
E-89-14 Guardian ad litem: Communications with and by GALs and communications by other counsel with the ward

Questions

1. May a lawyer for a party or witness in a proceeding communicate with a guardian ad litem in the proceeding without the knowledge or consent of the other counsel involved in the proceeding?
2. May a lawyer for a party or a witness in a proceeding communicate with a guardian ad litem's ward without the knowledge or consent of the guardian ad litem?
3. May a guardian ad litem communicate with a represented person in a proceeding without the knowledge or consent of that person's attorney?

Opinion

We would answer these questions as follows: Question 1, yes; Question 2, no; and Question 3, no.

Regarding Question 1 concerning communications by counsel in a proceeding with a guardian ad litem, we are not aware of any rule of conduct or other law prohibiting such communications. Guardian ad litem are not officials within the meaning of SCR 20:3.5.

Regarding communications by counsel in a proceeding with a guardian ad litem's ward or communications by a guardian ad litem with a represented person in a proceeding, we believe that both kinds of communications are governed by SCR 20:4.2, "Communication with Person Represented by Counsel." If, in particular circumstances, consent to a communication is unreasonably withheld or if the presence of other counsel would be contrary to significant personal or judicial interests, counsel desiring to make the communication should petition the tribunal for an order resolving the matter as suggested by SCR 20:4.2 (i.e., ". . . or is authorized by law to do so.").