



ILLINOIS STATE  
BAR ASSOCIATION

# ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 7.3. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

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**Opinion No. 95-03**  
**July 14, 1995**

Topic: Conflict of Interest; Solicitation

Digest: A lawyer acting as a guardian ad litem has a duty to act in the best interests of the ward and to avoid any conflict of interest that may arise from representing the ward in subsequent litigation arising from his role as a guardian ad litem.

Ref.: Illinois Rules of Professional Conduct, Rule 7.3  
ISBA Advisory Opinion No. 90-32  
Baughman v. Baughman, 215 Ill.App. 620 (1919).  
In re Dominique F., 204 Ill.App.3d 271, 561 N.E.2d 1240 (1990).  
Millage v. Noble, 334 Ill. 315, 166 N.E. 50 (1929).

## **FACTS**

A minor was injured by the negligence of another party. The negligent party's insurance company negotiated a settlement, subject to court approval, with the minor's parents. To determine whether the settlement was in the best interests of the minor, the court appointed a local personal injury lawyer to act as guardian ad litem (GAL) for the injured minor. The GAL reported to the court that, in his opinion, the settlement offer was not in the best interests of the minor. Acting on the guardian's opinion, the court did not approve the settlement.

Subsequently, the minor, through his next friend, brought a personal injury suit against the negligent party. The suit was filed by the lawyer who had been appointed GAL by the court.

### **QUESTION**

Is it improper for a court-appointed GAL to represent a ward in a subsequent personal injury suit after the GAL recommended that the settlement offer not be approved?

### **OPINION**

Although the Rules do not specifically address the duties of a GAL to his or her ward, when the guardian is a lawyer that lawyer's conduct will be governed by the Rules. In this case the lawyer was appointed to represent the minor by the court, having had no relationship with the minor before that time. When a court appoints a lawyer to act as GAL for a minor, that lawyer assumes additional fiduciary duties to the minor and to the court that may be in addition to those present in the typical lawyer-client relationship.

Millage v. Noble, 334 Ill. 315, 166 N.E. 50 (1929), set out some of the duties owed to a minor by the court and by the minor's GAL. A GAL has a duty to examine the case, determine the rights of the ward, and defend those rights. Id., at 320, 166 N.E. at 52. Appointment of a GAL does not end the court's duties to the minor. When a minor is brought into court, the court must ensure that the minor's interests are protected. Id. If the GAL does not properly protect the interests of the ward, the court has a duty to either compel the guardian to protect the ward or to appoint a new guardian. Id.

In Baughman v. Baughman, 215 Ill.App. 620 (1919), a minor, through her next friend, filed suit. The minor's lawyer in the suit was then appointed GAL of the minor. Id. at 622. The court stated:

We know of no reason why a solicitor for a party to a suit should not be appointed also the guardian ad litem of that party, and we know of no reason why a guardian ad litem, if he is a lawyer, should not act as his own solicitor. In fact, it is common practice in equitable proceedings to appoint solicitors guardian ad litem.... Id. at 628.

Note that the court also found that the lawyer should not be able to collect fees in his capacity as GAL and also in his capacity as the minor's lawyer. Id.

The Public Guardian of Cook County was appointed lawyer and GAL for several minors in In re Dominique F., 204 Ill.App.3d 271, 561 N.E.2d 1240 (1990), aff'd, 145 Ill.2d 311, 583 N.E.2d 555 (1991). The court stated:

...although the public guardian serves at the pleasure of the chief judge of the circuit court...once he is appointed to represent the interests of a minor, he stands in the same position as any other attorney before the court and enjoys no special status by virtue of his role as public guardian. Consequently, he is entitled and obligated to pursue all avenues which serve or protect the best interests of his client.... Id. at 275-76, 561 N.E.2d at 1244.

It would appear that there are no specific prohibitions preventing the lawyer in this case from acting

as the GAL in the first instance and as the attorney for the minor in the second instance.

In Opinion 90-32 the lawyer developed clients through contacts he made in his sales job. It was determined not to be unethical to turn such relationships into legal clients. Here, the lawyer has developed a relationship with the minor in his role acting as GAL for the minor. Merely advising the minor as to the adequacy of a settlement offer does not amount to solicitation for future appointment. However, if it appeared that a lawyer was taking advantage of his responsibility to act as GAL merely to solicit new clients, the question of improper solicitation would arise under Rule 7.3.

Whether a GAL should be able to represent his or her ward in subsequent related litigation should depend on the facts and circumstances of each case. A GAL certainly may represent a minor in more than one case. For example, the GAL may be appointed to represent a minor in an abuse and neglect action, and may later be asked to represent the same minor in an adoption proceeding. Far from being unethical, it would be desirable to have the same lawyer represent the minor in the later action, as that lawyer would already be familiar with the child's situation.

There are instances where a lawyer acting as GAL should not be barred from seeking to represent a client in subsequent matters. The GAL is appointed to give independent advice; he must refrain from acting in a manner that appears to be motivated by his own interest rather than the minor's interests. He should remember that his obligation is to act in the minor's best interest. While it is true that a lawyer must act in the interest of his client in any situation, lawyers acting as GAL should be aware that certain actions may raise questions of a conflict of interest under the circumstances presented by this question.

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