

1983 S.C. Op. Atty. Gen. 45 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-28, 1983 WL 142699

Office of the Attorney General

State of South Carolina

Opinion No. 83-28

July 6, 1983

*1 Honorable Robert H. Burnside
Chief Judge
Family Court of Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202

Dear Judge Burnside:

You have inquired of this office as to the South Carolina laws regarding potential liability of guardians ad litem for infants in child abuse and neglect cases. The South Carolina case law appears to be well established in this area and expresses that a guardian ad litem must actively protect the interests of the infant and that a failure to perform these duties diligently and in good faith may expose the guardian ad litem to liability.

With regard to infants appearing in litigation, the responsibilities of a guardian ad litem have been clearly defined in this State. The position of a guardian ad litem or next friend is one of trust and confidence toward the infant as well as the court; hence, it is his duty fully to protect the infant's interests in all matters relating to the litigation, as the infant might act for himself if he were of capacity to do so. His duty requires him to acquaint himself with all the rights of the infant in order to protect them, and to submit to the Court for its consideration and decision every question involving the rights of the infant affected by the suit. He should be as careful not to do anything, or allow anything to be done, to the prejudice of his ward's interests, as the court from which he receives his appointment.

[Simpson v. Doggett](#), 159 S.C. 294, 156 S.E. 771, 773 (1930). The State Supreme Court has amplified upon the duties of the guardian ad litem in the following as well:

The duty of a guardian ad litem or next friend is to look after the infant's interests and to act for him in all matters relating to the suit as he might act for himself if he were of capacity to do. The guardian ad litem should make a defense of the interests of the infant as vigorous as the nature of the case will admit. His duty requires him to acquaint himself with the rights, both legal and equitable, of his ward and take all necessary steps to defend and protect them, and to submit to the court for its consideration and decision every question involving the rights of the infant affected by the suit.

[Cagle v. Schafer](#), 115 S.C. 35, 104 S.E. 321, 322 (1920); *see also*, [McIver v. Thompson et al.](#), 117 S.C. 175, 108 S.E. 411, 416 (1921); [Cumbee v. Cumbee](#), 245 S.C. 107, 139 S.E.2d 477 (1964); *see also*, 43 C.J.S. Infants §§ 233–234.

Moreover, as to the liability of a guardian ad litem who is negligent in the performance of his functions, the South Carolina Supreme Court has been equally clear. In [Cagle v. Schafer](#), the Court noted:

If in consequence of the culpable omission or neglect of the guardian ad litem, the interests of the infant are sacrificed, the guardian may be punished for his neglect, as well as made to respond to the infant for the damage sustained. [Emphasis added.]

*2 In failing to perform their duty to defend the action in behalf of their wards the guardian ad litem of the infant defendants . . . [was] . . . guilty of culpable negligence which would have subjected [him] to liability to [his] wards if any damage has resulted. A notion, which is entirely erroneous, . . . that a guardian ad litem for infant defendants performs his duty when he files a formal answer . . .

Ibid, at 773; see also, Sampson v. Doggett, *supra*. ‘Culpable negligence is the omission to do something which a reasonable prudent and honest man would do, or the doing something which such a man would not do, under the circumstances surrounding each particular case.’ [Emphasis in original.] Montgomery v. Scott, 10 S.C. 449, 451 (1879).

Thus, in light of the foregoing, it must be said that a guardian ad litem is liable to the infant for injuries suffered on account of culpable negligence or omission. In addition, the guardian ad litem may be subject to punishment by the court.¹

If this office can offer further guidance or assistance, please call upon us.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

¹ You have advised this office that the Junior League of Columbia is sponsoring the Volunteer Guardian ad Litem Project. Apparently, members of the Junior League will participate in this Project after training and supervision by the League. With regard to potential liability of the League, Fitzer v. Young Men's Christian Association, 277 S.C. 1, 282 S.E.2d 230 (1981) notes that ‘We [The Supreme Court] hold that charitable institution is subject to liability for its tortious conduct the same as any other person or corporation.’ At page 4. Moreover, the Court left no doubt that the doctrine of respondeat superior is equally applicable to charitable institutions. See, Brown v. Anderson County Hospital Association, 268 S.C. 479, 234, S.E.2d 873 (1977).

1983 S.C. Op. Atty. Gen. 45 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-28, 1983 WL 142699