



Guardian ad Litem

Cindy Bizzell
Administrator

PO Box 2448, Raleigh, NC 27602
T 919 890-1251 F 919 890-1903

POLICY AND PROCEDURES CONFLICT ATTORNEY REPRESENTATION Effective July 1, 2009; Revised July 1, 2015

Guardian ad Litem (GAL) conflict attorney representation is paid by the Administrative Office of the Courts (AOC) and is not paid by Indigent Defense Services (IDS). Assignment and payment of GAL conflict attorneys is made in accordance with the procedures and forms set forth herein. If you have questions about the policy and procedures, or analysis of a conflict of interest, please contact Deana Fleming, GAL Associate Counsel, at (919) 890-1322 or deana.k.fleming@nccourts.org.

I. Identification of Conflict

The identification of conflicts is based 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 age 21 or older 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. Contact GAL Associate Counsel for case-specific questions. Additionally, attorneys may contact the Ethics/Professional Responsibility section of the N.C. State Bar 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. GAL District Administrators are responsible for compiling the 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 Deana Fleming, GAL Associate Counsel, by mail, courier, fax (919) 890-1903, or scanned and emailed to deana.k.fleming@nccourts.org. The form is essential in tracking GAL conflict attorneys and ensuring proper payment.

GAL conflict attorneys may be paired with a GAL volunteer or GAL staff person in a dual representation model of attorney and GAL; or the conflict attorney fulfills all statutory duties using an attorney-only model. Flexibility of the model depends on local GAL Program resources and the circumstances of the conflict.

III. Responsibilities of GAL Conflict Attorneys

GAL conflict attorneys 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 or ceasing of juvenile court jurisdiction.

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 attorneys 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 are 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. GAL conflict attorneys may 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 needed basis depending on the complexity and length of the case in court. If the conflict attorney wants direct deposit, he or she may complete the **AOC Vendor Payment Method Verification Form** (AOC-A-225) 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 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, Attn: Sandra Paul, P.O. Box 2448, Raleigh, NC 27602. Upon receipt, GAL Services Division will forward payment requests to AOC Fiscal Services Division for disbursement of funds.

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 and Permanency Planning** hearings held pursuant to G.S. § 7B-906.1
- ✓ **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.

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.

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 less 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.

Mileage

If a child client is in an out-of-county placement, GAL/AOC will pay \$0.50 per mile for the GAL Conflict Attorney to visit the child on a monthly basis using AOC-A-25. Travel time is not billable.

V. 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 child client and a GAL Conflict Attorney is assigned to the other child client. If the attorney advocate was already representing a child client who becomes a mother, the attorney advocate continues to represent the minor mother and a GAL Conflict Attorney is assigned to represent the baby who may also be assigned a GAL volunteer. District resource permitting, one GAL staff person would supervise the GAL 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. This scenario also creates a conflict of interest among current clients. The structure of representation would be the similar to 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. Contract attorney advocate represented the respondent father on a charge of driving under the influence, and the father refuses to waive the conflict of interest. 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 GAL backup attorney who will work with the assigned volunteer. Some districts hold back attorney retainer funds to cover these type of personal conflicts. Personal conflicts of GAL staff attorneys (state employees) are covered by GAL conflict attorneys.