



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 4, 2003

The Honorable William C. Mescher
Senator, District No. 44
Post Office Box One
Pinopolis, South Carolina 29469

Dear Senator Mescher:

You have requested an advisory opinion from this Office regarding whether a lay private guardian ad litem can also serve as a volunteer Guardian Ad Litem which is under the Governor's Office Division of Guardian Ad Litem Programs. You have indicated that from your reading of the relevant statutes there appears to be no reason why a lay private guardian ad litem cannot also serve as a volunteer in the Governor's Guardian Ad Litem Program. This office is in agreement with you in that there appears to be no statute that would specifically prohibit a lay private guardian ad litem from serving as a volunteer in the Governor's Guardian Ad Litem Program.

Pursuant to recently enacted S.C. Code Ann. Sections 20-7-1545 et seq. (Supp. 2002), private guardians ad litem are authorized in private actions involving custody or visitation of a minor child. Pursuant to Section 20-7-1545, the family court "...has absolute discretion in determining who will be appointed as a guardian ad litem in each case." The recent legislation on private guardians ad litem sets forth several basic qualifications for court appointment including annual continuing education requirements and limited observation of contested custody proceedings. Section 20-7-1547(A). The only apparent limitations on being appointed a private guardian ad litem are listed in Subsections (B) and (C) of Section 20-7-1547:

(B) A person shall not be appointed as a guardian ad litem pursuant to Section 20-7-1545 who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.

(C) No person may be appointed as a guardian ad litem pursuant to Section 20-7-1545 if he is or has ever been on the Department of Social Services Central Registry of Abuse and Neglect.

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The enabling statutes for the Guardian ad Litem Program administered by the Governor's office are found in S.C. Code Ann. Sections 20-7-121 et seq. (Supp. 2002). Pursuant to S.C. Code Ann. Section 20-7-110 (Supp. 2002), the family court must appoint a guardian ad litem for a child in all child abuse or neglect proceedings. The Guardian Ad Litem Program was established "to serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court." Section 20-7-121. The guardians' responsibilities and duties, as well as their rights of access to information, are set forth in Sections 20-7-122, 20-7-124, 20-7-125. As to who is prohibited from serving as a guardian ad litem pursuant to these provisions, Section 20-7-123 provides:

No person may be appointed as guardian ad litem for a child in an abuse or neglect proceeding who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, in Chapter 15 of Title 16, Offenses Against Morality and Decency, in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances, or for the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.

Referencing the above, there do not appear to be any express statutory prohibition to the simultaneous service of a person as both a lay private guardian ad litem and a volunteer in the Governor's Guardian ad Litem Program. However, this Office would defer to the Office of Governor as to an individual's service as a guardian ad litem in that program and to the discretion of the family courts in making appointments as guardians ad litem as to any special considerations that may arise in the course of appointing a guardian ad litem in any given case.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General