

Timothy Heinle

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# Parent Representation

Timothy Heinle

UNC School of Government

[Heinle@sog.unc.edu](mailto:Heinle@sog.unc.edu)

## **§ 7B-602. Parent's right to counsel; guardian ad litem.**

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused,

## **§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by

# Release in A/N/D and TPR

If the parent:

- Does not appear at the first hearing **after being served**
- Does not qualify
- Retains private counsel, or
- Enters valid waiver



TPR only

G.S. 7B-602; G.S. 7B-1101.1

*In re C.T.T.*, 288 N.C. App. 136 (2023); *In re R.A.F.*, 384 N.C. 505 (2023)

# Waiver of counsel



- Knowing and voluntary
- Examination by court\*
- On the record
- Findings must support conclusion
- Court's discretion (no right to self-representation)

See G.S. 7B-602(a), (a1) (AND); 7B-1101.1(a), (a1) (TPR); 7B-806; \*e.g., *In re K.M.W.*, 376 N.C. 195 (2020)

# Required inquiry at TPR

1. Are parents present?
2. If so, are they represented?
3. If not represented,
  - a. do they want counsel, and
  - b. are they indigent?

Sufficient to engage in “a fairly lengthy dialogue with [a respondent parent] to determine awareness of her right to counsel and the consequences of waiving that right.”

# Status of TPR Counsel



In all other situations, counsel is provisional (until released or confirmed).

A TPR is filed  
(petition or  
motion)



An attorney  
represents a  
parent in an  
underlying  
AND matter



That attorney is  
automatically  
confirmed counsel  
in the TPR.



EXIT

## Withdrawal of Confirmed Counsel

Court has discretion if:

- ✓ the motion is based on justifiable cause,
- ✓ the client receives prior notice of intent, and
- ✓ the court makes a sufficient inquiry into cause and notice.



# Forfeiture of counsel



- Statutory right to counsel is not absolute.\*
- Based on parent's "egregious, dilatory, or abusive conduct" that "totally undermine[s] the purposes of the right [to counsel] by making representation impossible and seeking to prevent trial from happening at all."\*\*
  - *C.f.* Waiver (knowing and voluntary)

\**In re D.T.P.*, 291 N.C. App. 165 (2023); \*\* *In re K.M.W.*, 376 N.C. 195, 209 (2020) (citations omitted)

When may a court reconsider a parent's eligibility and desire for appointed counsel?

At any stage of the proceeding.  
G.S. 7B-602(a), -1101.1(a).

Does the right to appointed counsel still exist after permanency? (E.g., a motion filed a year after grandma gets custody)

Right to counsel at critical stage. G.S. 7A-451(b).

IDS Policy:

- Prefers term. of jurisdiction or Ch. 50 transfer
- Presumes motion is not a critical stage.
- But! Judge may find
  - i. critical stage
  - ii. party is indigent, and
  - iii. party is entitled to counsel.



Are respondents who are not parents entitled to counsel?

Not statutorily. But!

IDS Policy:

- Judge may find, pursuant to G.S. 7A-498.3(a)(1)
  - i. non-parent is indigent, and
  - ii. due process requires appointment.



Is provisional counsel appointed to an unknown parent, not named in a TPR petition?

Probably not required. See G.S. 7B-1101.1(a); see *also* G.S. 7B-1105(d) (notice for service by publication does not reference provisional counsel)

What is trial counsel's role re: appeal?

Must assist appellate counsel with the preparation and service of proposed record on appeal. *N.C. Rules of App. Pro.*, R. 3.1(h).

# Rule 17 GALs for parents in AND/TPR

- *For purposes of this suit*
- Substitution, not assistance
- Customarily an attorney
  - But not the same attorney
- Does not replace counsel
- Appears to apply to non-parent respondents, too



# Category 1: Minor parents

At TPR: Required for any parent < 18  
who is not married or emancipated.  
G.S. 7B-1101.1(b)

At AND: Effective 10/1/25,

- Required for any parent < 16
- Court's discretion for 16 – 17 who is not married or emancipated (initiated by motion or sua sponte).

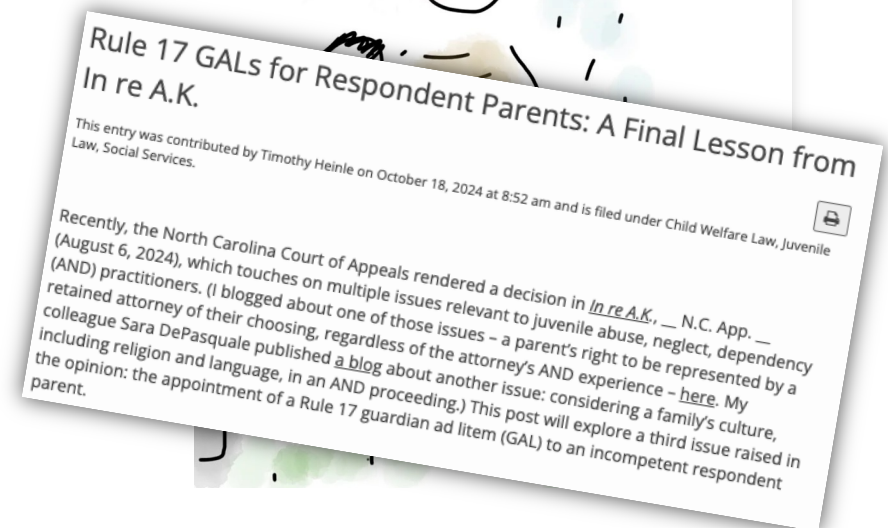
G.S. 7B-602(b); S.L. 2025-16





# Category 2: Incompetent parents

- Effect is different than Ch. 35A adjudication
- Defined in G.S. 35A-1101(7) (Lacks sufficient capacity to manage affairs or make/communicate important decisions about self, family, or property)



# Category 2: Incompetent parents

- Initiated by motion or sua sponte
- At any time, but should be addressed ASAP to avoid prejudicing parent's rights
- Court inquiry required if substantial question about competency exists
- Significant deference to trial court

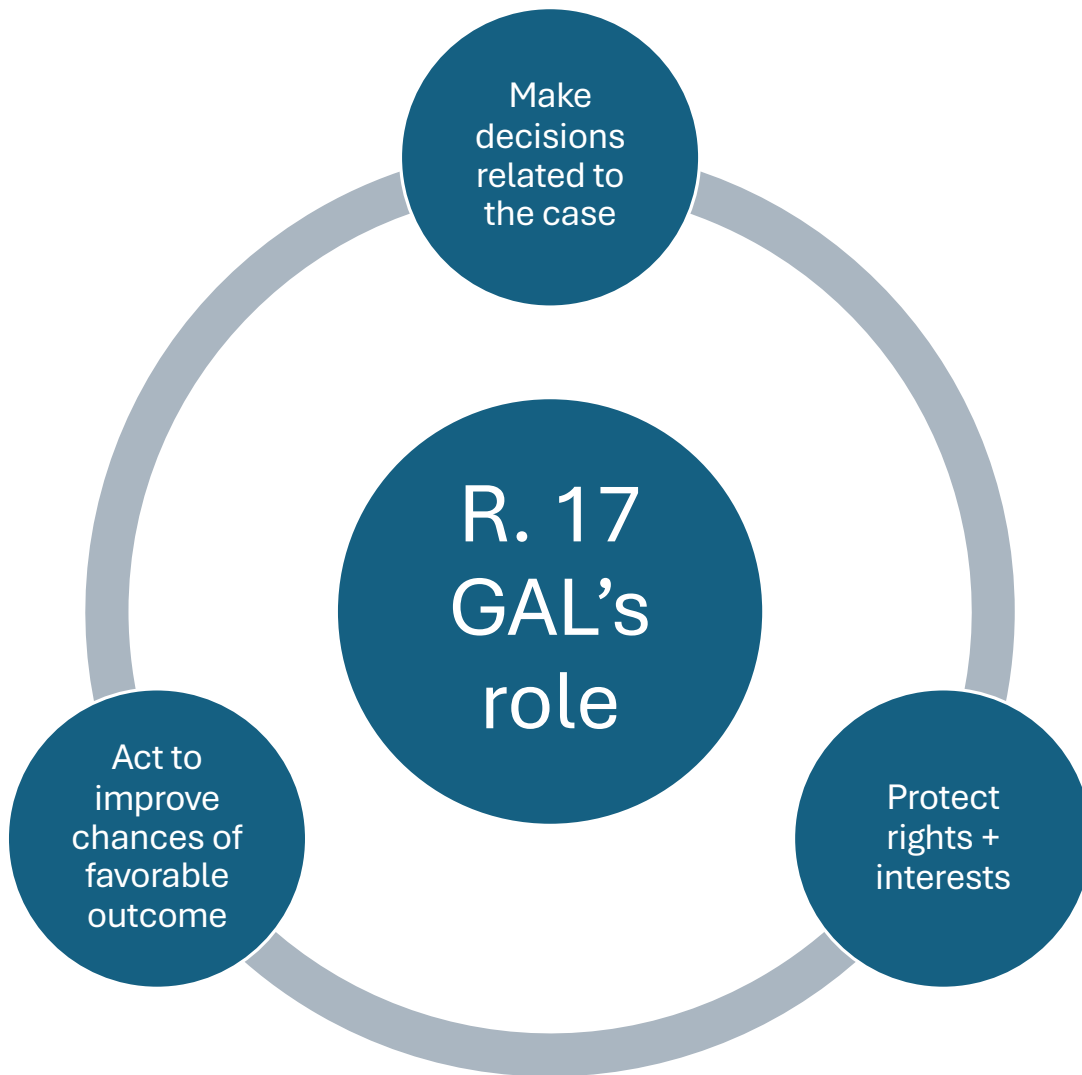


## Category 2: Incompetent parents

- Variety of factors (e.g., mental health history; IQ; education level; independent living; communication with DSS; participation in case plan; observed behaviors in court; cogent testimony; understanding of nature of proceedings; ability to assist attorney)
- No one factor is dispositive (including mental health history or G.S. Ch. 35A adjudication)







- Meet with parent
- Explain proceedings
- Attend hearings\*
- Collaborate w/ counsel
- May
  - Present evidence
  - Cross examine witness
  - Make arguments