



Guardian ad Litem

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POLICY AND PROCEDURES CONFLICT ATTORNEY REPRESENTATION Effective July 1, 2009

Guardian ad Litem (GAL) conflict attorney representation will no longer be paid by Indigent Defense Services (IDS) but will be paid by the Administrative Office of the Courts (AOC). It has been proposed that IDS will continue to pay attorneys for GAL conflict cases when the appointment occurred prior to July 1, 2009; however, all GAL conflict cases will be assumed by AOC as of June 30, 2010. GAL conflict attorneys appointed after July 1, 2009 will not submit fee applications to IDS; instead, payment will be made in accordance with the procedures and forms set forth herein.

Because of this transfer of responsibility, AOC and GAL have developed policies and procedures addressing the following issues: (1) identification of GAL conflicts; (2) assignment of GAL conflict attorneys; (3) responsibilities of GAL conflict attorneys; and (4) payment of GAL conflict attorneys.

Note that AOC/GAL anticipates a transition period as this is a change of policy and practice. As a result, AOC/GAL plans to review the policy, including assignment and payment, after six (6) months.

I. Identification of Conflict

The identification of conflicts will focus on **actual attorney conflicts** in representing GAL child clients. The focus of the analysis is the application of the Revised Rules of Professional Conduct related to GAL attorney advocate representation. The children served by the GAL Program are the clients of attorney advocates. Rule 1.7 prohibits representation of current clients who have a conflict of interest and Rule 1.9 requires certain duties to former clients. Note that while the Rules permit a client to give informed consent to waive an attorney's conflict, child clients by virtue of their minority cannot give informed consent. However, former child clients who are now adults may give informed consent to waive a conflict.

There may also be conflicts related to the GAL Program such as personal conflicts of staff. Most conflicts will be identified by the GAL Program staff or attorney advocate and request for appointment of a GAL conflict attorney will be made and reflected in the court file.

Please refer to the Appendix for examples of common conflict scenarios. Final decisions about GAL conflicts will be made by Jane Volland, GAL Administrator. Deana Fleming, Associate Counsel, is a resource in identifying GAL conflicts and can be reached at (919) 890-1322 or deana.k.fleming@nccourts.org. Additionally, the Ethics/Professional Responsibility section of the N.C. State Bar can be reached at (919) 828-4620.

II. Assignment of GAL Conflict Attorneys

GAL Conflict Attorneys will be assigned from the **GAL Conflict Attorney List**—*not* from the indigent defense list. District Administrators will be responsible for compiling this list of approved GAL conflict attorneys. The **GAL Attorney Conflict List** will be provided to the juvenile clerk and judge, and assignment will be made by local procedure. GAL conflict attorneys will be appointed to a specific case using “Order to Appoint or Release Guardian ad Litem and Attorney Advocate” (AOC-J-207) which is part of the court file.

The GAL District Administrator is responsible for completing the **GAL Conflict Attorney Approval Request Form** and sending it to the GAL State Office. The form is essential in tracking GAL conflict attorneys and ensuring payment.

Some GAL conflict attorneys may be paired with a GAL volunteer or GAL staff person. Flexibility of the model will depend on local GAL Program resources and the circumstances of the conflict.

III. Responsibilities of GAL Conflict Attorneys

GAL conflict attorneys will fulfill the statutory responsibilities as set forth in N.C. Gen. Stat. § 7B-601 by representing the child-client’s best interests until released by the court upon achievement of a permanent plan.

Hearings

GAL conflict attorneys will represent the best interests of the child or children to whom he or she is appointed in all hearings under Subchapter I of Chapter 7B including: non-secure custody hearings, adjudicatory proceedings, dispositional proceedings including reviews and permanency planning hearings, proceedings to terminate parental rights, and post termination of parental rights review hearings. GAL conflict attorney will also attend any court ordered pre-trial conferences.

Legal Advocacy

GAL conflict attorneys will provide effective and zealous representation of child client’s best interest, including informing the court of the child’s wishes age-permitting. This advocacy includes the following:

- Ensure that all relevant evidence and witnesses to be introduced in court are identified and secured.
- Interview witnesses when appropriate, including the child client, and preparing witnesses for court.
- Ensure that subpoenas are issued and motions to quash are filed in a timely manner.
- Introduce relevant evidence in court, and examine witnesses. If possible, a GAL court report is introduced into evidence on behalf of the child.
- Make relevant and appropriate arguments to the court.
- Review court orders for accuracy and taking appropriate action when corrections are required. Additionally, help ensure that orders are entered timely.

- Advocate that all hearings are timely scheduled and held, including the filing of motions for such hearings on behalf of the child client if necessary.
- Discuss case issues with 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.
- If working with a GAL volunteer or staff, ensure effective communication with the GAL volunteer and only enter into settlement agreements after consultation with the GAL volunteer or staff supervising the case.

Appeals

In accordance with current policy, appellate assignment is made by the GAL State Office. GAL conflict attorneys are not expected to represent the child client on appeal.

Training & Resources

GAL conflict attorneys will be provided continuing legal education training with CLE credit from the GAL Program State Office. Typically this one-day training is scheduled for early fall and is currently offered to new and seasoned attorney advocates. Additional training for GAL conflict attorneys may also be developed on the local and regional level. GAL conflict attorneys may contact Deana Fleming, Associate Counsel, as a resource to answer questions about GAL advocacy. Additionally, GAL conflict attorneys will have access to the Guardian ad Litem Attorney Practice Manual 2007 Edition.¹

IV. Payment of GAL Conflict Attorney

GAL conflict attorneys are paid a rate of \$50.00 per hour. Upon approval of the conflict assignment (District Administrator submits **GAL Conflict Attorney Approval Request Form**), the GAL conflict attorney will be approved for up to 20 hours of legal work. Additional hours will be approved in increments on an as added basis depending on the complexity and length of the case in court. Either the District Administrator or GAL conflict attorney may contact Deana Fleming at (919) 890-1322 or deana.k.fleming@nccourts.org for additional approval of hours. If the conflict attorney wants direct deposit, he or she may complete the **AOC Vendor Payment Method Verification Form** and return to AOC-Fiscal Services Division, Attn: Sue Cunningham, P.O. Box 2448, Raleigh, NC 27602.

Payment Procedure

After designated hearings and entry of the written order by the court, GAL conflict attorneys will complete and submit the **Request for Payment of GAL Conflict Attorney Services** form with a time sheet attached.² This form will be submitted to the District Administrator who will forward the form to AOC, GAL Services Division, P.O. Box 2448, Raleigh, NC 27602. Upon receipt, the GAL Services Division will forward payment requests to the Fiscal Services Division for disbursement of funds.

¹ Note that section 12.7 on conflicts is revised and amended by this policy.

² GAL conflict attorneys track their “billing hours” according to their regular practice. GAL/AOC needs some verification of the billable time spent on each conflict case.

Designated Hearings

The conflict attorney may submit the request for payment upon entry of the written order after the following hearings:

- ✓ **Disposition** (the submission will include time spent for nonsecure custody hearings, the adjudicatory hearing, and disposition hearing)
- ✓ **Review** hearings held pursuant to G.S. § 7B-906
- ✓ **Permanency Planning** hearings held pursuant to G.S. § 7B-907
- ✓ **Termination of Parental Rights**
- ✓ **Post TPR Review** hearings held pursuant to G.S. § 7B-908

In some cases, there may be other types of hearings such as a motion pursuant to Rule 60. Time for these hearings may be submitted with the above designated hearings, or separately if necessary. Time spent when a case is continued will be part of the time requested when the hearing is completed and order entered.

Billable Time (Note that the table is a sampling and not exhaustive)

| | Billable Time | Non-Billable Time |
|--------------|---|---|
| In Court | <ul style="list-style-type: none"> - In trial - Negotiations - Presence at pretrial conference - Waiting time > 1 hour may bill 1 hour total even if actual time is greater | <ul style="list-style-type: none"> - Waiting time if greater than one hour |
| Out of Court | <ul style="list-style-type: none"> - Preparing for trial including witness preparation - Reviewing court orders & documents - Preparing motions or other pleadings such as responses or subpoenas - Meeting with child client or GAL staff or volunteer - Discussing case with other parties - Investigative work such as talking with social worker or a therapist | <ul style="list-style-type: none"> - Travel time |

Fees

Receipts for fees such as service by certified mail may be submitted with the payment form. Note there should not be a fee for sheriff's service since the child client is considered indigent.

Parking fees are not covered.

Copying fees are not covered. The GAL Office should be used to make necessary copies of documents.

Expert witness fees must be approved on a case-by-case basis by contacting Deana Fleming at (919) 890-1322 or deana.k.fleming@nccourts.org.

V. Appendix

- a. Common Conflict Scenarios**
- b. GAL Conflict Attorney Approval Request Form**
- c. AOC Vendor Payment Method Verification Form**
- d. Request for Payment of GAL Conflict Attorney Services**

Appendix: Common GAL Conflict Scenarios

- 1) Minor mother has a baby and neglect petitions have been filed on both. This scenario creates a current conflict of interest between clients of the attorney advocate. The attorney advocate may only represent one client. Under the new model, the attorney advocate and a volunteer would be assigned to represent the minor mother's best interest. A GAL conflict attorney would be assigned to represent the baby, and if available, a volunteer appointed as well. District resource permitting, one GAL staff person would supervise the GAL of the minor mother paired with the attorney advocate and a different GAL staff person would supervise the GAL paired with the GAL conflict attorney.
- 2) Conflict among sibling group where allegations that the older brother sexually abused the younger sister. Again this scenario creates a conflict of interest among current clients. The structure of representation would be the same as example #1.
- 3) Generational conflict. Former GAL client is now 25 years old, is addicted to alcohol, and a juvenile petition is filed on her 3 year old. The same attorney advocate and same district administrator are still employed by the GAL Program, but there is a new program supervisor. The attorney advocate has a duty to the former client and unless the 25 year old waives the conflict, a GAL conflict attorney must be appointed. A volunteer is appointed and supervised by the program supervisor. The old file is not reviewed.
- 4) Generational conflict #2. Former GAL client is 23 and is the father of a child for whom DSS has filed an abuse petition. He aged out of foster care with many anger issues. The GAL staff is the same and remembers his problems. There is a new attorney advocate. Although there is not an attorney conflict, because of bias of the program staff, it may be necessary to assign a GAL conflict attorney without a volunteer.
- 5) Personal conflict of GAL staff. A juvenile petition is filed against a cousin of a GAL staff person and this staff person wishes to be a possible placement for the child. The case would be referred to a conflict attorney and probably not paired with a GAL volunteer.
- 6) Personal conflict of attorney advocate. Attorney advocate represented the respondent father on a charge of driving under the influence. This case is not assigned a GAL conflict attorney. Under the contract with AOC, the attorney advocate is responsible for making payment arrangements with a backup attorney who will work with the assigned volunteer.