

**State of New Hampshire Guardian ad Litem Board****Public Hearing**

Legislative Office Building Room 101

June 21, 2013

**Members Present:** Susan Duncan, Chair, Ann Larney, Chris Keating, Presiding Officer, Representative Deana Rollo, Senator David Pierce, David Villiotti

**Members Absent:** Alan Cantor, Master Henrietta Luneau

**Also Present:** Christopher Battaglio, Complainant, Jack Lightfoot, prosecutor, Ann Thompson Bennett, respondent

*A quorum was present.*

*Presiding Officer Chris Keating called the hearing to order at 1:30pm.*

C. Keating went over the hearing procedures.

C. Keating disclosed that he had reached out to both parties to inquire about a pre-hearing conference or settlement; however, no conversation took place. He did not realize that under RSA 541:A-36 he could not have contact with either party. C. Keating did confer with counsel who said that as long as no conversation took place he was still within the law and this happens all the time.

C. Keating swore in Attorney Lightfoot and Attorney/GAL Thompson Bennett.

The Board members introduced themselves.

Mr. Lightfoot and Ms. Thompson Bennett gave testimony and offers of proof.

Mr. Lightfoot testified that the facts in the case are straight forward and that after talking with Ms. Thompson Bennett they are not contested.

Mr. Lightfoot presented 42 exhibits as evidence.

<b><u>Exhibit 1</u></b>	3/30/11	Order on Appointment Entered
<b><u>Exhibit 2</u></b>	4/13/11	Ann Thompson Bennett email to Attorneys
<b><u>Exhibit 3</u></b>	4/14/11	Guardian ad Litem Stipulations
<b><u>Exhibit 4</u></b>	5/15/11	Guardian ad Litem questionnaire
<b><u>Exhibit 5</u></b>	6/6/11	ATB email to Christopher Battaglio & response
<b><u>Exhibit 6</u></b>	6/7/11	Ann Thompson Bennett email to Christopher Battaglio
<b><u>Exhibit 7</u></b>	5/15/11	Attorney Higham letter to Ann Thompson Bennett
<b><u>Exhibit 8</u></b>	9/1/11	Christopher Battaglio email to Ann Thompson Bennett
<b><u>Exhibit 9</u></b>	9/2/11	Christopher Battaglio email to Ann Thompson Bennett
<b><u>Exhibit 10</u></b>	9/3/11	Christopher Battaglio email to Ann Thompson Bennett
<b><u>Exhibit 11</u></b>	9/6/11	Ann Thompson Bennett email to Christopher Battaglio
<b><u>Exhibit 12</u></b>	9/6/11	Christopher Battaglio email to Ann Thompson Bennett
<b><u>Exhibit 13</u></b>	9/13/11	Christopher Battaglio email to Ann Thompson Bennett

<u>Exhibit 14</u>	9/15/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 15</u>	9/21/11	Attorney Higham letter to Ann Thompson Bennett
<u>Exhibit 16</u>	10/14/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 17</u>	10/31/11	Ann Thompson Bennett email to Christopher Battaglio
<u>Exhibit 18</u>	10/31/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 19</u>	11/8/11	Ann Thompson Bennett email to Christopher Battaglio
<u>Exhibit 20</u>	11/8/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 21</u>	11/9/11	Ann Thompson Bennett email to Christopher Battaglio
<u>Exhibit 22</u>	11/9/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 23</u>	12/8/11	Attorney Higham letter to Ann Thompson Bennett
<u>Exhibit 24</u>	11/23/11	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 25</u>	1/6/12	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 26</u>	1/18/12	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 27</u>	2/9/12	Christopher Battaglio certified letter to ATB
<u>Exhibit 28</u>	2/15/12	Ann Thompson Bennett email to Christopher Battaglio
<u>Exhibit 29</u>	2/15/12	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 30</u>	2/21/12	Christopher Battaglio email to Ann Thompson Bennett
<u>Exhibit 31</u>	2/22/12	ATB response to Christopher Battaglio's email
<u>Exhibit 32</u>	3/4/12	Attorney Higham letter to Ann Thompson Bennett
<u>Exhibit 33</u>	4/2/12	Ann Thompson Bennett letter to Attorneys
<u>Exhibit 34</u>	4/9/12	Ann Thompson Bennett email to Attorney Higham
<u>Exhibit 35</u>	4/9/12	Guardian ad Litem report
<u>Exhibit 36</u>	5/29/12	Final Order & Parenting Plan
<u>Exhibit 37</u>	10/30/12	Complaint form
<u>Exhibit 38</u>	2/17/13	Complaint answer form and attachments
<u>Exhibit 39</u>	4/13/12	Statement, C. Battaglio, Thompson Law Office
<u>Exhibit 40</u>	5/1/12-5/31/12	Statement, C. Battaglio from NH Postal Credit Union
<u>Exhibit 41</u>	10/8/12	Statement, C. Battaglio from Thompson Law Office
<u>Exhibit 42</u>	2/1/13	AR Report, C. Battaglio from Thompson Law Office

Mr. Lightfoot went over the rule violations he intends to prove by a preponderance of the evidence. They include:

- **GAL 503.02 (c) General Obligations of all Guardians ad Litem** A guardian ad litem shall perform those duties assigned to him or her by the appointing court.
  - The order of appointment had a due date listed for a preliminary report.
    - Ms. Thompson Bennett never filed one.
    - She confirmed this in her response to the complaint stating she was ill.
- **GAL 503.03 (a) & (b) Timeliness** A guardian ad litem shall undertake actions on behalf of a recipient of services in a manner that is sufficiently timely to avoid prejudice to the best interests of the recipient of services or such other object of appointment as specified in the orders or other instructions of the appointing court. A guardian ad litem shall adhere to all applicable deadlines imposed by an appointing court or by statute.
  - Ms. Thompson Bennett never filed a preliminary report as ordered by the court.
  - Ms. Thompson Bennett emailed her final report to the parties at 8:30pm on April 9, 2012. The final hearing was April 12, 2012.
- **GAL 503.04 (a) & (b)(1) Competency** A guardian ad litem shall carry out the duties of his or her appointment with sufficient competence to complete the work without avoidable harm to the best interests of the recipient of services. The competence required by (a) above shall include: Diligence, attention to detail and promptness in the scheduling and performance of the duties of the appointment;
  - Ms. Thompson Bennett was out of action and communication for 3 months.

- Her final report refers to Dennis as the grandfather. The grandfather's name is actually John and she never spoke with him as indicated by her billing.

Mr. Lightfoot testified that Ms. Thompson Bennett will argue a preliminary report is not require until signed stipulations are received from both parties. She did not get the stipulations until after the report was due. Even after receiving the stipulations she still did not file a preliminary report. Mr. Lightfoot testified that Ms. Thompson Bennett should have filed a motion for instruction with court stating the stipulations were not received and therefore she could not begin her investigation

Mr. Lightfoot testified that there were extensive emails from Mr. Battaglio between June 6<sup>th</sup> – November 9<sup>th</sup>, 2011 with occasional responses from Ms. Thompson Bennett as shown in Exhibits 5, 6, 8-14, 16-22. Exhibits 24-28 show that Ms. Thompson Bennett did not respond to Mr. Battaglio from November 23, 2011 – February 15, 2012. On February 15, 2012 Ms. Thompson Bennett sent an email (exhibit 27) to Mr. Battaglio regarding setting up a home visit. Mr. Battaglio promptly replied (exhibit 29) to her request. It took Ms. Thompson Bennett until February 21, 2012(exhibit 31) to reply stating she just got over the flu.

Mr. Battaglio's lawyer, Attorney Higham also made several attempts to communicate with Ms. Thompson Bennett in hopes of settling the case and she received no response. (exhibits 16, 23, & 33) In addition to the GAL report the only other communication to Attorney Higham was on April 9, 2012 (exhibit 33). In that email Ms. Thompson Bennett stated:

*I apologize for my delay in getting back to you on the status of my investigation and regret that I have not done a lot of work on this case over the last few months due to illness on my part which kept me out of the office for a few weeks and drastically reduced the number of hours I was able to work for almost two months, causing me to fall behind on my workload and it has been very difficult trying to catch up on everything. I have received periodic complaints from both parents but in order to finalize a report I would request that both parents provide me with a written update (can be e-mail) on the happenings over the last several months that I may not be aware of so that I am able to address all concerns and have all the necessary information to provide a written report. I will plan on having a final report to both of you by the end of the week.*

Mr. Lightfoot testified that on April 9, 2012 at 8:30pm Ms. Thompson Bennett emailed her final report to the parties(exhibit 34 & 35). This only gave the parties two working days before the hearing on April 12, 2012 to prepare. The attorneys in this case not asking for a continuance does not negate the duties of the GAL to leave proper time to review the report.

Mr. Lightfoot also testified that Ms. Thompson Bennett's attention to detail is in question. Exhibit 39 shows the final bill Mr. Battaglio was sent on April 13, 2012. On April 15, 2012 Mr. Battaglio wrote a check to pay the bill (exhibit 42). On May 7, 2012 the check cleared his bank account (exhibit 40). Ms. Thompson Bennett sent another bill on October 8, 2012 stating the final balance was still overdue (exhibit 41).

Mr. Lightfoot rested his case.

Ms. Thompson Bennett cross examined Mr. Lightfoot asking if he had the cancelled check? Mr. Lightfoot responded that he did not have the physical check.

Ms. Thompson Bennett presented 12 exhibits.

<b><u>Exhibit A</u></b>	5/18/2011	Attorney Higham letter to AnnThompson Bennett
<b><u>Exhibit B</u></b>	5/18/2011	Signed Stipulations
<b><u>Exhibit C</u></b>	5/25/2011	Check #1206 from Kindra Battaglio

<b><u>Exhibit D</u></b>	9/1/2011	Email from Kindra Battaglio
<b><u>Exhibit E</u></b>	9/6/2011	Email from Ann Thompson Bennett to Counsel
<b><u>Exhibit F</u></b>	9/6/2011	Email from Attorney Dahar
<b><u>Exhibit G</u></b>	9/6/2011	Email from Attorney Dahar
<b><u>Exhibit H</u></b>	9/6/2011	Email from Ann Thompson Bennett to Attorney Dahar
<b><u>Exhibit I</u></b>	9/6/2011	Email from Ann Thompson Bennett to Parties & Counsel
<b><u>Exhibit J</u></b>	9/6/2011	Email from Attorney Higham's once
<b><u>Exhibit K</u></b>	9/7/2011	Email from Kindra Battaglio
<b><u>Exhibit L</u></b>	10/2011-4/2012	Email from C. Battaglio to ATB
<b><u>Exhibit M</u></b>	11/2011-2/2012	Email from K. Battaglio to ATB
<b><u>Exhibit N</u></b>	5/29/2012	Final Order

Ms. Thompson Bennett agreed with Mr. Lightfoot that the order of appointment did list a due date of May 1, 2011 for the preliminary report. Ms. Thompson Bennett testified that her stipulation which was sent to both parties states the investigation would not begin until the retainer, signed stipulation and questionnaires were received from both parties. She did not receive the retainer from the mother until April 25, 2011. At a hearing Ms. Thompson Bennett told the court she did not have a preliminary report. The court did not assign a new date.

Ms. Thompson Bennett testified that she felt that not all of the emails required interaction. She did file all of them. She did respond to the emails about the violation of the parenting plan. She testified that she did have a conversation with the mother about keeping the kids when they were suppose to be with dad; however, this conversation was not in writing.

Ms. Thompson stated that she provided a marked up version of the report when she met with both parents and counsel. She does not recall the exact discussion at either meeting. Ms. Thompson Bennett also said she informed both parents it is hard on the children to have strict parenting plan when the parents can't communicate with each other.

Ms. Thompson Bennett testified that the emails she was receiving from both parties were the same and did not require a response or immediate attention.

Ms. Thompson Bennett said she was present during the entire final hearing and was cross examined. She noted that her suggested parenting plan allowed more time for Mr. Battaglio than the court's final order.

Ms. Thompson Bennett agreed with Mr. Lightfoot that she went off the radar from around the holidays 2011 through February 2012. She also agreed that she fell behind in cases. Due to not being at work for so long she needed to redo interviews to ensure that her report had all the facts. When the report was filed Ms. Thompson Bennett felt that she was well informed of all issues. She had intended to write the report long before it was due.

In regards to the billing dispute Ms. Thompson Bennett testified that this hearing was the first time she was hearing the Mr. Battaglio claim to have already paid the money owed. According to her records she did not receive payment nor has Mr. Battaglio contacted her about the issue.

Ms. Thompson Bennett rested her case.

Mr. Lightfoot cross examined asking the following questions.

- Did you ask the court for guidance on how to proceed with the preliminary report? Ms. Thompson Bennett replied that she couldn't remember if she asked the court or not.
- During your ill period did you ask anyone to notify clients that you were away from the office? Ms. Thompson Bennett replied no. She went on to say she was not ill that long and did not expect to be ill that long.

The Board members questioned Ms. Thompson Bennett.

- In regards to the preliminary report not being filed Ms. Thompson Bennett testified that:
  - It was her intention to file the report by May 1, 2011.
  - Usually the preliminary report is handled at the review hearing.
  - The court does not expect the GAL to start work on the case until both parties sign the stipulation and pay the retainer.
    - There was not enough time between when this was complete and when the report was due.
    - She let the court know this at the June hearing.
  - The preliminary report should not go out too early. It should be after the pre-trial hearing and before the final hearing.
  - It did not occur to Ms. Thompson Bennett to notify the parties of her absence even though:
    - It was clear that there was high animosity amongst the parties and young children were involved.
    - Both parties lawyers were requesting the preliminary report in the hopes of settling the case.
  - Ms. Thompson Bennett didn't know she was going to be out that long. She said she was working half days and was out completely only two weeks.
  - Ms. Thompson Bennett did not feel she needed to file a motion for continuance or let the court know of her illness/absence. She also felt that asking the parties and counsel for an update of what occurred during her absence did not constitute her not performing her duties as a GAL.
  - Ms. Thompson Bennett testified that her report was similar to her discussion that she had with the parties and counsel. She believed the parties understood her position therefore the final report was nothing new. Neither party should have been surprised.
  - Ms. Thompson Bennett does not know what date the stipulation was generated. She sent it to court to be filed on June 6, 2011 over a month past its due date. She did not feel she needed to file a motion with the court to file the stipulation late.

Mr. Lightfoot made his final remarks. He questioned whether a GAL has sole discretion that they are proceeding at proper pace even though they are incommunicado for months. Mr. Lightfoot felt that Ms. Thompson Bennett should have requested advice from the court instead.

Ms. Thompson Bennett made her final remarks by saying that due to this complaint she has decided not to renew her certification in January 2014 and is no longer accepting cases. She declined the opportunity to submit anything further to the Board.

Board discussion included:

- It is concerning that the Board does not know standard practice of filing stipulations & Preliminary Reports.
  - Due dates for stipulations and preliminary reports are assigned by the court clerk.
- GAL who are also lawyers like Ms. Thompson Bennett should know to file a motion for continuance.
  - It is unclear if the Board can discipline her for this.
- Ms. Thompson Bennett's reasonings for violating the rules were weak.

- She did not address the issue of notification of illness.
- How did she know the parties and counsel would not be surprised at final report?
- The rules of Competency were clearly violated.
  - Ms. Thompson Bennett admitted she did not reach out to court.
  - It was her responsibility to point out to the court that the stipulation was not signed by the due date causing the investigation not being able to begin.
- There were extenuating circumstances with some of the timeliness rule violations
- There was no diligence in this case which is a clear rule violation.
  - She had an obligation to notify the court of her absence and let the court decide whether or not to reassign the case.
- Even if she does not renew her certification she could reapply later. This fact should have no bearing on whether or not Ms. Thompson Bennett violated the rules and what sanctions should be imposed.

S. Duncan made a motion that by a preponderance of the evidence Ms. Thompson Bennett did not violate **GAL 503.02 (c) General Obligations of all Guardians ad Litem**, *A guardian ad litem shall perform those duties assigned to him or her by the appointing court.* A. Larney seconded. Vote: 6-0 Motion passes.

A. Larney made a motion that by a preponderance of the evidence Ms. Thompson Bennett violated **GAL 503.03 (a) Timeliness**, *A guardian ad litem shall undertake actions on behalf of a recipient of services in a manner that is sufficiently timely to avoid prejudice to the best interests of the recipient of services or such other object of appointment as specified in the orders or other instructions of the appointing court.* S. Duncan seconded. Vote: 6-0 Motion passes.

Sen. Pierce made a motion that by a preponderance of the evidence Ms. Thompson Bennett did not violate **GAL 503.03 (b) Timeliness**, *A guardian ad litem shall adhere to all applicable deadlines imposed by an appointing court or by statute.* S. Duncan seconded. Vote: 6-0 Motion passes.

Sen. Pierce made a motion that by a preponderance of the evidence Ms. Thompson Bennett violated **GAL 503.04 (a) Competency**, *A guardian ad litem shall carry out the duties of his or her appointment with sufficient competence to complete the work without avoidable harm to the best interests of the recipient of services.* A. Larney seconded. Vote: 6-0 Motion passes.

Sen. Pierce made a motion that by a preponderance of the evidence Ms. Thompson Bennett violated **GAL 503.04 (b1) Competency**, *The competence required by (a) above shall include: Diligence, attention to detail and promptness in the scheduling and performance of the duties of the appointment;* S. Duncan seconded. Vote: 6-0 Motion passes.

Sen. Pierce made a motion that by a preponderance of the evidence Ms. Thompson Bennett violated **GAL 503.05 (c) Advocacy**, *A guardian ad litem shall endeavor to expedite the conclusion of the case to the extent that he or she, in good faith, believes that to do so is consistent with the best interests of the recipient of services or such other purpose of his or her appointment as is set forth in the orders or other instructions of the appointing court.* Rep. Rollo seconded. Vote: 6-0 Motion passes.

Sanction discussion included:

- Whatever sanction is imposed it goes permanently on Ms. Thompson Bennett's record and as a lawyer she is required to report to NHBAR. The Board does send a copy of the order to the Administrative Judges, Attorney Discipline Office, and the Administrative Office of the Courts.
- All fines are public information.
- Written reprimand

- Fine
  - \$300 equal to \$100 per day that final report was late in filing. Should have been 5 business days before hearing.
- Continuing Education and Counseling are not appropriate.

S. Duncan made a motion to issue a written reprimand. A. Larney seconded. Vote: 6-0 Motion passes.

S. Duncan made a motion to allow Chris Keating to sign the order and written reprimand on behalf of the Board. Sen. Pierce seconded. Vote: 6-0 Motion passes.

C. Keating declared the hearing closed.