



Pandemic 2020 Court Practice Tool Kit

April 2020

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Introduction

The legal team in the NC Guardian ad Litem State Office created this “Pandemic 2020 Court Practice Tool Kit” to assist local GAL programs as they navigate representation of child clients during the 2020 coronavirus pandemic. The pandemic has brought about novel issues in a crisis situation, unlike those we have dealt with in the past. The Tool Kit was prepared after conducting a survey of district administrators and attorney advocates throughout the state. While no two districts are alike, common themes and concerns became evident. The intent of the Tool Kit is to provide guidance regarding legal and practical issues that have arisen due to the pandemic. The materials and resources herein should not be construed as a formal legal opinion or a mandatory directive. If you need further information or guidance on a specific situation, please contact GAL Associate Counsel Reggie O’Rourke regarding trial related issues and GAL Appellate Counsel Matt Wunsche regarding appellate related issues. If appellate counsel has been appointed in an appeal, please contact the appointed counsel and include counsel on correspondence about that appeal. The information included in this Tool Kit was published in April 2020.

I. Short-Term and Long-Term Impacts of the Pandemic

Attorney Advocates, GAL staff, and GAL Volunteers should thoughtfully consider how the pandemic and the various State and local orders regarding the pandemic, have impacted and could foreseeably impact child clients, parents, families, placement providers, and GAL Volunteers. While regular, in-person court proceedings may resume as early as 1 June 2020, it may take a considerable amount of time for some GAL Volunteers to be willing and able to resume appearing in court in person. Local programs should plan for this and make sure that accommodations are put in place to enable GAL Volunteers to participate in in-person proceedings telephonically or via WebEx. These same accommodations may be necessary for child clients, parents, placement providers, and others.

A. Safety From Infection

Consult [CDC guidelines](#) and learn how to avoid infection and/or spread of the virus. Use that information to protect yourself and others both during the suspension of court and once regular court activities resume.

B. Effects on Child-Parent Bond, Deadlines, and Services

Attorney Advocates, GAL staff, and GAL Volunteers should thoughtfully consider the manner in which a temporary suspension of in-person parent-child visits due to safety concerns regarding COVID-19 may impact things like the parent-child bond. Attorney Advocates should also consider how a temporary (or long term) unavailability of services or a parent’s inability to access services due to issues related to COVID-19 could impact statutory timelines; the parent’s ability to comply with court orders; how the lack of these services could impact a court’s decision to award custody or guardianship; reasonable efforts findings; and the extent to which these could impact a court’s ability to find that TPR grounds exist or do not exist.

We should be mindful of the fact that the pandemic may have negatively impacted parents' ability to participate in remote and in-person court proceedings and how a parent's loss of employment or housing due to COVID-19 could impact a case. It may be advisable to allow parents more time to bond, comply with court orders, and reunify. It may also be necessary to recommend different/alternative services or methods of correcting the conditions that led to the adjudication and/or the juvenile's removal.

II. Preparation Steps for Local GAL Programs

In this section we will address practices, steps, and actions local GAL programs can take to prepare for the resumption of regular, in-person court proceedings and full court dockets. During this stage, local GAL programs should consider how to collaborate with court stakeholders to prioritize and schedule hearings. This topic is discussed in section VII, [Prioritization of Hearings](#).

A. Minimize the Need for Staff to be Involved in Hearings

Under our model of representation, it is generally best for the in-court advocacy to be performed through the testimony and advocacy of the GAL Volunteer and the legal representation and legal advocacy of the Attorney Advocate. GAL Supervisors may have increased workloads and/or heightened GAL Volunteer supervision responsibilities as the result of measures that have been put in place in response to the pandemic. Trusting and holding GAL Volunteers capable of testifying and advocating in court proceedings will be even more important now as local GAL programs and jurisdictions work through the backlog of hearings. This will allow GAL Supervisors to focus on responsibilities and tasks that only they can complete.

It is foreseeable that in-person court proceedings will resume in some instances before GAL Volunteers are ready, willing, or able to physically return to court. As a result, it will be important for Attorney Advocates and GAL programs to find ways for GAL Volunteers to actively participate in hearings remotely. Whether GAL Volunteers are physically present in court or participate in proceedings remotely, GAL Volunteers' testimony is essential to authenticate GAL court reports and to provide courts with essential information regarding the GAL volunteers' thorough, independent investigation. Relying on GAL Volunteers' advocacy in court has been and will continue to be critical.

As a general rule, we encourage incorporating the testimony and/or participation of GAL Volunteers in all hearings to the extent possible and practicable. North Carolina appellate courts have consistently and repeatedly held that testimony is needed and attorneys' arguments are not considered testimony. ((See *In re J.T.*, 252 N.C. App. 19 (2017) (vacating and remanding permanency planning order as not supported by competent evidence when the court heard no oral testimony from any witnesses and only heard statements made by attorneys and accepted into evidence reports from DSS and the GAL) and *In re S.P.*, 833 S.E.2d 638 (N.C. Ct. App. 2019)

(vacating and remanding permanency planning order that was based solely on DSS and GAL reports without any testimony; attorney arguments are not testimony)).

We are mindful of the fact that GAL Volunteers may not be assigned or may not have information to provide to the court around the time that hearings on the continued need for nonsecure custody are being conducted. However, there are benefits in enabling and facilitating the GAL Volunteer's participation in those and other hearings, even if the GAL Volunteer will not testify. Ultimately, the decision as to whether the GAL Volunteer will testify rests with the GAL Attorney Advocate. If a GAL Volunteer is unable to testify, please have Staff testify to permit the introduction of court reports and any other documents essential to represent the best interests of the child.

B. Preparing and Training GAL Volunteers to Testify

The GAL Volunteers' thorough, independent investigation is undoubtedly the best preparation for enabling GAL Volunteers to testify effectively in court. However, Attorney Advocates and local GAL programs can improve GAL Volunteers' testimony and their confidence in testifying by providing additional training and guidance.

Attorney Advocates and GAL Staff should provide GAL Volunteers with specific guidance on testifying in remote proceedings. WebEx is the only video conferencing platform supported by NCAOC. For security and other reasons, NCAOC is strongly encouraging jurisdictions to exclusively use it when conducting remote hearings. Attorney Advocates and GAL Staff should familiarize themselves with using WebEx and review the guidance materials that NCAOC created about how to use WebEx.

Please consider the following suggestions for facilitating the GAL Volunteer's testimony and participation in remote hearings:

- Prior to the hearing, GAL Staff are encouraged to work with GAL Volunteers to ensure that GAL Volunteers are familiar with WebEx; that the GAL Volunteer has a computer or another device that will allow the GAL Volunteer to participate in the hearing; and that the GAL Volunteer has internet access. GAL Staff may need to conduct a practice WebEx meeting with the GAL Volunteer.
- Prior to the hearing, Attorney Advocates and GAL Staff should work together to determine whether, how, and the extent to which the GAL Volunteer will participate in the hearing. For example, will the GAL Volunteer participate in the entire hearing or only up until she/he testifies?
- It may be necessary for the Attorney Advocate to work with the court, the juvenile clerk, and the other parties to ensure that the GAL Volunteer will be able to participate. Since some clerks may send a single WebEx invitation to the parties in multiple cases, it may be necessary for the GAL Volunteer to be on standby or to log on at a specific time. If the Attorney Advocate encounters resistance to the GAL Volunteer's participation in hearings he/she may find *In re J.H.K.*, 365 N.C. 171 (2011) helpful. In *In re J.H.K.*, the N.C. Supreme Court held that the GAL Volunteer's presence at a TPR hearing is not

obligatory, “unless the attorney advocate or the trial court deems the GAL's presence necessary to protect the minor's best interests.”

- Prior to the hearing, the Attorney Advocate should consider whether or how he/she will communicate with the GAL Volunteer and, if necessary, the GAL Staff during the hearing.

GAL Volunteers should be reminded that hearings conducted via WebEx are just like in-person hearings in their importance and significance and that the hearing will likely be recorded. GAL Volunteers should wear business casual or more formal attire. During WebEx hearings, GAL Volunteers should speak only when instructed to do so by the Attorney Advocate or the court. They should stop speaking when instructed to do so or when an objection is made. GAL Volunteers should have a copy of their report, and other documents suggested and agreed upon by the GAL team.

C. NCAOC Resources

NCAOC created a seven and a half minute video that guides viewers on how to host a WebEx meeting; create a WebEx account; and manage WebEx recordings. Even though GAL Attorney Advocates and GAL Staff should not host or send invitations to participate in remote court proceedings, Attorney Advocates and GAL Staff can use those WebEx features for video conferencing meetings. In addition, the video contains helpful information about other WebEx features. The video is found at: <https://youtu.be/TRx4vTz3rbg>.

NCAOC also created interactive slides to provide step-by-step guidance on using WebEx to conduct remote proceedings; creating the optimal remote environment; conducting and managing remote hearings; and storing and sharing recordings as an official record. Many WebEx features covered by the video and the slides are tasks that should be performed by the clerk. However, the slides and the video contain information that will help judges and attorneys. The slides are found at: <https://indd.adobe.com/view/db34fd42-d3e0-4c7c-b934-a19aededa380>.

D. Tips for Effective Remote Hearings

The Capacity Center Building for Courts produced a document titled “Conducting Effective Remote Hearings in Child Welfare Cases.” It contains advice specific to judges, attorneys, and other remote hearing participants. The section titled “Tips for All Hearing Participants” contains helpful information for GAL Volunteers and it appears below:

Tips for All Hearing Participants

- Determine in advance what device you will use to access the hearing (i.e. computer, smart phone, tablet). Make sure your device’s camera and speakers are working properly. If possible, log in to the platform before a scheduled remote hearing to practice using it.
- Wear solid colors that are easily viewed on camera, avoid patterns.

- Be aware others can see what's behind you. Consider using a solid background instead of full camera view if that is an option on your platform. Pay attention to lighting—sitting in front of a window can make you look “washed out” or difficult to see.
- Minimize noises and distractions to the extent possible. When you are not speaking, mute your microphone. Turn your phone on silent and minimize or close other windows on your computer screen to avoid sounds and notifications (this may also help the program run more smoothly).
- Consider confidentiality limitations. If your communications are confidential, ensure that others in your home can't hear you.
- Look at the camera when you are speaking. Position the camera at about eye level if possible.
- Speak slowly and clearly. There may be an audio lag, so pause before and after speaking to account for this.
- Be flexible but remember professional decorum. Things may go wrong, and all participants may need to be extra patient and forgiving. Accept that these hearings may be less productive than in-person hearings. Despite the inevitable hiccups, the rights and experiences of children and parents are still at stake in remote child welfare hearings. Treat an online hearing with the seriousness with which you would treat an in-person hearing.

The entire document is found at:

https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remote-hearings.pdf.

III. Preparation Steps for Judicial Districts

In this section we will discuss practices and procedures that judicial districts may want to implement to help hearings to proceed smoothly, once in-person court resumes and court dockets become full. Per the orders of Supreme Court Chief Justice Cheri Beasley, most regular court hearings are postponed until at least 1 June 2020. All parties to a child welfare case should have a vested interest in ensuring that the case is heard and resolved expeditiously. With that shared goal in mind, all parties must work together to plan the steps they are going to take to mitigate delays resulting from the COVID-19 pandemic. To the extent possible, the parties should be acting now, by resolving cases by consent or holding uncontested hearings remotely, and by working to eliminate administrative backlogs that existed prior to the onset of the pandemic. To accomplish our shared goals, the most important thing is to communicate and produce a plan together that considers the needs of all parties in the district.

Districts should also consider the NC Child Welfare Court Suggested Practices During COVID-19 Pandemic that was issued by NCAOC on 20 April 2020. The [document](#) was created through collaboration between, NCAOC Juvenile Court Improvement Program, the N.C. GAL Program, IDS, and NCDHHS.

A. Chief Justice's Emergency Directives

Judicial Districts should comply with and take full advantage of the Emergency Directives as long as they are in place to reduce the risk of spreading COVID-19 and conduct necessary hearings in an appropriate manner.

1. Chief Justice's 4/2/2020 [Order](#)

Hearings should be rescheduled no sooner than June 1, unless they can be conducted remotely, are necessary to preserve due process, are for emergency relief, or the chief judge determines the hearing can be conducted safely (Directive 1). Remote hearings must safeguard the constitutional rights of all participants, can only be held with the consent of all parties, must maintain confidentiality, must be recorded, and must permit confidential communication between attorneys and clients. (Directive 3) Pleadings that normally must be verified, including petitions, only need to be affirmed with the statement provided in the order. (Directive 5) Serve documents electronically, by 5 pm, when the other parties consent. (Directive 6) The Order is set to expire May 1, but is expected to be extended until June 1.

2. Chief Justice's 4/13/2020 [Order](#)

Extends the deadline for all pleadings, motions, notices, and other documents that would have been due between March 13 and June 1 to June 1.

B. Reduce the Backlog

Below are steps we can take while social distancing to reduce the backlog that will be waiting when we return to court.

1. Regular Meetings

Jurisdictions should consider conducting regularly scheduled meetings that include the A/N/D judge(s), the GAL District Administrator, GAL Attorney Advocates, DSS attorneys, parent attorneys, and other court personnel like the A/N/D court clerk and the Family Court Case Coordinator. Topics for discussion and resolution should include, but not be limited to, how and what cases will be scheduled; issues around using WebEx to conduct remote hearings; and past due orders. Before you discuss how and what cases should be scheduled, it may be best to have previously considered the GAL program's preferences for how cases will be prioritized and scheduled. While WebEx should be used to conduct remote hearings, there are a number of issues jurisdictions should consider about its use. For example, jurisdictions should plan for how exhibits will be shared before and during remote hearings; how placement providers and other non-parties will be invited and included in hearings; and how parents and their attorneys will communicate with one another during remote hearings. Prior to engaging in discussions about past due orders, the District Administrator and the Attorney Advocate should consider what role the Attorney Advocate should play in working through any backlog of past due orders. While it is important to clear the backlog of past due orders, we do not want jurisdictions to place the responsibility for drafting orders on the Attorney Advocate.

2. Consent Orders

Identify cases where consent orders can be entered, per Directive 1 of the Chief Justice's 4/2/2020 Order. Also identify other cases that may be good candidates for remote hearings where there is not likely to be opposition, such as post termination of parental rights hearings. Entering these orders during the time that regular court is postponed will help free up court time when regular court resumes.

3. Priority of Juvenile Court

As juvenile courts prepare to handle the backlog of cases, they will be competing for court time and attorneys' time with other courts. Discuss where A/N/D hearings rank in the priority of hearings when there is a scheduling conflict as per Rule 3.1(a) of the General Rules of Practice for the Superior and District Courts, which were adopted pursuant to G.S. 7A-34. Remember, that Rule 3.1 includes domestic cases. However, when a respondent parent has a scheduling conflict between an A/N/D case and another case listed in Rule 3.1(a)(2), it may be advisable to continue the A/N/D case, especially when the A/N/D case will generate an appealable order. See *In re S.G.V.S.*, 811 S.E.2d 718 (N.C. Ct. App. 2018), which references Rule 3.1.

4. Catching Up on Old Orders

Get caught up on past orders due. Where possible, offer to help draft orders we support. Getting orders entered in older cases will free up court time and resources to deal with newer cases that are delayed by the pandemic.

5. Local Rules and Administrative Orders

Use local rules and administrative orders to help manage the backlog and consider changing them where they will hurt.

- a. It may be necessary to suspend local rules by administrative order when a jurisdiction is adopting backlog procedures that conflict with current local rules
- b. Revise local rules where a more permanent change will aid in resolving the backlog.
- c. Implementing local rules for jurisdictions that have not previously used them. This will obviously require the agreement of the chief district court judge.
- d. Administrative orders should be used to change court processes, procedures, and schedules, not to make substantive changes. For example, it is not advisable to suspend all visitation via an administrative order.

6. Prioritize Cases

Identify cases/hearings that will need to be addressed first when court resumes. See [Prioritization of Hearings](#), Section VII of this document.

7. Assess Services

Assess the services that were available and/or suspended for parents and other caretakers and children from when the pandemic began affecting North Carolina in mid-March. Access to those services during the pandemic will impact the well-being of children as well as parents' ability to comply with case plans and achieve reunification. Thus, whether services remained available or became inaccessible will have a profound impact on the direction a case may take when regular hearings resume. Consider, among other services: education, health care, visitation, mental health, substance abuse, counseling, and job training. Consider how these services will affect best interests upon resumption of court.

C. Practices that Judicial Districts Should Consider Implementing

1. Advance Submission of Court Reports

If the judicial district has not already done so, it may want to consider implementing a practice of submitting court reports sufficiently in advance of court so that the court and all parties will have read the reports.

2. Estimate Hearing Time

Schedule (and to the extent appropriate) conduct hearings based on projected estimated lengths based on hearing types. For example,

- a. Nonsecure Custody Hearings—20 minutes
- b. Review Hearings—20 minutes
- c. Permanency Planning Hearings—30 minutes
- d. Post-TPR Hearings—10 minutes
- e. If parties believe a hearing will take longer than the estimated timeframe, the party should provide notice to the court and the parties and request more time.
- f. The lengths of hearings are a guide and should not be rigidly adhered to, especially if an appealable order will be generated.

3. Scheduling by Hearing Type

Schedule all first setting Adjudication/Disposition and Pre-trial Adjudication hearings for possible consent on the same day and time and require parents to appear, so that parties can negotiate possible consents. Consent orders on Adjudication and Disposition should be circulated amongst the attorneys prior to or during that session of court. Non-contested and shorter hearings could be scheduled during that time also.

4. AM/PM Dockets

Consider separate dockets for morning and afternoon sessions of court, rather than scheduling all hearings at 9 AM. This will help to minimize time waiting in court for GAL Volunteers, parents, and attorneys.

5. Scheduling Conferences

Weekly or biweekly (depending on the frequency of A/N/D court) scheduling conferences with the attorneys and the judges at the beginning of or prior to the week of court to address scheduling issues, possible consent orders, GAL Volunteer availability etc.

6. Review Hearings not Required by Statute

Jurisdictions might elect to not reschedule Review Hearings that are not statutorily required. For example, some jurisdictions routinely schedule reviews every 90 days. If court time is limited in those jurisdictions, it may be best to not schedule or to reschedule those hearings or to make them a lower priority than other hearings.

7. Use of Local Rules and Administrative Orders

- a. It may be necessary to suspend various local rules or administrative orders by an administrative order, if a jurisdiction is adopting procedures that conflict with its current local rules or administrative orders.
- b. It may be best for the jurisdiction to revisits local rules or implement local rules, if the jurisdiction previously had none.

IV. Prioritization of Hearings

Scheduling and prioritization of child welfare hearings may vary from district to district, and county to county. GAL Staff should communicate priorities for scheduling cases with the court, clerk, and other parties. The following list is an example prioritization schedule based on input from all districts. This list is flexible and fluid depending on the situation. For example, while visitation issues are further down the list, they should take top priority if there is an emergent issue affecting the child's wellbeing or if the main issue concerning visitation is the child's safety. As always, emergency situations or those in which child's safety (physical and/or mental) is at risk are always top priority:

- Situations where a child's safety is at issue
- Child's placement is in jeopardy and/or dire need for a service
- Youth aging out of foster care
- Adjudication/disposition hearings
- Situations where reunification (with a parent or other caretaker) can occur
- Hearings on visitation issues
- PPH/PPHR hearings (for IV-E findings)
- Hearings that were continued prior to the current public health crisis
- Hearings related to mandates from an appellate court
- Hearings where guardianship or custody can be awarded and further reviews can be waived.
 - When appropriate, recommend that guardianship or custody is awarded to implement and fulfill the permanent plan. Courts might prefer to delay awarding guardianship and custody until it can do so in the same hearing that it waives reviews.

- Remember—when guardianship is awarded, the court must retain jurisdiction even if it waives reviews.
 - Past statutory deadline for hearing/order*
 - Hearings in progress
 - TPR hearings

*Statutory requirements and deadlines following Petition:

- Initial Nonsecure Custody Hearing- must take place within 7 days, but can be continued for 10 days with consent. N.C. Gen. Stat. § 7B-506(a).
- Initial Nonsecure Custody Order - should be entered within 30 days of initial hearing. N.C. Gen. Stat. § 7B-506 (d).
- 2nd and Subsequent Nonsecure Custody Hearings – must be held 7 days after the first hearing, then every 30 days thereafter. N.C. Gen. Stat. § 7B-506(c).
- Adjudication Pretrial Hearing - must held prior to adjudication. See N.C. Gen. Stat. § 7B-800.1 for requirements of this hearing.
- Adjudicatory Hearing – must be held no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 (“Continuances”) orders that it be held at a later time. N.C. Gen. Stat. § 7B-801
- Predisposition Report – must be submitted prior to disposition, and cannot be submitted or considered prior to or during adjudication hearing. N.C. Gen. Stat. § 7B-808
- Initial Dispositional Hearing - shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. N.C. Gen. Stat. § 7B-901
- Initial Dispositional Order – shall be entered no later than 30 days from the hearing, and shall direct that the review hearing required by G.S. 7B-906.1 be held within 90 days from of the date of the dispositional hearing and, if practicable, shall set the date and time for the review hearing. N.C. Gen. Stat. Section 7B-905
- 90-Day Review Hearings. The court shall conduct a review hearing within 90 days from the date of the initial dispositional hearing held pursuant to G.S. 7B-901. Review hearings shall be held at least every six months thereafter.
- Permanency Planning Hearing - within 12 months of the date of the initial order removing custody, there shall be a review hearing designated as a permanency planning hearing. N.C. Gen. Stat. Section 7B-906.1
- TPR Pretrial Hearing - the court shall conduct a pretrial hearing but the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. N.C. Gen. Stat. § 7B-1108.1
- TPR Hearing – must be held no later than 90 days from the filing of the petition or motion but can be continued for 90 days for good cause. N.C. Gen. Stat. § 7B-1109
- TPR Order - shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. N.C. Gen. Stat. § 7B-1110
- Post TPR Hearing - placement review hearing must be held not later than six months from the date of the termination hearing. The court shall conduct reviews every six months

thereafter until the juvenile is the subject of a decree of adoption. N.C. Gen. Stat. Section 7B-908.

V. Staffing Cases

The terms “staffing cases” and “court staffings” refer to thoughtful, pre-planned discussions between the Attorney Advocate and GAL Staff about a specific child client or sibling group and the related court reports, upcoming hearing(s), and relevant documents and information. Some jurisdictions conduct a staffing meeting wherein each case on the docket is discussed by the Attorney Advocate and the assigned GAL supervisor. These meetings allow the Attorney Advocate to ask questions about areas of particular interest or significance in the GAL Volunteer’s court report. Among other things, they also allow for discussions about the child client’s participation in the hearing and ironing out logistical considerations like the GAL Volunteer’s availability to testify. In some jurisdictions the term has been extended to include conversations between GAL Volunteer and the Attorney Advocate and/or the GAL Supervisor.

If your GAL Program has not implemented regular, systematic practices and procedures for staffing cases with the Attorney Advocate and GAL Staff, it may be helpful to begin. Good communication between Attorney Advocates, GAL Staff, and GAL Volunteers will be more important than ever to plan for the resumption of in-person court proceedings and full court dockets.

A. Regular Staffing Plan

Local GAL programs should consider implementing a regularly scheduled and organized plan for staffing cases that makes the best use of the Attorney Advocate’s and the staff’s time. It may be best to staff cases the week before court, but after the GAL Volunteer and social worker reports have been read by the Attorney Advocate and submitted to the court and the other parties.

B. Issues to Address at Staffing Meetings

During court staffing meetings, consideration should be given to safety concerns; the wishes and needs of each child client; issues and recommendations that will be highly contested; areas of focus for the GAL Volunteer’s testimony; whether and how the child client will participate in the hearing; and when the case might be heard to minimize waiting times for GAL Volunteers and child clients. This is not an exhaustive list.

C. Staff/Attorney Advocate Consultation

There may be instances before a GAL volunteer’s report is finalized and submitted, when it will be important for GAL staff to consult with the Attorney Advocate about a topic of substantial legal significance that might appear in the GAL volunteer’s report. For example, it may be necessary to obtain the Attorney Advocate’s legal opinion about recommending the primary and secondary permanent plans; whether it is advisable to request a cessation of reunification efforts; or whether custody or guardianship should be awarded to a placement provider. Consulting with the Attorney Advocate about topics like these may help to minimize appealable issues.

D. WebEx

Consider using WebEx to conduct court staffing meetings.

VI. GAL Attorney Advocate Work Practice

As local GAL programs prepare for and work through heavy court dockets, they will have a heightened dependence on the Attorney Advocate's legal expertise, guidance and leadership on legal issues. In fact, there will be a heightened dependence and importance of each member of the GAL team fulfilling their unique role and responsibilities.

A. GAL Attorney Advocate Practices

1. Read reports in advance of hearings.
2. Staff cases with GAL Staff and Volunteers
3. Consult with child clients to the extent possible and prepare child clients to testify and participate in hearings.
4. Identify, prepare, and if necessary, subpoenaed witnesses.
5. Organize exhibits in advance of court and appropriately distribute them to the other attorneys prior to hearings.
6. Communicate with other parties to ensure that all evidence necessary to protect and promote the best interests of the child is in the record and properly introduced. Including, but not limited to medical records at adjudication, certified copies of court orders, and certified copies of criminal records.
7. Appropriately use objections and other trial strategies to help ensure that hearings address the required findings of fact based on the hearing type and to ensure that other attorneys don't linger on "irrelevant" matters. These practices also help preserve arguments for appeal, because if we don't object to inadmissible evidence or we fail to attempt to introduce admissible evidence, we will not be able to argue those issues on appeal.

B. Impact of COVID-19 on Attorney Advocate Practices

Attorney Advocates should pay close attention to the manner in which the temporary suspension of in-person parent-child visits due to safety concerns regarding COVID-19 may impact things like the parent-child bond. Attorney Advocates should also consider how a temporary (or long term) unavailability of services or a parent's inability to access services due to issues related to COVID-19 could impact statutory timelines; the parent's ability to comply with court orders; how the lack of these could impact a court's decision to award custody or guardianship; reasonable efforts findings; and the extent to which these could impact a court's ability to find that TPR grounds exist or do not exist. Attorney advocates should be mindful of the fact that the pandemic may have negatively impacted parents' ability to participate in remote and in-person court proceedings. Finally, attorney advocates should consider how a parent's loss of employment or housing due to COVID-19 could impact a case.

C. Workloads and Schedule Limitations

1. Check the court schedule regularly.

2. Have a backup system in place in the event the person responsible for a deadline is sick.
3. Serve documents electronically, if possible. Documents can be served by email pursuant to Justice Beasley's 4/2/2020 order, assuming the parties consent.
4. Determine if videoconferencing or teleconferencing is possible in lieu of a physical meeting or appearance.
5. For contract attorneys, please work with the GAL District Administrator to put a plan in place in the event that the Attorney Advocate becomes ill or is otherwise unable to appear in court.

D. State Bar Guidance

Attorney Advocates are encouraged to review the 6 April 2020 guidance from the N.C. State Bar on ethics and professional responsibility issues that may arise as a result of the current catastrophic conditions. The article is found here: https://www.ncbar.gov/news-publications/news-notices/2020/04/professional-responsibility-in-a-pandemic/?utm_source=State+Bar+News+Alert+Apr+2020&utm_campaign=STBarNewsApr2020&utm_medium=email.

VII. **Mitigating COVID-19's Impact in Cases That Are Appealed**

We all have a vested interest and a role to play in minimizing and eliminating potential issues for appeals. As we create and implement new court processes to deal with the emergent issues presented by COVID-19, please do so with the knowledge that orders are still going to be appealed. When the appellate courts reverse orders in our cases, it causes additional delay in achieving permanence for our child clients, on top of those that may accrue as a result of the pandemic. The following section is intended to be a tool to help avoid potential unnecessary delays as a result of appellate review.

A. Continue to Identify and Respond to ICWA, UCCJEA, and SCRA issues

1. Indian Child Welfare Act (ICWA)

Is there any reason to suspect the Act may apply, even an off-hand remark by a parent or relative or unsubstantiated statement in a court report? Make sure that the record shows that the court and/or DSS made a significant effort to determine whether the Act applied before proceeding. Ask, how many attempts did they make to contact the Tribe? What kind of attempts? Did they receive any notice that mail or other communications did not reach the Tribe? Get it all on the record! If the information is not available, strongly consider postponing any appealable hearing until the information is available.

2. Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

Is there any reason to think there is an ongoing case in another jurisdiction? Was the child born in another state, or have the parents or have the adults lived in another state? If so, did the trial court contact the other state? Did it receive a response? Did the

response indicate that there was no ongoing case or that the other state's court was surrendering jurisdiction? Get it all on the record!

3. Servicemembers Civil Relief Act (SCRA)

If a respondent has not made an appearance, conduct a free search to see if they are a member of the military on the Department of Defense website (you must create an account to search): <https://scra.dmdc.osd.mil/scra/#/home>

B. Avoid Creating Appealable Issues

1. Ceasing Reunification Efforts

Don't cease reunification efforts, except where further efforts would create an immediate safety risk for the child. Ceasing is not necessary under concurrent planning, even where the child will not return home. Instead of ceasing, leave reunification as a secondary plan, continue to make reasonable efforts, and pursue the primary plan. This can create an awkward situation where termination or guardianship is the primary plan and reunification remains the secondary plan, but dealing with that awkwardness is better than an unforced error in a ceasing order that undermines a subsequent termination of parental rights order and pending adoption.

2. Combined Hearings

Avoid combining the ADJ/DISP and initial review/permanency planning hearings. The appellate courts have held the Juvenile Code does not forbid holding the hearings together, but the cases where it happens often get reversed on appeal because holding multiple hearings together makes it more difficult to make all the appropriate findings and apply the right evidentiary standard to each stage of the proceeding. It is not necessary to implement a permanent plan at the time of the initial disposition, and it is advisable to wait until a first review hearing to set one, when it will be a properly noticed permanency planning hearing. In the short term, this may not be appealing on judicial economy grounds, but in the long term it will save you a lot over having a case reversed on appeal.

a. Burdens of Proof

i. Adjudication: The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence. N.C. Gen. Stat. § 7B-805

ii. Disposition following Adjudication: The best interests of the juvenile. N.C. Gen. Stat. § 7B-901

iii. Permanency Planning: Best interests of the juvenile. Neither the parent nor DSS bears the burden of proof in permanency planning hearings, and the trial court's findings of fact need only be supported by sufficient competent evidence. In re L.M.T., 367 N.C. 165, 180, 752 S.E.2d 453, 462 (2013). "At the conclusion of each permanency planning hearing, the court shall make specific findings as to the best permanent

plans to achieve a safe, permanent home for the juvenile within a reasonable period of time.” N.C. Gen. Stat. § 7B-906.1

3. Absent Parents

If the parent is not present for a hearing, whether in person or remote, postpone the hearing and investigate the absence. Inquire as to whether the parent was served with notice of the hearing and ask the parent’s attorney, on the record, what efforts he/she made to contact the parent and notify him/her of the hearing. Without such a showing on the record, the case will be remanded if it is appealed. It may even be worth asking parent’s counsel whether he/she considered a motion to continue or making one ourselves.

4. Remote Hearings

Be cautious about remote hearings. Ensure that all parties have consented to having the hearing remotely, have access to the necessary technology, and that parents are able to communicate with their attorneys confidentially. If the parents are unable to communicate with their attorneys confidentially in real time during the hearing, ensure that there are breaks in the hearing for that to happen. If in doubt about any of those circumstances, postpone the hearing.

5. Contested Hearings

Be especially cautious about holding contested hearings remotely. It may be better to postpone a contested hearing if it is likely to result in an appeal. All of the remote access issues become that much more dangerous in a contested hearing that is more likely to be appealed.

C. Avoid Issues Commonly Raised by Parents on Appeal

1. TPR Filing Deadline

The deadline for filing a TPR motion or petition is now 65 days after the order eliminating reunification from the permanent plan, per 7B-1001. Unless the TPR petition/motion is filed by that deadline, the CRE order becomes appealable. With the widespread postponement of court proceedings, we may see even more cases where this becomes an issue. Either do not cease reunification efforts, which triggers the deadline, or encourage DSS to file petitions promptly. In some cases, it may also be appropriate for GAL to file the petition to comply with the statutory timeline.

2. Changes in Parents’ Lives

Account for changes in parents’ lives as a result of public health concerns. Expecting parents to act the same during a nationwide lockdown as we do under normal circumstances is not reasonable, and the appellate courts are unlikely to view the circumstances as normal. Modification of case plans may be necessary.

- a. Lack of services for parents to complete as required by their case plans.

- b. Account for changes to visitation and blanket orders suspending visitation.
 - c. Lost employment or housing
 - d. Alternative service options: Are there remote options for services like counseling?
3. Motions to Review Visitation

Were visits suspended w/o filing a motion per 7B-905.1? If so, DSS will have to file a motion for review and request that a hearing be scheduled within 30 days.
4. Reasonable Efforts

Did the county make reasonable efforts? What constitutes reasonable efforts will also be a moving target under the circumstances presented by COVID-19, but we should anticipate appellate courts being demanding when cases are challenged. DSS needs to make every effort it can under the circumstances to help parents find and engage with appropriate services.
5. Parent Lacks Representation/Attorney's Motion to Withdraw From Representation.

Unless the parent is present and consents to their attorney withdrawing, oppose the motion until the parent can appear unless there is verification that the parent has received notice of the motion to withdraw. Appellate courts are very protective of parent rights and if the parent did not have notice or consent to the attorney's withdrawal, oppose the motion as the parent can contest it on appeal and will most likely win if they did not consent and did not have notice of the motion. This will further delay permanence.
6. Remote Hearings and Entry of Consents Through Remote Means

Make sure that we are following NCAOC's recommendations for remote proceedings. You can find an FAQ memo about remote hearings from the NCAOC Office of General Counsel [here](#).

 - a. Petition electronically
 - i. Lack of service – documents can be served by email pursuant to Justice Beasley's 4/2/2020 order, assuming the parties consent.
 - ii. Petitions can also be affirmed, rather than verified.
 - b. Consent orders are governed by N.C. Gen. Stat 7B-801(b1) and there are three requirements:
 - i. All parties present or represented by counsel authorized to consent
 - i. What will "present" mean in a remote hearing? We don't have statutes or case law on this point yet, but look at the Chief Justice's directives for remote proceedings. At minimum, remote presence will have to be sufficient to protect due process rights.
 - ii. The juvenile is represented by counsel

attorney advocacy establish a record that the GAL program performed its duties. Make sure the court takes judicial notice of the entire court file, so that any documentary evidence in the file will be a part of the record. *See In re J.H.K.*, 365 N.C. 171, 711 S.E.2d 118 (2011) (recognizing the GAL Program's team model of representation).

8. Impact on TPR Grounds and Best Interests
 - a. Abuse/neglect grounds – Are parents able to access the treatment programs to address the issues that led to the original abuse or neglect? If so, have they been given a reasonable opportunity to access them in light of the conditions?
 - b. Reasonable progress within 12 months – How much of the relevant 12-month period was affected by the pandemic? If you remove the pandemic time, is there a 12-month block of time that was unaffected?
 - c. Child support – Did the parent lose employment/income because of the pandemic? If so, did the trial court take into account their ability to pay? If the parent was under a child support order, was that modified as a result of the pandemic?
 - d. Willful abandonment – Was the parent unable to visit with the child during the pandemic? For how long? Did the parent make other efforts to maintain contact? Did the parent provide any support?
 - e. Dependency – Is the parent's incapability to care for the child been positively or negatively impacted by the pandemic? That is, has the parent lost access to mental health services, been released from confinement, or otherwise had a status change that could impact his/her capability? Additionally, has the pandemic affected the availability of a proposed alternative placement for the child? Remember, both incapability and lack of an appropriate alternative placement are part of dependency.
 - f. Best interests determinations are reviewed for an abuse of discretion, so there should still be room for trial judges to exercise their own discretion based on the particular circumstances of each case. That said, parent attorneys have pushed to change that standard recently, and the appellate courts are likely to look a little closer at termination decisions that occur during the pandemic. Make sure all the relevant statutory criteria under N.C. Gen. Stat. 7B-1000 are addressed.

9. Impact on Prospective Guardian/Custodians under 7B-600 and 7B-906.1(j)
 - a. When possible encourage DSS to obtain affidavits to support income and ability to care for the child to show that the guardians still have adequate resources.
 - b. If a proposed custodian/guardian has lost employment because of the pandemic, guardianship may no longer be an appropriate placement until the situation has stabilized.

D. Errors Due to Rushed Hearings

1. Orders Lacking Appropriate Findings

This is the number one issue we see consistently on appeal, in all kinds of orders. Please work with DSS to draft strong orders that will withstand the most critical appellate review. Consider using the UNC School of Government's hearing [checklists](#) as one tool to check on the sufficiency of the findings in an order. Keep in mind that the checklists might not contain every needed finding of fact or conclusion of law, since the required findings and conclusions may evolve with caselaw.

2. Prematurely Awarding Guardianship/Custody or Seeking TPR
Particularly during the pandemic, parents are going to experience circumstances – losing employment, housing, access to services – that will require some delay in evaluating whether it's appropriate to change plans and placements or to terminate parental rights. While it is difficult to wait, the time lost due to appellate review and reversal is far greater than waiting for the parent to have an opportunity to demonstrate progress.