

1982 WL 189311 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 1, 1982

*1 The Honorable Daisy P. Porter
Probate Judge
County Courthouse
Saluda, South Carolina 29138

Dear Judge Porter:

You have asked this office for an opinion whether public notice must be given prior to the appointment of a guardian of a minor in the Probate Court. It is the opinion of this office that proceedings in Probate Court for the appointment of a guardian for a minor may be conducted ex parte without notice, although it is advisable to appoint a guardian ad litem for the minor whose interest is involved and to provide notice of the proceeding to the parties.

Generally,

[w]here no provision for notice is made by statute, proceedings for the appointment of a guardian are ex parte and ordinarily no notice to anyone is required. 39 C.J.S. Guardian and Ward § 23 p. 50.

See also, [Annot., 1 A.L.R. 919](#), 'Validity of Appointment of Guardian or Curator for Infant Without Service of Process Upon, or Notice to, Latter',

. . . notice is not necessary in the absence of the statute requiring notice, either expressly or by clear implication, p. 919.

South Carolina's statutory scheme prescribes no requirement of notice. Sections 21-19-10, et seq. of the South Carolina Code provide for the appointment of guardians by the Probate Court. In addition, [§ 14-23-1150\(b\) of the Code](#) grants jurisdiction for the appointment of guardians to the Courts of Probate. Although public notice is required in certain situations [see e.g., § 21-19-80, pertaining to the citation of guardian removed from state] the usual and ordinary process of appointment of a guardian for the minor provides no such requirement. ¹

The South Carolina Supreme Court has recognized the ex parte nature of guardianship proceedings. See, [Ex parte Davidge](#), 72 S.C. 16, 63 S.E. 449; [Chamberlin v. First National Bank of Greenville](#), 202 S.C. 115, 24 S.E.2d 158. In the case of [Cathcart, et al. v. Hopkins, et al.](#), 119 S.C. 90, 112 S.E. 64, the Court affirmed the longstanding practice of the courts of South Carolina to appoint committees for insane persons without notice given to the affected person. Thus, it must be concluded that the appointment of a guardian for a minor in the Probate Court is a special proceeding, which is generally ex parte.

However, it must be mentioned that the State Supreme Court has recently manifested its disfavor of ex parte orders. In [Herring v. Credit Bureau of Columbia, S.C.](#), 272 S.C. 368, 252 S.E.2d 123, the Court noted,

[w]e have stated repeatedly that ex parte orders are reserved for those rare occasions where no adverse interest exists or where exigent circumstances dictate that action be taken prematurely. p. 123.

Obviously, a guardianship proceeding affects the interest of a minor who is a party to the proceeding. 39 C.J.S. [Guardian and Ward](#) § 22, p. 50; Cf. [Cathcart, et al. v. Hopkins, et al.](#), *supra*. Thus, since the interest of a minor party is affected by the guardianship proceedings, it is advisable that the minor be represented by a duly appointed guardian ad litem. ² See, i.e., [Prather](#)

[v. Tupper](#), 267 S.C. 636, 230 S.E.2d 712 [the Court set aside paternity proceedings in which the child was not represented by a guardian ad litem]; [West v. West](#), 208 S.C. 1, 36 S.E.2d 856 [Supreme Court appointed a guardian ad litem for an infant in a custody case that affected his interest although he was not a party to the proceeding].

*2 Accordingly, you are advised that although guardianship proceedings have traditionally been ex parte without notice to the minor or any other person, the better procedure is to appoint a guardian ad litem for the minor and notice the guardian ad litem of the proceeding so that effective representation of the interest of the minor may occur.

With best wishes, I remain

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

- 1 Compare the procedure for appointment of a guardian to the explicit statutory notice requirements prior to the appointment of a committee for an incompetent [§§ 49-23-710, et seq.]. § 44-23-710 provides, inter alia, '[c]opies of the petition together with copies of a summons and notice to procure a guardian ad litem shall be served upon the person for whom the committee is sought, upon his legal guardian, if any, and his nearest known relative or friend'
- 2 Rules of Practice for the Courts of Probate of South Carolina 3 and 4 provide, respectively, for the appointment and duties of guardians ad litem in Probate Court.

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