E-87-12  Guardian ad litem subsequently acting as prosecutor in matter relating to same child

Question

May an attorney who once acted as guardian ad litem for a child in protective services proceedings subsequently act as prosecutor in a termination of parental rights proceeding involving the same child?

Opinion

The committee concludes that an attorney who once acted as guardian ad litem for a child in a protective services proceeding subsequently may not act as prosecutor or as lawyer for the defendant in a termination of parental rights proceeding, unless:

(a) the facts and issues in the two proceedings bear no substantial relationship;

(b) no confidential information was acquired as guardian ad litem that would materially relate to the termination of parental rights proceeding; and

(c) the former client (that is, the child) through his or her guardian ad litem in the parental rights proceeding provides informed consent to the representation.

See SCR 20:1.9. See also State Bar Committee on Professional Ethics, Formal Opinions E-85-8 (1985) and E-85-9 (1985). The committee recommends that the disclosures and consent be in writing.