

COMMUNICATION WITH A CHILD REPRESENTED BY GAL AND ATTORNEY ADVOCATE

Adopted: April 04, 1997

Opinion rules that a lawyer may not communicate with a child who is represented by a GAL and an attorney advocate unless the lawyer obtains the consent of the attorney advocate.

Inquiry #1:

Joey is ten years old. He lives with his mother and her boyfriend. The Department of Social Services (DSS) substantiated numerous abuse allegations against the mother for improper discipline and beatings. After no improvement in the mother's behavior, DSS filed a neglect and abuse petition and received a nonsecure custody order. Pursuant to G.S. §7A-586(a) of the Juvenile Code, the court appointed a guardian ad litem and an attorney advocate to represent the interests of Joey. G.S. §7A-586(a) provides for the appointment of a guardian ad litem (GAL) for every child alleged to be abused or neglected. The statute states that a GAL who is not an attorney shall be appointed an attorney to assure the protection of the child's legal rights through the dispositional phase of the proceedings and after disposition when necessary to further the best interests of the child. The GAL and the attorney advocate have standing to represent the juvenile in all actions under the subchapter.

The attorney for Joey's mother, Attorney M, would like to interview Joey without informing the GAL or the attorney advocate. May he do so?

Opinion #1:

Rule 7.4(1) provides that, during the course of his or her representation of a client, a lawyer is prohibited from communicating or causing another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so. Joey is represented by an attorney, and the attorney advocate's consent must be obtained prior to any communication by Attorney M with Joey.

Inquiry #2:

Is the permission of the attorney for DSS sufficient to allow Attorney M to interview Joey without the consent of the attorney advocate?

Opinion #2:

No, the attorney for DSS does not represent Joey.

Inquiry #3:

The district attorney intends to prosecute the mother for child abuse. The district attorney would like to interview Joey without informing or obtaining the consent of the GAL or the attorney advocate. May the district attorney interview Joey under these circumstances?

Opinion #3:

No. The comment to Rule 7.4 states, "This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question." See also RPC 87.

Inquiry #4:

May the district attorney instruct a sheriff's deputy to interview Joey without informing or obtaining the consent of the GAL or the attorney advocate?

Opinion #4:

No, an attorney may not instruct an agent to do that which the attorney cannot do. See Rule 3.3.

Inquiry #5:

May the attorney for DSS interview Joey without informing or obtaining consent of the GAL or the attorney advocate?

Opinion #5:

No. See opinion #1 above.

Inquiry #6:

If the GAL is also an attorney, would any of the above opinions be different?

Opinion #6:

No. If an attorney advocate was appointed, the GAL is not acting in the capacity of an attorney for the juvenile. Rule 7.4(d) requires the consent of the attorney representing the client prior to direct communication with the client.

Inquiry #7:

If the court appoints a GAL for Joey but does not appoint an attorney advocate, may the attorney for Joey's mother, the district attorney, or the attorney for DSS interview Joey without the consent of the GAL?

Opinion #7:

No, the consent of the GAL must be obtained before communicating with Joey. This is consistent with the policy and purpose behind G.S. §71-586. See also RPC 61.

Inquiry #8:

Would the preceding opinions be different if a guardian ad litem were appointed pursuant to G.S. §1A-1, Rule 17, which provides for the appointment of a guardian ad litem for infants or incompetent persons who are parties in civil actions?

Opinion #8:

No, if the GAL has an attorney for the matter, opposing counsel may not communicate with the GAL or the minor without the consent of the attorney. Rule 7.4(1). Moreover, if the guardian ad litem is not represented by an attorney in the matter, RPC 61 still prohibits communications with the minor unless the consent of the guardian ad litem is obtained.