



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1996

The Honorable Michael L. Fair
Senator, District No. 6
501 Gressette Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Fair:

You have forwarded to us a letter from a constituent of yours, Reverend Mary Ellen Harris. In that letter, Reverend Harris is concerned that S.C. Code Ann. Sec. 20-7-110(A) "which appears to be in full effect is not being used in Family Court." Specifically, you have asked on her behalf whether there "is some other law that supersedes this law?" You further wish to know "what is the recourse for non-compliance by the Family Court?"

Section 20-7-110 provides as follows:

(A) Children shall be appointed legal counsel and a guardian ad litem by the Family Court. Counsel for the child shall in no case be the same as counsel for the parent, guardian, or other person subject to the proceeding of any governmental or social agency involved in the proceeding.

(emphasis added). As Reverend Harris points out, Subsection (C) requires that the interests of the State and the local child protective services agency "must be represented by the legal representatives of the Department of Social Services in any judicial proceeding."

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This statute has not been superseded. In fact, Section 20-7-690(B) states that

[a]ll reports made and information collected and described in Subsection (A) must be made available to the ombudsman of the office of the Governor and to any person appointed as a child's guardian ad litem and the child's attorney pursuant to Section 20-7-110. (emphasis added).

Moreover, Rule 41 of the Rules of Family Court specifically states:

(a) Limitation on Fees. In all child abuse and neglect proceedings the court shall grant to legal counsel appointed for the child subject to child abuse and neglect proceedings, a fee not to exceed One Hundred (\$100.00) Dollars. The court shall grant to a guardian ad litem appointed for a child subject to such proceedings a fee not to exceed Fifty (\$50.00) Dollars.

(b) Exceptions. If the court determines that extraordinary circumstances require the award of a fee larger than that which is specified in this rule, the court shall set forth in its order the salient facts upon which the extraordinary circumstances are based and shall award a fee to appointed legal counsel or guardian ad litem in an amount which the court determines to be just and proper.

In S.C. Dept. of Social Services v. Vanderhorst, 287 S.C. 554, 340 S.E.2d 149 (1986), our Supreme Court reviewed Section 20-7-110 in the context of the Family Court's duty under Subsection (B) to appoint counsel on behalf of the parent. There, the Court stated:

[t]he record does not show that the Family Court, at any time during the removal proceedings, complied with its clear mandate under § 20-7-110(B) to appoint counsel.

Moreover, it is stated in 21 S.C. Jurisprudence, § 115 that "[r]epresentation by a guardian ad litem and legal counsel is statutorily required in all child abuse and neglect proceedings. (emphasis added). [citing § 20-7-110(A)]. Thus, it is clear that both the

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statute and the Rule require the Family Court to appoint both legal counsel and a guardian ad litem for the child where abuse and neglect proceedings are involved.¹

With respect to what recourse may be available, a couple of possibilities come to mind. Of course, if the matter is appealed in an individual case to the Supreme Court, the Court will review the entire record just as it did in the Vanderhorst case to determine if the statute and Rule were complied with. In addition, this issue could be brought to the attention of the Supreme Court through the Office of Court Administration which is the agency charged with the administration of the unified judicial system. I am sure that Court Administration can direct your constituent to the proper Chief Administrative Judge in a particular area if such is necessary. Court Administration can also apprise either you or your constituent if other similar reports are being made. The address of Court Administration is 1015 Sumter Street, P. O. Box 50447, Columbia, South Carolina 29250 and the telephone number is (803) 734-1800.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions 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 am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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¹ While our Supreme Court has determined that a viable unborn child is a "person" in both the civil and criminal contexts, See Fowler v. Woodward, 244 S.C. 608, 138 S.E.2d 42 (1964), State v. Horne, 282 S.C. 444, 319 S.E.2d 703 (1984), the Court has not yet so held in the context of abuse and neglect proceedings. See, 21 S.C. Jurisprudence, § 17. I understand that this Office is involved in proposing legislation concerning the subjection of viable, unborn children to drug abuse as part of abuse and neglect proceedings.