

THE COMPLAINT PROCESS

[9/15/07]

*The following is simply intended as a synopsis of the Board's rules relating to complaints. It is not a verbatim recitation of all applicable rules and statutes. Those interested or involved in the complaint process should consult the specific laws or rules at issue, including but not limited to **RSA 490-C** and the administrative rules of the Board.*

A. Initiating a Complaint

The Guardian ad Litem Board addresses allegations of misconduct against guardians ad litem certified by the Board and guardians ad litem formerly certified by the Board who are alleged to have engaged in prohibited acts while certified.

Complaints must be submitted to the Board in writing and meet certain requirements. Persons wishing to file a complaint against a certified or formerly certified GAL must submit:

1. A signed, fully executed **complaint form**, available on the GAL website;
2. Copies, but not originals of any documents that the person making the filing believes directly relate to the complaint;
3. The complaint filing fee in the form of a valid check or money order made out to "The State of New Hampshire: GAL Board." The fee is \$100.

Certified guardians ad litem are required to adhere to certain Ethical Standards and Standards of Practice established by the Board. These may be found in **Chapter Gal 500** of the Board's administrative rules. Violation of one or more of these ethical provisions may result in the Board's imposition of sanctions against the GAL. Persons wishing to file a complaint should familiarize themselves with the Ethical Standards and Standards of Practice applicable to certified GALs, since they will be required to specify in their complaint which of those standards the GAL is claimed to have violated.

Please note that the Guardian ad Litem Board is an executive branch administrative body charged with certifying and, if necessary, disciplining GALs that it certifies. The Board does not appoint persons to serve as GALs in particular cases, nor does it have the authority to remove a GAL from a case. Appointment and removal of persons from actual service as a GAL are functions of the court. The Board cannot overturn or reverse court orders, including decisions made in particular court cases on custody or any other matter.

The Board is required to adhere to certain statutory provisions in performing its duties, including but not limited to **RSA Chapter 490-C**. Pursuant to RSA 490-C: 4, I (g), complaints relating to trials or judicial proceedings that are in progress will be dismissed without prejudice unless the Board, for good cause, votes to proceed immediately with the complaint. As a general matter, therefore, complaints should not relate to

proceedings that are in progress. Please also note that (regardless of whether or not a complaint relates to a matter that is in progress), the Board may refer the matter to the appropriate court for investigation, resolution, or other action, either in addition to, or instead of, action by the Board.

B. Board's Initial Review of Complaints

Within 60 days of the receipt of a complaint form, the Board, through its personnel, representative or staff, will notify the person filing the complaint of any failure to provide material in accordance with rules of the Board and inform him or her that the complaint will not be accepted for filing unless that material is submitted within 30 days. If the material is not timely provided, the person will be notified that the complaint is not accepted for filing. See Gal 203.01.

Within 60 days of the receipt of a complaint meeting all requirements, the Board will either dismiss the complaint under the standards set forth at Gal 203.03 (a) or begin an investigation. The Board will notify the person filing the complaint of its determination and, in the case of a dismissal, will provide a brief statement of the reason(s) for dismissal. A person whose complaint has been dismissed, or whose complaint has not been accepted for filing, may request an oral argument before the Board within 10 days of the date of the dismissal or nonacceptance. Requests must be in writing.

C. Procedure After Acceptance of Complaint; Answers

If the Board accepts the complaint and determines that it will be further investigated, the Board will provide the GAL who is the subject of the complaint (either in hand or by first class mail):

1. A written and dated notification that an investigation is being conducted into the allegations;
2. An **Answer Form**, available on the GAL website, to be executed by the GAL;
3. A copy of the complaint and a list of supporting documents;
4. Written notice that the supporting documents filed in connection with the complaint are available for review at the Board's office during normal business hours.

A certified or formerly certified GAL who has been forwarded notification of a complaint must provide the Board with an executed Answer Form within 30 days of the date appearing on the Board's written notification. The GAL may address the specific allegations of the complaint in the answer or instead indicate that he or she elects not to submit a substantive answer to the allegations at that time. Upon its own initiative or upon motion by the GAL complained against, the 30-day period in which to provide an answer to the complaint may be extended. Although the review of the GAL's answer to the Board is the primary manner in which the Board will investigate complaints, the Board will use such other procedures for investigation of complaints, if any, as it

concludes are not contrary to law and will most effectively elicit reliable information regarding the subject matter of the complaint.

Persons filing or answering complaints should not consult with or discuss the matter with members of the GAL Board itself, since this may in some instances impact upon that member's ability to hear the case.

D. Hearings, Resolution and Other Matters

The Board will take no disciplinary action against a certified GAL without affording the GAL an opportunity for a hearing. Gal 208.02 (b). At least 14 days before a hearing on the complaint, the Board will provide the GAL and the person making the complaint a notice informing them of the time and date of the hearing, the time and date of any prehearing conference and the additional information set forth in Gal 208.01 (b). Each party or intervenor will be required to file an appearance containing the docket number of the case, if any; the daytime address and telephone number of the person filing the appearance and, if the person filing the appearance is a representative, the daytime address and telephone number of the person being represented. An **appearance form** is available from the Board on the GAL website.

If a hearing is held on the substance of the complaint, the Board will utilize the procedural rules found at **Chapter Gal 200**.

Please note that filings with, and hearings held before, the Board might in some circumstances implicate matters that are confidential according to statutory or case law, administrative or court rules or court orders. RSA 490-C and the rules of the Board contain provisions relating to confidentiality issues and in some circumstances allow the Board to issue orders regarding confidentiality. Persons filing matters with the Board or involved in hearings before the Board are encouraged to review statutes and rules relative to confidentiality.

Should a certified or formerly GAL be found by the Board to have engaged in an action that was prohibited by the Ethical Standards and Standards of Practice found in Chapter Gal 500, the Board will impose sanctions unless it determines that the matter involves extenuating circumstances as described in Gal 503.01 (e). In the absence of extenuating circumstances, the types of sanctions that the Board may impose for a violation of its Ethical Standards and Standards of Practice (either singly or in combination) are as follows:

- Revocation of certification;
- Suspension of certification;
- Supplemental training;
- Supervised training;
- Supplemental education;
- A fine of not more than \$1,500 per offense;
- Treatment and counseling; and/or
- Written reprimand

These sanctions are further discussed at **Part Gal 402**

The Board also has the authority to engage in settlements of disputes. See e.g. Part Gal 213. It is the Board that makes the final determination of whether or not a matter will be resolved by way of a settlement. Nonetheless, in the case of a complaint submitted in accordance with Part Gal 203 the complainant will be afforded the opportunity to submit for the Board's consideration written comment on the terms of proposed settlement. See Gal 213.01 (a).

Appeals from decisions of the Board are pursuant to RSA 541. See RSA 490-C: 8. Board decisions are subject to rehearing under Gal 212.08 and failure to request rehearing may impact upon the court's acceptance of an appeal.

Please Note

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