

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2009-03 Request No. No. 963
Issued August 6, 2009**

FACTS:

The inquiring attorney has a family law practice. He/she serves as a guardian ad litem in divorce and child custody cases. The Family Court appoints lawyers to serve as guardians ad litem to protect and promote the best interests of children whose families are involved in litigation. The Family Court may also appoint mental health professionals to provide forensic or custody evaluations, co-parenting counseling, or counseling for the child.

The inquiring attorney, together with a group of other lawyers and mental health professionals, proposes to create a not-for-profit organization to provide psychological services, visitation services, parent-education training, co-parenting/mediation services, and guardian ad litem representation.

The inquiring attorney states that there are agencies in Rhode Island and throughout the country in which attorneys and social workers work together to provide services to families and children. The inquiring attorney further states that typically, such organizations work with indigent populations, with children in the child welfare system, or both. The inquiring attorney cites C.A.S.A., which works with D.C.Y.F. families, as an example of such an organization. The inquiring attorney states that the proposed organization would provide services in private family disputes on the Family Court's domestic calendar, excluding the D.C.Y.F. calendar.

ISSUE PRESENTED:

The inquiring attorney asks whether it is the practice of law when an attorney serves as a guardian ad litem, and whether Rule 5.4 permits the proposed organization.

OPINION:

An attorney who serves as a guardian ad litem is practicing law. The proposed multidisciplinary business, which would include the practice of law through guardian ad litem representation, is prohibited by Rule 5.4 of the Rules of Professional Conduct.

REASONING:

Section 16.2 of Chapter 5 of Title 15 of the Rhode Island General Laws, entitled, "Divorce and Separation" states in pertinent part:

- (c) the court may, if in its discretion it deems it necessary or advisable, appoint an attorney or a guardian ad litem to

represent the interest of a minor or dependent child with respect to his or her support, custody, and visitation.

* * *

(ii) The guardian ad litem shall be appointed from a list of persons properly credentialed pursuant to administrative orders of the chief judge of the family court;

* * *

(x) The chief judge of the family court shall issue, through administrative orders, rules governing the appointment and performance of guardians ad litem in domestic proceedings.

Pursuant to the authority granted in G.L. §5-15-16.2(c)(ii) and (x), the Rhode Island Family Court issued Administrative Order 2006-02 entitled “Guardian ad litem Standards for Domestic Cases.” Section II, paragraph (a)(1) of the Standards sets forth the criteria for being listed on the Family Court guardian ad litem roster: A properly credentialed individual must hold either a current valid license to practice law in the State of Rhode Island, or a current, valid license to practice as a Licensed Clinical Social Worker, a Licensed Marriage or Family Therapist, a Licensed Psychologist or Psychiatrist in the State of Rhode Island, or a qualified professional in a related field. Section II, paragraph (a)(1) also requires proof of professional liability insurance coverage. Thus, only licensed professionals may serve as guardians ad litem. It follows then, that a licensed professional who is appointed as a guardian ad litem serves in that role in his or her professional capacity.

Whether or not an act or conduct constitutes the practice of law is a substantive law question which is outside the area of legal ethics. The plain language of Administrative Order 2006-02, however, sufficiently satisfies this Panel that an attorney who serves as a guardian ad litem is practicing law. Therefore the Rules of Professional Conduct governs the propriety of the business that the inquiring attorney has proposed.

In response to the inquiring attorney’s question about whether Rule 5.4 of the Rules of Professional Conduct applies, the Panel answers in the affirmative. Rule 5.4(a) prohibits lawyers from sharing fees with non-lawyers, with four exceptions that have no application to this inquiry. Rule 5.4(b) prohibits lawyers from forming partnerships with non-lawyers if any of the activities of the partnership consists of the practice of law.

The Panel concludes that the proposed multidisciplinary business, which would include the practice of law through guardian ad litem representation, is not permitted by the Rules of Professional Conduct.