



John H. Lightfoot, Jr.  
Chairman

# State of New Hampshire Guardian ad Litem Board

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## In the Matter of:

**Wendy Roberts**  
**(adjudicatory proceeding pursuant to complaint)**

**Docket #: 2009-C0010**

## DECISION AND ORDER

### History of the Case

On July 8, 2009, the Guardian ad Litem Board (“the Board”) received a complaint about the actions of Wendy Roberts (“Ms. Roberts”) as a certified guardian ad litem (“GAL”). The complaint was filed by Susan Duncan on behalf of the Board, and was based on information provided to the Board by letters from Robert T. The first was forwarded to the Board by Chief Justice Robert Lynn and received Oct. 15, 2007. A further letter directly to the Board from Robert T. was received March 2, 2009. The letter received on March 2, 2009 included documents filed in the case of In re: J. T. docket numbers 2006-JV-38, 20006-JV-39 and 2008-Gm-00003. The documents included “MOTION TO WITHDRAW AS GUARDIAN AD LITEM” filed by Wendy Roberts, and “REQUEST FOR REMOVAL OF GUARDIAN AD LITEM/GUARDIAN” filed by Byry Kennedy, attorney for DCYF, and affidavits from Russell Landry and Gail Snow in support of the request for removal of guardian ad litem/guardian. The Board reviewed the complaint on July 27, 2009 and determined to proceed with the case.

Ms. Roberts was provided notice of the complaint by letter dated August 24, 2009. Ms. Roberts’ response was received by the Board on September 24, 2009 and reviewed by the Board on October 9, 2009. The Board appointed Timothy Russell to conduct an investigation of the complaint. The Board received the investigator’s report on December 14, 2009.

At its meeting on January 8, 2010 the Board voted to proceed to a hearing, pursuant to its authority under RSA 490-C:4, I(g), to determine whether Ms. Roberts violated the rules of the Guardian ad Litem Board. The issues to be addressed at the hearing were:

- I. Whether Wendy Roberts violated N.H. Administrative Rule, Gal 503.06(a)(2), which requires that a GAL advise the court of the existence of a present or prior personal, professional, business or legal relationship with any party involved in a proceeding that would adversely impact her ability to perform the functions of a GAL in accordance with the Board’s rules and any requirements of the appointing court, by failing to disclose to the court of the existence of such a relationship with J.T.
- II. Whether Wendy Roberts violated Gal 503.02(a), which requires that a GAL at all times act in what she, in good faith, believes to be in the best interests of the recipient of services, by:

- a. Knowing of J.T.'s history of sexual abuse, she took J.T. on an overnight trip to Bar Harbor, Maine, creating a situation that was not in J.T.'s best interest.
  - b. Developing a personal relationship with J.T., which was not in his best interest.
  - c. Allowing J.T. to perform work at her house and to drive her personal vehicle, violating the policy of the Division for Children, Youth and Families by failing to notify the foster parents caring for J.T. or the Division for Children, Youth and Families, which had legal custody of J.T. of the trip to Bar Harbor.
  - d. Further, by failing to notify the foster parents and DCYF, indicating that she understood the trip to Bar Harbor was not in the best interest of J.T.
- III. Whether Wendy Roberts violated Gal 503.02(b), which requires that a GAL reach an independent conclusion about what is in the best interest of the recipient of services, by developing a personal relationship with J.T. such that she did not reach an independent conclusion about what was in J.T.'s best interest.
- IV. If any of the above allegations are proven, whether and to what extent Ms. Roberts should be subjected to one or more disciplinary sanctions pursuant to Gal 402 (Revocation, Suspension, and Other Sanctions).

By the same order, Henrietta Luneau was appointed presiding officer and Timothy Russell was appointed to prosecute the case.

There were no requests to intervene in the case.

An adjudicatory hearing was held on August 31, 2010 at 2 PM in room 102 of the Legislative Office Building, 33 North State St., Concord, NH.

Present were:

Board members John Lightfoot, Henrietta Luneau, Susan Duncan, Sheila Roberge, Nina Gardner, Mary Beth Walz, Anne Larney and Mark Jewell.

Prosecutor Timothy Russell

Guardian ad Litem Wendy Roberts and her attorney, James Moir

An audio recording was made of the proceedings.

### **Summary of the evidence**

The Board considered the following evidence: Investigative Report on Wendy Roberts by Timothy Russell (including affidavits of Russell Landry and Gail Snow; GAL Roberts' Motion to Withdraw from the underlying 169-C case; letter from Nancy Strapko, Ph.D. dated 9/25/2009; DCYF's Request for Removal of GAL/Guardian in underlying 169-C case); GAL Roberts' completed Complaint Answer form with attached Petition for Guardianship of Minor J.T. with request for ex parte relief and orders of notice; Complaint form filed by GAL Board, with attached letter from J.T.'s father, and above pleadings and affidavits from underlying 169-C case; letter from Judge Lynn; letter to Judge Lynn from J.T.'s father; testimony from Mr. Russell, and testimony from GAL Roberts.

## **FACTS:**

In January 2006, Attorney Wendy Roberts was appointed as GAL for J.T. in a 169-C case involving sexual abuse of J.T. by his father. J.T.'s biological mother had surrendered her parental rights when J.T. was 7 years old. J.T.'s only legal parent was his father.

An Adjudicatory hearing was held in the Berlin Family Division in May 2006, and a finding was made against J.T.'s father. A Dispositional hearing was held about a month later. During this time, J.T.'s father was indicted for a child pornography charge, and was incarcerated. A protective order was issued by the Coos County Superior Court in the criminal case, prohibiting J.T.'s father from having contact with J.T.

The following year, J.T.'s father tried unsuccessfully to remove the case to Federal Court. He made a complaint against GAL Roberts. A Permanency hearing was held in the summer of 2007. GAL Roberts recommended TPR, and DCYF concurred.

A TPR case was filed in the Berlin Family Division against J.T.'s father on March 10, 2008. The Court (Michalik, J) appointed Roberts as GAL for J.T. in that case. A final TPR hearing was held in July and September, 2008. Once the Berlin Family Division issued its decision terminating J.T.'s father's rights (Cyr, J), J.T.'s father appealed the decision to the Supreme Court. During the time the TPR case was pending, J.T.'s father was convicted on the child pornography charge involving J.T. as a victim/witness.

As the litigation progressed in multiple courts, J.T.'s father made the decision he would not provide his consent for J.T. to continue to receive medical treatment. As he was J.T.'s only legal parent, his consent was required, unless there was a guardian in place for J.T. During this time, J.T.'s emotional health worsened. His mental health provider recommended medication. J.T.'s father refused to renew releases for DCYF to get treatment for J.T. He was also seeking access to J.T.'s mental health records.

GAL Roberts consulted with Nancy Strapko, a therapist who specialized in sexual abuse cases. Dr. Strapko told the GAL that she believed it would be harmful for J.T.'s father to have access to his therapy records, or control over his therapy, because of the potential for re-victimization for J.T.

On March 10, 2008, GAL Roberts filed a Petition for Guardianship of J.T. in the Berlin Family Division, at DCYF's urging, citing the need for medical decisions to be made, as well as Dr. Strapko's concerns about J.T. being re-victimized if his records were released to his father. A Guardianship over the person of J.T. was granted on an ex parte basis. On March 31, 2008, the Court modified the guardianship to limit it to medical issues (Cyr, J.) GAL Roberts remained as Guardian for Joshua until November 5, 2008.

GAL Roberts testified that the expectations for GALs in the North County are greater than in other areas, because of the scarcity of resources. She is an experienced foster parent, and is familiar with resources in the area, and had experience working with other area professionals, including DCYF.

As J.T.'s guardian, DCYF told GAL Roberts she was responsible for making sure that J.T.'s medical and mental health needs were met. J.T.'s foster family was not able to meet his needs for

transportation, and with DCYF's urging, GAL Roberts took on this role. DCYF told her do what she wanted and not get into trouble. GAL Roberts drove J.T. to therapy appointments from Berlin to Plymouth. GAL Roberts also hired Nancy Strapko as J.T.'s therapist. During some occasions, GAL Roberts allowed J.T. to drive her car while she supervised. He was 16, and did not have a license, but wanted to develop independent living skills. GAL Roberts also stepped in and purchased J.T. steel toed boots, which were required for a high school class, after the foster parent and DCYF could not provide them.

J.T.'s foster placement had to be changed that summer, which was another source of anxiety for him. J.T. was also interviewed by the Child Advocacy Center during this same time frame, at which point, more evidence came out about his abuse by his father.

The last day of the TPR trial was held in September 2008. While the Court was considering the final order, the County Attorney filed indictments against J.T.'s father for the AFSA charges. Shortly after the last day of the TPR trial, GAL Roberts received a call from J.T.'s foster parent, informing her that he was 'acting strangely.' GAL Roberts came to the foster home to see J.T. and drove around with him. He seemed to be in crisis. She took him to her home that night to stay with her and her family, while they set up an appointment for him to see Nancy Strapko the following day.

The following weekend, Attorney Roberts took J.T. with her to the Fryeburg Fair, with her family. J.T. stacked wood with her family at her home, and went with the family to her daughter's soccer game. Both DCYF and the foster parent knew about the outings. Attorney Roberts knew that J.T. had lost his guitar, an item of great sentimental value to him, in his move from the previous foster home, and told him he could earn money from her to purchase a new guitar by stacking wood. She also purchased other items for him.

The following week, J.T. had a therapy appointment set up, and the indictment came out. On the way to his weekly therapy appointment, GAL Roberts told J.T. that she had planned a trip to Bar Harbor Maine for that weekend, which was Columbus Day weekend. J.T. was still struggling with suicidal thoughts, was feeling disconnected with his foster parents, and in the middle of another foster home change. Roberts made plans with J.T. to bring him on the trip to Maine, and picked him up from the foster home that Friday. She testified that she had planned to be away this weekend because "she needed to get away." She did not seek DCYF permission, or the permission of the foster parents. J.T. would be moving to a new foster home following the holiday weekend.

In Bar Harbor, GAL Roberts had J.T. stay in her suite. GAL Roberts says that they did not sleep in the same room. They hiked, went to galleries, and went out to eat. GAL Roberts admitted that she consumed alcoholic beverage(s) while J.T. was with her, though she contended that he was asleep when this happened. At the conclusion of the weekend, she dropped J.T. off at the new foster home.

About October 23, 2008, DCYF asked GAL Roberts about the weekend trip. She acknowledged that she had overstepped her role. She withdrew from the case the following week. DCYF filed the request that she withdraw contemporaneously with her conversation with them. She withdrew from the guardianship on November 5, 2008. It was not clear from the hearing whether she would have withdrawn from the case had DCYF not confronted her about her personal involvement with JT and the fact that she took him out-of-state for an overnight stay without notifying the foster parents or DCYF. She did not have any further contact with J.T. after October 23, 2008.

In May 2009, GAL Roberts testified that she had a call from DCYF, asking her to resume contact with J.T.

## **Discussion:**

### **A. Violation**

The consensus of the Board was that GAL Roberts made a poor decision by taking J.T. to Maine. She also erred in taking him out-of-state and for an entire weekend without permission of DCYF and/or the foster parents.

The Board did not find that GAL Roberts violated rules as alleged in Counts I and III of the Complaint. GAL Roberts complied with 503.02(b). She reached an independent, albeit flawed conclusion, about J.T.'s best interests. GAL Roberts also complied with Gal 503.06(a)(2), which requires that a GAL advise the court of the existence of a present or prior personal, professional, business or legal relationship with any party involved in a proceeding that would adversely impact her ability to perform the functions of a GAL. Her role was known, as the same Court that appointed her as GAL appointed her as Guardian. It was not clear if she would have advised the court absent DCYF's intervention.

Count II of the Complaint is founded in part. GAL Roberts violated Gal 503.02(a), which requires that a GAL at all times act in what she, in good faith, believes to be in the best interests of the recipient of services.

Under Gal 502.06 "Good faith" means a subjective state of mind or a set of circumstances involving an honest belief that is: (a) based upon reason and facts or allegations of fact; and (b) not formed to accomplish a violation of the law, to advance a malicious objective or to advance an objective that is not allowed by law.

Part 502(b) of the definition of good faith is met. GAL Roberts testified that she felt she acted in good faith. The Board did not believe that GAL Roberts had a malicious objective or intent to violate the law in this case. On the contrary, it appeared that she was motivated by an unselfish desire to help a child with great need, however her actions with J.T. clearly exceeded the scope of a usual GAL / recipient of services relationship.

However, part 502(a) of the definition of good faith is not met. The GAL admitted at the hearing that she 'did not think' when she made the decision to take J. T. to Maine. Failing to think cannot be acting in good faith, because by definition, acting in good faith requires reasoning. Reasoning requires thought. The Board was also concerned because given the particular aspects of J.T.'s life; this behavior on the part of the GAL especially put his well-being at risk.

Accordingly, GAL Roberts violated GAL 503.02(a) by not reasoning about her decision to take J.T. to Maine without authorization.

## B. Sanctions

Under Gal 402, the Board voted 7-0 to reprimand GAL Roberts, considering the mitigating factors in the case. The Reprimand shall be posted and include a list of the mitigating factors the Board considered.

At first glance, this case presents some stark facts. GAL Roberts developed a close relationship with a teen who was in a delicate emotional state, and who had been victimized by an adult close to him. She took him to Maine, for the weekend, without permission.

However, there are some mitigating factors. The strongest mitigating factor in the GAL's favor was that GAL Roberts had the role of both GAL and Guardian for J.T. at the time she went to Maine with J.T. Ms. Roberts was placed in two conflicting roles, that of GAL and guardian of the person, in the same case. The dual role was endorsed by both DCYF and by the Court.

The dual role is significant because the role of GAL and Guardian are two very separate roles. The GAL is appointed to represent a child's best interests in Court. A Guardian serves in a parental role, which in this case extended to making medical decisions and carrying those decisions out for that child. The role of GAL and Guardian is not unlimited, and GAL Roberts clearly did not have DCYF's or the foster parents' permission to take J.T. to Maine, nor could the trip be considered within the scope of her duties as GAL or Guardian.

Another mitigating factor was that there was a huge vacuum in meeting J.T.'s needs in this case. DCYF did not have access to unlimited resources, and the resources in the North Country are limited. DCYF allowed and encouraged GAL Roberts to step in and fill that gap. DCYF's position put GAL Roberts in a difficult situation if, as she testified, they encouraged her to just do what was necessary to meet J.T.'s needs. The Board believes DCYF may have given GAL Roberts the impression that she had authority to do what she felt was needed. Both DCYF and the Court endorsed the dual role, which placed GAL Roberts in a difficult situation. However, GAL Roberts clearly could have made better decisions. It was through her actions and choices that she developed the personal relationship, involved J.T. in her family's life and elected to expand her involvement with him. She was the adult in the relationship – a relationship that was with a fragile young man – and acted outside of the role normally expected of any GAL. A Guardian ad Litem is to remain independent. When GAL Roberts developed this close relationship with JT, she lost her ability to act objectively in his best interests.

The Board also considered GAL Robert's unselfish motive as a mitigating factor. GAL Roberts cooperated in the investigation and acknowledged she overstepped her boundaries. DCYF has since decided that it is in J.T.'s interests to continue his relationship with Roberts.

All of these factors lead the Board to conclude that a reprimand was the appropriate sanction, with note of the mitigating factors.

### IT IS THEREFORE ORDERED

1. Ms. Roberts shall notify all courts in which she is appointed as a Guardian ad Litem in writing of this sanction, copying all parties, of the Board's order pursuant 503.16 (c).

C. Pending Motions

The Motion to Reconsider the Motion to Dismiss is denied.

BY ORDER OF THE BOARD

DATE: 12/15/10

  
Henrietta W. Luneau  
Presiding Officer

cc: Timothy Russell, Prosecutor, P.O. Box 915, Henniker, 03242

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