



**LEGAL SERVICES CORPORATION**

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April 14, 1998

Glenn Shuman, Executive Director  
Withlacoochie Area Legal Services  
20 South Magnolia Avenue  
Ocala, Florida 34474

Dear Mr. Shuman:

This is a response to your request for an opinion on whether one of your staff attorneys may accept an appointment as a compensated court appointed Guardian Ad Litem. This matter was forwarded to the Office of General Counsel by Anh Tu, Manager, Office of Program Operations, in December 1997.

As you know, one of your attorneys requested your permission to engage in compensated outside work, including that of acting as a court appointed guardian ad litem (guardian) on behalf of children.<sup>1</sup> The attorney asserts that acting as guardian does not constitute the outside practice of law because the guardian "is a 'representative' of the children, but does not 'represent' the children." I have reviewed the Court Order Appointing Guardian Ad Litem provided by your office which sets out the powers and duties of the type of guardian at issue. According to the order, a guardian represents children in a matter before the court, and may conduct interviews, inspect records and documents related to the children, conduct independent investigations, file pleadings, motions or petitions for relief, request and provide discovery, compel attendance of witnesses, submit recommendations to the court and be awarded fees and costs and expenses.

The role of guardian ad litem in the nation's states is varied and often includes functions

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<sup>1</sup> This opinion assumes that the attorney in question is within the definition of attorney in Part 1604. There attorney is defined as "a person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered." 45 CFR §1604.2(a).

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traditionally assigned to attorneys as advocates for clients. Many of the powers and duties of the guardian listed in the court order you provided are actions taken by attorneys when representing clients. According to Black's Law Dictionary, guardian ad litem are a special category of advocates who are "appointed by a court to prosecute or defend, on behalf of an infant or incompetent, a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation." Black's Law Dictionary at 635 (5th Ed. 1979). It also appears that attorneys' fees may be awarded to guardian ad litem in your state. See Metcalf v. Metcalf, 655 So. 2d 1251 (1995). Finally, in some states, guardian ad litem are required to be attorneys when representing children, such as in Wisconsin and Ohio. However, it is far from clear whether the role of a guardian ad litem in certain states constitutes the practice of law. See Raven C. Lidman & Betsy R. Hollingsworth, *The Guardian Ad Litem in Child Custody Cases: The Contours of our Judicial System Stretched Beyond Recognition*, 6 Geo. Mason L. Rev. 255 (Winter 1998)(The functions and definitions of a guardian ad litem "are as varied as the multitude of local experiences in each jurisdiction of each attorney.")

The pertinent Legal Services Corporation regulation defines the "outside practice of law" as:

the provision of legal assistance to a client, who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

45 CFR Sec. 1604.2(b). In essence, this definition defines the practice of law as the provision of legal assistance to a client, except for teaching, consulting or performing an evaluation.<sup>2</sup>

The role of the guardian ad litem described by your attorney clearly does not fall within the exceptions in this definition for teaching, consulting or performing an evaluation. Therefore, the attorney must be able to justify that the activity is not the provision of legal assistance that constitutes the practice of law. Because the definition of the practice of law differs among states, and because it is less clear as to whether acting as a guardian ad litem is the practice of law in various states, I advise you to require the attorney in question to provide your office with an opinion from the controlling bar association or court as to whether the guardian ad litem activity he wishes to engage in constitutes the practice of law in Florida.<sup>3</sup> If it does constitute the practice

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<sup>2</sup> The rest of the definition focuses on what is meant by "outside" that is the practice of law outside of the attorney's employment with the recipient.

<sup>3</sup> It would not be appropriate for the Corporation to impose one definition for all jurisdictions because the definition of practice of law is a local matter and has many implications in the area of professional responsibility.

of law, he may not engage in the activity because it does not fall within the type of compensated outside practice permitted under Section 1604.4. If it does not, then the attorney may engage in the activity if approved by you.

The purpose of Part 1604 is to permit recipient attorneys to comply with the reasonable demands made upon members of the bar as long as those demands do not interfere with the fulfillment of the attorney's overriding responsibility to serve the clients of the recipient. *See* Section 1604.1. The motive of the attorney in this matter is the need for extra income. That is an understandable need but not one you are required to consider when determining whether to permit the outside work. According to Section 1604.3:

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

I hope this adequately responds to your inquiry. Please let me know if you need any additional assistance.

Sincerely,



Suzanne B. Glasow

Senior Assistant General Counsel