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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 12, 2000

Sylvia Lynn Gillotte, Staff Attorney
Office of the Governor
Division of Guardian ad Litem Programs
103 South Pine Street, Suite 204
Spartanburg, South Carolina 29302

RE: Informal Opinion

Dear Ms. Gillotte,

By your letter of July 25, 2000, you have requested an opinion of this Office on whether any conflict of interest exists for one serving simultaneously as a volunteer guardian ad litem and a foster parent, presumably on unrelated cases. You have also asked if a member of the Foster Care Review Board may also serve as a guardian ad litem.

Under South Carolina Code of Laws Section 20-7-110, the family court must appoint a guardian ad litem for a child in any child abuse or neglect proceeding. The Guardian ad Litem Program, pursuant to S.C. Code Section 20-7-121, is administered by the Office of the Governor. The statutes delineate the guardians' responsibilities and duties, as well as their rights of access to information. See S.C. Code Ann. §§ 20-7-122, 20-7-124, 20-7-125. Only one provision actually specifies who is prohibited from serving as a guardian ad litem, such as one convicted of an offense against the person or a narcotics related offense. See S.C. Code Ann. § 20-7-124. No other qualifications for service as a guardian ad litem are mandated by these statutes.

For purposes of comparison, in any civil action involving a minor a person may be appointed guardian ad litem if:

... he has no interest adverse to that of the person whom he represents in the action. No other person may be appointed guardian ad litem of a minor or incompetent or imprisoned person unless he be fully competent to understand and protect the rights of the person whom he represents, *has no interest adverse to that of the person whose interest he represents, is not connected or associated with the attorney or counsel of the adverse party, and is not the attorney for the adverse party.* If the guardian ad litem is an attorney, it shall not be necessary that he be represented by an additional attorney; but the attorney of the adverse party shall not represent the guardian ad litem.

Ms. Gillotte
September 12, 2000
Page 2 of 2

Rule 17(d) (2), S.C.R.C.P. (Emphasis added). The rule for guardians in civil proceedings contemplates adverse interests, particularly with respect to the opposing party, but does not further clarify which relationships are per se conflicts of interest.

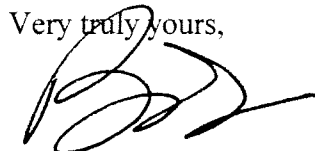
Moreover, as you noted in your letter, there appears to be no applicable case on point in South Carolina. In fact, I was unable to locate a case in any jurisdiction that addressed a conflict of interest between one serving as a guardian ad litem and a foster parent. Of course, in several cases a guardian was relieved because of a conflict involving the same child--the guardian was also seeking custody after a termination of parental rights proceeding, for example--but I was unable to find any authority suggesting that one who serves as a foster parent would be improperly biased in separate proceedings while serving as a guardian ad litem. Courts have recognized that the accountability of the guardian ad litem is ensured through other mechanisms, however, such as: 1) the cross examination of the guardian ad litem by opposing counsel for any potential biases; 2) the appointing court's oversight of the guardian's performance; 3) the prerogative of the court to reject the guardian's findings; 4) the parents' right to move for termination of the guardian; and 5) judicial review of court findings based on guardian recommendations. See Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997). Perhaps it is through these safeguards that in the past the courts have addressed similar conflicts of interest.

Although statutory and case law provide appear to provide no express prohibitions on the simultaneous service of one as a foster parent and a guardian ad litem, the Office of the Governor does have the authority to administer the Guardian ad Litem Program. As you have indicated in your letter, the decision to prevent foster parents and members of foster care review boards from serving as guardians became policy after parents and judges expressed concern over potential biases from these relationships. Certainly the family court judges and the administrators of the Program are in a better position to assess any likely problems with guardians ad litem in the performance of their duties. As the family court has the power to appoint the guardians ad litem, and the Governor's Office is charged with the direction of the Guardian ad Litem Program, this Office would defer to the discretion of the Program in its formulation of qualifications for service as a guardian ad litem.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General