



Public Guardianship: Potential Conflicts of Interest With Child Welfare Cases

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UNC
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NC Guardianship Law

If “the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute **a conflict of interest**, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he **shall** bring such matter to the attention of the clerk and seek the appointment of a different guardian.”

G.S. 35A-1213(d)



Scenario

Months ago, a district court judge ordered that DSS assume nonsecure custody of a child, Beth.

She was then placed in a foster home. The department is considering filing a motion for termination of parental rights in Beth's case.



Scenario

In a separate proceeding, the clerk determines that Beth's mother, Cora, is incompetent and appoints Alan, DSS Director, as her guardian.



Conflict of Interest?

“Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person.”

-National Guardianship Association



Conflict of Interest?

“Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. ... In some cases, protecting clients’ interests may require termination of the professional relationship with proper referral of the client.”

- *National Association of Social Workers*



Conflict of Interest?

“ ... a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client ... ”

- *NC State Bar*



Managing Potential Conflicts

Option 1 Internal firewalls within DSS

Option 2 Refer to “buddy county”

Option 3 Hire corporate guardian

Option 4 State involvement

Option 5 Other disinterested public agents



Buddy Counties

■ Child welfare

- Reports of A/N/D **shall** be referred to another county DSS for the investigation when the alleged perpetrator is an employee of the county DSS, a foster parent supervised by that DSS, a member of the Board of Social Services ...
- When in the professional judgment of the director the agency would be perceived as having a conflict of interest in the conduct of other child protective service investigations, the director **may** request that another county conduct the investigations.
- 10A NCAC 70A .0103



Open Questions

1. Firewalls

- Adequate to protect interests of ward/child?
- How to resolve attorney conflict?

2. Buddy counties

- How are/should buddies be identified?
- How reliable is this system?
- Which case should be transferred?
- How long should case be transferred?
- Who would pay for the transferred case?



Open Questions

3. Corporate guardian

- How would this be funded?
- How long should case be transferred?
- Is there capacity in the system?

4. State involvement

- Does the state have the capacity to become involved in either type of case?
- How would it be funded?

5. Other disinterested public agents

- Who would this be?



Questions?



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