



State of New Hampshire Guardian ad Litem Board

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In the Matter of:

Sara Ecker

Adjudicatory/Disciplinary Proceeding

Docket # 2014-C0008

DECISION AND ORDER

Before the Guardian ad Litem Board (the Board) is the matter of Sara Ecker (Ms. Ecker) following a complaint to the Board that Ms. Ecker did not fully comply with the rules of disclosure.

BACKGROUND INFORMATION

On August 13, 2014, the Board received a complaint from Alan Patterson through his attorney James Steiner regarding Guardian ad Litem Sara Ecker.

On September 19, 2014, the Board reviewed the complaint and voted to ask the GAL for a response.

On September 22, 2014, the Board sent a response request to Ms. Ecker via certified return receipt mail which was signed for on October 3, 2014 by Ms. Ecker.

On October 22, 2014 Ms. Ecker's response was received.

On November 19, 2014, the Board reviewed the response and voted to proceed to an investigation and hire Nason Investigations.

On December 5, 2014, the Board received a motion from Attorney Steiner withdrawing from this case.

On January 30, 2015, the Board received notice from Mr. Patterson that he is now pro-se.

On February 20, 2015, the Board reviewed the Investigation report.

On February 20, 2015 the Board voted to proceed to a hearing.

On March 2, 2015, a Notice of Hearing was mailed via certified return receipt and signed for by Robert Christensen on March 4, 2015.

On March 11, 2015, an amended Notice of Hearing was mailed via certified return receipt and sign for by Sara Ecker on May 19, 2015.

On April 8, 2015:

1. A notice of appearance was filed for Attorney Miriam Newman to represent Sara Ecker,
2. A motion to compel was received, and
3. A motion for clarification was received.

On April 10, 2015:

1. An order granting the motion to compel,
2. The investigation report, and
3. An order denying the motion for clarification

were mailed via certified return receipt and signed for by Miriam Newman on April 13, 2015.

On March 23, 2015, the Board issued subpoenas for:

1. Sara Ecker
2. Joan Ecker
3. Al Patterson
4. Barbara Patterson

On April 2, 2015 the subpoenas were served by Kristin Nason of Nason Investigations.

On April 8, 2015, the subpoena for Joan Ecker was returned as it was issued to Sara Ecker who did not have the authority to accept the subpoena on Joan Ecker's behalf.

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

- I. **Whether Ms. Ecker violated GAL 503.04(b)(4) Competency** *A guardian ad litem's competency shall include Knowledge of these rules.* Ms. Ecker did not demonstrate knowledge of GAL 503.06 (b) & (c).
- II. **Whether Ms. Ecker violated GAL 503.06(b) Disclosures, Conflicts of Interest and Appearances of Impropriety.** *A guardian ad litem who is aware that he or she possesses a prior acquaintance of any type, including but not limited to a professional, personal or financial relationship, with any party in a case, shall: (1) At or before the time of appointment, disclose such fact to the parties and the appointing court, either orally or in writing; and (2) If such an acquaintance becomes known only after appointment, immediately disclose such fact to the parties and the appointing court, either orally or in writing.* Specifically, it is alleged that Ms. Ecker did not disclose to either party or to the court that she knew Mr. Patterson from growing up in the same community, that she attended the same high school that Mr. Patterson attended and that as a result of these contacts she developed a negative impression of Mr. Patterson.
- III. **Whether Ms. Ecker violated GAL 503.06(c) Disclosures, Conflicts of Interest and Appearances of Impropriety.** *If it is alleged by a party to any proceeding in which a guardian ad litem is appointed that the guardian ad litem has failed to disclose any present or prior acquaintance of any type that impacts upon his or her objectivity, or upon his or her ability to perform the functions of a guardian ad litem in accordance with these rules or in accordance with requirements of the appointing court, the guardian ad litem shall: (1) Inform the appointing court that the allegation has been made; and (2) Respond either orally or in writing to the appointing court and to all parties regarding the nature of the present or prior acquaintance, if any.* Specifically, it is alleged that Ms. Ecker did not disclose to either party or to the court that she attended the same high school that Mr. Patterson attended and that as a result of attending the same high school, she developed a negative impression of Mr. Patterson. It is alleged that Ms. Ecker developed the impression that Mr. Patterson was a "bad boy" in high school, and that this impression could reasonably be perceived as having affected her objectivity.

Board member Christopher Keating was to serve as Presiding Officer and Don Nason was to serve as Prosecutor.

The Prosecution witness list included:

- Sara Ecker
- Joan Ecker
- Kristin Nason
- Alan Patterson
- Barbara Patterson

The Respondent did not submit a witness list.

The Prosecution exhibits included:

1. Mr. Nason's notes from his interview with Sara Ecker.
2. Summary of events according to Mr. Patterson
3. Newspaper article interview with Mr. Patterson & Email between Mr. Patterson and his attorney
4. Emails between Mr. Patterson and Ms. Ecker regarding scheduling a time to visit.
5. Email from Mr. Nason to the courts confirming the conversation had between Ms. Ecker and Court Clerk Miriam Wood.

The Respondent's exhibits included:

- A. Preliminary GAL Report submitted to courts by Ms. Ecker on 1/15/13.

HEARING

An adjudicatory hearing was held on April 17 & May 15, 2015 in room 101 of the Legislative Office Building, Concord.

Present were: board members Chris Keating, Presiding Officer, Susan Duncan, Chair, Betsy Paine, Representative Dave Welch, Representative Deanna Rollo Pursuant to RSA 490:C-3 IV.

Also present were Sara Ecker, respondent, Attorney Miriam Newman for Respondent, Don Nason, Prosecutor, Al Patterson, complainant.

The record in this case consists of the following:

- Amended Notice of Hearing dated March 11, 2015
- Prosecution Exhibits 1-5
- Respondent's Exhibit A
- Investigation Report

Summary of Evidence

Sara Ecker testified to the following:

- She was appointed in 2012 to the Patterson case by the Lebanon Court.
- Court staff telephoned and gave her a brief synopsis of the case and the parties involved.
- She agreed to take the case but told the clerk that she knew of Mr. Patterson, that they went to school in the same building when Mr. Patterson was in high school and Ms. Ecker was in middle school. She also knew of Mr. Patterson as a police officer in her community.
- Ms. Ecker did not know Mr. Patterson on a personal basis nor did she have any impressions of him one way or another.
- Ms. Ecker received the Order of Appointment approximately two weeks later and assumed that the clerk passed on the information regarding her knowledge of Mr. Patterson.
- Ms. Ecker confirmed that she did not notify the parties involved of her acquaintance with Mr. Patterson.
- Ms. Ecker explained her belief that the GAL Rules required notification of the court either verbally or in writing about an acquaintance with one or more parties to a case. Ms. Ecker did not recall whether or not the rules state to tell the parties.
- Ms. Ecker believed in good faith that by notifying the court before accepting the case she fulfilled her requirement.
- On December 24th, four days after she filed the ex-parte motion, she read a newspaper article that mentioned that Mr. Patterson served on the Lebanon School Board. This was the first time she learned of this, and because she was employed by the school district as a high school lacrosse coach, she sent notification to all parties about this potential conflict. All parties agreed that it was not a conflict.
- Ms. Ecker did not advise the court once she found out that Mr. Patterson was on the school board.
- Ms. Ecker believed in good faith that by notifying the parties of the potential conflict she fulfilled her requirement under the rules.
- She did not consult the rules in either of these instances regarding disclosure.

FINDINGS OF FACT

1. Sara Ecker was acquainted with Mr. Patterson prior to her appointment, in that she attended school with Mr. Patterson and knew of him as a police officer in her community.
2. Sara Ecker considered her acquaintance with Mr. Patterson to be of such significance that she notified the court about it prior to accepting appointment to the domestic relations matter.

3. Sara Ecker did not notify the parties of her acquaintance with Mr. Patterson once she received the appointment.
4. Sara Ecker notified the parties once she found out that Mr. Patterson was on the school board in the school district that employed her as a high school lacrosse coach.
5. Sara Ecker did not notify the court once she found out that Mr. Patterson was on the school board in the school district that employed her as a high school lacrosse coach.

RULINGS

1. Sara Ecker violated 503.04(b)(4) by not demonstrating knowledge of 503.06(b) &(c).
2. Sara Ecker did not violate 503.06(b).
3. Sara Ecker did not violate 503.06(c).

DISCUSSION AND CONCLUSION

The Board found that by knowing and complying with the GAL Rules regarding disclosure of acquaintances and potential conflicts, the prudent guardian ad litem allows both the parties and the court the opportunity to resolve any concerns about impartiality of the appointed guardian ad litem early in the case. The failure to bring these matters to everyone's attention can lead to future questions about the impartiality of the guardian ad litem and can breed distrust among the parties about whether they are being treated even-handedly by the GAL. In this case, doubt about the guardian ad litem's impartiality caused delays in the case and contributed to the replacement of the guardian ad litem, causing avoidable harm to the recipient of services.

The Guardian ad Litem complied with the spirit of rules 503.06(b) and (c), therefore no finding was made that she acted in explicit violation of these rules.

The Board was not unanimous in its opinions. The majority concluded that Ms. Ecker's violations were the result of a lack of careful attention to the rules, but that she otherwise acted in good faith in a contentious domestic relations matter. There was nonetheless concern that certain aspects of Ms. Ecker's conduct could have been perceived as unprofessional or biased, including the incident in which she brusquely whisked past Mr. Patterson without extending him the courtesy of an introduction at the doctor's office, as well as the testimony concerning her alleged chumminess with one of the parties during the case. Nevertheless, in the absence of explicit evidence of bias, we take Ms. Ecker at her word that she did not have a negative impression of either of the parties.

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 do not exist pursuant to Gal 503.16.

THEREFORE IT IS ORDERED pursuant GAL 402.01(a)(8), that Sara Ecker be issued a letter of reprimand for not having knowledge of the GAL rules specifically 503.06(b)&(c).

IT IS FURTHER ORDERED that respondent Sara Ecker 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 and Circuit Courts.

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, 2015



Christopher Keating
Presiding Officer

- cc: Alan Patterson
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June 1, 2015

Sara Ecker
P.O. Box 1133
Norwich, VT 05055

RE: Complaint Docket #2014-C0008

Dear Ms. Ecker:

Following a hearing on April 17, 2015, the Guardian ad Litem Board found that you violated Guardian ad Litem rules related to "Competency;" specifically that you acted in violation of GAL Rule 503.04(b)(4) by not demonstrating knowledge of GAL rules regarding disclosure of acquaintances and disclosure of potential conflicts of interest.

You were appointed by the Circuit Court to serve as a guardian ad litem in a domestic-relations matter in October 2012. Upon appointment, you notified the appointing court that you knew of Mr. Patterson when he was in high school and you attended middle school in the same building.

The Board found that your acquaintance with Mr. Patterson gave you reason to inform the appointing court of this fact, and you did so. However, upon receipt of the appointment to the matter, you did not notify the parties about your acquaintance as required by the rules.

Further, the Board found that during the time the matter was pending, you learned that Mr. Patterson served on the school board in the same school district that employed you as a lacrosse coach. You brought this to the attention of the parties but you did not notify the court as required by 503.06(a)(2).

As a result, the Board decided to issue this formal reprimand, a copy of which will be placed in your file in the office of the G.A.L. Board's administrative assistant and will be available for public inspection.

BY ORDER OF THE BOARD



Christopher M. Keating
Presiding Officer

