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State of New Hampshire Guardian ad Litem Board

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In the Matter of:

**Nancy Tierney
Adjudicatory/Disciplinary Proceeding**

Docket #10-18

DECISION AND ORDER

Before the Guardian ad Litem Board (the Board) is the matter of Nancy Tierney following a complaint to the Board that Ms. Tierney failed to notify one or more appointing courts of the discipline imposed upon her by the New Hampshire Supreme Court in an order dated May 24, 2010.

BACKGROUND INFORMATION

On September 24, 2010, the Guardian ad Litem Board (the Board) became aware that the New Hampshire Supreme Court had imposed disciplinary action on Nancy S. Tierney (Ms. Tierney) a certified guardian ad litem, on May 24, 2010. (LD-2009-0010, In the Matter of Nancy S. Tierney). This action by the Supreme Court followed actions by the Professional Conduct Committee (PCC) on March 12, 2009 and September 9, 2009 (clarifying the March 12, 2009 order).

The Board has no record of being notified of the discipline imposed by the Supreme Court prior to the Board's meeting of September 24, 2010.

At the direction of the Board, a complaint was filed on behalf of the Board on October 11, 2010, alleging that Ms. Tierney had violated N.H. Admin. Rule, Gal 503.16(b)(12)(b); Gal 503.16(e); and Gal 303.01(h) by failing to notify the Board and any courts in which she was currently serving as a guardian ad litem of the disciplinary action.

On October 18, 2010, the Board mailed a copy of the complaint to Ms. Tierney, pursuant to Gal 203.02(c).

The Board received Ms. Tierney's response to the allegations in the complaint on November 19, 2010.

The Board reviewed Ms. Tierney's response at its meeting on December 17, 2010 at which time the Board voted to issue a notice of hearing to be held February 18, 2011.

The notice of hearing was mailed via certified return receipt on January 7, 2011 and signed for on January 12, 2011.

The notice of hearing provided that the following specific issues would be determined at the adjudicatory/disciplinary proceeding:

- a. Whether Ms. Tierney violated Gal 503.16(b)(12)(b), which provides: *A guardian ad litem shall immediately advise the board, in writing, of . . . [a]ny change in the answer to the questions on the supplemental application or supplemental renewal application form described at . . . Gal 302.03(g), Gal 302.03(h), Gal 401.08(f), or 401.08(g) regarding disbarment, revocation, suspension, reprimand, censure, discipline, disqualification or sanction relative to the practice of a profession.*
- b. Whether Ms. Tierney violated Gal 503.16(e), which provides: *A guardian ad litem shall immediately inform all courts in which he or she is currently appointed of information which the guardian ad litem is required to report to the board under paragraph (b) above.*
- c. Whether Ms. Tierney violated RSA 490-C:5-a, I and Gal 303.01(h), which provide that an applicant for certification “*shall be of good character,*” as demonstrated by her failure to comply with the Board’s rules regarding notification of disciplinary action.
- d. If any of the above allegations are proven, whether and to what extent Ms. Tierney should be subjected to one or more disciplinary sanctions pursuant to Gal 402 (Revocation, Suspension, and Other Sanctions).

John H. Lightfoot, Jr. was presiding officer and Mary Beth Walz was prosecutor for the hearing.

On February 4, 2011, the Board received a notice of appearance for Russell Hilliard, Esq., representing Ms. Tierney.

On February 9, 2011, the Board received eight exhibits, labeled A through H from Attorney Hilliard.

HEARING

An adjudicatory hearing was held on Friday, February 18, 2011 in room 102 of the Legislative Office Building, Concord.

Present were: board members John H. Lightfoot, Jr., chair and presiding officer; Alan Cantor; Susan Duncan; Nina Gardner; Mark Jewell, Ann Larney, Henrietta Luneau, Senator Jim Luther, Representative Jeffrey Oligny.

Also present were Nancy Tierney, respondent, and Russell Hilliard, respondent’s counsel.

Mary Beth Walz, prosecutor, was absent. It was agreed by Ms. Tierney, Mr. Hilliard and the Board to proceed with the hearing and accept the notice of hearing and its contents as the prosecution’s evidence. Also by agreement, the Board afforded Ms. Walz until Friday, February

25, 2011 to listen to the recording of the hearing and respond if she had questions. Ms. Walz did not add anything to the record.

The record in this case consists of the following:

Documents from the Board's file on Ms. Tierney:

- State of New Hampshire Supreme Court Order dated May 24, 2010
- State of New Hampshire Supreme Court Professional Conduct Committee Recommendation dated September 9, 2010
- Complaint against Ms. Tierney filed by the Board on October 11, 2010
- Response to complaint by Ms. Tierney November 19, 2010
- Notice of Hearing dated January 7, 2011
- Letters of Support from clients of Ms. Tierney submitted to the New Hampshire Professional Conduct Committee

Respondent's exhibits submitted prior to the hearing

- Order from the United States District Court for the District of New Hampshire adopting the terms of the suspension imposed by the Professional Conduct Committee
- Order from the United States Court of Appeals for the First Circuit adopting the terms of the suspension imposed by the Professional Conduct Committee
- Letter from the Office of Disciplinary Counsel for the State of Vermont, together with an Order from the Vermont Supreme Court dated December 15, 2010
- Order of the Massachusetts Supreme Judicial Court dated December 9, 2010.

Respondent's exhibits submitted at the hearing:

Exhibit A:

List of active cases in which Ms. Tierney has been appointed Guardian ad Litem.

Exhibit B:

Article from New Hampshire Bar News dated June 18, 2010.

Exhibit C:

Letters of Support from clients of Ms. Tierney submitted to the New Hampshire Professional Conduct Committee

Exhibit D:

Order from the United States District Court for the District of New Hampshire adopting the terms of the suspension imposed by the Professional Conduct Committee

Exhibit E:

Order from the United States Court of Appeals for the First Circuit adopting the terms of the suspension imposed by the Professional Conduct Committee

Exhibit F:

Letter from the Office of Disciplinary Counsel for the State of Vermont, together with an Order from the Vermont Supreme Court dated December 15, 2010

Exhibit G:

Order of the Massachusetts Supreme Judicial Court dated December 9, 2010.

Exhibit H:

Letter to the Board explaining her point of view and reasons she should remain a GAL

Summary of Evidence

Ms. Tierney testified that her disciplinary case had been pending with the Attorney Discipline Committee since 2004. After the Supreme Court issued its order, she discussed the case with Judge Yasinski, Claremont Family Division; Judge McLeod, Lebanon Family Division; and Service Coordinators at Grafton County Probate & Family Division. She notified them of the Supreme Court decision and attempted to meet with them in person.

Ms. Tierney continues to be appointed to cases with the Judges having knowledge of her disciplinary action.

Ms. Tierney testified that she was out of the country when the Supreme Court issued its decision. Part of her sanction was to notify clients and courts.

Ms. Tierney's mentor is Pat Hayes. Together they created a mentoring agreement, which was approved by the Professional Conduct Committee, Disciplinary Council. As part of the agreement, Ms. Tierney was required to have all clients sign a consent form if they wanted to continue as Ms. Tierney's counsel and agreed to the mentor agreement.

Ms. Tierney also notified the Massachusetts Supreme Judicial Court, Vermont Discipline Board, U.S. Court of Appeals for the 1st Circuit and U.S. District Court for the State of New Hampshire. Ms. Tierney thought that she had notified everybody but admitted that she did not notify the Guardian ad Litem Board.

Ms. Tierney testified that she did not realize that she had to notify the Board. She presumed that the notification in the Bar News and PCC would satisfy the Board notification. She had difficulty finding out who the PCC notified; they did notify the administrative boards of which she was a member.

Ms. Tierney also testified that she was familiar with GAL 503.04 requiring that a guardian ad litem be competent, and that competence includes knowledge of the rules. She stated that at the time there were so many notifications and rules that she thought she was doing the very best she could.

FINDINGS OF FACT

1. Ms. Tierney did not notify the Board of the discipline imposed on her by the N.H. Supreme Court.
2. Ms. Tierney notified the courts in which she was currently appointed as a guardian ad litem of the discipline imposed on her by the N.H. Supreme Court.
3. Ms. Tierney is currently serving a one year suspension from the practice of law with a stay of two years pursuant to the order from the N.H. Supreme Court. As part of this she has been assigned a mentor who files a report with the court every quarter for two years.

RULINGS OF LAW

1. Ms Tierney violated 503.16(b)(12)(b) by not immediately advising the Board of her suspension imposed by the Supreme Court.
2. Ms. Tierney did not violate 503.16(e) in that she did inform the courts of her suspension from the Supreme Court.
3. Ms. Tierney did not violate RSA 490-C:5-a, I or GAL 303.01(h) requiring that guardians ad litem be of good character.

DISCUSSION AND CONCLUSION

Ms. Tierney informed all the courts of Supreme Court decision. She did not inform GAL board, admitting at the hearing that she forgot. The Board concludes that the mentor agreement pursuant to the Supreme Court order will enable Ms. Tierney to take control of her practice and to avoid similar situations in the future.

SANCTIONS

Gal 402.02 Standard for Imposition of Penalties and Sanctions provides the standards for imposing sanctions on certified guardians ad litem who have been found by the Board to have violated the requirements of RSA 490-C and rules adopted by the Guardian ad Litem Board.

Gal 402.02

- (a) In determining whether or which sanctions or penalties to impose in a particular case, the board shall:
 - (1) Consider whether extenuating circumstances exist pursuant to Gal 503.01 (e); and
 - (2) In the absence of extenuating circumstances, consider the following when determining the penalty or sanction, or the combination of penalties or sanctions, to be imposed:
 - a. The nature and magnitude of the infraction, including the nature of the harm that was, or may have been, caused by the act or omission at issue;
 - b. Whether a particular penalty is prescribed by the rules of the board;
 - c. The particular circumstances relating to the act or omission at issue;
 - d. The probable reason or reasons for the act or omission;
 - e. The person's past history of discipline, sanction or penalty, if any, imposed by the board, or by any other entity charged with overseeing the conduct of the person charged;
 - f. Whether the person has cooperated with any investigation into the matter under consideration; and
 - g. Whether the person may have violated the ethical standard and standard of practice set forth at Gal 503.02 (a), relating to acting in the best interests of the recipient of services.

- (b) In cases in which a penalty or sanction is to be imposed, the board shall impose such penalty or sanction, or combination of penalties and sanctions, as it concludes:
- (1) Takes into account the factors set forth in (a) (2) above;
 - (2) Will likely:
 - a. Convey to the person the importance of adhering to the requirements of the rule or law violated, or rules and laws generally; or
 - b. Assist the person in conforming his or her future conduct to the requirements of rules or law, either in general or as they relate to the functions of guardians ad litem;
 - (3) Will likely serve as a general deterrent to the commission of a similar violation by other persons in the future;
 - (4) Is or are not disproportionate to the magnitude of the act or omission at issue;
 - (5) Will likely be perceived by the general public as fair in light of the particular circumstances of the offense; and
 - (6) Will not, if imposed, be likely to increase a risk of harm to the health, safety, welfare or best interests of any recipient of services or potential recipient of services.

The Board finds that extenuating circumstances exist pursuant to Gal 503.16(b)(12)(b) in that the N.H. Supreme Court sanction, including the mentor agreement, is well-suited to guide Ms. Tierney to full compliance with both the attorney Rules of Professional Conduct and the rules of the Board. It further concludes that a more harsh sanction would not increase the likelihood of Ms. Tierney's future compliance.

THEREFORE IT IS ORDERED pursuant Gal 402.04, that Nancy Tierney's certification is suspended for one year from the date of this order, but that the Board's order of suspension is stayed for two years provided that no further disciplinary action is imposed upon Ms. Tierney.

IT IS FURTHER ORDERED that the suspension will be lifted following the two-year stay provided that Ms. Tierney is not subject to further disciplinary action by the Attorney Discipline Office or any court.

IT IS FURTHER ORDERED that if the Board receives new complaints against Ms. Tierney during the period of the suspension that arise out of events that occurred following the date of the order, any such complaints shall be processed by the Board on an expedited basis. In such case, the term of the suspension shall be extended pending the investigation and disposition of any charge associated with such complaint. Any final adjudication of a violation of the rules of the Guardian ad Litem Board arising out of such complaint shall provide the basis to impose any period of suspension that has been stayed on condition of Ms. Tierney's compliance with the rules of the Guardian ad Litem Board. In the event of such a complaint, Ms. Tierney shall be entitled to an evidentiary hearing and review by the Board

IT IS FURTHER ORDERED that if the Board is notified by the Administrative Office of the Courts of any late reports being filed by Ms. Tierney pursuant to RSA 490:26-g, the stay may be

lifted and the sanction of suspension imposed following a hearing at which Ms. Tierney will have the right to justify or explain her late filing.

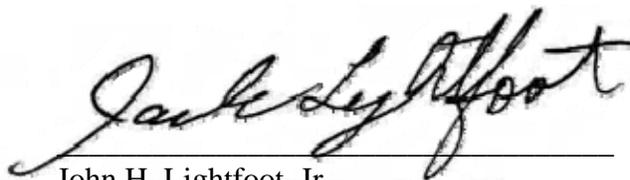
IT IS FURTHER ORDERED that respondent Nancy Tierney immediately notify any courts in which she currently holds an appointment as guardian ad litem of the results of this disciplinary hearing.

IT IS FURTHER ORDERED that a copy of this order be delivered to the Administrative Office of the Courts, the Administrative Judges of the Superior, Probate, District and Family Division Courts, and the Attorney Discipline Committee.

Appeals from orders of the Board may be taken pursuant to RSA 541. See RSA 490-C:8. Within 30 days of the date of this decision, the respondent may appeal by petition for a writ of certiorari to the New Hampshire Supreme Court. See RSA 541:6.

BY ORDER OF THE BOARD

DATE: June 1, 2011



John H. Lightfoot, Jr.
Board Chair

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