Whether the guardianship petition was filed out of frustration or from lack of knowledge of the statute, I do not know. Either way, the facility was familiar with the Alleged Incapacitated Person's condition and abilities, so the argument could be made that the guardianship petition was brought in bad faith. Use of the guardianship process as a cudgel to get payment out of a resident is abusive and must not be allowed to become common practice. Guardians will only suffer when the broad brush of negative publicity paints us all.

Certified Professional Guardian Board 2011 Meeting Calendar

Date	Place	Time
Monday, January 10	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, February 14	Teleconference	8:00 – 9:30 am
Monday, March 14	Teleconference	8:00 – 9:30 am
Friday-Saturday, April 8-9 or Monday, April 11	TBD or AOC SeaTac Facility	
Monday, May 9	Teleconference	8:00 – 9:30 am
Monday, June 13	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, July 11	Teleconference	8:00 – 9:30 am
Monday, August 8 (tentative)	Teleconference	8:00 – 9:30 am
Monday, September 12	Teleconference	8:00 – 9:30 am
Monday, October 10	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, November 14	Teleconference	8:00 – 9:30 am
Monday, December 12 (tentative)	Teleconference	8:00 – 9:30 am

The AOC SeaTac Facility is located at:
SeaTac Office Center
18000 International Boulevard
South Tower, Suite 1106
SeaTac, WA 98188