



John H. Lightfoot, Jr.
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State of New Hampshire Guardian ad Litem Board

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In the Matter of:

**Lynda Gagné
Adjudicatory/Disciplinary Proceeding**

Docket # 2011-0002

DECISION AND ORDER

Before the Guardian ad Litem Board (the Board) is the matter of Lynda Gagné following a complaint to the Board that Ms. Gagné falsified her applications for certification and re-certification.

BACKGROUND INFORMATION

On March 11, 2011 the Guardian ad Litem Board (the Board) received a complaint and cover letter regarding Guardian ad Litem Lynda Gagné (Ms. Gagné). The complaint was filed by Janette Mooney (Ms. Mooney) on behalf of Sima Mazzu (Ms. Mazzu). The complaint included allegations that Ms. Gagné's had falsified her applications for certification and re-certification, outlined below:

On July 10, 2006 – Ms Gagné's original application for certification as a guardian ad litem was received by the Board. In response to Part 7: Question 1 of the application, "*Has applicant ever been a party to any family law or domestic relations proceeding, or any other civil action of any type, in this or any other jurisdiction?*" she checked the box marked "no".

On October 23, 2009 – Ms Gagné's application for recertification as a guardian ad litem was received by the Board. In response to Part H: Question 6 of the application, "*To the extent not specified on the applicant's initial application form or in response to part H, 1. above, whether the applicant has ever been a party to any family law or domestic relations proceeding, or any other non-criminal court case, proceeding or action of any type, in this or any other jurisdiction, including but not limited to any civil, equity, landlord/tenant, probate, bankruptcy, forfeiture or other action, proceeding or matter of any type whatsoever, other than traffic or parking offenses charged as a violation or cases in which the person served solely in the capacity of a guardian ad litem*" Ms. Gagné did not answer.

On January 14, 2011 – Ms. Gagné was deposed *In the Matter of James Mazzu and Sima Mazzu, Dockete #: 216-2005-DM-00611*. In that deposition, Ms. Gagné stated she had been a party in “...about three, maybe four” law suits.

On April 14, 2011 – The Board dismissed the original complaint at its meeting of April 14, 2011 pursuant to RSA 490-C:4 I (g), on the grounds that it involved an on-going case.

On July 11, 2011 – The complainant was granted an oral argument pursuant to Gal 203.03 (c), (d) and (e) asking the Board to reverse its decision dismissing the complaint. Ms. Mazzu was represented by Attorney Jannette L. Mooney.

On September 16, 2011 – the Board deliberated and voted to notify Ms. Gagné of the complaint and request a response pursuant to Gal 203.02(c). The notification to Ms. Gagné related solely to the allegation that she had failed to inform the Board of her involvement as a party in one or more civil cases. The response form was mailed to Ms. Gagné on September 23, 2011.

On October 5, 2011 – The Board office received Ms. Gagné’s response. In that response she stated “*When reading this question, I was under the impression that I was being asked if I were a party in a divorce or family related proceeding in the past and, given I was applying to be a certified Guardian ad Litem, this seems to be a reasonable question.*” She further stated, “*During the deposition, Attorney Mooney asked me if I had ever been deposed before and, because I had, I answered in the affirmative. I was deposed in a personal case which I brought forth in the early 1990s which related to events of my adolescence. It never even occurred to me to include this on my application. It also never occurred to me to include various small claims actions that I brought forth through the years. I was not deliberately withholding information or trying to mislead the Board on either my original or Renewal Application.*”

On October 21, 2011 – The Board reviewed Ms. Gagné’s response

The notice of hearing was mailed via certified return receipt on December 30, 2011 and signed for on January 9, 2012.

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

- I. Whether Ms. Gagné violated Gal 503.16(a)(a), which provides: *A guardian ad litem shall:*
 - (1) *Submit truthful and accurate information in any application or renewal application form, supplemental application or supplemental renewal application form, or any other writing submitted to the board;*
 - (2) *Make truthful and accurate statements in any oral communication to the board; and*
 - (3) *Be forthright, candid and not misleading in his or her oral statements or written submissions to the board.*

- II. Whether Ms. Gagné violated RSA 490-C:5-a I and Gal 303.01 (h), which provides: “*An applicant for certification. . . shall be of good character” as demonstrated by her failure to comply with the rules regarding providing truthful and accurate information in her initial application for certification and application for recertification.*

Henrietta Luneau was presiding officer and John H. Lightfoot, Jr. was prosecutor for the hearing.

HEARING

An adjudicatory hearing was held on Friday, February 17, 2012 in room 101 of the Legislative Office Building, Concord,

Present were board members John H. Lightfoot, Jr. Chair and prosecutor, Alan Cantor, Susan Duncan, Nina Gardner, Ann Larney, Master Henrietta Luneau presiding officer.

Also present was Lynda Gagné.

The record in this case consists of the following:

Documents from the Board’s File on Ms. Gagné:

Ms. Gagné’s original Guardian ad Litem application for certification dated July 10, 2006

Ms. Gagné’s recertification for Guardian ad Litem application dated October 23, 2009

Transcript of Deposition of Ms. Gagne dated January 13, 2011

Complaint against Ms. Gagné filed on September 16, 2011

Response to complaint dated October 5, 2011

Notice of Hearing dated December 30, 2011

The respondent submitted no exhibits prior to or at the hearing.

SUMMARY OF EVIDENCE

Ms. Gagné testified that in Part 7: Question 1 on her original & recertification application for Guardian ad Litem she didn’t see the last line which stated, “*...or any other civil action of any type.*” She only read the beginning of the question stating, “*Has applicant ever been a party to any family law or domestic relations proceeding...*”

Ms. Gagné testified that it didn’t occur to her about the civil suits from years ago. It was an oversight.

FINDINGS OF FACT

1. Ms. Gagné did not notify the board of civil law suits she was involved in.

RULINGS OF LAW

1. Ms. Gagné inadvertently violated 503.16(a) by not notifying the board of the civil law suits she was previously involved in.

2. Ms. Gagné did not violate RSA 490-c:5-a, or GAL 303.01(h) requiring that guardians ad litem be of good character.

DISCUSSION AND CONCLUSION

Ms. Gagné inadvertently failed to notify the court of previous civil suits to which she was a party.

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(a) in that Ms. Gagné did not purposely omit truthful and accurate information from her original certification application or her recertification application.

THEREFORE IT IS ORDERED pursuant Gal 503.01(e), that Lynda Gagné not be sanctioned due to extenuating circumstances.

IT IS FURTHER ORDERED that Ms. Gagné correct her original application and her recertification application within 30 days of receipt of this order to reflect the truth.

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.

Henrietta W. Luneau, Presiding Officer
New Hampshire Guardian ad Litem Board

March 16, 2012

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