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JUL 27 2017

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NH Supreme Court

Guardian • Guardian ad Litem • Payee Services • Mental Health Consulting • Behavioral Assessment

July 26, 2017

Honorable Robert J. Lynn, Chair
Committee Members
Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Honorable Robert Lynn and Committee Members:

Over the past 17 years I have worked as a guardian for incapacitated adults. 6 years with a private agency (The Office of Public Guardian), before beginning sole practice as a professional guardian in 2006. I was formally approved to practice as a professional guardian after meeting the criteria as outlined in Administrative Order 16 (Attachment 1) and remained in compliance with that criteria for 11 years of private practice. I have enjoyed a successful practice and an excellent reputation for handling difficult, complex and high conflict matters, ranging from wards who are indigent, to wards with estates in the millions of dollars. Despite the number of adversarial parties in these matters and numerous complaints filed against me with the courts and Elderly and Adult Services, over the course of my career, there has never been a proceeding or investigation that has resulted in a finding of any wrongdoing, violation of professional ethics or any other inappropriate or improper conduct.

I am writing this committee for the purpose of bringing to your attention a serious and personally devastating situation resulting from the actions of Judge Edwin Kelly, in his capacity as Administrative Judge of the Circuit Court, and his use of administrative orders in the severe and very public destruction of my career and reputation. Attached to this letter are copies of the relevant administrative orders to which I will refer.

In December 2014, Edwin Kelly issued Administrative Orders 63 and 64 (Attachment 2 &3), which sought to oversee and control the business practices of professional guardian, by putting restrictions on the rate of pay, number of cases allowed, procedures under

which a guardian could be appointed and extensive procedural directives to circuit court probate judges as they pertain to appointments, fee rates and overall monitoring of guardianship matters. It is important to note that the two private guardian agencies here in New Hampshire are exempt from these orders in their entirety.

A copy of Administrative Orders 63 and 64, were sent to all professional guardians outside of the two private agencies, as well as all circuit court probate judges, effectively making these orders a priority over the law and already well established statutes, administrative rules, procedures and case law. These orders also constructively vacated existing fee orders in matters already before various courts.

As the directives contained in these orders presented significant financial and other problems for sole private practitioners, I petitioned the court in numerous matters for an increased fee rate and further requested clarification as to what authority an administrative judge could direct the setting of my rates in a manner that circumvented established statutes, court rules and case law. Almost without exception, every motion and motion for reconsideration was denied without a hearing. In response, I pursued a request for legislation to establish guidelines for all practicing guardians, whether agency or sole practitioner. Based on our meetings and the concerns of the Senate Judiciary Chair, in late summer 2015, SB 341 (Attachment 4) was introduced to study guardianships here in New Hampshire. Public hearings were held with Judge David King, in his capacity as Deputy Administrative Judge of the Probate Court, representing the Administrative Office of the Court's adamant objection to any authority of the AOC being curtailed by legislation or further rule making efforts.¹

Subsequent to the introduction of SB 341, Judge Edwin Kelly notified me by letter (Attachment 6) of his intention to hold a hearing to review two matters brought to his attention the prior year. Upon notice by my attorney of his representation and further inquiry as to his authority to conduct a hearing, (Attachment 7) Judge Kelly then issued Administrative Order 2015-14, (Attachment 8) specifically appointing and granting administrative authority to Judge Gary Cassavechia to establish and conduct disciplinary proceedings against me.

For the purposes of the matter which I am bringing before this committee, I will not be reviewing the course of the proceedings, but will state, at best, the findings are gross mischaracterizations of my actions and in some instances untrue. I have attached a copy of my Response Brief to the Supreme Court (Attachment 9) which I believe outlines the many procedural and other problems with the entire process of the disciplinary proceedings. This brief was written by me and submitted pro-se, after my attorneys, citing financial reasons, declined further work in connection with my appeal.

¹ During the course of these hearings, it should be noted that Judge David King was testifying in opposition of my position before the Senate committee while he was simultaneously sitting on my remaining non-guardian matters in the circuit court probate division after having these matters assigned specifically to him, by administrative orders issued by Edwin Kelly. (Attachment 5).

On May 6, 2016, Judge Edwin Kelly issued Administrative Order 2016-007 (Attachment 10). Outlining his findings, he ordered me removed from my profession, career and livelihood of 17 years and further ordered my immediate removal from each and every guardianship to which I was appointed throughout the Circuit Court Probate Division. Causing the most harm, were further orders banning me from ever practicing as a professional guardian again here in the State of New Hampshire. In an unprecedented step, Judge Kelly then publically disseminated this order, sending it out to over 100 individuals, including but not limited to, every ward, their attorneys, all circuit court judges, all parties in any guardianship and multiple federal and state agencies (see page 8 of the order). In conjunction with sending a copy of 2016-007, all parties additionally received a copy of Administrative Order 2016-008 (Attachment 11) which listed each and every guardianship matter from which I was being removed, including the name of the ward.

These orders were appealed to the Supreme Court. Unfortunately, the Supreme Court, rather than address the important and serious legal issues, raised in my appeal, and as reiterated in their order, chose instead to dismiss the entire appeal as moot. (Attachment 12)

From the time of the issuance of Administrative Orders 63 and 64, and through the Supreme Court appeal process, I have multiple times raised the issue and contested Judge Kelly's authority as administrative judge to issue orders that essentially circumvent properly established statutes and administrative rules, including Sup. Ct. Rule 54(4), which does not grant him authority over private citizens who do not work for the court and are not paid fees from funds granted to the judiciary by the legislature.

Article 73-a, of the New Hampshire Constitution establishes:

“The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the Supreme Court justices, make rules governing the administration of all courts in the state and the *practice and procedure to be followed in all such courts*. The rules so promulgated shall have the force and effect of law.” Art. 73-a.

RSA 464 A- XIV-b, establishes administrative authority under Sup. Ct. R. 54(4) for the chief justice to “establish the criteria for professional guardians”, with such criteria being set forth in Administrative Order 16. Administrative Order 16 establishes criteria which, in part, authorizes the administrative judge to “remove a guardian from the list of professional guardians for non-compliance or for good cause”. There are no other authorities granted to the Administrative Judge with regard to the regulation and business practices of professional guardians.

The administrative judge's establishment of the disciplinary process under Sup. Ct. R. 54, was a plain error, as modification or amendments to rules require adherence to established procedures under Sup. Ct. R. 51. Any extension of authority granted to the administrative judge requires adherence to the rule making process intended and

“adopted to aid the Supreme Court in discharging its rulemaking responsibility in the areas of procedure in all courts and shall apply to all amendments or additions to such rules.” Sup. Ct. R. 51(a). Sup. Ct. R. 51(c), establishes procedure to adopt, amend or repeal a court rule in order to ensure any rules, amendments or modification, are subject to appropriate, judicial or legislative reviews and open to public debate to ensure fairness, equity and input by the public and other interested parties.

As reflected in the attached Response Brief submitted to the Supreme Court, the deficiencies with the disciplinary process, in which I engaged in cooperatively and believed would be fair and limited as to the impact of even the most severe findings, represents exactly why no single member of the judiciary, in any capacity, should be taking it upon themselves to engage in an over extension of their authority in any manner without first having gone through the already well established rule making and statutory procedures in place.

I cannot begin to express to this committee the devastating effects Judge Kelly’s order has had not only on my career, livelihood and reputation, but also, due to the public dissemination of this order, on my ability to work in any capacity for which I have been educated, trained and practiced for over 20 years. Since the time this order was issued, these well published findings have, and continue to be, disseminated throughout the court system and between private individuals. These findings are available on-line to be seen by any potential employer (Attachment 13). I have been subjected to public scorn and ridicule and the fostering of hostility resulting in the unending filing of motions and petitions by two entities in pursuit of nothing more than financial damage. They have resulted in unending investigations and scrutiny of dozens of prior matters and appointments and in one instance a very public and embarrassing criminal investigation, all of which concluded no wrong doing of any kind.

These orders have created contempt towards me by the judiciary to the point where a circuit court judge, deciding the reasonableness of my fees in one matter, was emboldened to issue orders for me to repay almost \$3,000 subsequent to holding a hearing and accepting testimony while further acknowledging in her order, that I was neither noticed of or present at the hearing. In another matter before a different judge, again a hearing was held without proper notice, resulting in a ruling that, ordered not only that I pay back fees I had earned, but also ordering me to return to a trust, wages paid to a care provider, an issue not properly brought before the court or noticed to me by any party.

Since the issuance of Administrative Orders 64 and 14, these orders have been cited in multiple circuit court orders as the basis for denying me fees for work earned in good faith, amounting to tens of thousands of dollars. Because there is no legal basis for these rules or their authority as the basis to determine fees, the only option would have been an appeal of each and every order to the Supreme Court, an option that is financially prohibitive.

Despite the serious legal issues and the serious repercussions of these orders and despite numerous attorneys stating their agreement of the issues, none have been willing to represent me. Even counsel in long standing matters have withdrawn. One stating "this is no longer about the work but about you personally". I was told in recent months by a well-known attorney, "that there is no chance you will get an attorney in the State of New Hampshire to assist you." Judge Kelly's order and its public dissemination has resulted in my complete inability to obtain counsel within the state of New Hampshire.

After speaking with numerous professionals, legislatures and court employees, in my opinion, Judge Kelly's very public abuse of discretion and over reaching of his authority has had a chilling effect on professionals who work within the court system. They have expressed to me fear of retaliation in the same matter which I have suffered. This again highlights why a public and fair process of establishing any judicial or administrative procedure must be done publically and provide for all stakeholders and citizens to participate.

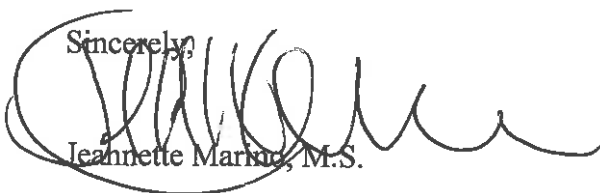
The circumstances of what has happened to me highlight the devastating consequences of a judge-whose findings are regarded with esteem and assumed to be well founded- who fails to adhere to the statutory limits of his authority and instead overreached his authority in a manner lacking any consideration for the protection of liberties and fairness offered by an established process of developing procedures within the judiciary.

Because the Supreme Court has dismissed this matter entirely, other than public disclosure of this matter, there is no opportunity for me to restore my reputation or undo the devastating impact of what I believe to be an unlawful procedure.

I am requesting that this committee review the information I am now providing in the hopes that the circumstances of this matter will be examined and that this committee will possibly pursue directly to the Supreme Court clarification of the use of administrative orders in order to ensure that no other citizen will again be subject to the whims and authority of a single court administrator granting themselves, without accountability or lawful authority, the power to determine the rights and liberties of any citizen.

If you have any questions or need further information, I can be reached at 603-226-6004.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannette Martin", written over a circular stamp or seal.

Jeannette Martin, M.S.

Representative Joe Hagen, Chair-House Judicial Committee
House Judicial Committee Members
Sharon Carson, Chair-Senate Judicial Committee
Senate Judicial Committee Members

STATE OF NEW HAMPSHIRE

PROBATE COURT

ADMINISTRATIVE ORDER 16

Criteria for Professional Guardian

Pursuant to RSA 464-A, the Probate Court Administrative Judge shall certify professional guardians who shall then be eligible for appointment as a guardian of the person, guardian of the estate or guardian of the person and estate of an incapacitated adult or a minor if requested by a petitioner.

A person seeking appointment as a professional guardian of an incapacitated adult shall submit an application to the Administrative Judge. Application forms are available from the Probate Court Administrative Office.

The requirements for certification as a professional guardian are:

1. Be a national certified guardian or national master guardian with the Center for Guardianship Certification (CGC) and maintain this registration as required by CGC or its successor organization.
2. Be a resident of the state of New Hampshire or have a resident agent.
3. Adhere to the *Standards of Practice* published by the National Guardianship Association (NGA) or its successor organization.
4. Adhere to the *Model Code of Ethics* published by the NGA.
5. Provide a bond that is acceptable to the probate court.
6. Carry malpractice insurance and provide proof of insurance on an annual basis to the administrative judge of the probate court.
7. Comply with all requirements of applicable statutes, regulations, and court rules and orders.
8. Disclose to the court any actual or potential conflicts of interest upon discovery of any such conflict.
9. Recognize the responsibility to provide necessary and appropriate quality guardianship services as dictated by the ward's needs.

10. Certify that he or she will maintain generally accepted standards of accounting, i.e. trust accounting, on all funds of all wards in their custody or under their control and further agree that the court or its designee may audit all accounts at any time.
11. Submit proposed fees and fee agreements for review and approval by the court. Fees and expenses charged, whether taken or not, must be reasonable, related only to guardianship duties, and are subject to review and approval by the court. If fees or expenses are disallowed, the guardian shall reimburse the ward's estate.
12. Adhere to the following billing and annual report requirements
 - a. Provide billing records for time and expenses with the guardian's annual account to the court on forms approved by the court.
 - b. The annual report and/or annual account shall include a report of cumulative fees paid to the guardian since the initial appointment as guardian, other than fees received from governmental sources.
 - c. The annual report and/or annual account shall also include a report of fees received from all sources for guardianship services rendered, other than fees received from governmental sources.
13. Submit to a criminal background, and an abuse and neglect registry check annually or as requested by the administrative judge of the probate court. If arrested or convicted for any felony or misdemeanor during the term of guardianship, disclose this information promptly to the administrative judge of the probate court.
14. Consult with a national certified guardian or national master guardian who has been approved by the Probate Court Administrative Judge for at least the first two cases involving guardianship of the person and at least the first case involving guardianship of the estate.
15. Be approved by the Probate Court Administrative Judge.
16. Be subject to removal from the list of approved guardians for non-compliance with any of the criteria for professional guardians or for good cause as determined by the Probate Court Administrative Judge.

David D. King
Administrative Judge of Probate Court

History

Effective: August 28, 2009

**State of New Hampshire
Circuit Court
Administrative Order 2014 – 63**

Procedure for Appointment of Professional Guardians

In the exercise of its authority to oversee and certify professional guardians eligible for appointment as guardians over the person and estate, see RSA 464-A; N.H. Prob. Ct. Admin. Order 16 (9/10/2009), and to ensure proper management of a ward's person and estate, the Court establishes the following procedures for appointment of professional guardians.

In establishing these procedures, the Court recognizes that industry best practices provide that professional guardians: "shall limit each caseload to a size . . . that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers." NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 23.1 (4th ed. 2013); see N.H. Prob. Ct. Admin. Order 16 ¶ 3 (9/10/2009).

In furtherance of these goals, all professional guardian appointments shall be made as follows:

- 1.) The New Hampshire Circuit Court will maintain a list of certified professional guardians and their current open caseload. Guardians will be required to notify the Court of their current cases on a quarterly basis.
- 2.) When service providers, health professionals, individuals, or the courts discern a need for professional guardian services, they will be required to contact the Circuit Court Professional Guardian Coordinator for a list of "available professional guardians" in the geographic area.
- 3.) "Available professional guardians" are defined as those professional guardians with reported current caseloads under thirty-five (35) clients per certified professional guardian. See NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 23.1 (4th ed. 2013).
- 4.) Parties may only petition for, and Probate Division Judges may only approve, appointments of an available professional guardian that has been referred by the Circuit Court Professional Guardian Coordinator.

December 11, 2014

/s/ Edwin W. Kelly
Edwin W. Kelly
Circuit Court Administrative Judge

**State of New Hampshire
Circuit Court
Administrative Order 2014 - 64**

Standards for Assessment and Approval of Professional Guardian Fees

In the exercise of its authority to approve fees and expenses charged by professional guardians, see Circuit Court – Probate Division Rule 88, the Court seeks to protect wards from the burden of unreasonable fees. See RSA 464-A:1. Professional guardians likewise have a duty to ensure that the pecuniary interests of wards are protected. See NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 22,II (4th ed. 2013); MODEL CODE OF ETHICS FOR GUARDIANS R. 2.1 (1988). Pursuant to RSA 464-A:23, every professional guardian is allowed to recover reasonable compensation for proper expenses and services provided during the guardianship.

In order to satisfy the Court's desire to protect wards from the burden of unreasonable fees and establish a fee review system that is fair and consistent, the New Hampshire Circuit Court establishes the following standards for assessment and approval of professional guardian fees. See In re Estate of Rolfe, 136 N.H. 294, 298 (1992)(establishing standards for fiduciaries).

The standards for assessment and approval are established as follows:

1. The standards for assessment and approval of professional guardian fees apply to guardianships over the estate, person, and both the estate and person.
2. The Court deems \$60 per hour to be the reasonable customary rate for professional guardian services based on the experience and skill set required of professional guardians, see N.H. Prob. Ct. Admin. Order 16 (9/10/2009)(criteria), the availability of professional guardians in New Hampshire, and reasonable fees allowed other similar professions adopted by court rule. Cf. Sup. Ct. R. 48 (Counsel Fees for Indigent Persons); Sup. Ct. R. 48-A (Guardian Ad Litem Fees).
3. The Court, based upon its experience reviewing fee petitions, and after consultation with certified professional guardians, deems that customarily a professional guardian spends five hours per month attending to the needs of a ward on average over the life of the case.
4. Professional guardians may charge the \$60 customary rate for up to five hours per month, not to exceed \$300 per month, without prior approval of the Probate Division, provided they submit a quarterly statement documenting that in conformity with industry best practices the guardian has met with the ward monthly during the preceding quarter. See NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 13,IV & 23.I (4th ed. 2013). Reporting forms are available on the Probate Division website or at the Office of the Clerk of Court.

5. If, however, the Court finds that the \$300 per month fee will unduly deplete the ward's available income or account(s), impoverish the ward, or otherwise deprive the ward of basic necessities, the guardian will be required to seek court approval for all fees charged the ward.
6. Professional guardians may petition the Probate Division before which the case is pending in writing for authorization to bill the ward in excess of \$300 per month, at a rate of \$60 per hour, after demonstrating that there is good cause and/or exceptional circumstances justifying additional billing to the ward. Any petition requesting approval of additional fees shall be filed within thirty (30) days of appointment or within thirty (30) days of the occurrence of the extraordinary circumstance. Any such petition must be filed and approved prior to the expenditure of any additional time on the part of the guardian for which the guardian intends to seek authorization to exceed the monthly fee allowed by this Administrative Order.
7. "Good cause" and "exceptional circumstances" may include, but are not limited to the following:
 - a.) Unusual or exceptionally time-consuming litigation **reasonably** undertaken to protect the ward and/or recover assets of the ward;
 - b.) The ward experiences unusual or exceptionally time-consuming mental or physical health emergencies;
 - c.) Emergency conditions or other circumstances requiring urgent attention;
 - d.) Services necessarily provided outside regular business hours;
 - e.) High degree of potential danger (hazardous materials, contaminated real property, or dangerous persons);
 - f.) Unusual challenging family dynamics of the ward that substantially increase the time necessary to complete regularly routine tasks;
 - g.) Unusual complex financial issues in proper management of the ward's estate, including: complex tax issues; significantly large assets; unusual complex regulatory environment; or otherwise problematic management or recovery of assets;
 - h.) The services provided the ward require specific skills, education, training, or certification beyond that required of professional guardians under Probate Court Administrative Order 16 (dated 9/10/2009);

- i) The unique circumstances of the ward preclude employment as a guardian for other clients.
8. "Good cause" and "exceptional circumstances" justifying additional remuneration do not include the usual and customary work required to establish and organize the guardianship during the first six months following appointment.
9. "Good cause" and "exceptional circumstances" justifying additional remuneration do not include time spent applying for authorization to exceed the \$300 monthly fee.
10. A finding of "good cause" and "exceptional circumstances" justifying reasonable additional remuneration is to be determined on a case-by-case basis by the Probate Division judge assigned to the case in the exclusive exercise of authority granted by Circuit Court - Probate Division Rule 88.
11. Petitions to exceed the \$300 monthly fee must describe, with specificity, the circumstances which justify additional remuneration, including a detailed description of the work performed and the time expended in performance of the exceptional services. Petitions shall be reviewed without necessity of a hearing unless so ordered by the court.
12. No funds shall be removed from the ward's account(s) for payment of exceptional fees absent a court order. Only after a fee petition has been approved by the Probate Division may the guardian be compensated for fees arising from exceptional circumstances.
13. No fees may be collected for services in the months preceding appointment by the Probate Division.
14. The Probate Division may, upon its own initiative, order a guardian to justify monthly billing of \$300 to the ward if it believes that the standards set forth in Probate Court Administrative Order 16 (dated 9/10/2009) or industry best practices, see NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE (4th ed. 2013); MODEL CODE OF ETHICS FOR GUARDIANS (1988), have been breached.
15. Guardians shall disclose in writing to the ward the fee standards at the time of first appearance; and provide a projection of expected annual fees within 90 days of appointment. See NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 22.IV (4th ed. 2013).
16. The Guardian shall notify the Court, in writing, any likelihood that the ward's funds will be exhausted and advise the Probate Division whether the guardian will seek removal. A Guardian may not abandon the ward when estate funds are exhausted and shall make appropriate succession plans. See NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS OF PRACTICE 22.V (4th ed. 2013).

17. This Order is not to be construed to replace the requirements for certification set forth in Probate Court Administrative Order 16 (dated 9/10/2009).
18. The standards set forth above are effective as of the date of this Order.

December 11, 2014

Edwin W. Kelly
Circuit Court Administrative Judge

CHAPTER 152
SB 341 - FINAL VERSION

03/24/2016 1041s
20Apr2016... 1281h

2016 SESSION

16-2792
05/10

SENATE BILL **341**

AN ACT establishing a committee to study guardianship in New Hampshire.

SPONSORS: Sen. Carson, Dist 14; Sen. Cataldo, Dist 6; Rep. Hopper, Hills. 2; Rep. Wall, Straf. 6

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes a committee to study guardianship in New Hampshire.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/24/2016 1041s
20Apr2016... 1281h 16-2792
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT establishing a committee to study guardianship in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

152:1 Committee Established. There is established a committee to study guardianship in New Hampshire.

152:2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Four members of the house of representatives, one of whom shall be a member of the children and family law committee, 2 of whom shall be members of the judiciary committee, and one of whom shall be a member of the health, human services and elderly affairs committee, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

152:3 Duties. The committee shall study guardianship in New Hampshire to determine:

I. Whether guardians should be registered and licensed by the state.

II. Who should have jurisdiction over guardians.

III. The number of guardians in New Hampshire and how the work of a private guardian differs from that of a public, court appointed guardian.

IV. The requirements, if any, for someone to become a guardian.

V. Whether New Hampshire should adopt, or adopt with amendment, the National Guardianship Association Standards of Practice.

152:4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

152:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2016.

152:6 Effective Date. This act shall take effect upon its passage.

Approved: May 27, 2016

Effective Date: May 27, 2016

State of New Hampshire

Circuit Court

Administrative Order 2016-0011-TD

Order of Reassignment to Trust Docket

Pursuant to RSA 490-F:2 and Circuit Court Administrative Order 2014-04, *In re: Guardianship of Barbara L. Cook* – Case No. 317-2011-GI-00421, and *Estate of Barbara L. Cook* – Case No. 317-2016-ET-00201, currently pending in the 6th Circuit – Probate Division – Concord, are reassigned to the Trust Docket, to be heard and decided by Deputy Administrative Judge of the Circuit Court David D. King, Presiding Judge of the Trust Docket.

All future pleadings shall be filed and hearings shall be conducted at the 7th Circuit – Probate Division (Dover) unless otherwise ordered by the Presiding Judge.



Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

June 10th, 2016

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State of New Hampshire


Circuit Court

Administrative Order 2016-0009-TD

Order of Reassignment to Trust Docket

Pursuant to RSA 490-F:2 and Circuit Court Administrative Order 2014-04, *In re: Estate of Daisy E. Hale*, Case No. 317-2014-ET-00648; *Trust Under Will of Daisy Hale, f/k/a Mary Mangavich*, Case No. 317-2015-TU-00483; and *Trust of Daisy E. Hale*, Case No. 317-2015-TU-00117, currently pending in the 8th Circuit – Probate Division – Merrimack, are reassigned to the Trust Docket, to be heard and decided by Deputy Administrative Judge of the Circuit Court David D. King, Presiding Judge of the Trust Docket.

All future pleadings shall be filed and hearings shall be conducted at the 7th Circuit – Probate Division (Dover) unless otherwise ordered by the Presiding Judge.


Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

April 15th, 2016

State of New Hampshire

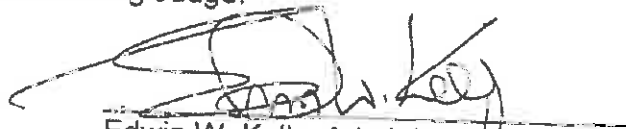
Circuit Court

Administrative Order 2016-0006-TD

Order of Reassignment to Trust Docket

Pursuant to RSA 490-F:2 and Circuit Court Administrative Order 2014-04, *In re: Guardianship of Michael A. Peters*, Case No. 317-2013-GI-0001; *Special Needs Trust of Michael Peters*, Case No. 317-2013-TU-00233; and *Special Needs Trust of Michael A. Peters*, Case No. 317-2015-TU-00178, currently pending in the 6th Circuit – Probate Division – Concord, are reassigned to the Trust Docket, to be heard and decided by Deputy Administrative Judge of the Circuit Court David D. King, Presiding Judge of the Trust Docket.

All future pleadings shall be filed and hearings shall be conducted at the 7th Circuit – Probate Division (Dover) unless otherwise ordered by the Presiding Judge.


Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

February 23, 2016

The State of New Hampshire Circuit Court



Edwin W. Kelly
Administrative Judge

David D. King
Deputy Administrative Judge

Circuit Court Administrators
Gina Belmont, Esq., *Sr. Administrator*
Paula Hurley, Esq.
Patrick W. Ryan, Esq.
Brigette Siff Holmes, Esq.

September 24, 2015

Ms. Jeannette Marino
75 South Main Street #7, Box 616
Concord, N.H. 03301

Re: Status as Professional Guardian

Dear Ms. Marino:

Professional guardians are appointed by the Probate Division from a list maintained by, and under the supervision of, the administrative judges of the Circuit Court. Probate Court Administrative Order 16 (2009) ("Administrative Order 16") sets forth the criteria for professional guardians. Since the former probate court has been absorbed into the Circuit Court as of July 1, 2011, it is now the Circuit Court which has jurisdiction over professional guardians. See RSA 464-A:2: XIV-b; 490-F:17, :18.

Administrative Order 16 provides at ¶16 that all professional guardians are "subject to removal from the list of approved guardians for non-compliance with any of the criteria for professional guardians or for good cause as determined by the Probate Court [now Circuit Court] Administrative Judge." Administrative Order 16 also specifies that professional guardians must, *inter alia*, adhere to the National Guardianship Association *Standards of Practice*, *id.* ¶ 3 ("NGA Standards"), act in compliance with all applicable statutes, regulations and court rules, *id.* ¶ 7, and submit fees for court review and approval. *Id.* ¶11. As such, failure to perform in conformity with these requirements may form the basis for sanction by the administrative judge, including removal from the list of approved professional guardians.

Two cases have been referred to my attention by Circuit Court trial judges. In each of the cases discussed below, orders have issued which raise serious question about your suitability to continue as a professional guardian in the State of New Hampshire. Since both cases involved appeals to the New Hampshire Supreme Court, I have withheld taking administrative action pending the outcome of those appeals. Both matters have now reached conclusion and the trial court findings and orders constitute final binding orders.

The purpose of this letter is to advise you of my intention to consider the imposition of sanctions against you, up to and including the removal of your name from the court's list of approved professional guardians.

The cases and circumstances which give rise to my concern are as follows:

Guardianship of Margarete Payan (317-2011-GI-00490): In this case, Judge Leonard made findings that you violated multiple standards of the National Guardianship Association (NGA). Administrative Order 16 requires adherence to the NGA Standards. This followed a hearing held after Judge King, the deputy administrative judge, received a letter of complaint from Meg Miller, R.N., in which she stated that in her twenty four years as a registered nurse and sixteen years as licensed nursing home administrator, she had "never witnessed anything close to this abuse by a private or public guardian." Among Judge Leonard's findings were that you removed the ward from the home where she had resided for more than four years under the false pretense that you were taking her to lunch. The Office of Public Guardian (OPG) was appointed as successor guardian and returned Ms. Payan to her previous living environment upon appointment. Judge Leonard's order, and its findings, are incorporated herein by reference. You appealed the case to the Supreme Court on numerous grounds. See In re Guardianship of M.P., No. 2014-0655.(Unpublished order dated Sept. 14, 2015). The Supreme Court affirmed Judge Leonard's order, including her findings that you violated at least eight NGA Standards. Id. at 4; see also In re Guardianship of M.P., No. 317-2011-GI-00490, Order at 3-5 (N.H. Prob. Div. Aug. 5, 2014).

Guardianship of John Lazott (317-2013-GI-00260): In this case Judge King was requested to approve your fees, over and above \$2,193.16 which you had reported on the first and final account. Specifically you requested another \$4,641.19 to be paid from future social security income. In the course of denying these fees as being unreasonable, Judge King learned that you had been paid \$4,800.05 in addition to the fees reported in the first and final account. The account, which was filed under oath, did not disclose the fact that you had received the additional \$4,800.05, during the period covered by the accounting. In asking the court for additional fees from future income of the ward, you intentionally misrepresented the fees already taken. This failure to disclose income violates both the NGA Standards as well as Probate Division Rules. See Cir. Ct. – Prob. Div. R. 88 & 108. Judge King's order dated April 29, 2015, and the other orders referenced therein, are incorporated herein by reference.

In addition, while you blamed the court for delays in the case, your five-month delay in filing a request for court appointed counsel for Mr. Lazott cost the state several hundred dollars, when you authorized counsel fees to be paid at inflated rates, over and above what would have been paid had you made a timely request for the state to pay the fees at indigent rates. Your appeal to the Supreme Court, see In re Guardianship of J.L., Case No. 2015-0281, was withdrawn by order dated August 12, 2015. As indicated earlier, Judge King's orders, including the finding of "significant breaches of fiduciary duties relative to reporting and accounting for fees," see Guardianship of John Lazott, No. 317-

2013-GI-00260, Order at 13 (N.H. Prob. Div. Apr. 6, 2015), now constitute binding final orders.

Given the findings made in these two serious matters, as indicated earlier, I will be considering whether and what sanctions should be imposed, including whether you should be removed from the list of approved guardians, pursuant to Administrative Order 16. Before deciding this issue, you will have an opportunity to be heard. Accordingly, I will conduct a non-evidentiary administrative hearing in the probate division courtroom at the Merrimack County Building in Concord on October 23, 2015 at 9:30 a.m. You may be represented by counsel and you will be given the opportunity, through counsel or directly, in writing or by sworn testimony and/or memoranda, to show cause why sanctions, including the removal of your name from the Circuit Court list of approved professional guardians, should not be imposed. One hour has been allotted for this hearing.

To repeat for purpose of clarity, the findings of the probate division in the Payan and Lazotte cases are final and will not be re-litigated during this hearing.

Very truly yours,



Edwin W. Kelly
Administrative Judge



ATTORNEYS AT LAW

DAVID F. EBY
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EBY@DEVINEMILLIMET.COM

October 19, 2015

Hon. Edwin W. Kelly
N.H. Circuit Court
45 Chenell Drive, Suite 2
Concord, NH 03301

Re: Jeannette Marino – Status as Professional Guardian
Response to Letter Dated September 24, 2015

Dear Judge Kelly:

This office has just been retained by Ms. Jeannette Marino with respect to a hearing scheduled before Your Honor on October 23, 2015. As set forth in Your Honor's letter of September 24, 2015 giving notice of the hearing, the purpose of the hearing is to determine whether and what sanctions should be imposed against Ms. Marino, including removal from the list of approved professional guardians, in light of two cases of misconduct referred to Your Honor by other Circuit Court trial judges. I am writing to request a continuance (and to request additional hearing time), and to raise certain procedural questions directed at the manner in which the hearing will be conducted.

With respect to the need for a continuance generally, my office was retained this past Thursday, October 15. Given the volume of material underlying the two cases which will be the subject of the hearing, and the seriousness of the potential sanction of removal from the list of approved guardians which directly impacts Ms. Marino's livelihood, we respectfully request a continuance of at least sixty (60) days to properly prepare to represent Ms. Marino.

With regard to the conduct of the hearing itself, it appears that Your Honor's authority to conduct the hearing arises from Administrative Order 16. Although paragraph 15 of Administrative Order 16 provides that a professional guardian is subject to removal from the court-approved list for non-compliance with any required criteria or for good cause shown, we have been unable to locate any other administrative orders, rules or statutes in the State of New Hampshire giving any guidance on the procedures to be followed in conducting disciplinary hearings against professional guardians. The lack of procedural guidelines raises serious due process concerns.

In addition, other than possible removal from the list of approved guardians, there are no established rules outlining the possible sanctions which may be imposed for violation of the National Guardianship Association standards, which raises the issue of proper notice to Ms. Marino of sanctions that Your Honor may be considering or is legally authorized to impose.

Your Honor's letter states that the hearing will consist of a one hour non-evidentiary administrative hearing, but that Ms. Marino may be represented by counsel and give sworn testimony—which suggests it is in fact an evidentiary hearing. Numerous questions also arise regarding how Ms. Marino may present her case, including the following:

- (a) Is Ms. Marino entitled to call witnesses to testify on her behalf on the issue of her reputation, character and work history, including possibly having one or more judicial officers provide testimony?
- (b) Is Ms. Marino entitled to issue subpoenas to compel the attendance of witnesses?
- (c) Is Ms. Marino entitled to have an expert witness testify on her behalf?
- (d) What constitutes the record to be considered by Your Honor in reaching a determination, and will Your Honor require the sworn testimony of any witness?
- (e) Is Ms. Marino entitled to conduct further discovery, including depositions and requests for production of documents?
- (f) If witnesses are to be called and documents produced in advance, should witness and exhibit lists be provided in advance?
- (g) What is the burden of proof in establishing misconduct warranting disciplinary action, and who bears that burden?
- (h) Will the rules of evidence apply and/or guide the court in the conduct of this hearing?
- (i) What are Ms. Marino's rights of appeal or for further administrative or judicial review of any disciplinary action taken?

On the issue of sanctions, Your Honor concludes from a reading of Administrative Order 16 that failure to follow the criteria to be an approved professional guardian "may form the basis for sanctions ... *including* removal from the list ..." This statement implies that sanctions other than removal are possible, yet nowhere within Administrative Order 16 does it state that a professional guardian can be "sanctioned." Although sanctions short of removal from the list may be to Ms. Marino's advantage, there is nothing to indicate what factors might be considered nor what sanctions might be appropriate depending upon the severity of the misconduct, e.g., letter of reprimand, letter of admonishment, suspension, or monetary fine. Having such guidance not only gives proper notice, but could, for example, facilitate an agreement to accept discipline, particularly where the remedy is designed to ensure future compliance with duties, standards, and requirements for a professional guardian. Such remedies might include changes in method

Hon. Edwin W. Kelly

October 19, 2015

Page 3

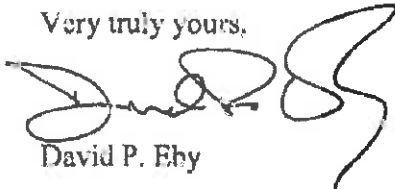
of practice, probation, restitution, additional training, consultation with other expert guardians, mentoring or an audit.

Factors that might be relevant in arriving at an appropriate level of disciplinary action might include: potential or actual injury caused by the misconduct; aggravating factors such as prior disciplinary action or pattern of misconduct, failure to cooperate, multiple offenses, refusal to acknowledge wrongdoing, vulnerability of the victim, and conduct rising to the level of criminal conduct; mitigating factors such as absence of prior disciplinary action, good faith effort to make retribute or correct mistakes, cooperation with disciplinary proceedings; whether there was an intent to benefit the guardian or another, or to deceive the court or cause serious injury to a party, or interference with the legal system; actions involving dishonesty, fraud or misrepresentation; gross incompetence. It is unknown what standards or factors Your Honor intends to rely upon in reaching a determination in this matter, making it difficult, if not impossible, to prepare an orderly presentation of evidence and to know whether witnesses or additional documents are necessary and should be obtained.

Ms. Marino is justifiably concerned, and wishes to address the court fully and completely, to comply with the court's requests, and to defend herself appropriately. Given the apparent severity of the contemplated sanctions (removal from New Hampshire's approved guardians list)—which would jeopardize her very livelihood—it is respectfully submitted that the issues outlined above need to be addressed in order to afford Ms. Marino adequate due process and to ensure a fair hearing. As it is unlikely these matters can be addressed prior to the hearing scheduled for October 23, if Your Honor is inclined to grant a continuance, we request that the October 23, 2015 hearing date be used as a structuring conference, which would allow the court and counsel to further discuss these important issues and to put in place a realistic time-line for these proceedings.

Thank you for your attention to this important matter.

Very truly yours,



David P. Ehy

DPE:vsb

cc: Jeannette Marino

State of New Hampshire
Circuit Court
Administrative Order 2015 – 14

[CONFIDENTIAL]

Pursuant to Supreme Court Rule 54 and the Circuit Court's supervisory duties over professional guardians under Circuit Court Administrative Order 16 (2009), see also RSA 464-A:2; XIV-b, 490-F:17; 18, a letter was sent to professional guardian Jeannette Marino, notifying her of referrals by two Circuit Court judges to the Administrative Judge concerning violations of the National Guardianship Association ("NGA") Standards and Circuit Court – Probate Division Rules in the Guardianship of Margaret Payan (No. 317-2011-GI-00490) and Guardianship of John Lazott (No. 317-2013-GI-00280) matters. See Letter from the undersigned dated Sept. 24, 2015. Ms. Marino was given notice of an administrative hearing to be held on October 23, 2015 at 9:30 a.m. and affording her an opportunity to be heard and to show-cause why sanctions should not be imposed in light of the misconduct found by the Circuit Court in the above-mentioned cases.

Ms. Marino, through her counsel, requested a continuance of the proceeding by letter dated October 19, 2015. See Letter from David P. Eby, Esq. (Oct. 19, 2015). That request was granted orally on October 21, 2015, and this Order confirms that the administrative hearing has been postponed.

In light of Attorney Eby's letter, and specifically his request for additional guidance and a structuring conference, the Honorable Gary R. Cassavechia is assigned to sit specially to conduct administrative proceedings concerning the appropriate sanctions, if any, to be imposed upon Ms. Marino, and make recommendations regarding sanctions to the Administrative Judge.


Judge Cassavechia is granted the authority to: receive sworn and/or unsworn written and/or oral testimony and other evidence relevant to the imposition of sanctions; receive and consider submitted memoranda; establish appropriate procedural guidelines for the administrative proceedings before him; establish deadlines for submissions; schedule hearings as necessary; and make a final recommendation to the Administrative Judge.

To be clear, Judge Cassavechia will not reconsider the decisions of the probate division in the Payan and Lazott cases, as the findings contained therein constitute binding final orders. Rather, he has been assigned to provide a fair process through which recommendations regarding the appropriate sanction, including possible removal from the list of professional guardians, may be made to the Administrative Judge.

Any final decision on the appropriate sanction will be made solely by the Administrative Judge pursuant to Administrative Order 16.

Until further Order, any communication should be directed to the Administrative Judge at 45 Chenell Drive, Suite 2, Concord, New Hampshire 03301-8541.

October 22, 2015


Edwin W. Kelly
Administrative Judge
New Hampshire Circuit Court

STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2016-0253

Petition of Jeannette Marino

**APPEAL PURSUANT TO RULE 11 FROM A DECISION OF THE
ADMINISTRATIVE JUDGE OF THE NEW HAMPSHIRE CIRCUIT COURT**

RESPONSE BRIEF OF JEANNETTE MARINO

**Jeannette Marino, pro-se
75 South Main Street, #7-616
Concord, NH 03301**

(603) 226-6004

QUESTIONS PRESENTED

1. Whether the Administrative Judge's establishment of a disciplinary proceeding for professional guardians was an unsustainable act of discretion in that findings were based on the validity and reliability of probate court findings made on a on preponderance of the evidence, whereas the Petitioner's liberties at stake required clear and convincing evidence.
2. Whether the Administrative Judge's establishment of a disciplinary proceeding for professional guardians was an unsustainable act of discretion and authority under Sup. Ct. R. 54, and made plain error in that he failed to adhere to the requirements of Sup. Ct. R. 51.
3. Whether the administrative judge in setting up a disciplinary process, failed to properly establish or notice Petitioner of certain procedural considerations and parameters as they pertain to the New Hampshire Rules for Professional Conduct for attorney ("PCC") standards, including, but not limited to, standard of analysis, confidentiality and collateral estoppel, nor advise of his assertion removal from the list of professional guardians was inclusive of removal from all guardianship matters.
4. Whether the administrative judge's argument the issues are now moot, fails in light of new information from Center for Guardianship Certification ("CGC") and new information reflecting the issues are not dead

STATEMENT OF FACTS AND CASE

This matter arises from an order of the Circuit Court Administrative Judge Edwin Kelly, which permanently removed Jeannette Marino, Petitioner, from all existing guardianship cases and effectively strips her of her entire livelihood and prevents her from ever working again in any capacity related to Petitioner's career of seventeen (17) years.

Petitioner now submits this response brief, pro-se, in order to respond to issues raised in the brief of the administrative judge and point out plain error that has effected substantial rights of the Petitioner. Sup. Ct. R 16-A. Specifically, failure to adhere to the requirements of Sup. Ct. R. 51, when acting in his authority as administrative circuit court judge under Sup. Ct. R. 54 and he failure to notice Petitioner of the use of New Hampshire Professional Conduct Rules for attorneys, in conjunction with failure to notice Petitioner of the administrative judges belief his authority to remove Petitioner from the list of professional guardians extended to removal from all guardianship matters, thereby creating circumstances that caused Petitioner to be stripped of her profession, permanently banned from ever practicing again and very publically destroyed the reputation of Petitioner, all important liberty rights. Petitioner also now presents certain new information not previously available.

Facts contained in Petitioner's brief and the brief filed by the Administrative Judge are hereby incorporated into this Response, to the extent such facts are subject to further challenge by a clear and convincing standard of evidence.

SUMMARY OF THE ARGUMENT

The brief of the administrative judge raises several arguments, but almost the entire Statement of the Case and Facts is predicated on the validity and reliability of the findings in four (4)¹ underlying probate court matters, with such findings made based on a preponderance of the evidence. The administrative Judge further argues, “Petitioner did not challenge the administrative judge’s authority to conduct disciplinary proceedings, nor did she question the administrative judges’ authority to decertify her as a professional guardian”, an argument predicated on the basis that Petitioner was fully informed and advised of certain procedures, considerations, authority and sanctions, not noticed until issuance of the hearing judge’s recommendation (“Recommendation”) A-25 and the administrative judge’s disciplinary order (“Order”) A-2, and not noticed prior to Petitioner’s opportunity to request, assert or move for additional procedural and other rights.

The factual circumstances of the underlying probate court findings, relied on as the basis for analysis, conclusions, findings and eventual sanctions, are simply not supported by the record in the underlying matters so as to support conclusions the Petitioner was “lacking candor”, A47 “demonstrated a stunning lack of professional competency”, A38 “told a bold-faced lie”, A4, and is possibly “sinister”. A43.

Where important individual liberties, such as an individual’s livelihood, career and reputation, are at stake, the standard of evidence must be clear and convincing, to ensure fairness and all defenses possible. Failure to properly notice Petitioner of either the application of the

¹ Citations to the records are as follow: A-refers to Appendix in Petitioner brief, SA-refers to Appendix in the Administrative Judge’s brief and AR- refers to Appendix contained of this brief, TR refers to the transcript of the disciplinary proceeding.

PCC model of discipline and sanctions, including effective disbarment- by removal from all guardianship matters- and public dissemination of both the Recommendation and Order, in conjunction failing to properly notice Petitioner or her counsel with the Administrative judge's overreaching expansion of the plain reading of Administrative Order 16, SA39, resulted in a denial of due process and failed to consider Petitioner's right to assert additional rights and safeguards not evident as necessary during the structuring of the disciplinary proceeding by the hearings judge.

Had either the hearing judge or the administrative judge properly and clearly noticed Petitioner of the adoption of certain procedural standards and assertion administrative authority extended past merely removing Petitioner from the list of professional guardians, Petitioner would have requested and moved for additional rights prior to cooperatively engaging in the disciplinary process. More specifically, Petitioner would have requested or moved for a clear and convincing standard of evidence, confidentiality and the barring of collateral estoppel. If allowed, assertion of these rights would have allowed evidence not presented to the hearing judge to be brought forward, thereby refuting findings in the underlying matters, that most assuredly would have resulted in different analysis, conclusions, findings and eventual sanctions which included removal from all existing guardianship matters and public dissemination of both the Recommendation and Order.

ARUGUMENT

- I. **THE ADMINISTRATIVE JUDGE EXERCISED AN UNSTAINABLE ACT OF DISCRETION AND P LAIN ERROR IN THAT HE WAS NOT AUTHORIZED BY STATUTE OR COURT RULE TO ESTABLISH A DISCIPLINARY PROCESS WITHOUT FIRST ADHERING TO SUP. CT. R. 51**

a. **The Administrative Judge Lacked Authority under Sup. Ct. R. 54 to Remove Petitioner from Existing Guardianship Matters Without Adhering to Sup. Ct. R. 51**

A plain reading of RSA 464 A- XIV-b, establishes Sup. Ct. R. 54 grants authority to the chief justice to “establish the criteria for professional guardians”, with such criteria being set forth in Administrative Order 16. A plain reading of Administrative Order 16 establishes criteria which, in part, authorizes the administrative judge to “remove a guardian from the list of professional guardians for non-compliance or for good cause”.

Article 73-a, of the New Hampshire Constitution establishes:

“The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the Supreme Court justices, make rules governing the administration of all courts in the state and the *practice and procedure to be followed in all such courts*. The rules so promulgated shall have the force and effect of law.”. Art. 73-a.

Based on the foregoing, any extension of discretionary authority granted to the administrative judge to either extend his authority beyond the parameters of Sup. Ct. R 54, requires adherence to the rule making process as outlined by Sup. Ct. R. 51, intended and “adopted to aid the Supreme Court in discharging its rulemaking responsibility in the areas of procedure in all courts and shall apply to all amendments or additions to such rules.”. Sup. Ct. R. 51(a). Sup. Ct. R. 51(c), establishes procedure to adopt, amend or repeal a court rule, ensuring any rule amendments or modification, are subject to appropriate, judicial or legislative reviews and open public debate to ensure fairness, equity and input by the public and other interested parties.

II. THE ADMINISTRATIVE JUDGE EXERCISED UNSUSTAINABLE DISCRETIONARY AUTHORITY AND COMMITTED PLAIN ERROR WHEN HE FAILED TO PROPERLY NOTICE PETITIONER OF THE RISK TO HER PROFESSION, LIVELIHOOD AND REPUTATION PRIOR TO COMMENCEMENT OF THE DISCIPLINARY PROCEEDINGS THEREBY DENYING ESSENTIAL RIGHTS TO DUE PROCESS

a. Failure to Properly Notice the Application of New Hampshire Rules Professional Conduct for Attorneys

The administrative judge, by Administrative Order 2015-14, in part directed the hearings judge to “establish procedural guidelines for the administrative proceedings before him.” It was not until issuance of the Recommendation by the hearings judge that Petitioner became aware the court would “adopt[s] as a guiding tool in making its decision, the standard used to evaluate the appropriate sanction when an attorney has violated the New Hampshire Rules of Professional Conduct.” A-50. Likewise, the Administrative Judge did not notice he would also be adopting PCC standards until issuance of Administrative Order 2016-007. A-4

b. Standard of Evidence

Sup. Ct. R. 37A III (d)(1), professional conduct committee requires the application of an evidentiary standard of “clear and convincing”. The harshest sanction allowable under the PCC disciplinary process—disbarment and a lifetime ban from practice—mandates a standard of clear and convincing evidence due to the potentially devastating consequences on careers, livelihoods and reputations.

The hearings judge applied a standard of a preponderance in the disciplinary proceeding, but acknowledged “violations of the attorney code of conduct must be demonstrated by clear and convincing evidence” A-81.

Had the hearings judge or administrative judge noticed adoption of the PCC standards for analysis, consideration of sanctions and dissemination of findings, Petitioner would have requested and moved for additional procedural rights similar to those allowed under PCC rules including a clear and convincing standard which would have barred estoppel as the standard used in the original findings was barely a preponderance.

c. Application of Estoppel

Administrative Order 2015-14, AR1 initiating the disciplinary process imposed collateral estopped specifically barring Petitioner from entering into evidence any witnesses, documentation or testimony that would contradict or refute the findings and conclusions in the Matter of M.P. and the Matter of J.L.:

“To be clear, Judge Cassavchia will not (his emphasis) reconsider the decisions of the probate division in the Payan and Lazotte cases, as the findings contained therein constitute binding final orders.” AR1

Collateral estoppel was reiterated by Judge Cassavechia during testimony and again in his recommendation:

“Let me interrupt here. I just want to be sure that I’m not relitigating”. TR35
and;

“While in the interests of fairness these exhibits and testimony were allowed, counsel and Ms. Marino arguably strayed close to, if not into the realm of re-litigating the findings of the Probate Division and Supreme Court. To the extent that any such evidence contradicted those findings, as opposed to properly assessing matters concerning sanctions, the undersigned gave that evidence little, if any weight”. A30.

In Bruzga’s Case No. LD-95-009, the PCC sought collateral estoppel in connection with findings made in superior court for which Bruzga was being disciplined. The Court concluded that

collateral estoppel, “may apply when the burden of proof in a prior proceeding equals or exceeds the clear and convincing burden governing the disciplinary proceeding.” The Court further held; “the doctrine of offensive collateral estoppel may be applied in attorney discipline proceedings when a prior proceeding was subject to a burden of proof equaling or exceeding the clear and convincing burden governing disciplinary proceedings”

In the disciplinary matter, the burden of proof in prior proceedings was a preponderance of the evidence. Had the clear and convincing evidence standard been applied in the disciplinary matter, as was proper when using PCC standards, estoppel would have been barred.

Petitioner asserts that had disciplinary procedures of professional guardians been in place at the time the underlying matters were heard before the probate court, thus making Petitioner aware of the potentially devastating impact that came to pass through this disciplinary process, Petitioner would have pursued additional hearings and asserted different rights in order to properly prepare with counsel, ensure a proper record and correct any misapprehensions of fact and points of law².

III. WERE COLLATORAL ESTOPPLE NOT APPLIED IN THIS MATTER, PETITIONER WOULD HAVE EXERCISED ADDITIONAL RIGHTS IN PROTECTION OF THE LIBERTIES AT STAKE BY PRESENTING NUMEROUS DOCUMENTS, WITNESSES AND OTHER TESTIMONY REFUTING THE UNDERLYING FINDINGS

The application of collateral estoppel in the disciplinary proceedings established by the administrative judge, barred Petitioner from presenting any evidence, witnesses, documents or testimony refuting the underlying findings for which Petitioner was being disciplined. Petitioner

² In the Matter of M.P., Petitioner was given 4 calendar days’ notice of hearing, encompassing one business day due to the holiday and did not assert her rights to proper 10 day notice for hearings, Cir. Ct. R. 60. Considering the eventual consequences of the findings by the probate court, had Petitioner been aware of the potential consequences, she would have asserted her right to proper notice in order to ensure proper preparation for the hearing scheduled with no Motion or Petition before the court but rather a letter not forward to Petitioner by the filing party.

now offers the following information and attached supporting documentation refuting the basis upon which the hearings judge and the administrative judge concluded Petitioner has an “inability to communicate with candor”, “demonstrated a stunning lack of professional competency”, A38 “told a bold-faced lie” A4 and is possibly “sinister”. A43.

The Administrative Judge’s letter of September 24, 2014, A87, initiating review of all guardianship matters to which Petitioner was appointed, was issued as a result of probate court proceedings in the Matter of M.P. The administrative judge further requested a list of each guardianship matter, date of the last ward visit and gave Petitioner the option to respond to allegations and findings by the probate court in the Matter of M.P.

In response Petitioner submitted a certificate of appointment for each matter noting the month and date of the last visit³ and advised Petitioner had not been removed from any guardianship matter. Although not requested, Petitioner disclosed, she had had been removed as Trustee in a non-guardianship matter, explaining the circumstances and provided supporting documentation of those circumstances. A113.

In the Matter of M.P.

In response the option to offer an explanation of Petitioner’s actions in the Matter of M.P., Petitioner submitted detailed response to each finding by the probate court provided numerous documents and supporting information reflecting Petitioner acted in line with well-established clinical and ethical guidelines. A90.

³ Both the Recommendation and Order made reference to my failure to indicate a complete date which included the year, as reflective of my dishonesty and incompetence. For clarification, the year was omitted as Petitioner presumed the administrative judge would realize the visit had taken place in 2014.

Review of this submission does not support a conclusion the Petitioner “acted with callous disregard”, nor that “she engage in subterfuge and lies”, A3. Petitioner’s willingness to explain her actions in such detail reflects great candor in going above and beyond in preparation of the submission to the Administrative Judge and reflects a willingness to explain and support that each her decisions were carefully considered and well within the standard of professional care rather than the severe conclusions reach by both the hearing judge and administrative judge.

Due to the estopple imposed in the disciplinary matter, none of this evidence could be presented to the hearing judge. There is no indication this submission was provided to the hearings judge, which leaves open the question as to whether he may have reached a different conclusion regarding Petitioner’s intentions and actions.

Petitioner finds it even more disturbing that despite being in possession of, and reviewing this information a year prior to the disciplinary hearing the Administrative Judge did not respond to what he now states are concerns so serious as to characterize Petitioner a danger to the public.

The Matter of TB.

Had Petitioner been properly noticed of the Matter of T.B. prior to the day of the hearing and collateral estopple not been imposed. Petitioner would have provided the hearings judge records establishing that all eight accountings filed in the Matter of T.B., were approved by the probate court AR2 with no objections from any party, and no findings of excessive or unreasonable fees. Petitioner also would have called counsel of record and successor guardian to testify as to stipulation referred to in Petitioner’s letter to the Administrative Judge. A114. Notwithstanding Petitioners unsolicited disclosure of removal as Trustee in the matter of T.B.,

provision of an explanation of the circumstances and supporting documentation forwarded to the administrative judge did not respond with any concerns or further inquiries.

Had Petitioner been allowed these submissions, testimony and witnesses, the hearings judge may have reached a different conclusion rather than findings Petitioners actions "further erode[s] confidence in her overall ability to address Probate Division judges with candor . . ."A47. or conclusion by the Administrative Judge that Petitioner's explanation "was nothing short of a bold-faced lie". A4.

The matter of J.L.

The Administrative Judge found the Petitioner

"intentionally attempted to recover a fee of \$1,100 as guardian over the person of J.L. when, in fact, she was only guardian over his estate. In her effort to explain her conduct to the court after it discovered the charge, she falsely claimed that the entry on the invoice she submitted for payment of this amount was at first for "mileage" and, subsequently, due to an "auto correct" error when typing in the amount. Both the trial judge and Judge Cassavechia found her explanation to lack credibility." A-3

The invoice submitted in the probate court proceeding, A391, reflecting the \$1,100 fee, is supported by Petitioner's original hand-written time sheet. (Client names redacted to ensure confidentiality). AR11. ⁴ As indicated by underline, for the month of September 2014, Petitioner traveled a total of 44 miles in the Matter of J.L., represented by three hand-written entries for four (4) miles on 9/5/13, four (4) miles on 9/6/13 and thirty-six (36) miles on 9/11/13. Review of the invoice reflects all time for tasks during the month are itemized by date, followed by a collective itemization of all expenses throughout the

⁴ Please see Affidavit of Authenticity 1.

month in the final lines of the invoices. Examination of expense entries reflect that only forty (40) miles were itemized with the other four (4) miles erroneously entered as “monthly guardian fees”. This documentation clearly refutes any proof of Petitioners “intentionally attempting to recover a fee” A3. to which Petitioner was not entitled and establishes clear and convincing evidence that Petitioners explanation was truthful.

Failure to provide Invoices

In his Recommendation, the hearings judge noted the probate court trial judge, “did not rule on the second motion for reconsideration, but gave Ms. Marino additional time to submit itemized invoices” A38 He additionally stated “The Probate Division deduced from an invoice *provided for the first time in February 2015 . . .*”. A39. On December 14, 2014 during the first and only hearing in the Matter of J.L., Petitioner provided to the probate court a complete set of invoices and receipt was acknowledged by the court. A337

The hearing judge weighted heavily, findings by the probate court trial judge, that Petitioner’s failure to submit invoices with the accounting was reflective of a possible attempt to “deceive the court”. A54.

Due to collateral estoppel, Petitioner was barred from admitting into evidence proof of instruction by the prior judge overseeing Petitioner’s matters for ten (10) years⁵, and had instructed Petitioner not to send invoices with accountings unless the Court requested them. This directive has been confirmed by receipt of a letter from Bradstreet, J, which states in part;

⁵ A14, letter forwarded to Judge Richard Hampe requesting his testimony at the disciplinary hearing. The letter, forwarded to the 6th Circuit Court.

“The guardian should have all invoices available but did not need to file them with the accounting unless the Judge had some questions and required them to be provided.” AR15. ⁶

Had Petitioner not been estopped from presenting evidence, witnesses and testimony as to her accounting practices and the submission of invoices, Petitioner believes that both the hearings judge and administrative judge would have reached very different conclusions as to the intent of any missteps, mistakes and oversights on the part of the Petitioner.

The matter of WR

The hearings judge states in his Recommendation, “Ms. Marino petitioned and was court appointed guardian over his person and estate as his wife, A.R., who is also disabled was unable to make decisions for her husband.” A44. In fact, both the Petitioner and A.R. signed the petition for guardianship and were appointed co-guardians. AR16. Despite her disabilities, A. R. was not incapacitated and merely required the assistance of a trusted person to assist her in making medical decisions for W.R. and addressing numerous financial and others issues due to her illiteracy and some cognitive limitations.

Of great concern is the hearing judges factual statement that the “matter recently came to the attention of the Probate Division staff after W.R. approached staff seeking documents from the file held by the court.” A44. Subsequent to the disciplinary hearing, Petitioners inquired to W.R., as to his appearing at the courthouse to look at his file. Both W.R. and his wife adamantly denied either one of them had been to the court to look at the file or for any other reason. This would make sense considering the guardianship had closed five (5) years prior.

⁶ Please see Affidavit of Authenticity 2.

IV. ARGUMENTS CONTAINED IN THE ADMINISTRATIVE JUDGES MOTION TO DISMISS ON THE GROUNDS OF MOOTNESS ARE UNFOUNDED

a. The Center for Guardianship Certification Policies are Subject to Modification

The Administrative Judge's Motion to Dismiss AR17 is premised on decertification by the Center of Guardianship Certification ("CGC") and the inability for Petitioner to acquire approval as a professional guardian in New Hampshire for failure to meet the criteria of Administrative Order 16.

The CGC is a for-profit organization with a stated purpose to develop and administer a credentialing process for guardians, to address issues related to renewal, suspension and revocation of credentials for guardians and to encourage, support and foster best practices in the provision of quality guardianship services. AR27. The purpose, authority and mission of the CGC is not based in any statute, rule or legal authority in any jurisdiction. Policies of the CGC are developed by the Board of Trustees, comprised of several professionals, who are credentialed as guardians in the jurisdiction where they work or provide services.

Whereas the CGC Board of Trustees is charged with the development, adoption and implementation of policy, as with any organization, these policies are subject to modification at any time and therefore, should not be treated as a hard and fast rule that cannot be modified, amended or changed at any time, thereby allowing Petitioner to then bring forward a response to the findings by the administrative judge, not previously submitted due to pending matters and limitations of CGC policies. In fact Petitioner's request to the CGC, AR28, for a modification of

policy allowing for a late response, has been responded to by the President of the Board of Trustees⁷, who has advised Petitioner's request has been put before the Board of Trustees. AR31

b. The Administrative Judge Intends to Continue Acting with Authority in the Disciplining of Professional Guardians

As cited in the administrative judge's Motion to Dismiss, "Generally ... a matter is moot when it no longer presents a justiciable controversy because the issues involved have become academic or dead." *Londonderry Sch. Dist. v. State*, 157 N.H. 734, 736 (2008). (quoting *In re Juvenile*, 2005-212, 154 N.H. 763, 765 (2007)).

The Motion to Dismiss further cites *Appeal of Hinsdale Fed'n of Teachers*, 133 N.H. 272, 276 (1990) (citation omitted), which states "Usually, unless a pressing public interest is involved, or the question is capable of repetition yet evading review, an issue that has already been resolved is not entitled to judicial intervention." D. (*quotation marks and citations omitted*).

By letter dated, October 21, 2016, AR32 a copy of which was forwarded to Petitioner, the administrative judge responded to Hugette Sorenson, regarding a complaint of impropriety in the Guardianship of Alma T,⁸ in connection with Petitioner's moving the ward.

With regard to the matter now before the Supreme Court, the administrative judge advised Ms. Sorenson:

"I am empowered to remove guardians from the list of approved professional guardians, or otherwise impose sanctions for misconduct, after appropriate hearing and factual findings by an impartial jurist." AR33.

The administrative judge further states:

⁷ Please refer to Affidavit of Authenticity 3.

⁸ It should be noted the Matter of Alma T closed in early 2015 upon the ward's death. The referred to impropriety took place in March 2014, almost 3 years ago.

“... in the event the Supreme court reverses my prior disciplinary decision and orders reinstatement of Ms. Marino as a professional guardian, your complaint would no longer be moot and I would consider further proceedings, . . .” AR33

Despite representations in the court’s Motion to Dismiss, the matters before this court are not moot. Here the issue is clearly not dead nor will the issue be resolved by dismissal of the appeal now before the Court.

CONCLUSIONS

The administrative judge’s establishment of the disciplinary process under Sup. Ct. R. 54, was a plain error, as modification or amendments to Sup. Ct. R. 54, requires adherence to procedures under Sup. Ct. R. 51.

The failure of the hearings judge and administrative judge to clearly establish and notice use and application of the New Hampshire Professional Conduct Committee standards, coupled with failure to clearly notice the extent of sanctions and what those sanctions would encompass, prior to the disciplinary proceedings, was a plain error, in that it Petitioner was denied the opportunity of assert certain rights with an understanding of the liberties at stake.

Had Petitioner noticed or been aware at commencement of the disciplinary proceeding, or even during the course of the underlying hearings, of the potential result in a disciplinary process could be and loss of her livelihood, reputation and permanently banning from for her profession of 17 years, Petitioner would have made very different decisions when proceeding in the underlying matters.

There is no more important right afforded citizens by the judiciary than the right to be heard in a fair and just manner. Failure to afford citizens due process can render the law an end to itself, so that that the value the law was intended to promote, is overlooked. The Court must guard against any individual citizen losing essential liberties, by ensuring all proceedings

conducted by the judiciary extend extensive protections to ensure fairness and the right to be heard. Even if this court were to affirm the duty of the administrative judge to protect the public by authority that trickled down from the legislature, the problems outlined above highlight the argument that it was proper to develop through the rules making process a clear and legally sustainable disciplinary process.

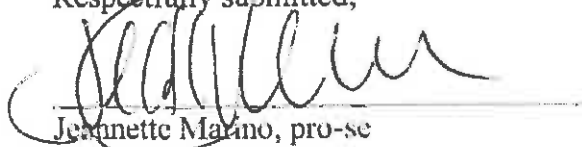
REQUESTED RELIEF

Relief previously requested in Petitioner's brief is incorporated herein. In light of the severe and extensive damage to Petitioner's reputation and the continued lack of any lawful disciplinary process and related procedures or authorized body to which this matter can be remanded, Petitioner requests she be granted the right to pursue a request for further relief to the Chief Administrative Judge of the Supreme Court, at such time is appropriate.

REQUEST FOR ORAL ARGUMENT

Petitioner maintains the prior request for a fifteen minute oral argument, but now advises counsel other than William Gramer, Esq., or the Petitioner herself will present the argument.

Respectfully submitted,

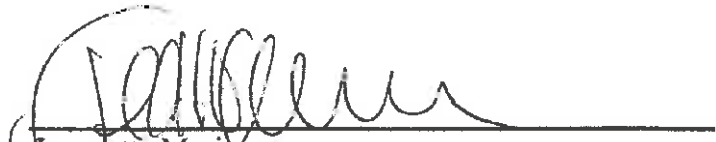


Jeannette Marino, pro-se
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CERTIFICATE OF SERVICE

On this day of January 20, 2017, I hereby certify that two copies of this brief and one copy of the appendices were forwarded by U.S. Mail to Counsel for the Respondent:

Laura F. B. Lombardi
Office of the Attorney General
33 Capitol Street
Concord, NH 03301


Jeanette Marino

STATE OF NEW HAMPSHIRE

CIRCUIT COURT ADMINISTRATIVE ORDER 2016-007

IN RE: JEANNETTE MARINO DISCIPLINARY MATTER

ORDER

Pursuant to Circuit Court Administrative Order 2015-14, a Disciplinary Recommendation in this matter was submitted on April 7, 2016 by Judge Gary Cassavechia. See No. 317-2015-AP-0001 (Index #18). The Recommendation recites in great detail the facts found by Judge Cassavechia, two trial judges and, in one case, confirmed by the New Hampshire Supreme Court. See In re: Guardianship of M.P., No. 2014-0655 (Unpublished Order dated September 14, 2015).

Based upon those findings, Judge Cassavechia has recommended that:

1. Ms. Marino be suspended from the approved list of professional guardians for a period of at least two years, effective immediately;
2. A report be filed with the appropriate certification authorities of the National Guardianship Association and/or the Center for Guardianship Certification; and
3. Ms. Marino be afforded the opportunity to petition for reinstatement after the suspension period.

I accept the findings upon which Judge Cassavechia based his recommendations; however, for the reasons which follow, I respectfully disagree with those recommendations and order an immediate and permanent removal of Jeannette Marino from the approved list of professional guardians.

I. Findings

The following findings against Ms. Marino have been judicially determined after multiple hearings in the trial courts, the New Hampshire Supreme Court and before Judge Cassavechia in this disciplinary process:

- She intentionally and improperly paid fees to herself, and subsequently misrepresented those fees in an account filed with the court under oath, in violation of Circuit Court—Probate Division Rules 88 and 108, as well as multiple standards of the National Guardianship Association (the "NGA Standards"). The fees were taken from funds that represented the retroactive Social Security payment sent to the facility where her ward was living at the time. See Guardianship of J.L., No. 317-2013-GI-00260;

- She intentionally and improperly paid fees, without the approval of the court, from a ward's estate to a private attorney hired by the guardian and paid "market rates" after the ward had been found indigent and approved for court-appointed counsel. The improper payment was later found by the trial court to have resulted in an overpayment of \$1,452.00, which, as the court (King, J.) noted in its order, would not have been approved had it been properly submitted to the court for approval prior to payment, as required by law. See id.;
- She submitted charges for her services as a professional guardian found by the trial court (King, J.) to be facially unreasonable, given that the fees amounted to 170% of the ward's total assets. See id.;
- She intentionally attempted to recover a fee of \$1,100.00 as guardian over the person of J.L. when, in fact, she was only the guardian over his estate. In her effort to explain her conduct to the court after it discovered the charge, she falsely claimed that the entry on the invoice she submitted for payment of this amount was at first for "mileage" and, subsequently, due to an "auto correct" error when typing in the amount. Both the trial judge (King, J.) and Judge Cassavechia found her explanation to lack credibility. See id.; Disciplinary Recommendation at 18-19;
- She suddenly and inappropriately removed an elderly woman with dementia, over whom she had been appointed as guardian, from a nursing home facility in which she had become comfortable to another facility. The trial court (Leonard, J.) found her actions to have been done with "a callous disregard for [the ward's] needs and requests..." Ms. Marino was further found to have engaged in subterfuge and lies directed toward the ward and professional staff at the facility to accomplish this inappropriate removal from the facility. Based upon her conduct, she was removed as guardian, for cause, by the trial judge, and the actions of the guardian were ultimately reversed. The removal was upheld by the New Hampshire Supreme Court. See In re Guardianship of M.P., No. 2014-0655 (September 14, 2015);
- She executed a document which had the effect of appointing herself as agent, under a general power of attorney, for a developmentally disabled individual ("W.R."), over whom she served as guardian, while he was still under guardianship. The document was witnessed by the ward's wife, who was similarly disabled, and notarized by Ms. Marino. See Guardianship of W.R., No. 317-2010-GI-00444. Judge Cassavechia found that the document was obviously defective, endangered the validity of all transactions completed during its roughly six-year existence, and highlighted the public policy concern of a professional guardian arranging for the grant of broad agency powers for herself that will extend beyond the termination of the then-existing guardianship, without any oversight by a court or even the participation of an independent notary. See Disciplinary Recommendation at 21; and,
- She demonstrated a complete lack of candor to the undersigned in my capacity as her appointing authority when, in September 2014 and in the course of an administrative investigation into her conduct as a professional guardian, I directed her to forward a list

of any guardianships from which she had been removed other than the Guardianship of M.P. In her response, she indicated that she had never been removed as guardian but had been replaced, as "the result of an agreed to Stipulation", as Trustee for a Special Needs Trust in the case of Guardianship of T.B., No. 317-2010-GI-00337 and the Special Needs Trust of T.B., No. 317-2010-TU-00853. In point of fact, Judge Cassavechia found that Ms. Marino had not been removed by agreement, but rather had been removed as Trustee by the court for cause, including regularly charging excessive and unreasonable fees. See Disciplinary Recommendation at 22. Indeed, Judge Cassavechia observed that she filed a Motion for Reconsideration of that decision. Id. In short, her assertion that her removal as Trustee was the "result of an agreed Stipulation" was nothing short of a bold-faced lie made directly to her appointing authority in the course of an investigation into her conduct.

II. Analysis

Judge Cassavechia's review of this matter was exhaustive, as were those of the trial judges in each of the underlying cases which are the subject of this disciplinary process. I will not repeat the details of the findings except as necessary to support my decision as to the sanctions to be imposed. Reference should be made to those orders and the Disciplinary Recommendation for more detail. Judge Cassavechia based his recommendation for sanctions on an analysis of the standard utilized in attorney discipline matters. In re: Richmond's Case, 153 N.H. 729, 743 (2006).

I believe the fiduciary responsibility of a guardian to a ward is significantly different than that of an attorney toward a client and should require a higher standard of scrutiny in cases where improper conduct is alleged to have occurred. The most obvious difference between the two professional relationships is that, by the very definition of guardianship, the guardian is always acting on behalf of someone who lacks the capacity to act for themselves. See RSA 464-A:1 (purpose). Indeed, the two primary cases forming the basis for this disciplinary action are a clear demonstration of the vulnerability of every ward for whom a guardian is appointed and speak loudly and clearly in favor of a higher standard. Having said that, however, the articulation of that higher standard is not mine to make in the context of this case. I have chosen, therefore, to review the recommendations for sanctions using the attorney discipline standard, as suggested by Judge Cassavechia.

I also make note of his decision to apply a preponderance of the evidence standard in making his recommendation. See Scheduling Order at 12-13 (November 24, 2015)(Index #4). Judge Cassavechia informed Ms. Marino that this was to be the standard used and gave her an opportunity to object. Id. at 2. None was forthcoming. See Structuring Conference Memorandum (Index #5). Judge Cassavechia selected that standard of proof in light of the New Hampshire Supreme Court's decision that this was appropriate in the context of discipline of psychologists. See Petition of Grimm, 138 N.H. 42, 49-51 (1993), and the Washington Supreme Court's observation that given the critical need to "effectively regulate guardians so as to protect the most vulnerable individuals," a preponderance standard was appropriate. In the Matter of the Disciplinary Proceeding Against Petersen, Professional Guardian, 329 P.3d 853, 863 (Wash. 2014); see Scheduling Order at 10, 12-13. In this disciplinary matter, the Circuit Court has a duty to protect wards, who, by definition, are incapacitated and dependent upon the professionalism and ethics of the guardian appointed over them, and thus use of the preponderance standard by Judge Cassavechia was appropriate. Cf. In re:

Reiner's Case, 152 N.H. 163, 168-69 (2005) (upholding preponderance standard in attorney discipline matter to protect public and integrity of profession); Petition of Grimm, 138 N.H. at 49-50 (significant interest in psychologist license protected by use of the preponderance standard).

Early in his report, Judge Cassavechia noted that, "[t]he public places its trust in the court system to provide protection for citizens lacking the capacity to make informed decisions in matters related to their personal and/or financial affairs and it needs to have confidence that any individual assigned to make those decisions is held to the highest standards of skill, professionalism, and ethics." See Disciplinary Recommendation at 2. He goes on to correctly further note that, "when serious breaches have been found, the Circuit Court is charged with ensuring that wards will not remain exposed to harm either by intent or by inability of his or her guardian to comply with the standards of professional conduct." Id., at 24.

Using the attorney discipline process as the template for consideration of whether and what sanction should be imposed for Ms. Marino's behavior and conduct, there are four factors to be considered:

1. The nature of the duty violated;
2. The guardian's mental state;
3. The potential or actual injury caused; and,
4. The existence of aggravating or mitigating factors.

See, e.g., In re: Richmond's Case, 153 N.H. at 743.

(a) Nature of the Duty Violated

In Judge Cassavechia's Report, he finds that Ms. Marino's conduct, as summarized earlier in this Order, violated at least two Probate Division Rules, an Administrative Order and a substantial number of standards of the National Guardianship Association. See Disciplinary Recommendation at 6-7, 14, 19, and 28.

Probate Court Administrative Order 16, entitled "Criteria for Professional Guardians," requires that professional guardians comply with the NGA Standards. Among the duties imposed by the Administrative Order and the NGA Standards found to have been violated are the following:

- Compliance with all applicable statutes, regulations and court rules (Administrative Order 16 and NGA Standard 1);
- Submission of all fees to the court for review and approval (Administrative Order 16 and NGA Standard 22);
- Submission of only those fees that are reasonable and related to guardianship duties (Administrative Order 16 and NGA Standard 22);
- Treatment of the person under guardianship with dignity (Administrative Order 16 and NGA Standards 9-13); and
- Treatment of all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the person (Administrative Order 16 and NGA Standard 5).

Not listed specifically in either the Administrative Order or the NGA Standards is the implicit duty to be truthful in all pleadings and documents filed with the court and to exercise candor and forthrightness with the court.

Where there are multiple misconduct charges, "the sanctions imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of other violations; it might well be, and generally should be, greater than the sanction for the most serious misconduct." Wyatt's Case, 159 N.H. 285, 306 (2009). The most serious of the duties that Ms. Marino violated was her duty to treat M.P., a ward in her care, with dignity and respect. Equally serious, however, were her misrepresentations and outright untruthfulness in accounts filed with the court and responses to inquiries connected to this investigation.

As to her duty to treat wards in her care with dignity and respect, it is my opinion that in Guardianship of M.P., we are dealing with actions that are of a vastly different and even more disturbing nature than the serious misbehavior she exhibited in the case of Guardianship of J.L. Judge Cassavechia stated the issue eloquently in his Disciplinary Recommendation when, in speaking of an incapacitated ward's vulnerability, he said, "[s]ociety can sometimes be dismissive of the retained individuality of incapacitated persons as they often struggle to fully communicate with the outside world. As such, they are particularly dependent upon care-givers and guardians not to treat them as an impoverished shell of a being devoid of personal integrity." Id. at 32. Judge Cassavechia found that Ms. Marino failed, "to appropriately value M.P.'s personal dignity and integrity...." After making that observation, he said her actions demonstrated "a willingness to ignore or disregard a person she exerts great power over, and thus I must conclude that others should be protected from exposure to similar risk." Id.

(b) Guardian's Mental State

Judge Cassavechia noted the findings of the trial judges that Ms. Marino intentionally committed violations of the Probate Division Rules and NGA Standards, including her failure to properly account for funds she received in the Guardianship of J.L. See Disciplinary Recommendation at 6-7, 14-15. In that case, Judge King, as trial judge, specifically found that had the guardianship not already been terminated, he would have removed her for cause, based on her conduct. Id. at 14. Judge Cassavechia added to Judge King's criticism of Ms. Marino and found that her conduct "demonstrated a stunning lack of professional competence." Id. at 14. Also, in the J.L. case, Judge King said that her actions, "at best, demonstrate a lack of competence or, worse, a deliberate attempt to keep the court from knowing the extent and nature of the fees taken in this case." Id. at 15 (quotations omitted). He concluded by saying that given her "self-described abilities and significant experience handling complex matters," he believed it was more likely the latter. Id. (quotations omitted).

At the hearing before Judge Cassavechia, Ms. Marino was given yet another opportunity to explain her actions in the case of J.L. Her response resulted in Judge Cassavechia observing that, "either she is not being forthright, or does not fully comprehend that her conduct was problematic." Id. at 16. He went on to say that, "at best Ms. Marino's conduct demonstrated a significant lack of understanding of applicable and basic court rules, administrative orders, and professional standards

concerning her duty to report and gain approval of fees charged, collected or to be paid. At worst, it demonstrates a clear intent to circumvent those rules." Id. at 17.

Finally, if the findings cited above were not enough to cause one to distrust Ms. Marino's truthfulness, there was her obvious lie to me in the course of my initial investigation cited earlier in this Order. Supra at 2-3.

Based on the findings of the referee and two trial judges, the conclusion is inescapable that Ms. Marino acted intentionally when, through subterfuge and lies, she moved M.P. from the original nursing home, when she filed the deficient accounts and invoices in the case of J.L., and when she lied to me about the nature of her removal in the Special Needs Trust of T.B. during my original investigation of improprieties.

(c) Potential or Actual Injury Caused

Again, using the template of attorney discipline cases, our Supreme Court, in the case of in re: Morse, 160 N.H. 536, 547 (2010), defined injury as, "harm to the client, the public, the legal system or the profession which results from a lawyer's misconduct." When reading the facts related to Ms. Marino's treatment of M.P., it is nearly impossible not to find the resulting damage to this woman to be serious. She was removed from an environment she had grown comfortable with and from a person who provided her with friendship to the point the two were described as "inseparable".

That, however, is not the end of the damage caused by this guardian's actions. The lies and subterfuge she used in accomplishing this removal stand as a signpost for misconduct beyond which no guardian should ever be allowed to proceed. Her behavior stands out as conduct that we, as a court charged with the responsibility for incapacitated individuals, need to prevent at every turn. If the court cannot trust that the guardians it appoints to care for those truly most vulnerable among us will be truthful and compassionate to their wards, and work professionally and collaboratively with other service providers, then how can we fulfill the obligation we have as a court to protect those who are placed in our care and under our responsibility by statute?

The damage to J.L. was no less severe in its own right and equally demonstrative of a very disturbing attitude on the part of this guardian that, frankly, reeks of arrogance. Somehow, this guardian felt no compunction to charge fees found to be facially unreasonable by the trial court and amounting to 170% of this ward's entire, very modest estate. Notably, the trial court found the fee request unreasonable even before it learned of her collection of a \$4,800 additional fee directly from the ward's retroactive social security payment. Additionally, she intentionally failed to disclose to the court the payment of fees to herself to which she was not entitled and then repeatedly tried to justify her failure through the filing of Motions to Reconsider. Finally, as Judge Cassavechia observed in his Recommendation, while her fee request was pending, Ms. Marino emailed the facility with control over J.L.'s social security funds asking that they begin paying her \$350 per month towards fees that were not yet approved by the court and subsequently largely denied as unreasonable. Id. at 13.

In Morse, 160 N.H. at 548-49, the Court states firmly, "no single transgression reflects more negatively on the legal profession than a lie.... The confidence of judges to rely with certainty upon the word of attorneys forms the very bedrock of our judicial system." Id., citing, Young's Case, 154

N.H. 359, 369 (2006); Kail's Case, 146 N.H. 466, 467 (2001). For our purposes, these principles apply equally to guardians.

The injury to each of the wards, the integrity of the guardianship process, and to the ability of the court to carry out its mandate to protect those entrusted to its care is self-evident, real and significant.

(d) Mitigating and Aggravating Factors

In balancing mitigating and aggravating factors, Judge Cassavechia found only two mitigating factors. They were that Ms. Marino does not have an extensive history of disciplinary actions, and that she has taken many continuing education courses necessary to maintain her certification. However, he also found that the latter factor offers little in the way of mitigation, given what he characterized as a shocking number of lapses in professional conduct brought to light by these cases. In fact, he found that the number of those lapses were actually aggravating factors. See Disciplinary Recommendation at 34.

In addition, of course, are the further aggravating factors noted earlier concerning the lies and subterfuge she used toward other professionals, as well as the trial courts, and me in the course of my initial investigation. Finally, it is clear from the record that this guardian not only showed no remorse when she was before the trial courts, she showed virtually no awareness of the severity of her conduct. It was only during the disciplinary proceeding before Judge Cassavechia that she began to show remorse; however, as noted by Judge Cassavechia, that was apparently only with the assistance of "suggestive questioning" by her attorney. Id. at 33.

In my judgment, there is no realistic way that I can assure incapacitated people who are put under the guardianship of Ms. Marino that they will be treated with dignity or that their financial and other affairs will be handled professionally or competently. Ms. Marino has been a professional guardian since 1999. Almost seventeen (17) years of practice as a guardian should clearly have produced someone who thoroughly understood court rules and procedures. From the vast contact she has had with incapacitated individuals, we should have been able to expect that her compassion and concern for the dignity of these most vulnerable individuals would be without question. And, from her many years appearing in the courtrooms of this state, we should have been confident that she would exercise what our New Hampshire Supreme Court calls an "unswerving allegiance to the truth." In re: Morse, 160 N.H. at 549.

The findings of the trial courts and Judge Cassavechia convince me otherwise. In speaking of the serious issues raised by her conduct in the case of J.L., Judge Cassavechia said he found no factors in mitigation of her behavior and believed that her serious offenses could only be explained, "as either significant lapses of professional incompetence, or, a more sinister pattern of intentionally enriching herself and others from the limited resources of her ward." Disciplinary Recommendation at 19.

There is no level of continuing education or training that will instill truthfulness in an untruthful person, integrity in someone who is self-interested, or compassion in someone who can act with callous disregard to one as vulnerable as M.P. A suspension, with any hint of possibility that she

could someday resume the role of guardian over any person, will not protect current or future wards in her care. I find her conduct to demonstrate a lack of professional competence and personal integrity such that no court should ever be allowed to appoint her to a position of trust again.


Therefore, I am ordering that the certification of Jeannette Marino as a Professional Guardian be immediately and permanently revoked.

I am also ordering that a copy of this Order, Judge Cassavechia's Disciplinary Recommendation, and Circuit Court Administrative Order 2018-008 be forwarded to the following individuals, agencies and associations:

All Judges of the Circuit Court Probate Division;
New Hampshire Attorney General;
New Hampshire Department of Health and Human Services- Bureau of Elderly and Adult Services;
U. S. Social Security Administration, Concord office;
National Guardianship Association;
Center for Guardianship Certification;
Attorneys for All Wards under Ms. Marino's Guardianship;
Family members of all Wards under Ms. Marino's Guardianship; and
J.L., M.P., W.R., T.B., and/or their attorneys, guardians, trustees of special needs trusts, and family members.

Ms. Marino shall immediately make available all of her files having to do with any active Guardianship matter in which she is involved to the successor guardian(s) to be named. She shall, within thirty (30) days of this Order, file Final Accounts in every case in which she is currently serving as guardian over the estate.

Without commenting on whether Ms. Marino has a right of appeal to the New Hampshire Supreme Court, if she chooses to do so, I will not stay the Orders entered supra, pending that appeal. The decision not to stay the Orders is made out of concern for the public's safety, and my statutory duty to protect incapacitated individuals. Cf. Sup. Ct. R. 37A(d)(4) (attorney sanction need not be stayed pending appeal if the Professional Conduct Committee orders otherwise and states reason). Ms. Marino has been found, by two trial judges, a referee, the New Hampshire Supreme Court upon appellate review, and the undersigned, to have committed multiple serious breaches of the standards of conduct, violated the rules of this court, and demonstrated a certain lack of professional conduct and candor to the courts. The undersigned has a duty to protect this state's most vulnerable citizens. The courts are dependent upon the professional ethics and competence of professional guardians in the first instance. I would be derelict in that duty if I stayed Ms. Marino's removal, pending appeal.


Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

May 8, 2018

STATE OF NEW HAMPSHIRE

CIRCUIT COURT ADMINISTRATIVE ORDER 2016-008

IN RE: REMOVAL OF JEANNETTE MARINO AS GUARDIAN

ORDER

Circuit Court Administrative Order 2016-07 issued on May 6, 2016 immediately and permanently removed Jeannette Marino from the approved list of professional guardians for the reasons stated therein. In accordance with that Order and the findings made therein, I find that it is in the best interest of each ward in the following cases that she be REMOVED as guardian, either over the person, the estate or both as applicable:

- Guardianship of Robert S. Blomquist, No. 312-2008-GI-00328
- Guardianship of Karen L. Hatch, No. 315-2010-GI-00248
- Guardianship of Eleanor Calope Baber, No. 316-2005-GI-02153
- Guardianship of Michelle E. McCloud, No. 316-2006-GI-00153
- Guardianship of Elizabeth Janvrie, No. 316-2009-GI-01490
- Guardianship of Evelyn Janvrie, No. 316-2009-GI-01494
- Guardianship of Patrick Corcoran, No. 316-2010-GI-01163
- Guardianship of Mary Rose Lallamme, No. 317-1995-GI-00798
- Guardianship of Simon Viger, No. 317-2006-GI-00522
- Guardianship of Barbara L. Cook, No. 317-2011-GI-00421
- Guardianship of Lucille Babbitt, No. 317-2011-GI-00791
- Guardianship of Christopher Walichewicz, No. 317-2012-GI-00887
- Guardianship of John Laplante, No. 317-2012-GI-00996
- Guardianship of Michael A. Peters, No. 317-2013-GI-00001
- Guardianship of Donna Vincent, No. 317-2013-GI-00384
- Guardianship of Donna Maloney, No. 317-2015-GI-00765
- Guardianship of Lindsey B. Runnelis, No. 317-2015-GI-00800
- Guardianship of Robert Douglas, No. 318-2011-GI-01236

The Office of Public Guardian, "OPG," is hereby APPOINTED as successor guardian in each of these matters. The Clerk of Court in the applicable Circuit Court is DIRECTED to effectuate administrative transfer of these cases as soon as possible.

Ms. Marino is ORDERED to facilitate transfer of her ward's files and personal belongings in each of the above cases immediately to OPG. She is further DIRECTED to cooperate with OPG in all facets of the transfer and assist in facilitating an efficient transition.

This ORDER is made by me as a judge of the Probate Division with jurisdiction over guardianships, see RSA 464-A:3, I, and upon my finding that it is in the best interest of the wards in these matters, see RSA 464-A:39, I(c) and as Circuit Court Administrative Judge pursuant to my

authority under Supreme Court Rule 54, RSA 490-F and further pursuant to my authority under RSA 464-A:2, XIV-b and RSA 464-A:10.



Edwin W. Kelly, Administrative Judge
New Hampshire Circuit Court

May 6, 2016

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2016-0253, Petition of Jeannette Marino, the court on March 27, 2017, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We dismiss the case as moot.

The petitioner, Jeannette Marino (guardian), seeks a writ of certiorari, see Sup. Ct. R. 11, challenging an administrative order of the Circuit Court (Kelly, J.) removing her permanently from the list of approved professional guardians and from all current guardianship matters. See RSA 464-A:2, XIV-b (Supp. 2016); Probate Court Administrative Order 16 (2009). She contends that the trial court erred by: (1) exceeding its authority by establishing a disciplinary process and removing her from all her current guardianship positions; (2) violating her due process rights by: (a) referring to her conduct in two matters that were not the subject of the disciplinary hearing; (b) not informing her that it would be guided by disciplinary rules for attorneys; (c) adopting a preponderance of the evidence standard and not notifying her in advance; and (d) not informing her of the "potentially devastating impact [of the] . . . disciplinary process"; (3) finding that she intentionally violated her duties as guardian; (4) removing her permanently from the list of approved guardians; and (5) declining to reconsider the findings in the binding final orders in the underlying matters upon which the disciplinary action was based. The administrative judge counters, in part, that the revocation of her certification as a National Certified Guardian by the Center for Guardianship Certification (CGC), a national certifying organization for professional guardians, has rendered this case moot.

The doctrine of mootness is designed to avoid deciding issues that have become academic or dead. Batchelder v. Town of Plymouth Zoning Bd. of Adjustment, 160 N.H. 253, 255 (2010). However, the question of mootness is not subject to rigid rules, but is regarded as one of convenience and discretion. Id. at 255-56. A decision upon the merits may be justified where there is a pressing public interest involved or future litigation may be avoided. Id. at 256.

In this case, the administrative judge sent a copy of the final disciplinary order to the CGC. The CGC, in turn, informed the guardian that it had received a complaint, requested her response, and notified her that a "[f]ailure to respond . . . may be deemed an admission to the allegations in the complaint." The guardian declined to respond to the allegations while this appeal was pending and requested that the CGC stay its proceedings until the appeal was concluded,

which it declined to do. The guardian did not respond substantively to the CGC or exercise her right to a hearing.

The CGC convened a professional review board to consider the complaint against the guardian. It found that she had violated seven of the National Guardianship Association Standards of Practice. Accordingly, the CGC revoked the guardian's certification as a National Certified Guardian. Although the revocation letter informed the guardian of her right to appeal this decision, she failed to do so.

The CGC's Rules and Regulations Regarding Certification and Recertification of National Certified Guardians (approved October 28, 2016) preclude someone whose CGC certification has been revoked from applying for certification. Rule II(A)(14). Probate Court Administrative Order 16 requires that anyone "seeking appointment as a professional guardian" in New Hampshire "[b]e a national certified guardian . . . with the Center for Guardianship Certification (CGC) and maintain this registration as required by CGC or its successor organization." Accordingly, regardless of the outcome of this appeal, the guardian will not again qualify to be a professional guardian in New Hampshire because she cannot be again nationally certified by the CGC.

The guardian argues that the CGC's "policies are subject to modification at any time" and that, at some undetermined future time, she may be allowed "to then bring forward a response to the findings by the administrative judge, not previously submitted." We conclude that such an eventuality is too speculative to create a present case or controversy. See Duncan v. State, 166 N.H. 630, 641 (2014) ("Except as provided in Part II, Article 74 [of the New Hampshire Constitution], the judicial power in this State is limited to deciding actual, and not hypothetical, cases.").

The guardian seems to argue that her situation constitutes a pressing public interest because, were we to reverse, the trial court might act on a complaint which has been made in another guardianship matter. We are not persuaded. Finally, to the extent that she argues that her appeal presents a question "capable of repetition yet evading review," her argument is not developed. See State v. Blackmer, 149 N.H. 47, 49 (2003).

Dismissed.

Hicks, Conboy, Lynn, and Bassett, J.J., concurred.

**Eileen Fox,
Clerk**

Distribution:

Circuit Court Administrative Judge, 2016-007

In re: Jeannette Marino Disciplinary Matter

Ms. Jeannette Marino

Laura E.B. Lombardi, Esquire

Timothy A. Gudas, Supreme Court

Allison Cook, Supreme Court

File

PROBATE COURT ESTABLISHES PROFESSIONAL GUARDIAN DISCIPLINE LAW IN IN RE: JEANNETTE MARINO

Ralph Holmes Jul 16, 2016 Comments & Insights

In decisions establishing new law in New Hampshire for the discipline of professional guardians, Judge Gary Cassavechia, acting as Judicial Referee, and Judge Edwin Kelly, as Administrative Judge for the Circuit Court, reviewed conduct by Jeannette Marino, a prominent NH professional guardian since 2006, in two of her guardianships with Judge Cassavechia recommending a two-year suspension and Judge Kelly ordering immediate and permanent termination of Marino’s practice certification. Marino moved to stay her guardianship disbarment, which Judge Kelly denied. Marino has appealed to the NH Supreme Court, which has accepted the case. Judge Kelly appointed the Office of Public Guardian (OPG) as Marino’s successor in her 17 guardianships.

The disciplinary proceeding arose from judicial findings of misconduct by Marino in *Guardianship of JL* and *Guardianship of MP*, the former involving serious financial irregularities and the latter involving apparent disregard for the welfare of the ward. Judge Cassavechia was tasked with recommending what, if any, disciplinary sanctions should be imposed. In addition to reviewing these cases, Judge Cassavechia with Marino’s agreement evaluated some of her conduct in other cases identified by court personnel as raising issues of concern. According to Marino’s Motion to Stay filed with the Supreme Court, which provides helpful background information, she was the sole witness in the hearing before Judge Cassavechia.

Guardianship of JL

Judge Cassavechia referred to Marino’s multiple financial irregularities in this case as “most concerning.” Most offensive, she directed the Moore Center to pay directly to herself \$4,800 in retroactive Social Security payments due the ward without disclosure to or authorization from the Court. The Court (King, J.) discovered that the funds had been paid as a result of a footnote in Marino’s second of three motions to reconsider a denial of her fees. Judge King found that she had “intentionally” not reported the funds and Judge Kelly in his disciplinary order reported that Marino had “intentionally and improperly paid fees to herself, and subsequently misrepresented those fees in an account filed with the court under oath....”

Other financial irregularities in this case as summarized by Judge Kelly included: “[s]he intentionally and improperly paid fees, without the approval of the court, from a ward’s estate to a private attorney hired by the guardian and paid ‘market rates’ after the ward had been found indigent and approved for court-appointed counsel;” she submitted fees amounting to 170% of the ward’s assets; and she attempted to recover fees as guardian over the person when she was only guardian of the estate.

Guardianship of MP

In this case, Marino abruptly removed her ward from his care facility without giving the ward or the care providers notice. Instead, Marino told the ward and the providers that she was taking the ward out to lunch. The executive director of the nursing facility filed papers with the Court. After hearing, the Court (Leonard, J.) found that Marino had violated eight standards of the National Guardianship Association and removed her as guardian. In an unpublished decision, the NH Supreme Court affirmed.

“Other Instances of Questionable Professional Judgment”

Under the above title, Judge Cassavechia discussed several other scenarios bearing on Marino’s fitness brought to his attention by other Court personnel after reaching out to them with Marino’s consent. These include:

1. Marino had her ward sign a general power of attorney appointing Marino as agent, the execution of which Marino notarized and had witnessed by the ward’s mentally challenged wife;
2. She represented to Judge Kelly that she had been removed as a trustee of a special needs trust “as the result of an agreed Stipulation,” when in fact she had objected to and sought reconsideration of her removal; and
3. She represented to Judge Kelly that documentation she was forwarding gave the dates that she had last visited with her wards, when in fact the document provided incomplete and in some instances no dates for visits with her wards.

Disciplinary Standard

This is the first case in which a professional guardian has been disciplined. Judge Cassavechia recommended and Judge Kelly adopted the preponderance of the evidence standard used in psychologist discipline cases, *see Petition of Grimm*, 138 N.H. 42, 49-51 (1993), and the four factor test for determination of sanctions for attorneys, *see In re: Richmond’s Case*, 153 N.H. 729, 743 (2006)(nature of the duty, mental state, injury, and aggravating/mitigating factors). In ruling that permanent revocation was the appropriate remedy, Judge King summarized as follows:

There is no level of continuing education or training that will instill truthfulness in an untruthful person, integrity in someone who is self-interested, or compassion in someone who can act with callous disregard to one as vulnerable as MP. A suspension, with any hint of possibility that she could someday resume the role of guardian over any person, will not protect current or future wards in her care. I find her conduct to demonstrate a lack of professional competence and personal integrity such that no court should ever be allowed to appoint her to a position of trust again.

Judge Kelly directed that his Order be copied to a number of specific persons and agencies, including the NH Attorney General.

The Appeal

Marino raises seven questions in her appeal with the first being: “Whether Administrative Judge Edwin Kelly erred by issuing a sanction that was more severe than the sanction recommended by the trier of fact in this disciplinary matter?” Given the well established history of the NH Supreme Court disbaring lawyers appealing suspension and lesser discipline, Marino would appear to have a difficult road ahead, at least on this ground.

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