

**STATE OF TENNESSEE**  
OFFICE OF THE  
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Opinion No. 08-149

Effect of Guilty Plea to Board of Professional Responsibility Upon Guardian ad Litem's  
Immunity

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**QUESTION**

Does a guardian ad litem's guilty plea to the Board of Professional Responsibility for misconduct in a case remove any immunity from liability that a guardian ad litem may enjoy for his or her actions in the case?

**OPINION**

No. Such a guilty plea in and of itself has no automatic effect on a guardian ad litem's immunity.

**ANALYSIS**

Several statutes confer immunity from liability upon lawyers acting within the scope of their appointments as guardians ad litem in various proceedings. *See, e.g.*, Tenn. Code Ann. § 36-4-132 (conferring immunity on guardians ad litem of children in divorce cases); Tenn. Code Ann. § 37-1-149 (conferring immunity on guardians ad litem of children in juvenile court proceedings); Tenn. Code Ann. § 37-1-610 (conferring immunity upon guardians ad litem of children in sexual abuse proceedings). Additionally, courts have recognized that court-appointed guardians ad litem may enjoy absolute judicial immunity in certain proceedings. *See, e.g., Winchester v. Little*, 996 S.W.2d 818, 825 (Tenn. Ct. App. 1998) (recognizing that persons who function as integral parts of the judicial system, such as guardians ad litem, are entitled to absolute immunity in civil rights actions brought under 42 U.S.C. § 1983).

Regardless of any immunity from liability that a guardian ad litem may enjoy, like any lawyer he or she remains subject to the Rules of Professional Conduct and to disciplinary process for violations of the Rules of Professional Conduct. *See generally* Tenn. Sup. Ct. R. 8 and 9. The Rules of Professional Conduct prescribe and proscribe a wide range of conduct. An attorney's failure to comply with the Rules "is a basis for invoking the disciplinary process." Tenn. Sup. Ct. R. 8, Scope § 5. However, the Rules caution that:

Violation of a Rule should not give rise to a cause of action, nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment or for sanctioning a lawyer under the administration of a disciplinary authority does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

Tenn. Sup. Ct. R. 8, Scope § 6. Because the Rules “are not designed to be a basis for civil liability,” a guilty plea to violation of the Rules should not operate to remove a guardian ad litem's immunity, which is a basis for denying civil liability. *Id.*

Case law supports this view. In *Winchester, supra*, a parent raised a number of allegations against a guardian ad litem, including defamation, negligence, violation of civil rights, and fraud. 996 S.W.2d at 820-21. As noted above, the court held that the guardian ad litem was absolutely immune from suit as a quasi-judicial officer. *Id.* at 826-27. The court also rejected the parent's argument that a violation of the Code of Professional Responsibility, the predecessor to the Rules of Professional Conduct, gave rise to a cause of action for negligence:

This court also finds unpersuasive Appellant's argument that breach of a duty imposed by the Code of Professional Responsibility is sufficient to satisfy the duty requirement for a negligence cause of action. The Code of Professional Responsibility does not create a private cause of action for damages. *Lazy Seven Coal Sales v. Stone & Hinds*, 813 S.W.2d 400, 405 (Tenn.1991). The purpose of the code is to state when a lawyer will be subject to disciplinary action, not to define standards whereby a lawyer may be civilly liable, and conduct that violates the Code may not breach duty to client. *Id.* at 404.

996 S.W.2d at 825-26.

Similarly, in *Lazy Seven Coal Sales*, the case relied upon by the *Winchester* court, the court rejected a plaintiff's argument “that ‘a violation of the Code *itself* when coupled with testimony regarding the deleterious results thereof, are and should be sufficient upon which to predicate an action for legal malpractice in Tennessee.’” 813 S.W.2d at 403. The court held that the plaintiff's argument was defeated by the Code of Professional Responsibility, which provided in its Preliminary Statement that the Code did not “*undertake to define standards for*

*civil liability of lawyers for professional conduct.*” *Id.* at 404 (quoting Preliminary Statement to Code of Professional Responsibility).

The current Rules reject definitively the notion that a violation of the Rules is “designed to be a basis for liability.” Tenn. Sup. Ct. R. 8, Scope § 6. If the Rules cannot impose liability, it follows that they cannot remove immunity from liability. Accordingly, we are of the opinion that a guilty plea to a violation of the Rules does not itself remove a guardian ad litem’s immunity.<sup>1</sup>

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<sup>1</sup>This is not to say that the conduct occasioning the guilty plea, or any admissions contained therein, would not be relevant to the determination whether the guardian ad litem’s immunity has been pierced.