

LEGAL ETHICS OPINION 1463

APPEARANCE OF IMPROPRIETY –
PUBLIC LAWYER - PART-TIME
COMMONWEALTH'S ATTORNEY OR
ASSISTANT COMMONWEALTH'S
ATTORNEY CONTINUING TO SERVE
AS GUARDIAN AD LITEM IN
JUVENILE AND DOMESTIC
RELATIONS COURT.

You have presented a hypothetical situation in which an attorney serves as a part-time Assistant Commonwealth's Attorney and also maintains a private practice. The Assistant prosecutes in Juvenile and Domestic Relations Court. The Commonwealth Attorney's office does not provide legal services or advice to the Department of Social Services. In his capacity as a private practitioner, the Assistant has been asked to serve as a guardian ad litem in proceedings in the Juvenile and Domestic Relations Court.

You have asked the Committee to opine whether, under the facts of the inquiry, it would be proper for a part-time Assistant Commonwealth's Attorney or part-time Commonwealth's Attorney to serve as a guardian ad litem in Juvenile and Domestic Relations Court in the two following situations: (1) The Department of Social Services (DSS) has no interest or involvement in the case other than the preparation of a home study; and (2) The DSS is an active player in the case, i.e., the DSS initiates the proceedings for which the guardian ad litem is named.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:8-101(A)(2) which states that a lawyer who holds public office shall not use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client; and DRs 9- 101(B) and (C) [DR:9-101] which provide respectively that a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee and that a lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

Irrespective of whether or not an attorney-client relationship arises between the child and the guardian ad litem, the Committee is of the opinion that it would not be improper for a part-time Assistant Commonwealth's Attorney or part-time Commonwealth's Attorney to act in such a capacity in a Juvenile and Domestic Relations Court proceeding since there is no apparent conflict between the government and the child. The Committee cautions that there should be (1) no effort to use the public office, or any implication that the public office will or may be used, to influence the Juvenile and Domestic Relations Court's disposition in the proceeding; (2) as pertains to the parties or their witnesses, no pending criminal charges or investigations known to the Assistant Commonwealth's Attorney or Commonwealth's Attorney; and (3) no involvement in criminal matters relating to such parties or witnesses for which the attorney has presently or previously had substantial responsibility. See LE Op. 600, LE Op. 696.

Committee Opinion
June 9, 1992

As to the variations on the question you raise, the Committee is of the view that the same conclusion is reached whether the DSS initiates the proceedings or has no interest in the case other than the preparation of a home study.