

CHAPTER 8

GUARDIAN AD LITEM ADVOCACY: THE PROGRAM, ROLES, AND RESPONSIBILITIES

Table of Contents

Sec.		
8.1	Introduction: A Team Effort	298
8.2	What Is a “Guardian ad Litem?”	298
	A. Definition of “Guardian ad Litem”	298
	B. The Origin of Guardian ad Litem: The Child Abuse Prevention and Treatment Act of 1974	298
	C. North Carolina Program Establishment and Program Structure.....	299
	D. North Carolina’s Model of Dual Representation: Volunteer and Attorney Advocate	299
8.3	An Explanation of the Role of the Guardian ad Litem.....	299
8.4	Responsibilities of the Guardian ad Litem Team	300
	A. Statutory Duties.....	300
	B. The Team Model: Volunteer, Staff, and Attorney Advocates.....	301
	C. Specific Responsibilities of the Attorney Advocate.....	301
8.5	The Attorney Advocate’s Role and Relationship with the Volunteer.....	307
	A. Resolving Conflicts in Opinion.....	307
	B. The Attorney Advocate’s Role as Consultant	307
	C. Talking to the Volunteer: The Importance of Communication	308
	D. Filling Gaps in Investigation	308
	E. Division of Time Between GAL Work and Other Areas of Practice	308
	F. Role of the Attorney Advocate When there Is No Volunteer Assigned to a Case.....	309
	G. Role of the Attorney Advocate When a Volunteer Is Not Present in Court.....	309
8.6	Attorney Dilemma: Who Is the Client?.....	309
8.7	Division of Responsibilities of the Guardian ad Litem Volunteer, Attorney Advocate, and Guardian ad Litem Staff (Chart)	310
8.8	Events, Activities and Roles in Abuse, Neglect, and Dependency Cases (Chart)	314

STATUTES

7B-600	Appointment of guardian	321
7B-601	Appointment and duties of guardian ad litem	321
7B-603	Payment of court-appointed attorney or guardian ad litem.....	322
7B-1200	Office of Guardian ad Litem Services established	323
7B-1201	Implementation and administration.....	323
7B-1202	Conflict of interest or impracticality of implementation.....	323
7B-1203	Alternative plans	324
7B-1204	Civil liability of volunteers	324

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

North Carolina Guardian ad Litem Program Mission

The mission of the Guardian ad Litem Program is to provide trained independent advocates to represent and promote the best interests of abused, neglected, and dependent children in the state court system and to work toward a plan that ensures that these children are in a safe, permanent home.

§ 8.1 Introduction: A Team Effort ¹

A Guardian ad Litem Attorney Advocate (AA) works as a partner with a Guardian ad Litem volunteer, and both are supported by the Guardian ad Litem staff. The attorney, volunteer, and staff are therefore cooperating as a team to represent and promote the best interests of the child in abuse, neglect, or dependency cases. Each member of this advocacy “team” brings different skills and a different perspective, which helps to ensure quality representation of the child.

Guardian ad Litem representation is a unique and fulfilling type of legal representation. One of its unique aspects is that of working as part of a team. Another unique aspect is that the attorney advocate represents what is in the best interest of the child instead of strictly representing the child’s wishes. The attorney advocate and the GAL volunteer factor any wishes expressed by the child into a determination of best interest. The GAL makes recommendations to the court based on best interest but also conveys any wishes expressed by the child to the court.

§ 8.2 What Is a “Guardian ad Litem”?

A. Definition

The phrase *ad Litem* means “for the lawsuit.”² The word *guardian* refers to an officer or agent of the court who is appointed to protect the interests of minors.³ The phrase *Guardian ad Litem* as a whole therefore refers to one who protects and represents the child for the purpose of the court action, which, in this case, includes all matters surrounding a petition for abuse, neglect, or dependency.

B. Origin: The Child Abuse Prevention and Treatment Act of 1974

This federal act required states receiving federal funds for the prevention of child abuse and neglect to provide a Guardian ad Litem for each child involved in such proceedings. Each state handles this requirement differently because the federal act did not define the role or responsibilities of GALs. In some states, GALs are attorneys, and in some they are trained volunteers (often called Court Appointed Special Advocates or “CASAs”). Other states, like North Carolina, provide a combination of attorneys and volunteers to represent children.

C. North Carolina Program Establishment and Program Structure

¹ Some of the material for this section was originally drawn from Children and the Law, by Ilene Nelson, 1992, and from the North Carolina Guardian ad Litem Training Curriculum, edited by Cindy Bizzell, 1998, both published by the Administrative Office of the Courts.

² Barron’s Law Dictionary, page 11 (1984).

³ Id. at 208.

GUARDIAN AD LITEM ADVOCACY

In the North Carolina General Statutes, G.S. 7B-1200 and 7B-1201 establish the existence of the Guardian ad Litem Program, stating that local programs shall consist of (at a minimum) volunteer guardians ad litem (“GALs”), a program attorney, a program coordinator and necessary clerical staff. This program exists within the Administrative Office of the Courts (AOC) as the Guardian ad Litem Services Division, that promulgates policies and procedures necessary and appropriate for the administration of the program.

There is at least one GAL office in every judicial district in the state, and some districts have more than one office. Each district has a district administrator responsible for overseeing the program in that district. GAL offices also typically have, in addition to the district administrator, one or more program supervisors and a program assistant. The size of the staff varies depending on the size of the district. Each district contracts with one or more attorneys to provide legal services for the program clients and those attorneys are independent contractors who are appointed by the court and paid out of program funds. Guardian ad Litem Staff who are in positions which serve the entire state, as opposed to a district or satellite field office, are collectively referred to as the “state office staff.” Most members of the state office are located in one office in Raleigh, but other members of the state office staff have offices in other locations.

D. North Carolina’s Model of Dual Representation: Volunteer and Attorney Advocate

In North Carolina, volunteers serve in the role of guardian ad litem, but the statute requires that whenever a nonattorney volunteer is appointed, an attorney be appointed as well. [7B-601] The GAL and attorney advocate have standing to represent the juvenile in all actions under Subchapter I of the Juvenile Code where they have been appointed. The appointment is to terminate when the permanent plan has been achieved for the juvenile and approved by the court, but the court may reappoint the GAL upon a showing of good cause upon motion of any party, including the GAL, or of the court. [7B-601] According to statute, the attorney is to assure protection of the child’s legal rights throughout the proceeding.⁴ [7B-601]

§ 8.3 An Explanation of the Role of the Guardian ad Litem⁵

To be an effective member of the advocacy team, it is essential that a GAL attorney understand his or her role and how that role relates to staff members and volunteers. An excerpt from *Children and the Law*, a casebook written by Ilene Nelson, former Administrator of the Guardian ad Litem Program, best summarizes the general role of the Guardian ad Litem along with the role of attorney advocate:

The notion of the child as a separate party entitled to legal counsel and advocacy has concurrently underscored the vital role of the Guardian ad Litem in protecting the child's best interests in a legal proceeding.

. . . The appointment of a Guardian ad Litem is mandatory in North Carolina whenever a juvenile petition is filed alleging abuse or neglect. It is permissive if dependency is the only allegation. NCGS 7A-586 [Now 7B-601]. In an effort to improve the representation of the child both in and out of court, North Carolina provides a volunteer/attorney statewide program of Guardian ad Litem service for children.

⁴ From 1995 until 1999, the attorney advocate’s representation was limited to “through disposition and after disposition when necessary to further the best interests of the child.”

⁵ Refer to Chapter 12 of this manual on Ethics for more discussion on the role of the GAL.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

As soon as the social services department files the petition alleging abuse or neglect, the Guardian ad Litem is appointed for the child. The GAL represents neither the social services department nor the family but rather focuses on the child alone. Virginia Weisz, Advocating For Children: North Carolina's Guardian Ad Litem Program, Popular Gov't. 16, 18 (Institute of Government, 1985).

A trained lay volunteer chosen to act as Guardian ad Litem must be assisted by an attorney "in order to assure protection of the child's legal rights within the proceeding". NCGS 7A-586 [Now 7B-601]. These attorneys are called "attorney advocates." The GAL represents the best interest of the child and not necessarily what the child wishes. However, because the child does not have an attorney to represent those wishes, it is essential that the GAL make those wishes known to the court even when advocating against them.

The aim of the legislation is clear: (1) to provide quality representation for children in abuse and neglect matters, and (2) to do so in a cost-effective manner by using volunteers, with professional services from attorneys in every court proceeding.

Attorney advocates in North Carolina serve as partners with trained lay volunteer Guardians ad Litem to represent the best interest of the child. The attorney relies on the volunteer to bring to court sufficient evidence to support recommendations that are in the best interest of the child. The Guardian ad Litem relies on the attorney to present the evidence in a convincing manner and preserve a strong court record. A strong working relationship between attorney and volunteer gives the child the quality representation the court demands.

The basic duties of the Guardian ad Litem [volunteer] encompass the continued involvement with the child from the time the petition is filed through return of the child's custody to the parents or through termination of parental rights and adoption, or "until formally relieved of the responsibility by the judge." NCGS 7A-586.⁶ [Now 7B-601]

§ 8.4 Responsibilities of the Guardian ad Litem Team (volunteer, attorney advocate, and staff)

A. Statutory Duties

The statute sets out specific duties of the GAL, which are carried out as a team effort by volunteer, attorney advocate, and staff. The expanded responsibilities stemming from these duties and the division of responsibility among staff, volunteer, and attorney advocate are shown in the chart in § 8.7 in this chapter titled "Division of Responsibilities of the Guardian ad Litem Volunteer, Attorney Advocate and Guardian ad Litem Staff." Contractual responsibilities of the attorney advocate are further outlined in § 8.4.C. of this chapter.

The Statutory Duties of the GAL under 7B-601 include the following:

- Representing the child in all actions in Juvenile Court where they have been appointed
- Making an investigation to determine the following:
 - ◆ the facts,
 - ◆ the needs of the juvenile, and
 - ◆ the available resources within the family and community to meet those needs
- Facilitating, when appropriate, the settlement of disputed issues
- Offering evidence and examining witnesses at adjudication
- Exploring options with the judge at the dispositional hearing

⁶ Children and the Law, by Ilene Nelson, published by the Administrative Office of the Courts, 1992.

GUARDIAN AD LITEM ADVOCACY

- Protecting and promoting the best interests of the juvenile until formally relieved of the responsibility by the judge
- Conducting follow-up investigations to insure that the orders of the court are being properly executed
- Reporting to the court when the needs of the juvenile are not being met
- When authorized by the court, to accompany the child to court in any criminal action where the child is called to testify in a matter relating to abuse.

B. The Team Model: Volunteer, Staff, and Attorney Advocates

These statutory duties provide a framework for the GAL volunteer, who receives at least twenty-five hours of intensive, detailed training from GAL program staff members on how to apply and expand these responsibilities. Volunteers are closely supervised and supported by local Guardian ad Litem staff throughout the course of a case. GAL attorneys work with both volunteer and staff to provide the legal representation for child clients. The GAL program, both locally and at the state level, provides training and guidelines for attorneys, staff, and volunteers to help define the work done by all.

C. Specific Responsibilities of Attorney Advocate⁷

1. Contractual Obligations

The GAL attorney advocate has certain contractual obligations pertaining to the services that he or she performs in providing legal representation to GAL child clients. Those contractual obligations relevant to a discussion of AA responsibilities include the following:⁸

The AA agrees to provide, in a manner satisfactory to the agency and consistent with the North Carolina Revised rules of Professional Conduct, the following legal services reasonably necessary to effectively advocate in the proceedings brought pursuant to Chapter 7B of the North Carolina General Statutes for each child client of the Guardian ad Litem Services Division for whom the attorney has been appointed to represent, including but not limited to: representing the best interests of the child in non-secure custody hearings, adjudicatory proceedings, dispositional proceedings, and proceedings to terminate parental rights; participation in any court ordered pre-trial conferences; and all other reasonable professional services necessary after disposition until the court relieves the attorney of this duty. The attorney shall be present and represent each child client at every review hearing; provided, however, that if the attorney is unable to attend a review hearing the attorney will be deemed to have fulfilled this obligation if the child is represented at the review hearing by an attorney approved by the GAL Services division.

⁷ There are two sources from which an AA can draw to define his or her responsibilities. The contract that each AA signs with the AOC sets out a number of performance expectations that are binding on the AA. In addition, the GAL Guidelines for Best Practice set out expectations for the AA, some of which are not incorporated in the contract but are designed to serve as guidelines attorneys should attempt to meet to make their representation as effective as possible. Because the contract language was revised more recently than the Guidelines, the contract would supercede the Guidelines where there is any contradiction or ambiguity between similar provisions in both.

⁸ Other contractual obligations will not be discussed here, e.g. those relating to payment, qualifications, termination, etc. These obligations have been paraphrased and do not necessarily duplicate the language in the contracts. These obligations are set out here to provide information on the AA's responsibilities and the reader should assume that the language in the actual contracts with AAs will differ.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

The AA further agrees to advocate for and further the best interests of the child and assure protection of the child's legal rights by taking all action necessary to zealously represent the child; such advocacy includes but is not limited to:

- ensuring that all relevant evidence and witnesses to be introduced in court are identified and secured;
- interviewing witnesses when appropriate, including the child, and preparing witnesses for court;
- ensuring that subpoenas are issued in a timely manner;
- examining and cross-examining witnesses and introducing relevant evidence in court;
- making relevant arguments to the court;
- reviewing court orders for accuracy and taking appropriate action when corrections are required;
- ensuring that all hearings are timely scheduled and held, including the filing of motions for such hearings if necessary;
- ensuring that termination of parental rights petitions are filed in a timely manner when needed to further the interests of the child, including the filing of such petitions initiated by the GAL;
- discussing case issues with the Volunteer GAL and other parties to ensure complete familiarity with facts and issues in the case and to determine areas of agreement and disagreement and the legal limits within which a settlement can be reached. The attorney agrees not to enter into a settlement with other parties without agreement from the Volunteer GAL;
- advocating for interventions designed to expedite the cessation of court involvement;
- in effort with the Volunteer GAL, facilitating agreements among the parties;
- requesting release of the GAL and AA pursuant to 7B-601 and ensuring court orders reflect that release.

The AA shall ensure that the child, by and through the GAL, participates in all appeals arising out of the proceedings to which the AA is appointed. A separate brief for the child is not necessary if the attorney deems it appropriate to join in the brief of another party so long as the child becomes a party to the appeal and the brief sufficiently addresses the child's appellate issues.

The attorney has no obligation and shall not be paid for participating in tangential legal or administrative proceedings that may benefit the child but fall outside the scope of Chapter 7B. The attorney is not required to pursue these actions on behalf of the child but rather must advocate for proper representation for the child so that the child is able to proceed with these actions.

2. Work Standards from the GAL Guidelines for Best Practice

Responsibilities and expectations of the GAL attorney advocate (AA) are outlined below in the Work Standards, contained in the Guardian ad Litem Guidelines for Best

GUARDIAN AD LITEM ADVOCACY

Practice, which take into account both program expectations and statutory obligations.

WORK STANDARDS FOR GUARDIAN AD LITEM ATTORNEYS

[From *Guardian ad Litem Guidelines for Best Practice, 2007*]

E. Work Standards

I. Advocacy

A Guardian ad Litem Attorney Advocate:

- a. Demonstrates knowledge and expertise in the area of juvenile law, including familiarity with the North Carolina Juvenile Code and relevant case law.
- b. Performs legal research on disputed legal questions and prepares in advance for courtroom presentation of the case.
- c. Collaborates with Volunteers to a sufficient degree to facilitate effective paired representation of the child-client.
- d. Advocates for the best interests of the child-client in courtroom proceedings in conjunction with the Guardian ad Litem Volunteer. Expressed wishes of the child-client are communicated to the court if the child-client is able to articulate his or her wishes.
- e. Express wishes of the child-client to the court if the child is unable to articulate his/her wishes.
- f. Attends all hearings to further the best interests of the child-client.
- g. Advocates and furthers the best interests and protects the legal rights of the child-client by:
 - (1) Identifying and securing evidence and witnesses to be introduced in court.
 - (2) Interviewing witnesses, including the child-client, when appropriate and preparing witnesses for court.
 - (3) Ensuring that subpoenas are issued in a timely manner.
 - (4) Examining and cross-examining witnesses and introducing relevant evidence in court.
 - (5) Making appropriate arguments to the Court.
 - (6) Reviewing court orders for accuracy and taking appropriate action when corrections are required. Ensures that court orders are timely entered

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

according to statute.

- (7) Requesting the release of the Volunteer and Attorney Advocate at the close of a case and ensuring court orders reflect that release.
 - (8) Assuring protection of the child-client's legal rights in other related legal matters through other legal representation or other professionals as appropriate.
- h. Files motions for review or any other necessary motion in the child's best interest and schedules hearings as needed after consulting with the GAL staff and Volunteer on particulars of the matter.
 - i. Files Termination of Parental Rights (TPR) petitions or motions in a timely manner that GAL staff and the Volunteer agree are in the best interests of the child-client.
 - j. Discusses case issues with the Volunteer and other parties to determine areas of agreement and disagreement and the legal limits within which a settlement can be reached. The Attorney Advocate will not enter into a settlement with other parties without agreement from the Volunteer.
 - k. Advocates for interventions designed to expedite the cessation of court involvement.
 - l. With the Volunteer, facilitates agreements among parties when possible and serves as mediator when appropriate. Notifies the District Administrator or designee immediately when a case is appealed.
 - m. Ensures that the child-client is represented on appeal by either:
 - a. Representing the child-client on appeal by filing a separate brief or collaborating with DSS on a brief.
 - b. Referring the case to the GAL State Office for representation by a pro bono attorney. *(Cross reference appeals re: volunteer involvement)*
 - c. Referring the case to another attorney who has the same position on the brief, if appropriate, so long as the child-client, by and through the GAL, is a party to the appeal and the brief sufficiently addresses the child-client's appellate issues.
 - n. In order to be paid for appellate work, attorneys representing the child-client on appeal must request and receive approval from the State Office to participate in the appeal prior to the docketing of the case in the Court of Appeals.

II. Division and Staff Relations

- a. Promotes the Guardian ad Litem Program mission.

GUARDIAN AD LITEM ADVOCACY

- b. Understands the role of the Attorney Advocate in relation to Volunteers and GAL staff and appropriately functions in that role.
- c. Consistently cooperates within the spirit of the Program and uses a shared-team approach of case involvement.
- d. Offers creative ideas and solutions to system obstacles and program operation.
- e. Consults with the GAL District Administrator or designee on contested issues.
- f. Participates in Volunteer Guardian ad Litem Training as requested by the GAL District Administrator or designee.
- g. Attends meetings as requested by the District Administrator that relate to the advocacy of the child-client as his/her schedule permits.

III. Volunteer Relations

- a. Provides consultation and support to Volunteers when appropriate.
- b. Responds in a timely manner to Volunteers' phone calls, requests for information, and legal direction.
- c. Reviews Volunteers' recommendations to ensure they are legally appropriate and child-focused, and offers appropriate feedback.
- d. Attends Guardian ad Litem Program case staffings with Volunteers or staff as requested and consults on case investigation and preparation when necessary.
- e. Brings any concerns regarding Volunteer performance to the attention of the District Administrator or his/her designee.

IV. Professional Responsibility

- a. Maintains professional standards and ethics.
 - (1) The vulnerability of the population of children served by the Program, as well as the Program's credibility and integrity in the legal and child advocacy communities, requires a high standard of ethics. The Attorney Advocate is expected to bring ethical conflicts and questions to the Guardian ad Litem Services Division Program Administrator and/or Associate Counsel for assistance with resolution.
 - (2) Attorney Advocates are not appointed to cases in which their representation would violate the North Carolina Rules of Professional Conduct (RPC). (Rules 1.7; 1.9; and 1.10 of the Revised Rules of Professional Conduct of the North

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Carolina State Bar.)

- (3) Attorney Advocates follow all RPCs and withdraw from any case in which they would violate the RPCs by continuing representation.
 - (4) Attorney Advocates zealously represent the best interests and protect the legal rights of their child-clients throughout the proceedings.
 - (5) Attorney Advocates may withdraw from a case only if they can do so without violating the RPCs after consulting with the GAL District Administrator.
 - (6) Attorney Advocates who interact on a regular basis, consult with each other, or are in any sense of the word colleagues, are considered part of a "law firm" for the purpose of applying the RPCs to conflicts.
- b. Works and interacts appropriately for the situation with system players such as Department of Social Services, Mental Health, Office of Juvenile Justice, Clerks' Offices, and others to enhance Guardian ad Litem facilitation and cooperation.
 - c. Appears for scheduled court hearings throughout the proceedings. If unable to attend, ensures that the child-client will be represented by securing separate counsel and being responsible for compensation of that representation if necessary.
 - d. Offers and accepts constructive criticism regarding program operation and job duties.
 - e. Completes training related to Juvenile Law and the Guardian ad Litem Program as required by the Attorney Advocate contract.
 - f. Notifies the GAL District Administrator or designee if unable to fulfill contract obligations in regard to any hearing, and works with the District Administrator or designee to secure counsel for that hearing including offering compensation for coverage if necessary.
 - g. Provides complete, timely and accurate requests for payment by the Program as requested and attaches any documentation to payment requests as policy dictates.
 - h. In accordance with provisions of the North Carolina State Bar, retain client files for a minimum of six (6) years after the case is closed, unless arrangements have been made with GAL staff for the Program to retain the files.

§ 8.5 The Attorney Advocate's Role and Relationship with the Volunteer⁹

A. Resolving Conflicts in Opinion

⁹ Please see Chapter 12 in this manual on Ethics for more discussion on the Attorney Advocate's Role and Relationship with the Volunteer.

GUARDIAN AD LITEM ADVOCACY

GAL volunteers and attorneys all approach their cases in different ways. Volunteers make a significant investment of time and thought throughout their investigation and evaluation of the case. They have been in the child's home, have observed her and talked to her, have spoken with her parents, teachers, relatives, and friends. In fact, monthly contact with the child is typically required, according to the GAL Guidelines for Best Practice.¹⁰ The evidence they bring to the attorney advocate has been gathered with their own eyes and ears, and, as such, their evaluation of the facts of the case deserves respect and deference.

Consequently, it is reasonable to say that when there is a factual issue or conflict, the volunteer is entitled to deference from the attorney. When there is a legal issue or conflict, however, the attorney is entitled to deference from the volunteer. This is not to say that volunteers and attorneys should never question, challenge, or disagree with each other – they should and must if they are to carry out the very essence of the teamwork approach to advocacy. But both must realize that the case is not theirs alone and allow the other to carry out his or her portion of the work without interference.

In the rare circumstance that a volunteer and attorney advocate simply can't agree, the conflict should be handed over to GAL staff for resolution. The volunteer and attorney advocate should then abide by the decision of staff concerning the case. The only exception is if the attorney advocate feels that he or she could not zealously represent the child under the circumstances or has an ethical dilemma, in which case the attorney should withdraw from that particular case.

B. The Attorney Advocate's Role as Consultant

The role of the AA during the investigative stages of the case is to be available to the volunteer and staff for advice and support as needed. Some AAs have specific times when they meet with volunteers or when they are in the GAL office for staff meetings. An AA's availability will depend on his or her practice and on logistics, but the important thing is that the AA communicate availability to staff and volunteers, give them information on how to be reached, and exhibit a willingness to consult with them when possible. Volunteers and staff appreciate an attorney who is accessible.

¹⁰ See GAL Guidelines for Best Practice, III-8.

C. Talking to the Volunteer: The Importance of Communication

There are times when there simply is no substitute for an actual conversation between attorney and volunteer. When that conversation does not take place, information may come to light too late in the process or, worse, may never come to light at all.

The AA must be willing to make time to speak with the volunteer. It is entirely possible in some cases for an attorney advocate, especially an experienced one, to go into court with a volunteer's report in hand without ever having spoken to the volunteer and still give *adequate* representation to the child. However, representation is unlikely to be at its best when the volunteer and attorney advocate have never spoken about the case prior to court. Both attorneys and volunteers have many time limitations and other logistical issues that could make a face-to-face meeting difficult, in which case a phone conversation would suffice. Many things that cannot be learned simply by reading a report can be learned through conversation with the volunteer.

Beyond the information contained in the court report, it is important that the attorney understand what facts and issues the volunteer wants to be emphasized in court. It is also important for the attorney to determine whether it would be useful to tender the volunteer to the court for questions or call the volunteer as a witness. The attorney needs to determine the volunteer's feelings about talking to the court and may need to prepare the volunteer as a witness. If the volunteer is new, the attorney should explain what his or her expectations are of the volunteer when they are in court.

The attorney must remember that as nonlawyers, most volunteers are not familiar enough with the judicial process to understand which piece, among all the evidence they have gathered, is most important and admissible. As a result, their report may not emphasize or even include some information that the volunteer is aware of that the attorney believes to be important for the case. Such information might only come to the attorney's attention in the course of conversation with and questioning of the volunteer.

The attorney also needs to talk to the volunteer to assess the credibility and admissibility of potential testimony and evidence. The volunteer, for example, may know facts about a potential witness that might prevent him or her from being a credible witness but may not have mentioned such facts in a report.

D. Filling Gaps in Investigation

If an attorney advocate is proceeding with a case and feels as though there are gaps in the investigation or that additional information is needed, he or she should ask the GAL volunteer to obtain the information or inform staff of the problem so that they can assist the GAL in obtaining the information.

E. Division of Time Between GAL Work and Other Areas of Practice

Some attorneys struggle with dividing their time between GAL work and work in their other areas of practice. The important thing to remember is that once an attorney agrees to represent a child-client all of his or her clients deserve quality representation regardless of ability to pay. However, GAL staff members are typically sensitive to and understanding of the time demands on program attorneys from other areas of practice. The best way to avoid conflicts is to discuss with the district administrator realistic and reasonable expectations concerning the amount of time the attorney advocate typically will need to contribute to the GAL program and then abide by those expectations with a mutual

GUARDIAN AD LITEM ADVOCACY

understanding that there must be a bit of flexibility on both sides.

F. Role of the Attorney Advocate When There Is No Volunteer Assigned to a Case

A case without a volunteer is often referred to as a “program case.” Program cases have been handled in various ways in different districts, but now the GAL Guidelines for Best Practice state that “If no volunteer is available, the District Administrator assigns an Attorney Advocate or staff person as the Guardian ad Litem.”¹¹ A GAL staff member or the attorney advocate, whoever is assigned, must take over tasks normally carried out by the volunteer. Because of the sheer volume of cases, however, the staff member or AA is typically unable to handle the case in the same fashion as a volunteer. However, the duty to represent the best interests of the child remains whether or not a volunteer is assigned to the case. It is important to remember that the attorney advocate (or staff member) should never advocate for a position unless it is based on adequate knowledge acquired through independent investigation. It is better not to take any position when information is inadequate and/or not acquired by the AA or GAL staff member.

G. Role of the Attorney Advocate When a Volunteer Is Not Present in Court

Sometimes a volunteer simply is not present in court, due to a conflict, oversight, or other reason. In this case the attorney may or may not have a report. If the volunteer has a conflict, the AA should be sure to obtain the volunteer’s report and talk to the volunteer prior to court. At the hearing, it is a good idea for the AA to explain to the court the reason for the volunteer’s absence (assuming it is a good one) and to tell the court whether he or she has spoken to the volunteer about the volunteer’s views in the case. If an AA has no report *and* no volunteer and no good excuse for an absence, the AA simply needs to do the best he or she can with information from the file, GAL staff, DSS, and any other sources. *If it becomes apparent that the child would suffer more from inadequate representation due to a lack of information than from a postponement of the matter, only then would a request for a continuance be appropriate.*

§ 8.6 Attorney Dilemma: Who Is the Client?

Defining the client is a dilemma that arises at times for Attorney Advocates in GAL representation. The GAL AA is in a unique position because he or she represents the “best interests of the child” and not necessarily the child’s wishes even though any wishes expressed by the child are factored into best interest and conveyed to the court. Because the GAL volunteer makes recommendations regarding best interest and the attorney advocate is, in essence, the volunteer’s voice, is the volunteer the client? Since, however, the attorney is appointed for the child, to be a partner with the volunteer, is the child the client? The definition of the GAL Attorney Advocate’s client has not been resolved by the North Carolina State Bar or in North Carolina cases. The best guidance in resolving this dilemma is to examine the language of 7B-601, which states that “. . . an attorney shall be appointed in the case in order to assure protection of the child’s legal rights . . .” This language specifically refers to protecting the child’s rights and not to representation of the GAL volunteer or the program. As such, it is reasonable to infer that the attorney advocate represents the child, not the volunteer. However, the representation is unconventional because it is done as a team, in cooperation with the volunteer, and because the representation is of the child’s best interests. Please see Chapter 12 for a more detailed discussion of this issue.

¹¹ GAL Guidelines for Best Practice, V-4.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

§ 8.7 Division of Responsibilities of the Guardian ad Litem Volunteer, Attorney Advocate, and Guardian ad Litem Staff ¹²

To make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs.

<i>Staff</i>	<i>Receives and reviews petition and any background information DSS shares about the case. Determines which available volunteer should be assigned to case.</i>
<i>Staff</i>	<i>Assigns volunteer to case, sending copy of petition and GAL appointment order to volunteer. Shares any background information available with volunteer.</i>
Attorney Advocate / Staff/ Volunteer	Reviews petition
<i>Staff</i>	<i>Notifies volunteer of dates for non-secure, adjudication, disposition hearings.</i>
<i>Staff</i>	<i>As needed, assists volunteer in planning the steps and priorities of her/his investigation</i>
Volunteer	Visits the child at least monthly, having direct and sufficient contact with the child-client to carry out an independent and valid investigation of the child’s circumstance and what the child wants so as to be able to make sound, thorough and objective recommendations in the child’s best interest.
Volunteer	Interviews parents and family members. The parents’ counsel is informed of the Guardian ad Litem Volunteer’s intent to visit or communicate with the parents.
Volunteer	Gathers and reviews data from various records, including DSS, Mental Health, education, and other community service providers to ascertain the needs of the child
Volunteer	Verifies accuracy of information gained during investigation
<i>Staff</i>	<i>Assists the volunteer as necessary to gather and review data from various records, including DSS, Mental Health, education, and other community service providers</i>
<i>Staff</i>	<i>Consults with volunteer to ensure all needs are identified</i>
Volunteer	Determines what services are necessary to meet the child’s needs, determines whether the child can live in his/her own home or needs to remain in foster care or other group setting
<i>Staff</i>	<i>Notifies volunteer of foster care reviews and court hearings</i>
Volunteer	Identifies which resources are available to meet the child’s needs
<i>Staff</i>	<i>Provides a community resource manual and assists the volunteer in identifying which resources are available to meet the child’s needs</i>
Volunteer	Formulates recommendations for services to meet the child’s needs
<i>Staff</i>	<i>Helps volunteer identify additional resources to meet the child’s needs</i>
<i>Staff</i>	<i>Consults with volunteer prior to hearings to review court report and recommendations</i>
<i>Staff</i>	<i>Coordinates the sharing of information between the volunteer and attorney advocate prior to the hearing as needed</i>
Attorney Advocate	Reviews volunteer recommendations with volunteer and/or staff and determines need for witnesses
Volunteer	Identifies and clarifies issues in the case which are known to be in dispute and agreement

¹² Source: This Chart was adapted from the N.C. Guardian ad Litem Training Curriculum, edited by Cindy Bizzell, 1998, revised by Ruth Kravitz, 2002.

GUARDIAN AD LITEM ADVOCACY

To facilitate, when appropriate, the settlement of disputed issues.

Attorney Advocate / Staff / Volunteer	Identifies and clarifies issues in the case which are known to be in dispute and agreement
Attorney Advocate / Staff / Volunteer	Determines the limits within which a settlement can be reached with other parties
Attorney Advocate / Volunteer	Discusses case issues with other parties to determine areas of agreement
Attorney Advocate	Communicates with volunteer and/or staff about possible settlements
Attorney Advocate / Staff / Volunteer	Facilitates agreement among parties when possible

To offer evidence and examine witnesses at adjudication.

Attorney Advocate	Consults with volunteer to determine what evidence is needed for the court hearing
Attorney Advocate	Reviews cases and clarifies disputed issues
Attorney Advocate	Identifies what evidence is needed, ensures that subpoenas are issued and documents secured that need to be introduced
Attorney Advocate	Interviews witnesses to prepare them for court, including child when appropriate
Attorney Advocate	Performs legal research on disputed legal questions and prepares court presentation of case

To explore options with the judge at the dispositional hearing.

Volunteer	Writes court report, including the child's wishes, the child's needs and the resources available to meet those needs, and recommendations for achieving the goal of a permanent safe home for the child
<i>Staff</i>	<i>Reviews court report to ensure that it includes the child's wishes, the child's needs and the resources available to meet those needs, and recommendations for achieving the goal of a permanent safe home for the child</i>
Attorney Advocate	Reviews volunteer court report
Attorney Advocate	Advocates for the needs of the child, including the volunteer's recommendations as to how those needs might be met
Attorney Advocate	Brings the child's wishes to the attention of the court and lets the court know if the child's wishes and the child's best interests are not the same

To conduct follow-up investigations to insure that the orders of the court are being properly executed.

Volunteer / Attorney Advocate	Reviews the court order
Volunteer	Visits the child at least monthly, and maintains sufficient contact with parents, relatives, foster parents and agency personnel to determine if the orders of the court are being properly executed
<i>Staff</i>	<i>Notifies volunteer of foster care reviews, court hearings, and of any relevant information that they receive regarding the case</i>
<i>Staff</i>	<i>Maintains awareness of all cases assigned to volunteers and has ready access to information to discuss case when necessary and appropriate</i>
Volunteer	Verifies accuracy of information gained during follow-up investigation
Volunteer	Notifies staff and attorney advocate if the orders of the court are not being properly executed
Attorney Advocate / Staff	Contacts those who are responsible for carrying out the orders of the court to

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

/ Volunteer	address issues surrounding non-compliance
<i>Staff</i>	<i>Identifies facts and changes in situation that may necessitate the case's return to court</i>
Attorney Advocate	Files necessary motions and schedules hearings as needed

To report to the court when the needs of the juvenile are not being met.

Volunteer / Attorney	Reviews the court order
Volunteer	Visits the child at least monthly, and maintains sufficient contact with parents, relatives, foster parents and agency personnel to determine if the needs of the juvenile are not being met
<i>Staff</i>	<i>Notifies volunteer of foster care reviews, court hearings, and of any relevant information that they receive regarding the case</i>
<i>Staff</i>	<i>Maintains awareness of all cases assigned to volunteers and has ready access to information to discuss case when necessary and appropriate</i>
Volunteer	Verifies accuracy of information gained during follow-up investigation
Volunteer	Notifies staff and attorney advocate if the needs of the juvenile are not being met
Attorney Advocate / Staff / Volunteer	Contacts those who are responsible for carrying out the orders of the court to address issues surrounding non-compliance
<i>Staff / Volunteer</i>	<i>Identifies facts and changes in situation that may necessitate the case's return to court</i>
Attorney Advocate	Files necessary motions and schedules hearings as needed

To protect and promote the best interest of the juvenile until formally relieved of the responsibility by the court.

Volunteer	Regularly monitors the child in his/her home setting, evaluating appropriateness of placement and whether the child is receiving court ordered services, identifying any unmet needs
<i>Staff</i>	<i>Consults with volunteer throughout the life of the case to ensure adequate investigation and monitoring of the case</i>
Volunteer	Ensures that the child's wishes are known to the court at every review hearing and that the child-client is appropriately informed about relevant case issues (impending court hearings, the issues to be presented, and the resolution of those issues) in an age appropriate manner
Volunteer	If the Volunteer's recommendations for the best interest of the child are in conflict with the wishes of the child, the Volunteer informs the child-client of the reasons for the Volunteer's recommendations
Attorney Advocate	Ensures that the child's wishes are known to the court at every review hearing
Volunteer	Determines if additional services are needed for the child
Attorney Advocate / Volunteer	Advocates for interventions and services that are designed to ensure that as soon as possible, the child is in a permanent safe home and GAL involvement will no longer be necessary
<i>Staff</i>	<i>Provides support to the volunteer who advocates for interventions and services that are designed to ensure that as soon as possible, the child is in a permanent safe home and GAL involvement will no longer be necessary</i>

GUARDIAN AD LITEM ADVOCACY

<i>Staff / Volunteer</i>	Identifies facts and changes in situation that may necessitate the case's return to court
Attorney Advocate	Files necessary motions and schedules hearings as needed
Attorney Advocate	Files appeals as approved by the State GAL office
<i>Staff</i>	<i>Maintains awareness of all cases assigned to volunteers and has ready access to information to discuss case when necessary and appropriate</i>

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

§ 8.8 Events, Activities and Roles in Abuse, Neglect, and Dependency Cases

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
<p>Report of abuse/neglect to DSS.</p> <p>Prepare Reports</p>	<p>Initiate investigation in 24 hours if abuse is alleged, 72 hours if neglect is alleged.</p>			<ol style="list-style-type: none"> 1. Investigates report to determine if child abused or neglected. 2. Substantiates all allegations. 3. Removes child if necessary—DSS has placement authority. 4. Provides services to substantiated cases.
<p>Child may or may not be taken into temporary custody.</p> <p>Petition filed by DSS.</p> <p>May pursue Non-Secure Custody Order</p>	<p>When taken into temporary custody with no order, must obtain Non-Secure Custody Order within 12 hours or 24 hours if any part of the 12 hours falls on a Saturday, Sunday or holiday.</p>	<ol style="list-style-type: none"> 1. Child may be removed 2. Petition filed 3. Removal may be pursuant to temporary or nonsecure custody 4. Non-Secure Custody Order signed by judge if appropriate 5. Summons sent to both parents with Non-Secure Custody Order and Petition. 6. GAL appt. order signed. 	<ol style="list-style-type: none"> 1. GAL and Attorney Advocate appointed on abuse/neglect cases. 2. Receives Petition, Summons, Non-Secure Custody Order and Appointment Order. 3. Begins investigation immediately. 4. Visits child, witnesses and parents if possible. 5. Interviews DSS social worker. 6. Collects records. 	<ol style="list-style-type: none"> 1. Files petition/subpoenas and calls witnesses. 2. Places child in temporary legal custody. 3. Develops protective service plan, which includes resources.
<p>Non-Secure Custody Hearing</p>	<p>1-7 days after removal; may be continued for up to 10 business days with the consent of the juvenile’s parent or guardian, and GAL, if one has been appointed</p>	<ol style="list-style-type: none"> 1. Establish need for continued custody (whether child has been exposed to physical or sexual abuse or risk of either or needs medical treatment). 2. Determine whether DSS has made reasonable efforts to prevent removal, or whether such efforts are not required. 3. Determine where child will reside until next hearing. 4. May address visitation, support or other such issues. 5. If parents are present, they will be given an opportunity to request court appt’d counsel. 	<ol style="list-style-type: none"> 1. GAL consults with Attorney Advocate prior to hearing. 2. Attorney Advocate presents evidence on need for continued custody and on reasonable efforts, based on preliminary investigation by volunteer GAL, if any. 3. Inquires about legal representation for parents. 4. Conducts preliminary assessment of family problems and remedies. 5. Begins to identify child’s needs. 6. Identifies parties’ common interests. 7. Evaluates risks to child if remains in home or separated from home. 8. Asks for attention to child’s needs 	<ol style="list-style-type: none"> 1. Presents petition and puts on evidence. 2. May ask for continued non-secure custody if appropriate. 3. Has placement authority for children if granted nonsecure custody. 4. Informs the court of placement of the child and arrangement for visitation, evaluations and other services for family. <p>Shows court what reasonable efforts were made to prevent removal, if not an emergency, or why reasonable efforts are not required.</p>

Source: Adapted from the N.C. Guardian ad Litem Training Curriculum, edited by Cindy Bizzell, 1998, revised Ruth Kravitz, 2002.

GUARDIAN AD LITEM ADVOCACY

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
Ongoing Non-Secure Custody hearings	Within 7 days after first Non-Secure Custody hearing and every 30 days thereafter until adjudication unless waived.	Determine need for continued non-secure custody.	<ol style="list-style-type: none"> 1. Attends with attorney advocate. 2. Attorney advocate presents evidence or cross examines, if needed. 3. Continues independent investigation. 4. Advocates for appropriate placement and services needed by child. 	<ol style="list-style-type: none"> 1. Presents evidence regarding why non-secure custody is needed. 2. Provides services for family of child. 3. Finances placement/ services/care for child.
Pre-Hearing Conference <i>(In a number of judicial districts, local court rules require these conferences. They are not mandated by law.)</i>	Prior to adjudication hearing.	<ol style="list-style-type: none"> 1. Clarify issues to be addressed. 2. Establish proper parties. 3. Review placement of children. 4. Motions of Attorneys presented. 5. List of witnesses presented by each party. 6. Discussion to settle or not to settle. 	<ol style="list-style-type: none"> 1. Attends with attorney advocate. 2. Has formed opinion (based on facts) on child's needs for inclusion in any consent order. 3. Is ready to discuss settlement issues. 4. Makes sure any consent order clearly states parent and DSS responsibilities to child whether or not child is returning home. 5. Reviews DSS plan to ensure child's best interest served or considered, presents other alternatives and requests to serve child's best interest. 6. Advocates for permanency for child. 	<ol style="list-style-type: none"> 1. Works with family to remedy issues in petition—may include housing, day care, job skills, substance abuse/mental health counseling. 2. Assesses conditions to determine if children can return home. 3. Arranges medical and psychological evaluations particularly in abuse cases. 4. Finances child's placement and care while in DSS custody.
Adjudication Hearing	Within 60 days from the filing of the petition unless the judge schedules it later for good cause.	<ol style="list-style-type: none"> 1. All parties present evidence and examine witnesses. 2. DSS must prove allegations in Petition are true. 3. Judge determines if allegations are proven. 4. Judge determines whether DSS made reasonable efforts to reunify or whether such efforts are not required. 	<ol style="list-style-type: none"> 1. Attends with attorney advocate. 2. Attorney advocate presents evidence when needed, question witnesses, and argues the case. 3. Gives testimony. 4. Ensures that the court has sufficient information and professional advice about child, family, and services available. 5. Advocates for prompt adjudication by court. 	<ol style="list-style-type: none"> 1. Presents case/evidence. 2. Attempts to prove allegations/ carries burden of proof.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
Disposition Hearing	Usually immediately following adjudication. Sometimes delayed to receive more information on child's needs.	<ol style="list-style-type: none"> To design a case plan that sets forth actions to be taken by the family, DSS, and other professionals to strengthen the home situation and/or place the child outside the home. DSS presents plan. GAL presents Court Report which includes recommendations. Parents present evidence. Judge determines what is in best interest of child and issues order. 	<ol style="list-style-type: none"> Assesses DSS case plan to insure that it is specific, meets the needs of the child and family, and advocates for necessary changes. Consults GAL staff and Attorney Advocate prior to hearing. Attends with attorney advocate. Advocates recommendations through court report and/or testimony based on child's best interest. Seeks to settle differences in plan, to avoid adversarial confrontations. Offers alternative witness/ evidence to support differences in plan for judge's consideration. Recommends next review date. 	<ol style="list-style-type: none"> Presents case plan. Offers services to remedy conditions that led to the child's removal; and/or advocates for out-of-home placement. Sets visitation schedule. Schedules evaluations and services. Designate other services. Manages provision of services needed by family and child. Financially supports needed services by child and family. Recommends next review date.
Ongoing and Out-of-Court Involvement	Between all court hearings	<ol style="list-style-type: none"> Parents involved in DSS service plan. DSS and GAL attend meetings, review reports, monitor situations, etc. 	<ol style="list-style-type: none"> Monitors case to ensure court orders are executed. Attends conferences to facilitate services to the child/family. Gathers reports/information for court. Motions to the court if orders not followed or if circumstances change for the child. Identifies possible remedies. Problem solver/facilitator. Serves as liaison between service providers, DSS, family and foster parents—to empower systems to act on behalf of child. Offers consistent representation and involvement for the child. Informs GAL staff of ongoing progress or problems. 	<ol style="list-style-type: none"> Monitors family's progress, provides social work services, reviews plans for family and child; supervises visits between family and child; manages all facets of case; has primary placement authority for children. Contracts for services for family and child. Motions the court for changes. Monitors child's out-of-home placement.

GUARDIAN AD LITEM ADVOCACY

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
First Review Hearing	Within 90 days of the date of the dispositional hearing.	<ol style="list-style-type: none"> 1. In-court review of placement and service plans and court order. 2. Determine any need to modify, renew or terminate previous orders. 3. Examination of the status of child and family, of placement of child and needs of child. This includes examination of services offered, whether reunification efforts are futile or inconsistent with child's needs, examination of efforts and goals concerning placement, and of visitation and any independent living assessment for children 16 or 17. 	<ol style="list-style-type: none"> 1. Investigates and continues to monitor prior to court. 2. Consults with attorney advocate and GAL staff prior to hearing. 3. Attends with attorney advocate. 4. Attorney advocate presents evidence on parent's, DSS, and other efforts to reunify family; reports on compliance with previous orders. 5. Attorney advocate presents evidence on child's current needs and advocates for permanent placement. 6. Identifies other assessments or evaluations needed to remedy situation. 7. Informs court of progress made toward alleviating the conditions which caused the petition to be filed. 8. Submits Court Report. 	<ol style="list-style-type: none"> 1. Presents court report. 2. Reports progress of parents complying with court order. 3. Identifies need for continuing services from DSS or other agencies. 4. Justifies need for continued DSS involvement. 5. Presents case plan for next 6 months. 6. Identifies permanent plan for child.
Second and Subsequent Review Hearings	Within 6 month intervals after the first hearing. Further review hearings may be waived under certain circumstances pursuant to 7B-906(b).	<ol style="list-style-type: none"> 1. Same activities as in first review hearing, above. 2. If child not returned to parents, termination of parental rights considered. 	Same as above.	Same as above.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
Permanency Planning Hearing	<p>In cases of removal, required within 12 months after initial order removing child, and subsequent hearings are at least every 6 months thereafter.</p> <p>Also required within 30 days of a judge’s decision that reasonable efforts to reunify are not required or shall cease.</p>	<ol style="list-style-type: none"> Parties present information of the court to enable the court to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. If the child has been outside the home for 12 of the most recent 22 months or meets any other criteria set out in 7B-907(d) DSS shall initiate TPR proceedings unless the exceptions in 7B-907(d) are met. Such TPR petition shall be filed within 60 days of the permanency planning hearing. 	<ol style="list-style-type: none"> Presents information to the court to enable the court to determine the same factors (1-5) listed in the column to the right concerning DSS role • Advocates for a specific plan to achieve a safe, permanent home within a reasonable period of time. 	<p>Needs to provide information to the court to enable the court to determine the following:</p> <ol style="list-style-type: none"> Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile’s best interests to return home; Where the juvenile’s return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents; Where the juvenile’s return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile’s adoption; Where the juvenile’s return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why; Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile.

GUARDIAN AD LITEM ADVOCACY

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
<p>Termination of Parental Rights (TPR) Petition Filed</p> <p>TPR petition can be initiated as a motion in the cause in an abuse, neglect and dependency proceeding.</p>	<p>DSS ordered or required to initiate termination proceedings in cases involving circumstances set out in 7B-907(d) or upon the initiative of DSS at any time when warranted, or the GAL when warranted.</p>	<ol style="list-style-type: none"> 1. DSS files petition or GAL may file. 2. Both parents summoned or noticed. 	<ol style="list-style-type: none"> 1. Attorney advocate expediently files TPR petition, when it is determined that such a proceeding is in the child's best interest. 2. Consults attorney advocate to draft the Petition. <p>Where DSS petitions for TPR and GAL is in favor of TPR, GAL and attorney advocate prepare to present evidence, question witnesses and argue case to the court to supplement the case presented by DSS.</p>	<ol style="list-style-type: none"> 1. Files TPR petition after reasonable attempts to reunite the family have failed, or the situation is so egregious that no efforts are reasonable. 2. Adoption unit looks for adoptive family, prepares child for adoption, determines if adoption subsidies are available/ appropriate.
<p>Termination of Parental Rights Hearing</p>	<p>Responding parties have 30 days to file an answer.</p> <p>Hearing shall be held no later than 90 days from filing of petition or motion</p>	<ol style="list-style-type: none"> 1. Parents admit or deny allegations. 2. DSS presents evidence. 3. GAL presents evidence. 4. Parents present evidence. 5. Judge determines if grounds exist and if in best interest of child to terminate rights of parents. 	<ol style="list-style-type: none"> 1. Prepares for hearing with attorney advocate. 2. Attends with attorney advocate. 3. GAL testifies if necessary. 4. Attorney advocate presents evidence on grounds for termination as well as best interest of child and argues case, whether or not petitioner. 5. Submits Court Report in dispositional phase of the case. 	<ol style="list-style-type: none"> 1. Presents evidence and argues the case.
<p>Post TPR Court Review</p>	<p>No later than six months from date of termination and every 6 months thereafter.</p>	<ol style="list-style-type: none"> 1. DSS presents evidence of efforts to place child for adoption. 2. GAL, foster parents, agencies present evidence. 	<ol style="list-style-type: none"> 1. Investigates and requests information from DSS. 2. Presents information and submits Court Report. 3. Advocates for permanency/ stable home/services for child. 4. Attends with attorney advocate. 5. Presents any information. 6. Collaborates with DSS adoption unit to ensure child's interest is paramount. 7. GAL advocates for additional adoption listing, if appropriate. 8. GAL requests additional moneys for subsidies for special needs children. 	<ol style="list-style-type: none"> 1. Works with adoptive family. 2. Provides services to child. 3. Finances child's placement/services while in DSS custody.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

EVENT	TIMING	ACTIVITY	GAL ROLE	DSS ROLE
Adoption Petition filed	After parental rights terminated.	DSS notifies District Court and GAL in writing.	<ol style="list-style-type: none"> 1. GAL raises any issues of abuse of discretion by DSS within 10 days following written notification of adoption petition filing, but cannot demand to have a role in adoption selection. 2. Requests information on adoption selection from DSS. 3. Submits Court Report. 	<p>Must provide GAL with adoption selection information within 5 days upon request of GAL.</p> <p>Monitors adoption for 1 year or until adoption is finalized.</p>
Adoption Disruption	Adoptive parents relinquish rights back to the agency, or other situation which places child back in DSS custody.	<ol style="list-style-type: none"> 1. DSS monitors the case for continued reviews. 2. GAL reappointed. 3. Notice of disruption given to GAL within 30 days of disruption. 	<ol style="list-style-type: none"> 1. GAL investigates and determines child's needs. 2. Prepares for review through investigation. 3. Submits Court Report. 4. Advocates for permanency/ stable home/services for child. 5. Attends with attorney advocate. 6. Presents any information. 7. Collaborates with DSS adoption unit to ensure child's interest is paramount. 8. GAL advocates for additional adoption listings, if appropriate. 9. GAL requests additional moneys for subsidies for special needs children. 	DSS attempts to locate another home or determines alternate permanent home.

GUARDIAN AD LITEM ADVOCACY

STATUTES

§ 7B-600. Appointment of guardian

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition under G.S. 7B-906 or G.S. 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person of the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case.

(c) If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2000-124, § 1, eff. October 1, 2000; S.L. 2003-140, § 9(a), eff. June 4, 2003.

§ 7B-601. Appointment and duties of guardian ad litem

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) The court may authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) The guardian ad litem has the authority to obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 432, § 1, eff. Aug. 10, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999.

§ 7B-603. Payment of court-appointed attorney or guardian ad litem

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply with the order at the time of disposition, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

GUARDIAN AD LITEM ADVOCACY

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order at the time of disposition, the court shall file a judgment against the respondent for the amount due the State.

(c) Repealed by S.L. 2005-254, § 2, eff. Oct. 1, 2005.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2000-144, § 17, eff. July 1, 2001; S.L. 2005-254, § 2, eff. Oct. 1, 2005.

§ 7B-1200. Office of Guardian ad Litem Services established

There is established within the Administrative Office of the Courts an Office of Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to abused, neglected, or dependent juveniles involved in judicial proceedings and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities. Each local program shall consist of volunteer guardians ad litem, at least one program attorney, a program coordinator who is a paid State employee, and any clerical staff as the Administrative Office of the Courts in consultation with the local program deems necessary. The Administrative Office of the Courts shall adopt rules and regulations necessary and appropriate for the administration of the program.

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

§ 7B-1201. Implementation and administration

(a) Local Programs. --The Administrative Office of the Courts shall, in cooperation with each chief district court judge and other personnel in the district, implement and administer the program mandated by this Article. Where a local program has not yet been established in accordance with this Article, the district court district shall operate a guardian ad litem program approved by the Administrative Office of the Courts.

(b) Advisory Committee Established. --The Director of the Administrative Office of the Courts shall appoint a Guardian ad Litem Advisory Committee consisting of at least five members to advise the Office of Guardian ad Litem Services in matters related to this program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally.

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

§ 7B-1202. Conflict of interest or impracticality of implementation

If a conflict of interest prohibits a local program from providing representation to an abused, neglected, or dependent juvenile, the court may appoint any member of the district bar to represent the juvenile. If the Administrative Office of the Courts determines that within a particular district court district the implementation of a local program is impractical, or that an alternative plan meets the conditions of G.S. 7B-1203, the Administrative Office of the Courts shall waive the establishment of the program within the district.

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

§ 7B-1203. Alternative plans

A district court district shall be granted a waiver from the implementation of a local program if the Administrative Office of the Courts determines that the following conditions are met:

- (1) An alternative plan has been developed to provide adequate guardian ad litem services for every juvenile consistent with the duties stated in G.S. 7B-601; and
- (2) The proposed alternative plan will require no greater proportion of State funds than the district court district's abuse and neglect caseload represents to the State's abuse and neglect caseload. Computation of abuse and neglect caseloads shall include such factors as the juvenile population, number of substantiated abuse and neglect reports, number of abuse and neglect petitions, number of abused and neglected juveniles in care to be reviewed pursuant to G.S. 7B-906, nature of the district's district court caseload, and number of petitions to terminate parental rights.

When an alternative plan is approved pursuant to this section, the Administrative Office of the Courts shall retain authority to monitor implementation of the said plan in order to assure compliance with the requirements of this Article and G.S. 7B-601. In any district court district where the Administrative Office of the Courts determines that implementation of an alternative plan is not in compliance with the requirements of this section, the Administrative Office of the Courts may implement and administer a program authorized by this Article.

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

§ 7B-1204. Civil liability of volunteers

Any volunteer participating in a judicial proceeding pursuant to the program authorized by this Article shall not be civilly liable for acts or omissions committed in connection with the proceeding if the volunteer acted in good faith and was not guilty of gross negligence.

Added by S.L. 1998-202, § 6, eff. July 1, 1999.