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In the Matter of:

**Lenora Boehm
(Adjudicatory proceeding pursuant to complaint)**

Docket #: 10-C7(2)

Decision and Order

Before the Guardian ad Litem Board (the Board) is the matter of Lenora Boehm following a complaint to the Board that Ms. Boehm failed to notify one or more appointing courts of the discipline imposed upon her by this Board (Docket # 10-C7) by order dated September 29, 2010.

History of the case

On September 29, 2010 the Board issued its order in the Case of Lenora Boehm, Docket # 10-C7, which included, in part, the following:

Findings of Fact and Rulings of Law

- I. 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.

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 that in 2008 that she had received reprimands from the Professional Conduct Committee on Oct. 31, 1995; June 8, 1998; and October 26, 1999.
Docket # 10-C7, Decision and Order at page 3.

That decision and order further provided in part:

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, of the Board's order
Docket # 10-C7, Decision and Order at page 6.

The Board mailed the order via certified mail with return receipt request and the Board received notice that the order was signed for by Lenora Boehm on October 1, 2010.

On October 14, 2010, the Board received a communication from Lucinda V. Sadler, Judge in Laconia Family Division, that Ms. Boehm had appeared as a guardian ad litem (GAL) in an on-going case in the family division on October 12, 2010 and did not inform the court, in writing or verbally, that her certification as a GAL was suspended for 6 months, effective September 29, 2010.

Acting on that information, the Board, at its meeting on October 15, 2010, 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. As stated in the notice of hearing, the issues to be addressed at the hearing were:

- I. Whether Lenora Boehm violated N.H. Administrative Rule, Gal 503.16(c), which requires that a GAL shall immediately inform all courts in which he or she is currently appointed, in writing, copying all parties, of any sanction imposed upon him or her by the Board.
- II. Whether Lenora [*sic*] violated N.H. Administrative Rule, Gal 503.19(b), which requires a presently or formerly certified guardian ad litem to abide by orders issued by the Board or its presiding officers that are applicable to the guardian ad litem, including, but not limited to, orders issued pursuant to RSA 490-C:5-b, VI – VIII.

Docket # 10-C7(2), Notice of Hearing.

The notice of hearing also stated, in part:

IT IS FURTHER ORDERED that Lenora Boehm shall appear before the New Hampshire Guardian ad Litem Board on December 17, 2010 in the Legislative Office Building, 33 North State St., Room 102, Concord, New Hampshire, to participate in this adjudicatory/disciplinary proceeding and, if deemed appropriate, be subject to sanctions pursuant to Gal 402.

By that same order, Mary Beth Walz of Bow was appointed prosecutor and John Lightfoot was appointed Presiding Officer.

A hearing was held at 1:00 p.m. on Friday, December 17, 2010 in room 102 of the Legislative Office Building in Concord, NH. Ms. Boehm was represented by counsel, Attorney Russ Hilliard. Due to a malfunctioning recording device, the hearing was not recorded. The Board and the parties agreed that the facts in the case were not substantially in dispute and agreed to allow the Board to act based on statements of fact and documents provided by both parties.

Findings of Facts

The Board finds the following facts:

Ms. Boehm received the notice of decision in the prior case on October 1, 2010 which was a Friday. Under terms of her discipline from the Attorney Discipline Office, Ms. Boehm is not allowed to open mail alone, therefore, the letter was not opened until Monday, October 4, 2010.

On Tuesday, October 12, 2010, Ms. Boehm participated as GAL in a hearing before Judge Lucinda Sadler in the Laconia Family Division. It is undisputed that Ms. Boehm did not inform Judge Sadler of the discipline imposed by the Guardian ad Litem Board. *Boehm's Statement of Facts, No. 10.*

Between October 12, 2010 and October 29, 2010, Ms. Boehm provided written notice to courts in which she had active cases of the discipline imposed by the Board. *On January 21, 2011, Ms. Boehm provided copies to the Board.*

Ms. Boehm testified that she sought advice about whether to appeal the Board's order. She provided no evidence to support this assertion and the Board makes no finding on this assertion.

Rulings of Law

1. Ms. Boehm violated Gal 503.16(c) by failing to immediately inform courts in which she was currently appointed, copying all parties, of the discipline imposed by the Board, notice of which she received no later than October 4, 2010.
2. Ms. Boehm violated Gal 503.19(b) by failing to comply with the Board's order dated September 29, 2010, which required her to notify all courts in which she is, or may hereafter be appointed as a guardian ad litem during the imposition of her suspension.

Discussion

Ms. Boehm's defense was based almost completely on her assertion that the September 29, 2010 order of the Board was automatically stayed for thirty days following its issuance to afford her the opportunity to file an appeal with the New Hampshire Supreme Court. Thus, she argues she was not required to notify courts until immediately after October 29, 2010. This Board disagrees.

An appeal from an order of a state agency or board does not suspend the operation of the order. RSA 541:18. Only the Supreme Court may order such a suspension when justice so requires. *Id.* Therefore, the Board finds that Ms. Boehm's argument fails as a matter of law and that as the Board's order was in operation, Ms. Boehm violated Gal 503.16(c) and Gal 503.19(b) by failing to immediately notify the courts of her suspension.

Furthermore, Ms. Boehm has a duty of candor to the court. In a face-to-face meeting with Judge Sadler, she owed a duty to at least verbally inform the Judge of her suspension, adding, if Ms. Boehm wished, that she was considering an appeal of the Board's order. As we noted in our September 29, 2010 order:

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 with which they operate.

Docket # 10-C7, Decision and Order at page 4. This Board finds that Ms. Boehm failed to achieve this necessary level of honesty and integrity.

Ms. Boehm did not argue that motions filed in her current cases between October 12 and October 29, 2010 met the requirement of Gal 503.16(c) that “A guardian ad litem shall immediately inform all courts in which he or she is currently appointed, in writing, copying all parties, of any sanction imposed upon him or her by the board.” (emphasis added) The order was effective September 29, and a delay of 1 to 3 weeks is not “immediate.”

Ms. Boehm’s period of suspension expired on March 29, 2011 and her status as a fully certified guardian ad litem was restored.

SANCTIONS

Gal 402.02 Standards for Imposition of Penalties and Sanctions provides the standards for imposing sanctions on certified guardians ad litem

Gal 402.02 Standard for Imposition of Penalties and Sanctions.

(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 Ms. Boehm violated Gal 503.16(c) and Gal 503.19(b) by failing to immediately notify the courts in which she had active cases of the discipline of suspension imposed by this Board on September 29, 2010.

- 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 does not find any extenuating circumstances. Ms. Boehm’s history of ethical violations before this Board and the Attorney Discipline Office demonstrates her apparent reluctance to fully comply with her ethical obligations. Failing to impose sanctions would have an adverse impact on the public perception of the ethical practice of certified guardians ad litem. The Board is especially troubled by Ms. Boehm’s failure to notify Judge Sadler of the situation regarding her suspension when she was face-to-face with Judge Sadler, appearing as GAL in a proceeding more than a week after receiving the order of suspension.

Gal 402.03 provides,

- (b) Absent a finding of extenuating circumstances under Gal 503.01 (e), the board shall impose the sanction of revocation of certification if:
 - (1) The revocation was included as part of a settlement or agreement with the guardian ad litem;
 - (2) The board finds that it is more likely than not that the person:
 - c. Has failed to comply with other sanctions or penalties imposed upon him or her by the board as required;

IT IS THEREFORE ORDERED

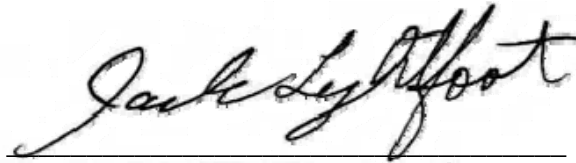
1. Lenora Boehm's certification as a Guardian ad Litem is hereby revoked pursuant to Gal 402.03(b)(2); and
2. Ms. Boehm shall notify all courts in which she is, or may hereafter be appointed as a guardian ad litem of the imposition of this revocation, copying all parties, pursuant to Gal 503.16(c).

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

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. RSA 490-C:8; *see* RSA 541:6.

BY ORDER OF THE BOARD

DATE: May 4, 2011



John H. Lightfoot, Jr.
Board Chair

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