

State of New Hampshire

GUARDIAN AD LITEM BOARD

25 Capitol Street – Room 120

Concord, New Hampshire 03301

(603) 271-1199 Fax: (603) 271-5440

Email: gal.board@nh.gov

JOHN H. LIGHTFOOT, JR.
CHAIRMAN

In the Matter of:

Lenora Boehm

(adjudicatory proceeding pursuant to complaint)

Docket #: 10-C7

Decision and Order

Before the Guardian ad Litem Board is the matter of Lenora Boehm following complaints to the Board that Ms. Boehm had provided false and misleading information to the Board on her application to become a certified guardian ad litem and in a subsequent affidavit filed by her in support of her application.

History of the case

On February 12, 2010 the Guardian ad Litem Board (“the Board”) became aware the Lenora Boehm (“Ms. Boehm”), a certified Guardian ad Litem (GAL) had been subjected to a six month suspension by the Professional Conduct Committee of the NH Supreme Court. Katherine Stearns, acting on behalf of the Board, filed a complaint against Ms. Boehm alleging violations of various rules of the Board based on information contained in the order of the Professional Conduct Committee and Ms. Boehm’s application and supporting materials to become a certified guardian ad litem. The complaint was dated March 29, 2010.

Ms. Boehm was provided notice of the complaint by letter dated March 31, 2010. Ms. Boehm’s response was received by the Board on April 7, 2010 and reviewed by the Board on April 9, 2010.

At its meeting on April 9, 2010 the Board voted to proceed to a hearing, pursuant to its authority under RSA 490-C:4, I(g), to determine whether Ms. Boehm violated the rules of the Guardian ad Litem Board.

On July 25, 2010 the Guardian ad Litem Board (“the Board”) served notice on Lenora Boehm (“Ms. Boehm”), a certified Guardian ad Litem (GAL) that a hearing would be held on August 31, 2010. The purpose of the hearing as stated in the notice was to determine:

- I. Whether Ms. Boehm violated Gal 503.16 (a) by failing to disclose on her application to become a certified guardian ad litem which was received by the Board on October 8, 2008 that she had received reprimands from the Professional Conduct Committee on Oct. 31, 1995; June 8, 1998; and October 26, 1999 and been issued warnings by the Professional Conduct Committee on June 29, 1998 and October 2, 2000 in that in response to the question “Has applicant ever been disbarred or ever suspended from the practice of any profession, reprimanded, censured, had certification or licensure in any profession revoked or otherwise been disciplined or disqualified form professional practice of any type by a professional organization or other entity supervising or overseeing a profession in this or any

other jurisdiction, without such action being subsequently overturned or reversed on appeal?”, Ms. Boehm checked the box marked “yes” but in response to the following question, “If the answer to question 8 is Yes, provide the following: a. name, address and telephone number of the organization or entity taking such action: b. Type of action taken: c. date of action. Ms. Boehm reported only the public censure imposed on July 21, 2008.

- II. Whether Ms. Boehm violated Gal 503.16(a) by filing an affidavit dated Dec. 10, 2009 in which under the heading “**Part F: Professional Record and Ethics**” she reported only 1 matter, a pending case involving Kimberly Frederickson and failed to disclose that she had received reprimands from the Professional Conduct Committee on Oct. 31, 1995; June 8, 1998; and October 26, 1999 and been issued warnings by the Professional Conduct Committee on June 29, 1998 and October 2, 2000.
- III. If any of the above allegations are proven, whether and to what extent Ms. Boehm should be subjected to one or more disciplinary sanctions pursuant to Gal 402 (Revocation, Suspension, and Other Sanctions).

By the same order, Timothy Russell was appointed prosecutor and John Lightfoot was appointed presiding officer.

A hearing was held at 10 AM on August 31, 2010 in room 102 of the Legislative Office Building, 33 North State St., Concord, NH. Present were Ms. Boehm, Mr. Russell, John Lightfoot, presiding officer, and board members Susan Duncan, Nina Gardner, Ann Larney and Mary Beth Walz. An audio recording was made of the hearing.

Summary of the evidence

The Board had before it copies of the order from the NH Supreme Court Professional Conduct Committee in the cases of *Boehm, Lenora E. advs. Kimberly Frederickson #08-055* and *Boehm, Lenora E. advs. Robin Marble #07-018*. Each of these decisions includes references to prior disciplinary actions against Ms. Boehm. Ms. Boehm did not dispute the facts of prior disciplinary actions as recited in the *Frederickson* and *Marble* cases. She argued that she did not intentionally seek to deceive the Board because she believed (1) the cases were public knowledge and therefore she was not required to further disclose information about them to the Board and (2) by disclosing the existence of the *Marble* order, which included references to prior disciplinary actions, she had complied with her obligations to the Board. She acknowledged that she was mistaken in her belief and should have included information about all the disciplinary actions in her application or subsequent affidavit.

Findings of Fact and Rulings of Law

- I. Ms. Boehm violated Gal 503.16 (a) by failing to disclose on her application to be become a certified guardian ad litem which was received by the Board on October 8, 2008 that she had received reprimands from the Professional Conduct Committee on Oct. 31, 1995; June 8, 1998; and October 26, 1999.

The Board finds it is not credible that Ms. Boehm believed the Board had actual knowledge of the prior disciplinary actions.

The Board finds Ms. Boehm did not violate Gal 503.16 (a) by failing to disclose warnings by the Professional Conduct Committee on June 29, 1998 and October 2, 2000. The warnings are not disciplinary actions and are not subject to disclosure by Gal 302.02(f)(8).

- II. Ms. Boehm violated Gal 503.16(a) by filing an affidavit dated Dec. 10, 2009 in which under the heading “**Part F: Professional Record and Ethics**” she reported only 1 matter, a pending case involving Kimberly Frederickson and failed to disclose 2008 that she had received reprimands from the Professional Conduct Committee on Oct. 31, 1995; June 8, 1998; and October 26, 1999.

Ms. Boehm did not violate Gal 503.16 (a) by failing to disclose warnings by the Professional Conduct Committee on June 29, 1998 and October 2, 2000. The warnings are not disciplinary actions and are not subject to disclosure by Gal 302.02(f)(8)

Discussion

Ms. Boehm’s argument that the Board should have been on notice of these disciplinary actions because they were discussed in the one order from the Professional Conduct Committee she did disclose, that of the public censure from July 21, 2008 is not persuasive. She argues that because the censure was public, the Board could have read the censure and thereby discovered the earlier disciplinary actions. However, she did not enclose a copy of the Censure with her application which was required by Gal 302.04 (i). The Board, consisting of volunteer members and one half-time executive secretary does not have the resources to do further background checks on applicants. Nor is it reasonable to believe Board members will remember any incidental knowledge they may have learned of prior disciplinary actions by other professional boards if and when the involved individual later applies for certification. The Board is entitled to rely on the applicant’s statements which are signed by certifying the truth and accuracy of the information included on the application.

Ms. Boehm’s repeated assertions, both in her written answer to the complaint and in her oral presentations that the Board was or should have been on notice of her otherwise undisclosed disciplinary actions are neither credible nor reasonable. The Application and Supplemental Application themselves, in Part F, question 9, dealing with prior disciplinary actions includes the statement “*attach additional sheets if needed*” clearly indicating the Board expects there may be more than one situation to report. Parts b. and c. “Type of action taken” and “Date of action” further clearly demonstrate the need to further specify any disciplinary action because there may be more than one type or date of disciplinary action. Ms. Boehm, in her own testimony, stated she should have been aware of Gal 302.04 (i) and enclosed a copy of at the very least the public censure of July 21, 2008.

Ms. Boehm was given an opportunity to clarify her application when the Board asked for, and she supplied, an affidavit dated December 10, 2009 updating information on her application, which had been originally submitted in October, 2008. However, she failed to provide any additional information, instead, disclosing only, apparently in response to Part F question 9 the Frederickson

complaint before the Professional Conduct Committee which was then pending. Her argument that the Board should have been aware of her prior disciplinary record because the public censure was available for review by the board and recited these actions is, as stated above, not persuasive.

Guardians' ad litem are officers of the court, and are relied on by the courts to provide accurate information to them in specific cases. Guardians' ad litem operate independently, with no effective day to day check on their actions. Thus, their honesty and integrity are critically important, not only for the specific cases to which they are assigned, but also to the over-all framework and system within which they operate. Providing false or misleading information to the Board is a serious offense because it calls into question the ability of the Guardian ad litem to provide truthful, complete and not misleading information to the courts in which she works.

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 has found that Ms. Boehm has violated Gal 503.16 (a) by failing to disclose disciplinary actions imposed by the NH Supreme Court's Professional Conduct Committee in her application and supporting affidavit.

Gal 503.01(e) provides "The board shall find that extenuating circumstances exist if it determines that:

- (1) Imposing sanctions would not assist the person in conforming his or her future conduct to the requirements of these rules or other applicable law.
- (2) The purposes that would be served by imposing sanctions have been fully fulfilled;
- (3) The absence of imposing sanctions would be unlikely to pose a risk of harm to the interests or welfare of any recipient of services or potential recipient of services; and
- (4) The reasons supporting the decision not to impose sanctions outweigh any adverse impact on general deterrence or on public perception that may arise from the absence of sanctions.

The Board finds that extenuating circumstances exist pursuant to Gal 503.01(e) in that, although Ms. Boehm made false statements to the Board in her application (Gal 402.03(b)(2)b, Ms. Boehm, in her testimony, reflected true remorse for her behavior, and an understanding of the significance of her wrong-doing. She did not attempt to place the blame on others or to make excuses for herself. Furthermore, she has been suspended from the practice of law for in excess of six months. The Board has taken these factors into consideration in issuing its order.

IT IS THEREFORE ORDERED

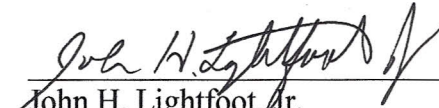
1. Lenora Boehm's certification as a Guardian ad Litem is suspended for a period of 6 months from the date of this order, pursuant to Gal 402.01(a)(2)
2. a fine of \$500 is imposed on Lenora Boehm pursuant to Gal 402.01(a)(6), and
3. Ms. Boehm shall notify all courts in which she is, or may hereafter be appointed as a guardian ad litem during the imposition of the suspension, copying all parties, of the Board's order pursuant 503.16 (c).

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

Appeals from orders of the Board may be taken pursuant to RSA 541. See 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: 9/29/2010



John H. Lightfoot, Jr.
Board Chair

cc: Lenora Boehm, Boehm & Wright, PLLC, One Capitol St., 2nd floor, Concord, NH 03301
Timothy Russell, Prosecutor, P.O. Box 915, Henniker, New Hampshire 03242
Rosemary Wiant, Assistant Attorney General, New Hampshire Department of Justice, 33
Capitol Street, Concord, New Hampshire 03301.