

HB 681 – AS INTRODUCED

2013 SESSION

13-0323
05/09

HOUSE BILL **681**

AN ACT relative to the membership, duties, and responsibilities of the guardian ad litem board and establishing the Court Appointed Advocates for Children in Divorce (CAACD) Corporation.

SPONSORS: Rep. Itse, Rock 10; Rep. Kappler, Rock 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill revises the membership and duties of the guardian ad litem board. The bill also transfers administration of the guardian ad litem board from the department of administrative services to the joint board of licensure and certification.

The bill also establishes the Court Appointed Advocates for Children in Divorce (CAACD) Corporation which shall be responsible for training, in conjunction with the guardian ad litem board, guardians ad litem appointed in parenting cases.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to the membership, duties, and responsibilities of the guardian ad litem board and establishing the Court Appointed Advocates for Children in Divorce (CAACD) Corporation.

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

1 1 Joint Board of Licensure and Certification; Guardian Ad Litem Board Added. Amend
2 RSA 310-A:1 to read as follows:

3 310-A:1 Joint Board Established. There shall be a joint board of licensure and certification for
4 professional engineers, architects, land surveyors, foresters, professional geologists, natural
5 scientists, landscape architects, court reporters, ***guardians ad litem***, home inspectors, accountants,
6 manufactured housing installers, real estate appraisers, and electricians, and the board of
7 manufactured housing, consisting of each of the members of the board of professional engineers,
8 board of architects, state board of licensure for land surveyors, foresters' board, board of professional
9 geologists, the board of natural scientists, the board of landscape architects, the board of court
10 reporters, ***the guardian ad litem board***, the board of home inspectors, the board of accountancy,
11 the real estate appraiser board, the electricians' board, the manufactured housing installation
12 standards board, and the board of manufactured housing.

13 2 Guardian Ad Litem Board; Transfer of Administrative Functions to Joint Board of Licensure
14 and Certification. RSA 490-C:7 is repealed and reenacted to read as follows:

15 490-C:7 Affiliation with Joint Board of Licensure and Certification. All administrative, clerical,
16 and business functions of the board shall be transferred to the joint board of licensure and
17 certification, established in RSA 310-A:1, on July 1, 2013. A full-time administrator shall be
18 assigned to the guardian ad litem board for the purpose of assisting the board with administrative,
19 certification, and records management responsibilities.

20 3 Guardian Ad Litem Board; Membership. Amend RSA 490-C:2 to read as follows:

21 490-C:2 Membership.

22 I. The board shall consist of the following members:

23 (a) One member representing the New Hampshire supreme court, appointed by the chief
24 justice of the New Hampshire supreme court.

25 (b) [~~One member~~] ***Two members*** of the senate, appointed by the president of the senate,
26 ***one of whom shall serve as an alternate.***

27 (c) [~~One member~~] ***Two members*** of the house, appointed by the speaker of the house,
28 ***one of whom shall serve as an alternate.***

29 (d) [~~The executive director of the New Hampshire judicial council.~~]

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1 ~~(e)~~ One member of Court Appointed Special Advocates (CASA), nominated by the
2 director of CASA and appointed by the governor **and council**.

3 ~~(f)~~ **(e)** One member representing the division of children, youth, and families, or Casey
4 family services, or another child protection agency in the state, appointed by the governor **and**
5 **council**.

6 ~~(g)~~ **(f)** One member representing the interests of guardians ad litem, appointed by the
7 governor **and council**.

8 ~~(h)~~ **(g)** ~~Two~~ **Three** members of the general public ~~representing~~, **2 of whom shall**
9 **represent** the interests of those individuals receiving the services of guardians ad litem **and one of**
10 **whom shall have no affiliation or experience with guardians ad litem**, appointed by the
11 governor **and council**.

12 II. The members of the board shall serve without compensation.

13 III. All members of the board shall be New Hampshire residents.

14 4 Guardian Ad Litem Board; Term for Public Members. Amend RSA 490-C:3, I(a) to read as
15 follows:

16 (a) The terms of the member representing the New Hampshire supreme court, the
17 member representing CASA, and the member representing the child protection agency shall be for 5
18 years and until a successor is appointed; provided, however, that the term of the member
19 representing CASA shall expire if he or she ceases to be a member of CASA. The terms of the
20 members representing the senate and house ~~and the term of the executive director of the judicial~~
21 ~~council~~ shall be concurrent with their terms of office. The terms of the members appointed under
22 RSA 490-C:2, I~~(g) and (h)~~ **(f) and (g)** shall be for 3 years and until a successor is appointed.
23 **Public members appointed under RSA 490-C:2, I(g) shall not serve more than one term.**
24 Vacancies in board membership shall be filled in the same manner as the original appointment.

25 5 Guardian Ad Litem Board; Appointment of Alternates. Amend RSA 490-C:3, IV to read as
26 follows:

27 IV. A simple majority of the board members currently serving shall constitute a quorum.
28 Whenever a quorum of the board is unable to address a particular matter or hear a particular case
29 requiring action by the board, the members of the board who are able to act may appoint ~~one or~~
30 ~~more former members as alternates to address the matter or hear the case, starting with the most~~
31 ~~recent members to leave the board and proceeding in reverse chronological order of former members]~~
32 **a member of the general court to serve as an alternate pursuant to his or her appointment**
33 **under RSA 490-C:2, I(b) or (c).**

34 6 Duties of the Guardian Ad Litem Board. RSA 490-C:4, I(b) is repealed and reenacted to read
35 as follows:

36 (b) Establish fees for certification, recertification, reinstatement, and renewal of
37 certification of guardians ad litem; such fees shall be sufficient to produce estimated revenue equal to

1 110 percent of direct operating expenses, including training costs, for the previous fiscal year.

2 7 Duties of the Guardian Ad Litem Board. Amend RSA 490-C:4, I(d) to read as follows:

3 (d) Establish educational requirements and continuing educational requirements,
4 **including the examination required for certification as a guardian ad litem. The scope of**
5 **the examination and methods of procedure shall be prescribed by the board.**

6 8 Guardian Ad Litem Board; Rulemaking Authority Relative to Complaint Investigation
7 Procedures. Amend RSA 490-C:5, I(h) and (i) to read as follows:

8 (h) Procedures for conducting investigations and hearings **including due process**
9 **hearings and procedures for hearing oral testimony in proceedings** conducted by the board
10 under this chapter.

11 (i) Procedures for processing complaints and addressing disciplinary issues handled by
12 the board under this chapter, **including a procedure for recording all complaints and issues**
13 **addressed by Court Appointed Special Advocates (CASA) of New Hampshire and by Court**
14 **Appointed Advocates for Children in Divorce (CAACD) of New Hampshire.**

15 9 Certification. Amend RSA 490-C:5-a to read as follows:

16 490-C:5-a Certification.

17 I. To be eligible for initial certification, recertification, reinstatement, or renewal of
18 certification, as a guardian ad litem under this chapter, an applicant shall be of good character,
19 **shall successfully complete the examination and training requirements established by the**
20 **board, and** shall meet such **additional** criteria or requirements as may be established by the
21 board.

22 II. Certification issued by the board shall be valid for 3 years from the date of issuance, and
23 shall expire 3 years from the date of issuance, unless renewed or reissued pursuant to rules adopted
24 by, and upon payment of fees established in, the rules of the board.

25 III. If timely and sufficient application has been made in accordance with board rules for
26 renewal of certification, the existing certification shall not expire until the board has taken final
27 action on the application for renewal.

28 ~~[IV. Conditional or temporary certification as a guardian ad litem under this chapter shall~~
29 ~~be according to such criteria, terms, requirements, and procedures, and for such duration, as may be~~
30 ~~established by the board.]~~

31 10 Guardians Ad Litem. Amend RSA 490:26-e, I to read as follows:

32 I. Standards and requirements for registration and training as a guardian ad litem
33 **provided that, to the extent practicable, the court shall not appoint an individual to serve**
34 **as guardian ad litem who is not certified by and in good standing with the guardian ad**
35 **litem board.**

36 11 New Chapter; Court Appointed Advocates for Children in Divorce. Amend RSA by inserting
37 after chapter 490-G the following new chapter:

CHAPTER 490-H

COURT APPOINTED ADVOCATES FOR CHILDREN IN DIVORCE

1
2
3 490-H:1 Court Appointed Advocates for Children in Divorce (CAACD) Established. There is
4 hereby created a body politic and corporate having a distinct legal existence separate from the state
5 and not constituting a department of state government, to be known as the Court Appointed
6 Advocates for Children in Divorce (CAACD) to carry out the provisions of this chapter. The
7 corporation is hereby deemed to be a public instrumentality. The corporation shall be a private
8 nonprofit corporation and shall have all the powers necessary to carry out the purposes of this
9 chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of
10 funds from any public or private agency and to receive and accept from any source, contributions of
11 money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of
12 this chapter.

13 490-H:2 CAACD; Board of Directors.

14 I. The powers of CAACD of New Hampshire shall be vested in a board of directors, composed
15 of the following members:

- 16 (a) Two members appointed by speaker of the house of representatives.
17 (b) One member appointed by the senate president.
18 (c) One member appointed by the chief justice of the supreme court.
19 (d) Three members appointed by the governor.

20 II. Board members shall serve a 3-year term, except that the initial appointments by the
21 governor shall be for staggered terms of one, 2, and 3 years and the initial appointments by the
22 speaker of the house shall be for staggered terms of one and 2 years. A member shall hold office until
23 a successor has been appointed and qualified.

24 III. The members shall elect annually from among their number a chairperson and such
25 officers as they may determine. Meetings shall be held at the call of the chairperson or when 4
26 members so request. Four members of the board shall constitute a quorum and the affirmative vote
27 of 4 members shall be necessary for any action taken by the board. No vacancy in the membership of
28 the board shall impair the right of a quorum to exercise all the rights and perform all the duties of
29 the corporation. A member of the board of directors may be removed for cause by the official who
30 appointed that member.

31 IV. Members shall receive no salary for the performance of their duties under this chapter,
32 but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under
33 this chapter. Any such expenses by board members shall have prior approval by a majority of
34 members of the board of directors before reimbursement.

35 V. There shall be no liability on the part of, and no cause of action shall arise against, any
36 member of the board of directors, or its employees or agents, for any action they take in the
37 performance of their powers and duties under this chapter.

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1 VI. The board shall have complete fiscal control over the corporation and shall be
2 responsible for all corporate operations.

3 490-H:3 Duties. CAACD shall be responsible for training and supervising guardians ad litem
4 appointed in divorce and parenting cases. CAACD shall be accountable to the guardian ad litem
5 board for complying with the training requirements established by the board under RSA 490-C:5,
6 I(d) and for the actions of its volunteer members who are appointed by the court as guardians ad
7 litem in divorce and parenting cases under RSA 461-A.

8 490-H:4 CAACD Fund. There is hereby established in the office of the state treasurer a fund to
9 be known as the CAACD fund. CAACD, established in RSA 490-H:1, is authorized to accept public
10 sector and private sector grants, gifts, donations, and appropriations of any kind to further the goals
11 of the corporation. The filing fee received under RSA 461-A:16, IV and any public sector
12 appropriations shall be deposited in the fund and may be expended by CAACD for the training of
13 guardians ad litem appointed in divorce and parenting cases. The moneys in the fund shall be
14 nonlapsing and shall be continually appropriated to the corporation.

15 12 Guardian ad Litem; Court Appointed Advocates for Children in Divorce. Amend RSA 461-
16 A:16 to read as follows:

17 461-A:16 Guardian ad Litem.

18 I. In all proceedings for divorce, separation, annulment, paternity, or determination of
19 parental rights and responsibilities, the court may appoint a ***Court Appointed Advocates for***
20 ***Children in Divorce (CAACD)*** guardian ad litem to represent the interests of the children of the
21 parties, upon its own motion or motion of any party. The court may, in its order of appointment,
22 after considering the nature of the issues raised in the case pending before it, specify the concerns to
23 be addressed by the guardian ad litem, and otherwise limit the scope of the appointment. The
24 guardian ad litem may be appointed to continue to serve after the final decree of divorce has been
25 granted.

26 II. Persons accepting appointment as guardians ad litem agree to serve as officers of the
27 court and have such standing in the proceedings as the court deems appropriate and may, upon
28 approval of the court, utilize the service of others found necessary by the court to represent the
29 child's best interest.

30 III. Guardians ad litem shall respect communications between themselves and the child and
31 shall disclose such information only in accordance with applicable rules and, as required by the
32 court, in rendering a report with the guardian ad litem's recommendations or in an ex parte
33 proceeding to enable the court to make an informed decision. When the child's ability to make
34 adequately considered decisions in connection with the representation is impaired, whether because
35 of minority, mental disability, or some other reason, the guardian ad litem shall be the holder of the
36 privilege and shall have the authority to waive the privilege, but only if the guardian ad litem
37 reasonably believes that the child cannot adequately act in the child's own interest.

1 IV. The fees for services for the guardian ad litem and others utilized by the guardian and
2 approved by the court shall be a charge against the parties [~~in a proportional amount as the court~~
3 ~~may determine~~] ***as provided in this paragraph.***

4 ***(a) The parties shall be charged an initial fee of between \$500 and \$1,000 for the***
5 ***appointment of a CAACD guardian ad litem. The amount of the fee shall be based on the***
6 ***number of parenting cases and the number of guardians ad litem assigned to parenting***
7 ***cases. In a contested case, the fee shall be born by the petitioner. In an uncontested case,***
8 ***the fee may be waived for indigence; the burden of the fee cannot be otherwise reallocated.***
9 ***The fee shall be deposited in the CAACD fund established in RSA 490-H:4.***

10 ***(b) Unless otherwise approved by the court and excluding the initial fee under***
11 ***subparagraph (a), the fee and time commitment of a guardian ad litem appointed under***
12 ***this chapter shall not exceed \$1,200 and 20 hours, including the preparation and filing of***
13 ***a final report.***

14 V. For good cause shown, the court may waive the requirements of paragraph I. Good cause
15 shall not include the lack of ability to pay by either party.

16 VI. The supreme court shall provide the following relative to non-certified guardians ad
17 litem appointed pursuant to this section:

18 (a) Standards and requirements for registration as a guardian ad litem.

19 (b) Standards for practice, including but not limited to ethical rules.

20 (c) Disciplinary procedures for violating ethical rules and requirements established
21 under this paragraph.

22 (d) Penalties for violation of ethical rules and requirements, including, as the court may
23 deem necessary, fines or disciplinary action, or both.

24 13 Effective Date. This act shall take effect January 1, 2014.