



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1997

The Honorable Mark W. Stiles
Chair, Committee on Calendars
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 97-067

Re: Whether a retired judge is precluded by section 74.055 of the Government Code from accepting appointment as a guardian ad litem (ID# 39617)

Dear Representative Stiles:

You have requested our opinion as to whether a retired judge who has opted to continue serving as a judge by assignment may accept appointment as a guardian ad litem.

Under the terms of section 74.003 of the Government Code, individuals in certain categories of "former judge" may elect to continue to hear cases upon assignment by the chief justice of the supreme court. In order to be eligible, the former judge "must [] certify to the presiding judge [of the administrative district] a willingness not to appear and plead as an attorney in any court in this state for a period of two years." Gov't Code § 74.055. A particular former judge has asked whether he "may accept appointment as a guardian ad litem in a suit in which the guardian would not be required to file any pleadings with the court."

Both the Probate Code and the Family Code provide for the appointment of "guardians ad litem" and "attorneys ad litem." The former is defined as "a *person* who is appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding." Prob. Code § 601(11). The latter is, on the other hand, defined as "an *attorney* who is appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding." *Id.* § 601(1). Section 107.001 of the Family Code requires the appointment of a guardian ad litem in certain cases "in which termination of the parent-child relationship is requested." In other situations, the legislature has provided for the discretionary or mandatory appointment of an attorney ad litem. *See, e.g.*, Fam. Code §§ 107.011, .012, .013.

In *Dawson v. Garcia*, 666 S.W.2d 254 (Tex. Civ. App.--Dallas 1984, no writ), the court of appeals, in determining that it was itself authorized to fix the amount of a guardian ad litem's fee, declared:

A guardian ad litem is not an attorney for the infant, but an officer appointed by the court to assist it in properly protecting the infant's interests. A guardian ad litem is the *personal representative* of an individual subject to a disability who is appointed to protect the interests of the disabled person in

any lawsuit where that individual is a party. The legislature has recognized a distinction between guardian ad litem and attorney ad litem. [U]nder the facts of the present case, we conclude that a distinction between guardian ad litem and attorney ad litem must be recognized. Accordingly, we modify the award of guardian ad litem fees so as to delete compensation for services rendered on behalf of the minor as an attorney at law. . . .

Dawson, 666 S.W.2d at 265 (emphasis added) (citations omitted); see also *Pleasant Hills Children's Home of the Assemblies of God, Inc. v. Nida*, 596 S.W.2d 947 (Tex. Civ. App.--Fort Worth 1980, no writ). We believe it is abundantly clear from the statutory definitions cited and from the court's language in *Dawson* that a "guardian ad litem" does not "appear and plead *as an attorney*." Thus, the former judge of whom you inquire is not precluded by section 74.055, Government Code, from accepting appointment as a guardian ad litem in any suit in which the guardian would not be required to plead and appear in court *as an attorney*.

S U M M A R Y

A former judge sitting by assignment is not precluded by section 74.055, Government Code, from accepting appointment as a guardian ad litem in any suit in which the guardian would not be required to plead and appear in court *as an attorney*.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee