

## Search Adopted Opinions

### REQUEST FOR INDEPENDENT GUARDIAN AD LITEM WHERE EXISTING GUARDIAN HAS CONFLICT

*Adopted: April 15, 1994*

*Opinion rules that an attorney may seek the appointment of an independent guardian ad litem for a child whose guardian has an obvious conflict of interest in fulfilling his fiduciary duties to the child.*

**Editor's Note:** This opinion was originally published as RPC 163 (Revised).

#### Inquiry #1:

Attorney X represents A, a seventeen-year old high school student who was injured in a motor vehicle accident at the time that she was riding in an automobile being driven by her mother, M. There is a question as to whether the oncoming vehicle was negligent, whether M was negligent, or both. A's father, F, and M originally asked Attorney X to represent both M and A. Attorney X explained that there appeared to be a conflict of interest between M and A and that Attorney X would be willing to represent only A. M and F agreed. Attorney X entered into a fee agreement with F signing as guardian for A. No lawsuit has been filed at this time. After investigating the motor vehicle accident, Attorney X concluded that M was most likely negligent, although the driver/owner of the oncoming vehicle may also have been negligent. F left a telephone message for Attorney X indicating that he was no longer interested in pursuing A's claims since it appeared likely that M would be the major defendant and if a judgment was entered against her, it would raise F and M's automobile insurance rates. F did not respond to Attorney X's request that he come in to discuss the matter in person. Attorney X wrote to F explaining that M and F's insurance rates would go up if the driver of the other car made a claim against M and, therefore, making a claim on A's behalf would have no additional adverse effect on the family's insurance rates. In this letter, Attorney X told F that he believed that F and M had a moral as well as an ethical duty to A to proceed. Attorney X believes that A's parents are not acting in A's best interests. They appear to be protecting their own interests to the exclusion of A's interests. Having advised F that Attorney X believes that he has an ethical and moral duty to proceed, is Attorney X's ethical duty satisfied?

#### Opinion #1:

Yes. However, on these particular facts, where F's only stated reason for failing to pursue his daughter's claim is the protection of the family's automobile insurance rates and no other concerns or contingencies have been indicated by F, it would be permissible for Attorney X to seek the appointment of an independent guardian ad litem to represent A's interests. This would be consistent with Attorney X's primary duty to represent the interest of A, who is the real party in interest. See CPR 15.

#### Inquiry #2:

May Attorney X seek the appointment of an independent guardian ad litem and proceed with filing suit after the independent guardian ad litem has reviewed the case and agrees that Attorney X should proceed?

#### Opinion #2:

Yes. See Opinion #1 above.