

Committee Opinion
February 17, 1995

LEGAL ETHICS OPINION 1626

ATTORNEY-CLIENT RELATIONSHIP;
GUARDIAN AD LITEM; CONFLICT OF
INTEREST; ATTORNEY
REPRESENTING DSS IN APPEAL OF
DECISION ON TERMINATION OF
PARENTAL RIGHTS WHEN ATTORNEY
WAS GUARDIAN AD LITEM IN
TERMINATION PROCEEDING.

You have presented a hypothetical situation in which Parents petition Juvenile and Domestic Relations Court to be relieved of Child's custody and for the termination of parental rights. You indicate that Attorney is appointed guardian ad litem for Child. The court grants the relief requested by Parents and Attorney appeals the court's decision. You further advise that the Department of Social Services seeks to employ Attorney for the appeal to Circuit Court.

You have asked the committee to opine, under the facts of the inquiry, (1) whether Attorney is prohibited from representing Department of Social Services; (2) whether Attorney would be prohibited from such representation if a new guardian ad litem were appointed; and (3) whether the answers to #1 and #2 would be impacted by the consent given to such representation by a new guardian ad litem.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-105(D), which states that a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

The committee declines to opine as to the existence of an attorney-client relationship between Child and Attorney serving as guardian ad litem. However, irrespective of whether or not an attorney-client relationship arises between Attorney and Child, and assuming that the Attorney/Guardian ad Litem determines that there is an identity of interest between Child and the Department, the committee is of the view that Attorney would not be prohibited from representing Social Services. See LE Op. 1463.

As to your second inquiry, the committee is of the view that the same conclusion is reached whether or not a new guardian ad litem is appointed. Finally, as to your third question, since the committee has opined that there is no apparent conflict between Social Services and Child, Attorney would not be required to receive consent of a new guardian ad litem before undertaking representation of Social Services.

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