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COPY

Re: Request for Ethics Opinion 93-1

Dear

You have requested an opinion from this Committee regarding the following factual scenario:

FACTS

You are in-house counsel for an insurance company. You have two similar situations involving settling a claim with a minor.

One of your policyholders, as determined by you, would be liable for the injuries done to a minor. You have been in contact with the parents of both minors and at this point, neither of them have obtained a lawyer. You have informed the parents of both minors that they can, of course, obtain a lawyer. Also, you have made a settlement offer to both sets of parents and both have accepted the settlement offer.

The problem is that you would like to get a release signed which would relieve your insured of any possible legal liability in the future. Both parties are aware that a release must be signed before you pay them any money. Since you are dealing with minors, you will need a guardian ad litem appointment and have the guardian sign off for the minor to make the release and settlement effective. You would like to handle the guardian ad litem appointment and settlement hearing yourself but wonder if that would present a conflict of interest. You need to know if you can represent the insurance company and represent the claimant in the guardian ad litem appointment and settlement hearing.

Based upon these facts, you have requested that this Committee answer the following question:

Whether an insurer's legal counsel can represent both the insurer and the claimant in the guardian ad litem appointment and negotiate an effective release and settlement between the insurer and claimant without violating the South Dakota Rules of Professional Conduct.

OPINION

It is the opinion of this Committee that an insurer's legal counsel cannot ethically represent both the insurer and the claimant in a guardian ad litem appointment and negotiate an effective release and settlement between the insurer and claimant. See Rule 1.7. It is the opinion of this Committee that this is a conflict that does not fit within the exceptions under either Rule 1.7(a)(1) and (2) or under 1.7(b)(1) and (2).

Due to a conflict of interest, Committee member Larry Von Wald did not participate in this request.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee