

GRIEVANCE INVESTIGATION REPORTS

2017 066

KRISTYAN CALHOUN

GUARDIAN GRIEVANCE INVESTIGATION SUMMARY

CPGB Grievance #:	2017 066	Date Rec'd: 8.3.2017	Date Closed:
Guardian:	Kristyan R. Calhoun	CPG	10954
Guardian Agency:	n/a	CPGA #	
County:	Yakima		IP: Kathryn Owen
Resolution:	Dismissal, no actionable conduct		

Interview List

(Persons to interview, grievant, incapacitated person, guardian, experts, others)

- Grievant
- CPG
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Document List

(Documents and records to obtain, include both existing and potential records and their relevance to the investigation. Obtain and analyze pertinent documents, prior to conducting interviews.)

- Grievance 8.3.2017

Allegations List

(Identify each alleged wrongdoing or impropriety and the applicable rule or regulation and include the following: each allegation you intend to investigate; emerging allegations you believe warrant investigation based on facts developed during the course of the investigation or additional information.)

1. Alleged that the guardian did not have authority under the Revised Code of Washington to act as a temporary guardian.
2. Alleged mismanagement of IP finances; failure to pay utility bills and cost of care and allowed insurance on real estate rental to lapse.
3. Allowed some family members access to the IP's finances for their personal use
4. Harassment of family members, including prohibiting family to talk to the IP regarding finances.
5. Failure to protect the IP from abusive family members

Chronology of Events

(Chronology of events outlines the order in which events occurred. It is important to have a good understanding of what happened and when before beginning your interviews. Create a chronology of events based on your understanding of the complaint and update it as you obtain additional information.)

- The CPG was appointed as “temporary guardian” by the Superior Court judge on 11.14.2016.
- It had been noted by AOC that there is no statutory authority for appointment of a temporary guardian. There are many due process protections for appointment of a guardian that are not required for the appointment of a “temporary” guardian, thereby possibly putting the civil liberty of an allegedly incapacitated person at risk.
- The CPG asserts that the Court is vested with the authority to consider temporary measures to protect an alleged incapacitated person under RCW 11.88.090(9) and RCW 11.88.045(5).
- The CPG states that she has been working on behalf of the IP since November, 2016.

FAILURE TO PAY BILLS AND COST OF CARE

- The CPG states that there was some confusion regarding payment of utility bills because the grievant, Jeff Owen, and the IP were both receiving bills at their separate addresses. CPG also states that the grievant several times dropped off bills that were already past due, or close to it. The CPG as a temporary only guardian did not have the authority to marshal assets and debts.
- The CPG did not pay the annual power bill for a family cabin at the direction of the IP. The grievant wanted to own the family cabin. He has had sole access to the cabin for many years. He was paying the taxes, utilities and insurance for the cabin from his parent’s funds. The CPG paid the taxes and insurance at the direction of the IP, but not the power bill. The CPG had put the grievant’s current and prior attorney on notice of this.
- The CPG admits that she did bounce a check to the living facility. She says that she did not realize that the auto pay agreement would go into effect when it did. She made a transition to another guardianship software to alleviate a bill payment error from occurring again. She advised the attorneys involved in the case, and the IP of what had occurred.
- The CPG states that she paid the insurance on the real estate rental after she was asked to do so by the IP’s attorney. The insurance was in Keith and Jeff Owen’s names. The bill was mailed to the grievant Jeff’s home. She received the bill after it was already due.

ALLOWED FAMILY MEMBERS TO ACCESS THE IP’S FINANCES

- The CPG denies any knowledge of family members accessing the IP’s resources.
- The CPG states that the IP had full access to her funds. She knows that the IP did take out small amounts and took funds to buy a suit for her husband to be buried in.

HARASSMENT OF FAMILY MEMBERS AND PROHIBITION OF DISCUSSING FINANCES W/IP

- The CPG states that she asked the grievant, Jeff Owens, not to talk to the IP about the purchase of a TV. The IP was having trouble watching TV because of vision issues. The CPG suggested purchasing a larger TV so she could watch television. The IP thought a larger TV might enable her to watch again. One was purchased, and the IP was able to enjoy TV again. However, when the grievant/son came over to visit he was very upset about the purchase and made critical remarks to the IP which upset her.
- In addition, the IP had agency care givers for a time because of health complications. The grievant/son told her that she did not need the care and it was too expensive. The CPG did not want the grievant/son harassing the IP about purchases that she needed.

FAILURE TO PROTECT THE IP FROM ABUSIVE FAMILY MEMBERS

- The CPG states that the grievant, Jeff, was the only family member that the IP had stated she was afraid of. She had been clear and consistent about her fear of grievant/son Jeff Owens with the CPG and her staff.
- The IP had shared her concerns to her attorney, Marcus Fry, as well as the GAL, Amy Clark.
- The CPG asked the grievant not to make critical remarks to the IP, which upset her.

Background Information

(The origin of the hotline complaint; a summary of the complaint; optional information about earlier investigations or ongoing investigations and any other background information that might establish a precedent for this case.)

- Petition for Appointment of Guardian 11.14.2016
- Motion for Order Appointing Temporary Guardian
- Order Appointing Temporary Guardian 11.14.2016
- Letters of Guardianship (Temporary) 11.14.2016
- Order Appointing Guardian Ad Litem 11.14.2016
- Designation of Standby Guardian 12.22.2016
- Agreed Order (Granting Additional Powers to Temporary Guardian)
- Sealed Confidential Reports 3.1.2016
- Order Dismissing Guardianship, Authoring Payment of GAL Fees and Discharging GAL (Agreed) 9.27.2017



Certified Professional Guardian Board

DATE: October 15, 2019
TO: Standards of Practice Committee
FROM: Carla A. Montejo
RE: 2017 066 Kristyan Calhoun

RECOMMENDATION: Dismissal, No Actionable Conduct

<u>Allegation:</u>	Alleged that the guardian did not have authority under the Revised Code of Washington to act as a temporary guardian.
<u>SOP:</u>	401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.
<u>Evidence Relied On:</u>	There is nothing in the Washington statutes that clearly authorizes the appointment of a "temporary guardian" or creation of a temporary guardianship. The statute appears to contemplate the need to appoint a GAL to obtain medical evidence that establishes the inability to manage his or her own affairs by an allegedly incapacitated person. In this case, this was not done. However, the fact is that a court did appoint Ms. Calhoun as a temporary guardian, apparently relying on the court's powers to fashion emergency remedies for allegedly incapacitated persons in an vulnerable situation. There is no basis to sanction a Certified Professional Guardian who has been appointed by a Court to act in any capacity. The CPG's actions when authorized by court order have the imprimatur of legality.
Conclusion:	<input type="checkbox"/> Substantiated <input checked="" type="checkbox"/> Unsubstantiated

<u>Allegation:</u>	Alleged mismanagement of IP finances; failure to pay utility bills and
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	cost of care and allowed insurance on real estate rental to lapse.
<u>SOP:</u>	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.
<u>Evidence Relied On:</u>	<p>The grievant provided no evidence of unpaid bills or lapsed insurance. The CPG provided a persuasive explanation regarding any irregularities in paying utility bills. She explained that there was one returned check for payment of cost of care that was caused by her lack of understanding of the auto pay procedures. She also explained that she took steps to rectify this situation. It apparently was a one time error. In addition, the CPG explained how situation involving the insurance on the rental, and that the rental was under the names of the grievant and his deceased father, the husband of the IP. The CPG advises that when counsel for the IP instructed her to pay it out of community assets that she did so.</p> <p>There is no evidence of any significant, ongoing mismanagement of bills and financial obligations of the IP.</p>
Conclusion:	<input type="checkbox"/> Substantiated <input checked="" type="checkbox"/> Unsubstantiated

<u>Allegation:</u>	Allowed some family members access to the IP's finances for their personal use
<u>SOP:</u>	409.4 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.
<u>Evidence Relied On:</u>	There is no evidence that substantiates that the CPG allowed anyone to access the IP's resources and assets for their own use. The CPG denies it, and provides a persuasive explanation.
Conclusion:	<input type="checkbox"/> Substantiated <input checked="" type="checkbox"/> Unsubstantiated

<u>Allegation:</u>	Harassment of family members, including prohibiting family to talk to the IP regarding finances.
<u>SOP:</u>	<p>RCW 11.92.195</p> <p>(1) Except as otherwise provided in this section, an incapacitated person retains the right to associate with persons of the incapacitated person's choosing. This right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means.</p> <p>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.</p>
<u>Evidence Relied On:</u>	There is no evidence in the record of the guardian harassing any family members, or unlawfully interfering with the IP's right of association. The guardian explains that she did ask the grievant/son not to talk to the IP about money because he was criticizing her appropriate purchases, frequently due to his objection to her spending her money. These requests to the IP were consistent with the guardian's duty to protect the IP's right to self-determination.
<u>Conclusion:</u>	<input type="checkbox"/> Substantiated <input checked="" type="checkbox"/> Unsubstantiated

<u>Allegation:</u>	Failure to protect the IP from abusive family members
<u>SOP:</u>	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.
<u>Evidence Relied On:</u>	There is no evidence that any of the IP's family members were abusive. The CPG says that the only member of her family that the IP was afraid of was her son, the grievant. The CPG indicates that she did

	discourage the son from making critical, controlling remarks to the IP about her expenditures.
Conclusion:	<input type="checkbox"/> Substantiated <input checked="" type="checkbox"/> Unsubstantiated