



Rule 17 Guardians ad Litem for Respondents in Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings: Frequently Asked Questions

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Abuse, neglect, dependency (A/N/D), and termination of parental rights (TPR) proceedings are civil actions.¹ These actions involve multiple parties, including a county department of social services (DSS) as the petitioner in an A/N/D action, the individual or agency with standing who commenced a TPR action, the juvenile who is the subject of the action, respondent parents, and, when applicable, respondent guardians, custodians, or caretakers.² Like in other civil actions in North Carolina, a guardian ad litem (GAL) may be appointed to the parties in an A/N/D or TPR action pursuant to Rule 17 of the North Carolina Rules of Civil Procedure [hereinafter Rule 17].³ The term “ad litem” is a latin phrase that means for the purposes of the suit.⁴

Both Rule 17 and the state Juvenile Code, Chapter 7B of the North Carolina General Statutes [hereinafter G.S.] require the appointment of a GAL when a respondent parent (1) is unemancipated and under a certain age or (2) has been determined to be incompetent by the court hearing the A/N/D or TPR action.⁵ Although not specifically referenced in the Juvenile Code, it is likely that non-parent respondents may have a Rule 17 GAL appointed to them if they are determined to be incompetent by the court hearing the A/N/D action.⁶

The Juvenile Code provides for the appointment of a special type of GAL to represent a juvenile in an A/N/D or TPR action—one who is not appointed under Rule 17 and whose qualifications and duties differ from other GALs.⁷ Other types of proceedings also authorize the appointment of a GAL, either pursuant to Rule 17 or specific statutes addressing a substantive proceeding, such as an incompetency proceeding under G.S. Chapter 35A. The differences between the various types of GAL representation can cause confusion.⁸ The appointment and role of GALs that are not appointed pursuant to Rule 17 in A/N/D and TPR proceedings are beyond the scope of this bulletin.

1. State v. Adams, 345 N.C. 745 (1997) (discussing A/N/D proceeding); *In re* J.S.L., 218 N.C. App. 610 (2012) (discussing TPR proceeding).

2. Chapter 7B, Section 401.1 of the North Carolina General Statutes [hereinafter G.S.]; *id.* § 1103(a) (standing to file TPR).

3. G.S. 7B-602(b), (c) (as amended by S.L. 2025-16, § 1.9, effective for all actions pending or filed on or after Oct. 1, 2025), and -1101.1(b), (c) (both incorporating Rule 17 for respondent parents). See G.S. 1A-1, Rule 17.

4. Roberts v. Adventure Holdings, LLC, 208 N.C. App. 705, 708 (2010).

5. See *supra* note 3.

6. G.S. 1A-1, Rule 17; see *In re* E.H., 227 N.C. App. 525, 536–37 (2013) (the Rules of Civil Procedure apply when they do not conflict with the procedure in the Juvenile Code and advance the purpose of the Juvenile Code).

7. Compare G.S. 7B-601 with 1A-1, Rule 17; see also G.S. 7B-1108(b)–(d) (appointment of GAL for the juvenile in TPR proceedings); -1200 (establishment of a state Office of Guardian ad Litem Services for juveniles).

8. See *Standards of Practice for Lawyers Representing Children in Custody Cases*, 2003 A.B.A. SEC. FAM. L. 2 (acknowledging the role of the GAL “has become too muddled through different usages in different states, with varying connotations”), https://www.msbar.org/media/2771/standards_of_practice_for_lawyers_representing_childreauthcheckdam.pdf; N.C. State Bar, “[Identifying the Roles and Reponsibilities of a Lawyer Appointed to Represent a Child or the Child’s Best Interests in a Contested Custody or Visitation Case](#),” 2012 Formal Ethics Op. 9, at n.16 (Jan. 25, 2013) (recommending that lawyers appointed to the child in custody proceedings should urge the court to avoid using the term *guardian ad litem* given “its affiliation with Rule 17 and abuse/neglect appointments”), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-9/>.

This bulletin seeks to answer the numerous questions that arise about Rule 17 GALs for respondents in A/N/D and TPR cases. Using a question-and-answer format, the bulletin is organized into seven sections that examine

- Rule 17 GALs generally ([page 4](#));
- the applicability of Rule 17 to A/N/D and TPR proceedings ([page 6](#));
- Rule 17 appointment procedures, timing, and standards for incompetency ([page 8](#));
- the appointment of a Rule 17 GAL for an unemancipated minor parent ([page 24](#));
- persons who may serve as Rule 17 GALs and their compensation ([page 27](#));
- duties and responsibilities of a Rule 17 GAL in A/N/D and TPR proceedings ([page 29](#)); and
- when and how a Rule 17 GAL appointment terminates ([page 40](#)).

The content of this bulletin focuses on the laws and appellate opinions related to Rule 17 GALs for respondents⁹ that are current as of the date of this bulletin and does not address previous iterations of GAL representation (including GALs of assistance) for respondent parents that had been provided for in the Juvenile Code and no longer apply.

Rule 17 GALs Generally

To understand the use of Rule 17 GALs for respondents in juvenile proceedings, it is best to first explore the rule and the use of GALs generally in civil matters.

1. What is the purpose of a Rule 17 GAL in civil cases generally?

Rule 17 provides a mechanism for protecting the rights of a plaintiff or defendant in a civil action when that party is under a legal disability.¹⁰ One kind of legal disability is based on a party being an unemancipated minor, and the controlling statute refers to that party as “an infant.”¹¹ A second kind of legal disability is based on a party’s incompetency, which means the party lacks the capacity to manage their own affairs or make or communicate important decisions about themselves, their family, or their property in such a way that they do not understand the nature of the civil court proceeding.¹² Once appointed by the court, a GAL “appear[s] in the lawsuit

9. Rule 17 also addresses the appointment of a GAL for an unemancipated minor or an otherwise incompetent person who is a plaintiff; unborn persons; and corporations, trusts, or other entities not in existence. G.S. 1A-1, Rule 17(b)(1), (4), (5); (c)(1); (d). Those GAL appointments are beyond the scope of this bulletin.

10. See G.S. 1A-1, Rule 17(e); see *Roberts v. Adventure Holdings, LLC*, 208 N.C. App. 705, 709 (2010) (quoting *Blackwell v. Vance Trucking Co.*, 139 F. Supp. 103, 106–07 (1956)) (a GAL “is appointed for the mere temporary duty of protecting the legal rights of an infant in a particular suit and his duties and his office end with that suit. . . . [H]e has no powers nor duties either prior to the institution of the suit or after its termination.”).

11. See G.S. 1A-1, Rule 17(b), (c). A minor may be emancipated in North Carolina through a district court action under Article 35 of G.S. Chapter 7B or is automatically emancipated upon their marriage under G.S. 7B-3509.

12. See G.S. 1A-1, Rule 17(b), (c); 35A-1101(7) (definition of “incompetent adult”); *In re Q.B.*, 375 N.C. 826 (2020). For a further discussion of incompetency, see *infra* [Question 6](#), and for the difference between incompetency for purposes of a Rule 17 GAL and for an adjudication of incompetency for purposes of

on behalf of an incompetent or minor party.”¹³ A GAL divests the party for whom they are appointed of that party’s “fundamental right to conduct his or her litigation according to their own judgment and inclination.”¹⁴ The appointment of a GAL for a party in a proceeding who is an unemancipated minor or incompetent satisfies concerns regarding that party’s legal disability and allows for a final judgment to be entered in that proceeding.¹⁵ As an officer of the court, a GAL “has a duty to represent the party he is appointed to represent to the fullest extent feasible and to do all things necessary to secure a judgment favorable to such party.”¹⁶

2. How does Rule 17 operate for a defendant in civil cases generally? What does the rule provide and require?

In any case in which the Rules of Civil Procedure apply, and unless altered by a more specific statute, a defendant who is an unemancipated minor or otherwise incompetent may be appointed a GAL. A GAL is not required to be appointed to a defendant when they have a general or testamentary guardian in North Carolina, as that guardian can defend the defendant.¹⁷ However, even if a general or testamentary guardian has been appointed to an unemancipated minor or an incompetent person, the court may appoint a GAL to that minor or that person if it determines that it would be expedient for the defendant to have GAL representation.¹⁸

A GAL may be appointed following a written request by the defendant’s relative or friend, by any other party to the action, or by the court sua sponte.¹⁹ A GAL may be appointed before or after a defendant is served; however, if the defendant has not yet been served, service upon the GAL allows the court to order that a party may dispense with direct service upon the defendant.²⁰

The person who is appointed as the GAL is “some discreet person” who will act and defend on behalf of the defendant.²¹ Examples of a discreet person include a parent, relative, or friend.²² There is no requirement under Rule 17 that the GAL be an attorney.

the appointment of a guardian of the person, guardian of the estate, or general guardian pursuant to G.S. Chapter 35A, see *infra* [Question 19](#).

13. *Roberts*, 208 N.C. App. at 708.

14. *In re J.A.A.*, 175 N.C. App. 66, 71 (2005) (citing *Hagins v. Redev. Comm’n*, 275 N.C. 90, 102 (1969) (discussing prior version of GAL appointment statute for respondent parent in a TPR action)).

15. G.S. 1A-1, Rule 17(b)(2), (e).

16. *In re A.S.Y.*, 208 N.C. App. 530, 538 (2010) (internal quotation marks, citation omitted).

17. G.S. 1A-1, Rule 17(b)(2). See G.S. 35A-1202(7) (definition of “general guardian”). The concept of a testamentary guardian comes from G.S. 33-2 (repealed by section 10 of S.L. 1987-550), wherein a parent could, in the parent’s last will and testament, appoint a guardian for a child under the age of 21. Now, under G.S. 35A-1224(d) and -1225, a testamentary recommendation for a guardian of a minor may be made.

18. G.S. 1A-1, Rule 17(b)(3).

19. G.S. 1A-1, Rule 17(c)(2)–(4) address time periods for requesting the appointment of a GAL based on the type of service made on the defendant.

20. G.S. 1A-1, Rule 17(c)(2)–(4).

21. G.S. 1A-1, Rule 17(b)(2).

22. See, e.g., *Gaskins v. McCotter*, 52 N.C. App. 322 (1981) (where the trial court released a relative appointed as a GAL for an incompetent plaintiff in favor of the acting trustee, the appellate court found that the initial appointment of the GAL on behalf of the plaintiff under Rule 17 was appropriate); *Harmon v. Harmon*, 251 N.C. App. 369 (2016) (unpublished) (mother was GAL for minor child in action for domestic violence protection order where minor was plaintiff); *Juarez ex rel. J.I.A.-M. v. Alvarez-Gomez*, 287 N.C. App. 217 (2022) (unpublished) (grandmother was guardian ad litem for minor granddaughter in action for domestic violence protection order against minor’s father).

A GAL's role may include filing and serving pleadings (e.g., an answer) and accepting service on behalf of a defendant.²³ Beyond that, the rule does not identify specific duties or responsibilities of GALs. It is clear, however, that the appointment and effect of a GAL is limited to the proceeding in which the GAL is appointed.²⁴

A GAL's fees may be affixed and taxed as part of costs.²⁵ In some circumstances, a statute governing a particular type of proceeding authorizes the cost of a GAL to be paid by the North Carolina Office of Indigent Defense Services (IDS).²⁶ If a GAL's fees are not taxed as costs or authorized for payment by the State, the GAL serves pro bono. Not all GALs will charge fees. For example, some discreet person who is not acting in their professional capacity when serving as a GAL, e.g., a parent or relative, is unlikely to seek compensation. Others who are acting in a professional capacity may agree to serve pro bono.

The Applicability of Rule 17 to A/N/D and TPR Proceedings

3. Does Rule 17 apply to A/N/D and TPR matters?

Yes. Although the Juvenile Code “provide[s] procedures for the hearing of juvenile cases,”²⁷ the Juvenile Code also states that certain Rules of Civil Procedure apply in different circumstances. Rule 17 is explicitly incorporated into the statutes addressing parent representation.²⁸ Thus, any respondent parent who is indigent is entitled to a court-appointed attorney, and if the parent meets the criteria for a GAL, they are also appointed a GAL.

4. What are the criteria for the appointment of a Rule 17 GAL to a respondent parent in an A/N/D or TPR matter?

Whether and when a GAL is appointed to a respondent parent is based upon the parent's age and competency as well as the type of proceeding.

The court *must* appoint a GAL to a respondent in the following circumstances:

- when the respondent is an unemancipated minor parent in a TPR action²⁹ and
- when the respondent is an unemancipated minor parent who is 15 years old or younger in an A/N/D action.³⁰

23. G.S. 1A-1, Rule 17(b)(2), (c)(3), (e).

24. See *supra* note 10.

25. G.S. 1A-1, Rule 17(b)(2); 7A-305(d)(7).

26. The North Carolina Office of Indigent Defense Services (IDS) has a chart identifying when state funds are available to pay for a GAL by specific proceeding type. N.C. OFF. OF INDIGENT DEF. SERVS. & ADMIN. OFF. OF THE CTS., [North Carolina Proceedings That Involve GALs](https://www.ncids.org/wp-content/uploads/2021/04/GAL_Chart.pdf) (Dec. 2014), https://www.ncids.org/wp-content/uploads/2021/04/GAL_Chart.pdf.

27. G.S. 7B-100(1); see also *id.* § 1100(1) (stating that a general purpose of the TPR statutes is “to provide judicial procedures for terminating the legal relationship between a juvenile and . . . [their] parents”).

28. G.S. 7B-602 (A/N/D proceedings), -1101.1 (TPR proceedings).

29. G.S. 7B-1101.1(b).

30. *Id.* § 602(b), as amended by § 1.9 of S.L. 2025-16 (2025), effective for any action pending or filed on or after Oct. 1, 2025. See G.S. 7B-3500 through -3509 (emancipation).

The court *may* appoint a GAL to a respondent in the following circumstances:³¹

- when the respondent parent is incompetent in an A/N/D and/or TPR action³² and
- when the respondent parent is an unemancipated 16- or 17-year-old in an A/N/D action.³³

5. May a Rule 17 GAL be appointed to a respondent in an A/N/D action who is *not* the juvenile’s parent?

The Juvenile Code does not directly address this question; however, the Rules of Civil Procedure seem to apply here. Because the Juvenile Code “provide[s] procedures for the hearing of juvenile cases,”³⁴ the Rules of Civil Procedure do not always apply. But a specific Rule of Civil Procedure may apply when it does not conflict with the Juvenile Code and only to the extent that it advances the purposes of the Juvenile Code.³⁵ Additionally, where the Juvenile Code does not identify a specific procedure to be used, the Rules of Civil Procedure may be used to fill procedural gaps.³⁶

Where the Juvenile Code provides for representation for respondent parents in A/N/D actions, Rule 17 is explicitly incorporated;³⁷ however, the Juvenile Code does not address representation of a non-parent respondent. A non-parent respondent may be the juvenile’s custodian,³⁸ guardian,³⁹ or caretaker.⁴⁰ Although the North Carolina appellate courts have not addressed this question, the application of Rule 17 to a non-parent respondent appears to fill a procedural gap that advances the purpose of the Juvenile Code to provide fair and equitable procedures and ensures the best interests of the child.⁴¹

Another reason to consider appointing a GAL to a non-parent respondent in an A/N/D action is that a guardian, custodian, or caretaker is a party to the proceeding⁴² and, as such, has due process rights.⁴³ Protecting those due process rights ensures fair and equitable procedures. A GAL assures that a respondent will receive procedural due process safeguards.⁴⁴

31. The use of the word “may” indicates that the court exercises discretion, as opposed to “shall,” which mandates the court to take a specific action. *Campbell v. First Baptist Church of City of Durham*, 298 N.C. 476 (1979).

32. G.S. 7B-602(c) (A/N/D); -1101.1(c) (TPR).

33. G.S. 7B-602(b), *as amended by* § 1.9 of S.L. 2025-16.

34. G.S. 7B-100(1).

35. *In re M.M.*, 272 N.C. App. 55 (2020) (discovery); *In re E.H.*, 227 N.C. App. 525 (2013) (relief from judgment or order); *In re L.O.K.*, 174 N.C. App. 426 (2005) (dismissal of TPR).

36. *See In re S.D.W.*, 187 N.C. App. 416 (2007).

37. *See* G.S. 7B-602(b), (c).

38. *Id.* § 101(8).

39. *Id.* § 600.

40. *Id.* § 101(3).

41. *See id.* § 100(1), (5).

42. *See id.* § 401.1(c)–(e).

43. IDS recognizes the due process rights of non-parent respondents and will pay for court-appointed counsel for those respondents under its 2008 “[Appointment of Counsel for Non-Parent Respondents in Abuse, Neglect, and Dependency Proceedings](#)” policy [hereinafter *IDS Appointment Policy*], available at <https://www.ncids.org/wp-content/uploads/2021/04/AppointmentsCounselNon-parentRespondents.pdf>.

44. *In re Shepard*, 162 N.C. App. 215 (2004) (decided under prior version of statute appointing GAL to respondent parent in TPR proceeding); *see In re A.H.-G.*, ___ N.C. App. ___, No. COA25-152, 2025 WL 3648514 (2025).

Appointment Procedures, Timing, and Standards Involving Incompetency

A different analysis applies for determining each of the following three issues: (1) whether a substantial question about a respondent's competency exists; (2) when a court may, should, or must inquire into a respondent's competency; and (3) whether a respondent is incompetent and a Rule 17 GAL must be appointed. This section explores common questions related to these issues, including the definition of incompetency and applicable procedures.

6. How is incompetency defined for purposes of a Rule 17 GAL in an A/N/D or TPR matter?

Neither the Juvenile Code nor Rule 17 defines incompetency; however, case law is instructive. The North Carolina Supreme Court has held that for purposes of appointing a Rule 17 GAL for a parent in an A/N/D or TPR case, trial courts should examine “whether the parent is able to comprehend the nature of the proceedings and aid her attorney in the presentation of her case.”⁴⁵

North Carolina appellate courts have adopted the definition of an “incompetent adult” found in G.S. Chapter 35A for use in competency determinations for a Rule 17 GAL in A/N/D and TPR matters.⁴⁶ Thus, an incompetent adult is one

who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.⁴⁷

Although the appellate courts have used the Chapter 35A definition of an “incompetent adult” in appeals that challenge the appointment, or lack thereof, of a Rule 17 GAL, the appellate courts' analysis focuses heavily on whether the respondent understands the nature of the A/N/D

45. *In re* Q.B., 375 N.C. 826, 836 (2020). Note that this is similar to the criterion for the criminal standard of incapacity to proceed under G.S. 15A-1001(a) (“No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner . . .”). This bulletin does not discuss capacity to proceed issues that arise in criminal matters under Article 56 of Subchapter X of G.S. Chapter 15A.

46. *See, e.g., In re* M.S.E., 378 N.C. 40 (2021); *In re* N.K., 375 N.C. 805 (2020); *In re* D.L.P., 242 N.C. App. 597 (2015); G.S. 35A-1101(7) (definition of “incompetent adult”).

47. G.S. 35A-1101(7). Note that S.L. 2023-124 expanded the definition of an “incompetent adult” to clarify that an adult “does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property.” *See* G.S. 35A-1101(11a) (definition of “less restrictive alternative”). North Carolina appellate courts have not yet weighed in on whether the concept of less restrictive alternatives applies in an incompetency determination for purposes of Rule 17 in A/N/D and TPR proceedings. It seems unlikely to apply since the alternative in a juvenile proceeding would be the appointment of a substitutive GAL, which would not amount to a less restrictive alternative for purposes of this proceeding. *See infra* notes [193](#), [198–99](#), discussing repeal of a non–Rule 17 GAL of assistance.

or TPR case. When examining a respondent's understanding of the case, the appellate courts look to how the respondent functioned within the case, to the extent information is available at the time of the inquiry. Examples from case law include the following inquiries:

- Has the respondent attended the hearings?
- Has the respondent testified in a coherent manner, including at the hearing addressing their competency?
- If there has been a case plan, how has the respondent followed through with the plan?
- Has the respondent communicated with their attorney, DSS social workers, and the child's GAL?
- If visits have occurred, did the respondent attend those visits?
- Is the respondent their own representative payee of their income, indicating a lack of concern by others that the respondent is handling their money appropriately?
- Does the respondent have their own housing?
- Has the respondent expressed a preference for where the child is placed if the child is removed from the respondent's home?⁴⁸

Other practical questions may include the following:

- Does the respondent understand and follow court procedures and decorum?
- Can the respondent identify the parties in the case?
- Can the respondent identify the officials in the courtroom and explain their roles?
- Can the respondent name their mental health diagnosis, if applicable, and explain how it does or does not impact their daily life?

The reference to the Chapter 35A definition of "incompetent adult" requires that the parent's lack of understanding about the nature of the A/N/D or TPR case be related to "mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition."⁴⁹ Circumstances that impact a respondent's ability to understand the proceedings but that are unrelated to those conditions, such as language or cultural barriers, are not a basis for determining incompetency that will result in the appointment of a GAL.⁵⁰ If a GAL is appointed for reasons other than incompetency, the GAL and the attorney for the respondent should discuss how to raise this issue before the court to have the GAL removed.

48. For cases addressing these factors, see [Question 18](#).

49. G.S. 35A-1101(7).

50. See *In re A.K.*, 295 N.C. App. 115, 129, 130 n.4 (2024) (appellate court was unable to review the issue of a GAL appointment due to a lack of a record; appellate court raised "serious concerns" about the appointment of a Rule 17 GAL for the respondent mother based on her "inability to understand the proceedings and cultural barriers" where the record showed that the mother was Albanian and Muslim and that English was not her first language; there was no explanation of mother's incompetency under G.S. 35A-1101(7)).

7. Who may raise the issue of a respondent’s competency in an A/N/D or TPR proceeding and request that a Rule 17 GAL be appointed to the respondent?

Any party or the court itself may move for the appointment of a GAL for a respondent.⁵¹ Thus, if a trial court identifies red flags indicating that there may be a basis for inquiring into a respondent’s competency but no party raises the issue, the trial court may proceed sua sponte.⁵² Parties or the court may have different motivations for raising the issue, including, for example, to authorize someone to make decisions on the respondent’s behalf if the respondent is unable to do so on their own or to reduce the risk of a court order being overturned on appeal.

8. Must a petitioner raise the issue of a respondent’s competency?

No. DSS as the petitioner in an A/N/D action, or any petitioner or movant in a TPR action, may raise the issue of a respondent’s incompetency; however, there is no requirement that they do so. The North Carolina Supreme Court held that DSS, as a petitioner, is not required to request a GAL appointment for a respondent even when it has reason to believe the respondent is incompetent.⁵³

9. May a respondent’s attorney raise the issue of the respondent’s potential incompetency?

Yes, but there are several factors the attorney should consider when deciding whether to raise the issue of their client’s competency to the court.

Because any party may move for the appointment of a GAL for a respondent, the attorney representing the respondent may make such a motion.⁵⁴ Rule 1.14 of the North Carolina Rules of Professional Conduct expressly permits an attorney to seek a GAL for their client in qualifying situations.⁵⁵ The rule states that when a lawyer reasonably believes that “a client’s capacity to

51. See G.S. 7B-602(c); -1101.1(c); see *In re* M.S.E., 378 N.C. 40 (2021).

52. *But see* STEVEN S. GENSLER, FEDERAL RULES OF CIVIL PROCEDURE, RULES AND COMMENTARY HIGHLIGHTS § 17:24 (2025 ed.) [hereinafter GENSLER] (noting that while the Federal Rules of Civil Procedure—upon which North Carolina’s Rules are modeled—permit a trial court to consider a respondent’s competency sua sponte, that “is not to say that [Rule 17] requires a court to inquire into the possible need for a guardian in every case, but only in those cases where there is verifiable evidence of incompetence. For example, courts do not need to routinely question the ability of individuals to represent themselves. Even a party’s bizarre behavior does not necessarily obligate the court to sua sponte inquire into the need for a guardian”). For more on whether a court has a duty to inquire into a party’s competency, see *infra* Questions 10 and 12.

53. *In re* Q.B., 375 N.C. 826 (2020) (interpreting Rule 17(c) of the Rules of Civil Procedure to mean that DSS is not obligated to request the appointment of a GAL to a mother in a TPR proceeding, even where DSS had reason to believe that the mother was incompetent as described in the petition’s allegations, including allegations that the mother had limited capacity to care for her infant child, was unable to manage her funds appropriately, and had a low Intelligence Quotient (IQ), as no statute or rule actually imposes such a requirement on the petitioner).

54. G.S. 7B-602(c); -1101.1(c); see *In re* S.G.S., 289 N.C. App. 630 (2023) (unpublished) (facts showed that mother’s attorney successfully sought the appointment of a Rule 17 GAL).

55. N.C. RULES OF PRO. CONDUCT r. 1.14. (Client with Diminished Capacity) (N.C. STATE BAR 1997, amended 2003). To avoid any confusion with former statutory language that had allowed for the appointment of a GAL of assistance who was not a Rule 17 GAL for a respondent parent with “diminished capacity” in an A/N/D or TPR proceeding, this bulletin uses the term “lacks capacity” when discussing Rule 1.14.

make adequately considered decisions in connection with a representation” is lacking, such that the client “is at risk of substantial physical, financial or other harm” and is need of protective action, the lawyer “may take reasonably necessary protective action, including . . . seeking the appointment of a guardian ad litem or guardian.”⁵⁶ When taking protective action pursuant to Rule 1.14, “the lawyer is impliedly authorized . . . to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.”⁵⁷ Thus, an attorney for a respondent who lacks capacity and is at sufficient risk of harm may seek a determination of their client’s competency in an A/N/D or TPR matter. In doing so, the attorney may reveal otherwise confidential client information but only to the extent necessary to protect their client. While a respondent’s counsel may raise the issue of their client’s competency, the attorney is not required to do so.⁵⁸

Raising the issue of a client’s competency with the trial court and seeking the appointment of a GAL to the respondent has potential benefits. Having a GAL appointed to a respondent means that a second person is working with the client on the case. The GAL can communicate decisions to the attorney, participate in meetings with the client, and generally assist both inside and outside of court.

Raising the competency issue also comes with risks—for both the lawyer and the client—in part because of the serious consequences that may result from a determination that a respondent is incompetent and needs a GAL. Potential consequences include affecting the client’s ability to make certain decisions in the case,⁵⁹ harming the client’s chance of reunification with their child by highlighting the respondent’s limitations, and harming the attorney-client relationship.⁶⁰

An attorney who questions their client’s competency may be tempted to withdraw rather than raise the issue with the court; however, raising the issue of a client’s competency to the court is the mechanism provided for under the law for protecting an incompetent party in a civil action. Still, an attorney may be uncomfortable raising the issue of their client’s incompetency to the court. In that circumstance, the attorney may consider discussing the issue with an attorney for another party in the matter to see if that attorney agrees and is willing to raise the issue with the court. The respondent’s attorney should be mindful of the particular facts and dynamics of the case and take care not to reveal more information than is necessary to protect their client.

56. *Id.* r. 1.14(a), (b).

57. *Id.* r. 1.14(c).

58. See *In re J.A.A.*, 175 N.C. App. 66 (2005) (decided under a prior version of the law; holding that it was not ineffective assistance for mother’s counsel in a TPR action to tell the court that mother did not need a Rule 17 GAL where (1) the attorney vigorously and zealously represented mother, (2) the attorney had represented mother for many months and was familiar with mother’s ability to aid in her own defense and with the idiosyncrasies of her personality, (3) overwhelming evidence existed to support the termination of mother’s parental rights, and (4) mother did not show that counsel’s failure to request that a Rule 17 GAL be appointed to her denied her a fair trial).

59. See [“Duties and Responsibilities of a Respondent’s Rule 17 GAL in A/N/D and TPR Proceedings,”](#) *infra*, addressing the consequences to the respondent of a Rule 17 GAL’s appointment and the role of a Rule 17 GAL in a proceeding.

60. Counsel should remember that where a client lacks capacity, “the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” N.C. RULES OF PRO. CONDUCT r. 1.14(a).

10. How is the issue of a respondent's potential incompetency raised?

A request for the appointment of a GAL in an A/N/D or TPR action may be made by “written application” before or at the time the action is filed.⁶¹ A party may make an oral motion as well.⁶² Or the court may raise the issue on its own when it believes there is a substantial question as to the respondent's competency.⁶³

11. When is the issue of a respondent's potential incompetency raised?

The Juvenile Code does not require that a motion seeking the appointment of a GAL be made at any particular stage of a proceeding.⁶⁴ However, the Juvenile Code does require the court to consider any motions for the appointment of a GAL for a respondent at the pre-adjudication hearing⁶⁵ in an A/N/D action and at the pretrial hearing⁶⁶ in a TPR action. If a respondent's competency is raised later in a proceeding, the matter should be paused while the court determines if a substantial question⁶⁷ as to the respondent's competency exists “as soon as possible in order to avoid prejudicing the party's rights.”⁶⁸

The court and the parties should be mindful of the intersection between an A/N/D case and a resulting TPR case, when applicable. If a respondent parent has a GAL appointed to them in an A/N/D action and a TPR motion is filed in that action, the GAL will continue to represent that parent since it is the same action. However, if a TPR petition is filed, a new action is initiated. The Juvenile Code does not address whether the respondent parent's GAL carries over to the new TPR action.⁶⁹ Because of that silence, the court in the TPR proceeding should determine whether a substantial question as to the parent's competency exists and, if so, conduct a hearing as discussed in the questions immediately below. Alternatively, it is also possible that a parent

61. G.S. 1A-1, Rule 17(c).

62. See *In re E.V.R.*, 254 N.C. App. 345 (2017) (unpublished) (discussing oral motion by DSS to have Rule 17 GAL appointed to respondent).

63. G.S. 7B-601(c) (A/N/D); -1101.1(c) (TPR). See *infra* Questions [12](#) and [13](#), discussing a substantial question about competency. See *supra* [note 52](#), discussing the absence of a requirement that a trial court inquire about a party's competency in every matter, despite having the authority to act sua sponte.

64. Compare G.S. 7B-601(a) and -408 (appointment of a 7B-601 GAL to a juvenile in an A/N/D case occurs after the petition is filed), with G.S. 7B-602, and compare G.S. 7B-1108(b) (GAL for juvenile is appointed when answer denying material allegation of TPR petition or motion is filed), with G.S. 7B-1101.1.

65. G.S. 7B-800.1(a)(6).

66. See *id.* § 1108.1 (the need for a GAL may be raised as an issue that can be addressed by the court as a preliminary matter).

67. For more on what constitutes a substantial question, see *infra* [Question 13](#).

68. *In re J.A.A.*, 175 N.C. App. 66, 72 (2005) (decided under prior law); see *Rutledge v. Rutledge*, 10 N.C. App. 427 (1971) (discussing procedures regarding whether a substantial question exists); see also *In re I.T.P-L.*, 194 N.C. App. 453 (2008) (holding that appointment of a GAL for a respondent was timely when made on motion of the petitioner seventeen days after a TPR petition was filed and three months before the first hearing in the matter).

69. *C.f.* G.S. 7B-1102(b1) (if parent is served with TPR motion and they have an attorney of record, motion and notice must be sent to parent's attorney); *id.* § 1106.1(b)(3) (notice of motion must include statement that any attorney previously appointed to and still representing respondent parent in A/N/D action will continue to represent parent unless otherwise ordered by court).

may not have a GAL appointed to them in an A/N/D action but, at a related TPR action, a substantial question about their competency may arise on the court's own motion or on a motion of a party.⁷⁰

12. When must a trial court make an inquiry into a respondent's competency?

"[A] trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*."⁷¹

Whether a substantial question as to a respondent's competency exists determines what happens next. If there is no substantial question, the court is not required to conduct an inquiry into a respondent's competency.⁷² If there is a substantial question as to a respondent's competency, the court in an A/N/D or TPR action must conduct a hearing or otherwise inquire into the issue of competence.⁷³ As a result, it may be necessary for the court to conduct the following two-part inquiry:

1. Is there a substantial question as to the respondent's competency?
2. If so, is the respondent incompetent?

13. Is it within a trial court's discretion to determine whether a substantial question exists as to a respondent's competency?

Yes. It is within the discretion of a trial court to determine when there is a substantial question as to a respondent's competence such that a hearing or other inquiry into the respondent's competency is required.⁷⁴ The standard of review for whether an inquiry into a parent's competency should be conducted is an abuse of discretion, meaning a ruling that "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision."⁷⁵

The North Carolina Supreme Court has repeatedly held that a trial court is given substantial deference when determining whether there is a substantial question as to a parent's competency warranting a hearing or an inquiry on the issue, because the trial court has interacted with the respondent parent.⁷⁶ The supreme court has reasoned:

[a]ffording substantial deference to members of the trial judiciary in instances such as this one is entirely appropriate given that the trial judge, unlike the members of a reviewing court, actually interacts with the litigant whose competence is alleged to

70. See *In re Q.B.*, 375 N.C. 826 (2020) (although affirming TPR when lower court did not hold inquiry into parent's competency, appeals court found that facts contemplated change in circumstances that could warrant need for inquiry).

71. *J.A.A.*, 175 N.C. App. at 72 (citation omitted) (decided under prior law) (quoted in *In re T.L.H.*, 368 N.C. 101, 106 (2015); *In re J.A.J.*, 381 N.C. 761, 768 (2022)). See *infra* [Question 13](#), discussing whether there is a substantial question of competency.

72. See *Q.B.*, 375 N.C. 826; *T.L.H.*, 368 N.C. 101.

73. See *In re M.S.E.*, 378 N.C. 40 (2021); *In re N.K.*, 375 N.C. 805 (2020).

74. *M.S.E.*, 378 N.C. 40; *Q.B.*, 375 N.C. 826; *N.K.*, 375 N.C. 805; *In re Z.V.A.*, 373 N.C. 207 (2019); *T.L.H.*, 368 N.C. 101.

75. *T.L.H.*, 368 N.C. at 107 (internal quotation marks omitted) (quoted in *M.S.E.*, 378 N.C. at 44–45, and *Z.V.A.*, 373 N.C. at 210).

76. *Q.B.*, 375 N.C. 826; *N.K.*, 375 N.C. 805; *Z.V.A.*, 373 N.C. 207; *T.L.H.*, 368 N.C. 101.

be in question and has, for that reason, a much better basis for assessing the litigant’s mental condition than that available to the members of an appellate court, who are limited to reviewing a cold, written record.⁷⁷

In determining whether a substantial question exists as to a party’s competency, “normally a Voir dire examination should be conducted[, and] [w]here practicable, it is preferable that the party whose competency is questioned be present in person before the court.”⁷⁸ Circumstances may exist where a trial court does not hold a separate hearing on the issue of whether there is a substantial question regarding a respondent’s competency—for example, where the court has determined *sua sponte* that a substantial question does exist.

Absent “the most extreme instances,” a trial court should not be held to have abused its discretion by not making the inquiry in an A/N/D or TPR proceeding when there is an appreciable amount of evidence that tends to show the respondent is not incompetent.⁷⁹ The state supreme court has held that trial courts did not abuse their discretion in determining that there was not a substantial question of competency in cases where evidence showed that, even when a parent had an intellectual disability, untreated mental health issues, or had been adjudicated incompetent in a G.S. Chapter 35A proceeding before the clerk of superior court, the parent understood the nature of the A/N/D or TPR proceeding by

- demonstrating an understanding of the questions that were asked of them and responding appropriately;
- working a case plan;
- participating in negotiations;
- attending visitation; and/or
- making themselves available to the court, the juvenile’s GAL, and DSS.⁸⁰

14. When a substantial question about a respondent’s competency exists, what are the procedural requirements for determining whether the respondent is incompetent?

No specific formal procedures for determining a respondent’s incompetency are articulated in the Juvenile Code or in Rule 17.⁸¹ Case law, however, is instructive on a few points, including the need to provide notice to the respondent and their attorney and provide them with an

77. *T.L.H.*, 368 N.C. at 108 (quoted in *Q.B.*, 375 N.C. at 832; quoted in part in *N.K.*, 375 N.C. at 810, *In re J.A.J.*, 381 N.C. 761, 768 (2022), and *Z.V.A.*, 373 N.C. at 210).

78. *Rutledge v. Rutledge*, 10 N.C. App. 427, 432–33 (1971). *Author’s note: Rutledge* was superseded by statute as stated in *Culton v. Culton*, 96 N.C. App. 620 (1989); however, *Culton* was subsequently superseded by statute, and *Rutledge* was reaffirmed (as stated in *In re J.A.A.*, 175 N.C. App. 66, 72–73 (2005)).

79. *T.L.H.*, 368 N.C. at 108–09 (quoted and applied in *Q.B.*, 375 N.C. at 832, *N.K.*, 375 N.C. at 810, and *Z.V.A.*, 373 N.C. at 210).

80. *See, e.g., N.K.*, 375 N.C. 805 (considering, among other factors, mother’s availability to the court, the GAL, and DSS as evidence of mother’s understanding of the proceedings and lack of incompetency).

81. *See* G.S. 7B-602(c); -1101.1(c); *Rutledge*, 10 N.C. App. 427. *Compare* G.S. 1A-1, Rule 17, *with* GENSLE, *supra* note 52, at § 17:24 (citations omitted) (noting that under the Federal Rules of Civil Procedure—upon which North Carolina’s Rules are modeled—“[w]here a substantial question exists about a pro se party’s competence, the court should conduct a hearing to determine competence and assess the need to appoint a guardian ad litem. The court has discretion over the format of the hearing, provided at a minimum the person whose competence is in question receives notice and an opportunity to be heard”).

opportunity to be heard.⁸² Notice before the competency inquiry and an opportunity to be heard at the hearing protects the respondent’s constitutional rights to procedural due process.⁸³ If a GAL is appointed without these procedures having been followed, the GAL and the attorney for the respondent should discuss how to raise this issue before the court to ensure proper compliance with these procedures.

- **Notice.** Case law does not specify a timeframe in which notice of a competency inquiry must be given. But where the Juvenile Code does not identify a specific procedure to be used, the Rules of Civil Procedure may be used to fill procedural gaps.⁸⁴ Rule 6 of the Rules of Civil Procedure requires that at least five days’ notice be given,⁸⁵ though timeframes may also be established by court order or adopted local rules.⁸⁶ Additionally, if a motion for a GAL is made in writing, under Rule 5 of the Rules of Civil Procedure, the motion must be served on each of the parties.⁸⁷ Service may be accomplished on the party’s attorney of record, and if ordered by the court, on the party themselves.⁸⁸
- **Opportunity to be heard.** Numerous appellate opinions state that a respondent, after receiving notice, has an opportunity to be heard before the court determines the respondent’s competency and need for a Rule 17 GAL.⁸⁹ The opinions simply refer to the opportunity to be heard without any detail as to what that entails.⁹⁰ A trial court should ensure that a respondent’s procedural due process rights to defend themselves

82. See *Hagins v. Redev. Comm’n of Greensboro*, 275 N.C. 90, 101–02 (1969) (citations omitted) (holding that despite the silence of the controlling statute, it is clear that a party whose lack of mental capacity is asserted “is entitled to notice and an opportunity to be heard before the judge can appoint . . . a guardian ad litem for him”); *Rutledge*, 10 N.C. App. at 433 (stating “if the trial judge determines that a substantial question as to the party’s competency is raised, notice and opportunity to be heard must then be given the party for whom the appointment of a guardian is proposed”); see also *In re A.T.*, ___ N.C. App. ___, 923 S.E.2d 841 (2025) (where, in an order continuing a permanency planning hearing, the trial court indicated that it had reviewed a respondent father’s psychological evaluation and appointed a GAL to the father based on that evaluation, the appeals court held that the trial court abused its discretion by appointing a GAL without providing the party with notice and an opportunity to be heard; the appeals court vacated the subsequent order terminating the father’s rights and remanded for a new TPR hearing and for reconsideration of the father’s potential incompetency); *In re A.K.*, 295 N.C. App. 115, 129 (2024) (expressing “serious concerns regarding the appointment of a [Rule 17] GAL” to a respondent mother who was not given prior notice or an opportunity to be heard).

83. *Hagins*, 275 N.C. 90.

84. See *In re S.D.W.*, 187 N.C. App. 416 (2007).

85. G.S. 1A-1, Rule 6(d); see also *Rutledge*, 10 N.C. App. 427.

86. [Local rules, organized by county](https://www.nccourts.gov/documents/local-rules-and-forms), are available through the North Carolina Judicial Branch’s website at <https://www.nccourts.gov/documents/local-rules-and-forms>.

87. G.S. 1A-1, Rule 5(a). Rule 5 is incorporated in specific A/N/D and TPR statutes: G.S. 7B-700(c) (“Sharing of information; discovery”); -903.2(c) (“Emergency motion for placement and payment” in A/N/D action); -1102(b) (“Pending child abuse, neglect, or dependency proceeding” for TPR); and -1106(a1), (a2) (“Issuance of summons” in TPR action).

88. G.S. 1A-1, Rule 5(b).

89. See, e.g., *In re J.A.A.*, 175 N.C. App. 66 (2005) (decided under prior version of G.S. 7B-1101).

90. See, e.g., *Rutledge*, 10 N.C. App. 427.

are protected during this hearing given that the right to a hearing exists under due process of law.⁹¹ Typically scheduled as a hearing, the opportunity to be heard is sometimes referred to as an “inquiry.”⁹²

- ***Impartial tribunal.*** One component of procedural due process requires a hearing before an impartial tribunal.⁹³ A respondent’s counsel may be concerned about the judge who is going to determine issues such as the adjudication of the juvenile’s abuse, neglect, or dependency; reunification; permanency; and the potential termination of parental rights, first receiving evidence and hearing arguments about the respondent’s alleged incompetency, and the effect that exposure to that type of information will have on the larger case and on the court’s view of the respondent. However, nothing in the Juvenile Code or in the North Carolina Rules of Civil Procedure prohibits the same judge presiding over an A/N/D or TPR proceeding from considering a party’s competency. It is unlikely this circumstance alone warrants a judge to recuse themselves because of prejudice or bias against the respondent.⁹⁴ Notably, a trial court’s familiarity with a litigant has been viewed as a strength (and not a conflict) in terms of the court’s ability to make incompetency determinations.⁹⁵
- ***Procedures in G.S. Chapter 35A.*** One published juvenile opinion states, “Chapter 35A of the general statutes sets forth the procedure for determining incompetency, which the trial judge must comply with when conducting a competency hearing under Rule 17.”⁹⁶ However, the opinion does not specify which procedures apply.⁹⁷ It is reasonable to conclude that the relevant procedures in the hearing statute, G.S. 35A-1112, apply to Rule 17 incompetency hearings.

The relevant procedures under G.S. 35A-1112 for a hearing to determine incompetency include the following:

- The hearing is open to the public unless the respondent or their attorney requests that it be closed.⁹⁸ However, the court should be mindful of G.S. 7B-801, which

91. See *Hagins v. Redev. Comm’n of Greensboro*, 275 N.C. 90 (1969); see also *In re Moore’s Sterilization*, 289 N.C. 95, 101 (1976) (citation omitted) (stating that procedural due process “means notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a competent and impartial tribunal having jurisdiction of the cause”).

92. See, e.g., *In re M.S.E.*, 378 N.C. 40, 44 (2021).

93. *Moore’s Sterilization*, 289 N.C. 95.

94. See *In re Faircloth*, 153 N.C. App. 565, 570–71 (2002) (quoted in *In re J.A.M.*, 375 N.C. 325, 332 (2020) (recognizing that a central policy of the state, known as “one judge-one family,” is the practice of one judge presiding over a juvenile case throughout the life of the case)) (holding that a judge is not required to recuse themselves because they have knowledge of evidentiary facts from an earlier proceeding; rejecting “any contention that [a judge] should be disqualified [in a TPR action] because he earlier adjudicated the four children abused and neglected”).

95. See, e.g., *In re N.K.*, 375 N.C. 805, 812 (2020) (holding that even where the record does not indicate that a respondent testified, it is still meaningful that the respondent attended previous hearings, giving the trial court an opportunity to “gauge [her] competency by observing her demeanor and behavior in court”).

96. *In re J.A.A.*, 175 N.C. App. 66, 73 (2005) (decided under prior law). Note that this opinion refers to G.S. Chapter 35A procedures without discussing how procedures governing A/N/D and TPR actions are set forth in the Juvenile Code. See *supra* note 28.

97. For example, G.S. Chapter 35A addresses procedures related to a petition, notice, service, the right to counsel or a G.S. 35A-1107 GAL, the right to a jury trial, a multidisciplinary evaluation, the hearing, and, effective January 1, 2024, notice of the rights of respondents. See G.S. 35A-1101 through -1117.

98. G.S. 35A-1112(a).

addresses when a hearing or a part of a hearing in an A/N/D action may be closed to the public, factors the court considers, and a requirement that the hearing remain open to the public if the juvenile requests that it remain open.⁹⁹

- The parties are entitled to present testimony and documentary evidence, subpoena witnesses and the production of documents, and examine and cross-examine witnesses.

15. Who has the burden of proof when a respondent’s incompetency is questioned, and what is the standard of proof?

Neither case law nor the statutes address (1) who at the trial level has the burden of proof when a question arises about a respondent’s competency or (2) what the standard of proof is.¹⁰⁰ In practice, trial courts typically look to the moving party to offer evidence as to incompetency and to establish the need for a Rule 17 GAL. However, there may not be a moving party, as the court may raise the issue of a respondent’s competency and need for a GAL sua sponte.¹⁰¹ Additionally, in A/N/D and TPR proceedings generally, some hearings in the dispositional phase do not place a burden of proof on any party.¹⁰²

Both A/N/D and TPR actions are civil proceedings.¹⁰³ Generally, the standard of proof in a civil action is preponderance of the evidence, which is evidence “of greater weight than that offered in opposition to it.”¹⁰⁴ However, some issues in an A/N/D or a TPR action, including an adjudication of abuse, neglect, or dependency or a TPR ground, must be proved by clear and convincing evidence.¹⁰⁵ Clear and convincing evidence “should fully convince . . . [and] is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than the beyond a reasonable doubt standard applied in criminal matters . . . such that a factfinder applying that evidentiary standard could reasonably find the fact in question.”¹⁰⁶

In an incompetency hearing under G.S. Chapter 35A, the standard of proof is clear, cogent, and convincing evidence.¹⁰⁷ Applying Chapter 35A procedures to a Rule 17 incompetency hearing and recognizing that a Rule 17 incompetency determination results in the appointment

99. G.S. 7B-801(a), (b).

100. Note that if the issue of incompetency is preserved and raised on appeal, the burden is on the appealing party. *In re E.V.R.*, 254 N.C. App. 345, *4 (2017) (unpublished) (citations omitted) (holding that on appeal it is “well established that ‘it is the *appellant* who has the burden in the first instance of demonstrating error from the record on appeal’ and who has the burden to demonstrate that the trial court’s decision that [the r]espondent was incompetent and required a Rule 17 guardian ad litem amounted to an abuse of discretion”).

101. G.S. 7B-602(c) (A/N/D); -1101.1(c) (TPR).

102. *See In re J.M.*, 384 N.C. 584, 592 (2023) (stating, “[t]here is no burden of proof at the dispositional phase” in an A/N/D action); *In re L.E.W.*, 375 N.C. 124, 128 (2020) (stating, “neither the parent nor the county department of social services bears the burden of proof in permanency planning hearings”).

103. *Supra* note 1.

104. *Wyatt v. Queen City Coach Co.*, 229 N.C. 340, 342 (1948).

105. *See* G.S. 7B-805 and -807 (both applying to A/N/D adjudication); -1109(f) and -1111(b) (both applying to TPR grounds). *See also* G.S. 7B-505.1(c) (consent for the juvenile’s non-routine and non-emergency medical treatment); -506(b) (continued nonsecure custody); -903.2(f)(1), (g) (emergency motion for placement and payment); -906.1(n) (waiving permanency planning hearings).

106. *In re J.C.-B.*, 276 N.C. App. 180, 184 (2021) (citation omitted).

107. G.S. 35A-1112(d).

of a GAL that divests the respondent of the right to conduct the litigation according to their own judgment,¹⁰⁸ applying the higher burden of clear and convincing evidence seems prudent. However, this issue has not been addressed by the North Carolina appellate courts.

Without an answer from the appellate courts, trial courts will have to determine which standard of proof to apply to competency determinations. In its written order denying, appointing, or releasing a GAL based on a respondent's incompetency, a trial court should include the standard of proof it applied in making its decision.

16. Do the North Carolina Rules of Evidence apply during a hearing or other inquiry to determine a respondent's competency?

Neither Rule 17, the Juvenile Code, nor case law addresses whether the North Carolina Rules of Evidence apply to a hearing to determine a respondent's competency. The Juvenile Code does address evidentiary standards generally and limits the application of the Rules of Evidence to three types of hearings: an A/N/D adjudicatory hearing,¹⁰⁹ a TPR adjudicatory hearing,¹¹⁰ and a hearing on an emergency motion for a juvenile in DSS custody who remains in a hospital for mental health treatment but meets hospital discharge criteria.¹¹¹ The Rules of Evidence do not apply at hearings on the need for continued nonsecure custody¹¹² or at any type of dispositional hearing in A/N/D and TPR proceedings.¹¹³ Instead, at dispositional hearings, evidence that is "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition" is admissible.¹¹⁴ But there is not a statute that specifically addresses the hearing to determine a respondent's incompetency that may result in the appointment of a GAL.

One is left to determine whether in an incompetency hearing the more relaxed standard of relevant, reliable, and necessary evidence applies or whether the Rules of Evidence apply.

In deciding whether the Rules of Evidence apply, a court may look to similar types of proceedings for guidance.

- The Rules of Evidence apply in G.S. Chapter 35A incompetency and guardianship proceedings before the clerk of superior court. Although there is no reference to the Rules of Evidence in Chapter 35A, Rule 1101 of the Rules of Evidence states that the rules apply to all court actions and proceedings unless otherwise provided for by statute.¹¹⁵ A court may consider that there is not a statute providing otherwise

108. *Hagins v. Redev. Comm'n of Greensboro*, 275 N.C. 90 (1969) (quoted in *In re J.A.A.*, 175 N.C. App. 66, 71 (2005) (discussing prior version of GAL appointment statute for respondent parent in TPR action)).

109. G.S. 7B-804.

110. *Id.* § 1109(f).

111. *Id.* § 903.2(e).

112. *Id.* § 506(b).

113. *In re J.H.*, 244 N.C. App. 255 (2015). *See In re K.W.*, 272 N.C. App. 487 (2020) (at initial disposition hearing, court considers evidence otherwise barred by rules of evidence).

114. G.S. 7B-901(a) (initial dispositional hearing); -906.1(c) (review and permanency planning hearings); -908(a) (post-TPR placement review hearings). *See* G.S. 7B-1110(a) (TPR disposition refers to "relevant, reliable, and necessary to determine the best interests of the juvenile"). *See also id.* § 323(b) (in a judicial review of a person's placement on the Responsible Individuals List, the rules of evidence apply but relevant and reliable evidence is admissible "if the general purposes of the rules of evidence and the interests of justice will best be served by its admission").

115. G.S. 8C-1, Rule 1101(a); *see also In re R.D.B.*, 274 N.C. App. 374 (2020) (holding that the Rules of Evidence apply in the context of a guardianship of a minor proceeding under G.S. Chapter 35A given the (1) general applicability of the Rules of Evidence under Rule 1101, (2) absence of minor guardianship

in the Juvenile Code. A court may also consider that at least some procedures for determining incompetency under Chapter 35A apply in a hearing on a respondent's competency for purposes of a GAL appointment in an A/N/D or TPR case.

- The Rules of Evidence do not apply to preliminary questions being decided by a court concerning the qualification of a person to be a witness (including, e.g., tendering of expert witnesses), the existence of a privilege, or the admissibility of evidence.¹¹⁶

17. What kinds of evidence may be offered during a hearing to determine a respondent's competency?

There are no special rules that address what evidence must be considered by a court or what form that evidence must take in its determination of a respondent's competency. As with any hearing, testimony from the parties may be offered. The strongest evidence may be the observation of or testimony from the respondent whose competency is being questioned. Testimony of other lay witnesses who have observed or interacted with the respondent and may have personal knowledge of the respondent's ability to understand and communicate about the A/N/D or TPR case may also be offered. The court may also consider its own observations of the respondent's behavior.¹¹⁷

A witness may be tendered as an expert, for example, someone with expertise in cognition and capacity. Expert testimony, however, is not required. There is also no requirement that a respondent complete an evaluation, such as a psychological or multidisciplinary evaluation. A court may order such an evaluation under Rule 35 of the Rules of Civil Procedure¹¹⁸ or in a TPR proceeding under G.S. 7B-1109(c), but the court is not required to do so.

Parties may also offer documentary evidence. Examples include the respondent's mental health records, capacity evaluation if one was completed, or a certification of completion of a case plan service.

18. What are examples of the factors, conditions, or circumstances a trial court may consider when determining whether a respondent is incompetent?

Case law offers a window into the wide variety of factors a court may consider when determining whether a respondent is incompetent; however, no one factor is controlling. The court is focusing on whether the parent has the ability to understand "the nature of the proceedings and aid her attorney in the presentation of her case."¹¹⁹ For example, a court may consider the fact that a respondent was adjudicated incompetent and appointed a guardian under proceedings before the clerk of superior court pursuant to G.S. Chapter 35A, or that a respondent has (or does not have) a particular mental health diagnosis, but neither is per se incompetency for purposes of

proceedings among the enumerated hearings exempted in Rule 1101(b) from the principle that the Rules of Evidence generally apply, and (3) legislature's declining to except Chapter 35A minor guardianship proceedings in Chapter 35A or by other statute).

116. G.S. 8C-1, Rule 104(a).

117. See *In re A.J.*, 386 N.C. 409, 416 (2024) (evidence that included trial court's observations supported "finding that respondent exhibited 'extremely hostile and aggressive' behavior").

118. G.S. 1A-1, Rule 35.

119. *In re Q.B.*, 375 N.C. 826, 836 (2020).

Rule 17.¹²⁰ Although those factors may be evidence the court considers, the court must address the impact of those factors on a respondent's ability to understand and participate in the A/N/D and/or TPR proceeding.

Factors that may indicate *incompetency* that have been considered by trial courts include where a respondent

- requires supports and services due to an intellectual disability;¹²¹
- received adult protective services from DSS before being adjudicated legally incompetent;¹²²
- has untreated mental health issues, including, for example, a lack of medication;¹²³
- is the recipient of Social Security Income Disability benefits due to their mental health diagnoses and a history of substance use;¹²⁴ and
- has a low IQ indicating intellectual deficits.¹²⁵

After considering such factors, a court should look at how those factors impact a respondent's ability to understand the nature of the proceedings and/or communicate with their attorney when determining whether the respondent is incompetent. Examples of factors that could support a *competency* (versus incompetency) determination include where a respondent

- participated in stipulation negotiations;¹²⁶
- filed a verified answer addressing allegations in a pleading;¹²⁷
- attended hearings (in both A/N/D and TPR proceedings, where applicable) where a judge had an opportunity to observe the respondent and determine that the respondent understood the issues and stakes in the case;¹²⁸
- testified, offering clear and cogent testimony; understood the questions asked; and responded appropriately;¹²⁹
- entered into or made progress on a case plan;¹³⁰
- attended visits and was appropriate with the juvenile;¹³¹
- was available to the social worker, the juvenile's GAL, and the court;¹³²
- expressed a preference for certain mental health providers and for relative placements;¹³³

120. *In re T.L.H.*, 368 N.C. 101 (2015); *In re J.R.W.*, 237 N.C. App. 229 (2014); *see also infra* Questions 19 (incompetency) and 20 (mental health).

121. *See, e.g., In re M.S.E.*, 378 N.C. 40 (2021).

122. *See, e.g., Q.B.*, 375 N.C. 826.

123. *See, e.g., In re N.K.*, 375 N.C. 805 (2020); *T.L.H.*, 368 N.C. 101; *J.R.W.*, 237 N.C. App. 229.

124. *See, e.g., T.L.H.*, 368 N.C. 101.

125. *See, e.g., In re Z.V.A.*, 373 N.C. 207 (2019) (respondent with IQ of 64).

126. *N.K.*, 375 N.C. 805.

127. *Id.*

128. *See, e.g., N.K.*, 375 N.C. 805; *In re J.A.J.*, 381 N.C. 761 (2022); *In re M.S.E.*, 378 N.C. 40 (2021); *T.L.H.*, 368 N.C. 101; *J.R.W.*, 237 N.C. App. 229.

129. *M.S.E.*, 378 N.C. 40; *In re Q.B.*, 375 N.C. 826 (2020).

130. *See, e.g., J.A.J.*, 381 N.C. 761; *Q.B.*, 375 N.C. 826; *N.K.*, 375 N.C. 805; *Z.V.A.*, 373 N.C. 207; *J.R.W.*, 237 N.C. App. 229.

131. *N.K.*, 375 N.C. 805; *J.R.W.*, 237 N.C. App. 229.

132. *N.K.*, 375 N.C. 805.

133. *Id.*

- served as their own payee for government benefits;¹³⁴
- attended school or work;¹³⁵ and
- obtained independent housing.¹³⁶

Typically, a respondent who is competent is engaging in more than one of the listed factors. A trial court determines the weight of the evidence, including these factors, in determining whether a respondent is incompetent.

19. What is the impact of a clerk of superior court granting or denying a petition for an adjudication of incompetency and appointment of a guardian in a G.S. Chapter 35A proceeding on a trial court’s determination of competency for a Rule 17 GAL?

An adjudication of incompetency under G.S. Chapter 35A differs from an adjudication of incompetency for purposes of a Rule 17 GAL.¹³⁷ A Chapter 35A determination results in a respondent being legally incompetent and the subsequent appointment of a guardian¹³⁸ for the respondent.¹³⁹ A Rule 17 determination does not establish that a respondent is legally incompetent but does result in the appointment of a GAL.¹⁴⁰ The roles and duties of a guardian under Chapter 35A and a Rule 17 GAL are very different. As explained by the state supreme court, “[a]n adult guardian appointed under Chapter 35A generally has a broad range of powers with respect to the ward’s person and property, . . . whereas the duties of a GAL under Rule 17 appointed solely for purposes of assisting a parent during a particular proceeding are much more limited.”¹⁴¹

A separate adjudication of incompetency by the clerk of superior court pursuant to Chapter 35A is not required for a respondent to be found incompetent in an A/N/D or TPR proceeding.¹⁴² Similarly, an adjudication of incompetency in a Chapter 35A proceeding before the clerk does not automatically require the appointment of a Rule 17 GAL.¹⁴³ For purposes of a Rule 17 GAL, the court is examining “whether the parent is able to comprehend the nature of

134. *Id.*

135. *Z.V.A.*, 373 N.C. 207; *J.R.W.*, 237 N.C. App. 229.

136. *J.R.W.*, 237 N.C. App. 229.

137. *In re K.J.P.W.*, 297 N.C. App. 786 (2025) (distinguishing between an incompetency determination under G.S. Chapter 35A resulting in the appointment of a guardian and an incompetency determination in a TPR action requiring the appointment of a Rule 17 GAL).

138. There are three types of guardians under G.S. Chapter 35A: a guardian of the person as defined in G.S. 35A-1202(10), a guardian of the estate as defined in G.S. 35A-1202(9), and a general guardian as defined in G.S. 35A-1202(7).

139. *K.J.P.W.*, 297 N.C. App. 786.

140. *Id.*

141. *In re Q.B.*, 375 N.C. 826, 836 (2020) (quoted in *K.J.P.W.*, 297 N.C. App. at 790). *See also* *Wilson v. Ball*, 337 S.C. 493, 496–97 (1999) (stating, “[a] ‘guardian’ is one given the power and charged with the duty of taking care of a person who is considered incapable of administering his or her own affairs and of managing his or her property rights. A ‘guardian ad litem,’ on the other hand, is one authorized to prosecute on behalf of or defend an incapacitated person in any suit to which the incapacitated person may be a party and to protect his or her interests in the particular litigation”).

142. *See* G.S. 35A-1102 (stating that even though Chapter 35A is the exclusive procedure for adjudicating a person incompetent, that does not interfere with the judge’s authority to appoint a GAL under Rule 17).

143. *See Q.B.*, 375 N.C. 826 (no abuse of discretion where the court in a TPR action determined there was not a substantial question of mother’s incompetency and did not hold a hearing on that issue, where mother was adjudicated incompetent in a Chapter 35A proceeding and was under guardianship).

the proceedings and aid her attorney in the presentation of her case.”¹⁴⁴ The existence (or not) of a Chapter 35A proceeding is likely relevant¹⁴⁵ but is not dispositive either way to the juvenile court’s determination.

For these same reasons, the fact that a clerk of superior court denied a petition for adjudication of incompetency in a Chapter 35A proceeding against the same respondent may be relevant but would not be controlling over whether the respondent is incompetent for purposes of Rule 17 in an A/N/D or TPR matter.

20. Is a respondent’s mental health (including a diagnosis, or lack thereof) controlling in determining the respondent’s incompetency?

No. A determination of a respondent’s incompetency does not require that the respondent have mental health diagnoses. Similarly, if a parent has a mental health problem or diagnosis, that condition is not determinative of incompetency.¹⁴⁶ Still, evidence of the respondent’s mental health may be relevant to questions and determinations about the respondent’s competency.¹⁴⁷

21. What should an A/N/D or TPR court order include when determining a respondent’s competency?

Like a decision regarding whether a substantial question exists as to a respondent’s competency, a determination regarding a respondent’s competency also is reviewed by an appellate court using an abuse of discretion standard.¹⁴⁸ To enter its judgment, a trial court may craft a separate, stand-alone order on the issue of incompetency or its findings and determinations may be included in the written order for the larger proceeding.¹⁴⁹ For purposes of a complete and clear record, a trial court should make written findings to support its determination regarding competency, particularly where the court receives conflicting evidence on the issue.¹⁵⁰

144. *Q.B.*, 375 N.C. at 836.

145. *See* G.S. 8C-1, Rule 401 (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”).

146. *See, e.g., In re T.L.H.*, 368 N.C. 101 (2015) (holding that a trial court is not required to inquire about a respondent parent’s competency solely because the parent has diagnosable mental health problems); *In re J.R.W.*, 237 N.C. App. 229, 235 (2014) (holding that the trial court did not abuse its discretion when it did not, on its own motion, inquire into mother’s competency where “the record establishes both that the severity of her mental health problems was well known to the trial court, and that those issues did not rise to the level of incompetency”).

147. *See* G.S. 8C-1, Rule 401 (relevance). *See supra* [note 145](#) for the definition of relevant evidence.

148. *In re M.S.E.*, 378 N.C. 40 (2021); *Q.B.*, 375 N.C. 826; *In re Z.V.A.*, 373 N.C. 207 (2019); *T.L.H.*, 368 N.C. 101.

149. One option is to use the form created by the North Carolina Administrative Office of the Courts. *See* Form AOC-J-206, “[Order to Appoint, Deny, or Release Guardian ad Litem \(For Respondent\)](https://www.nccourts.gov/documents/forms/order-to-appoint-deny-or-release-guardian-ad-litem-for-respondent),” <https://www.nccourts.gov/documents/forms/order-to-appoint-deny-or-release-guardian-ad-litem-for-respondent>.

150. *See* *Rutledge v. Rutledge*, 10 N.C. App. 427 (1971) (stating that a trial court charged with determining a party’s competency should make findings of fact to support the court’s determination, particularly where the court receives conflicting evidence); *In re A.K.*, 295 N.C. App. 115, 122, 130–31 (2024) (vacating and remanding on other grounds but requiring the trial court on remand to hold a hearing at the request of any party on the respondent’s need for a Rule 17 GAL and to “enter an order with findings of fact,” given “the complete absence of findings of fact or evidence to support appointment of a GAL” in the initial record). *See also In re Z.A.N.L.W.C.*, 297 N.C. App. 698, 703 (2025) (commenting on (1) the lack of an order appointing a GAL in the appellate record while other orders and court reports refer to mother’s Rule 17 GAL

There must also be an order for the appointment of a Rule 17 GAL, which may be part of or separate from an order that determines a respondent is incompetent.

22. May a party appeal a court’s determination (1) of whether a substantial question exists as to a respondent’s competency, (2) of whether a respondent is incompetent, or (3) to appoint a Rule 17 GAL?

The Juvenile Code specifies which final orders in A/N/D and TPR matters may be appealed by an aggrieved party with standing to appeal.¹⁵¹ Orders reflecting a court’s determinations about a respondent’s competency and those appointing a GAL to the respondent are not among the list of appealable orders under G.S. 7B-1001.¹⁵² If, however, an otherwise appealable order contains language addressing a respondent’s competency or appointing a GAL, those issues are among those that may be addressed on appeal of that order.¹⁵³

For those instances where the respondent’s competency is addressed or a GAL is appointed in an order that is not identified as an appealable order under G.S. 7B-1001, some recourse may be available either by filing a petition for writ of certiorari¹⁵⁴ with the court of appeals or through the appellate court’s application of Rule 2 of the North Carolina Rules of Appellate Procedure,¹⁵⁵ which is used “[t]o prevent manifest injustice to a party, or to expedite decision in the public interest.” Both potential avenues of appeal require the appellate court to exercise its discretion in deciding whether to grant a petition for writ of certiorari or to apply Appellate Rule 2.¹⁵⁶ As a result, a party should not rely on these possibilities.

and her “cognitive limitations,” mental health diagnoses, and substance use issues and (2) the trial court’s finding that mother had the ability to make reasonable progress but failed to do so, stating, “the information in our record indicates Mother was not incompetent”).

151. See G.S. 7B-1001(a).

152. *In re A.K.*, 295 N.C. App. 115 (2024).

153. See, e.g., *In re J.E.B.*, 376 N.C. 629 (2021) (in appeal of order terminating respondent’s parental rights, examining appointment and role of respondent’s Rule 17 GAL).

154. Rule 21(a) of the N.C. Rules of Appellate Procedure allows for review of interlocutory orders when no right of appeal exists.

155. See *A.K.*, 295 N.C. App. at 122, 130–31 (internal quotation marks omitted) (noting that while interlocutory orders—including those appointing a Rule 17 GAL—are not appealable, an appellate court may, pursuant to Rule 2, “suspend the Rules of Appellate Procedure and reach the merits of an unpreserved issue in a case pending before the court,” and indicating that the court was inclined to do so regarding the appointment of mother’s GAL but was unable to due to the lack of a hearing transcript); see also *In re A.T.*, ___ N.C. App. ___, 923 S.E.2d 841 (2025) (invoking Rule 2 to review respondent father’s argument that a GAL appointment without notice was an abuse of discretion that deprived him of his constitutional right to conduct his own litigation, where respondent failed to object at trial and did not preserve the issue for appeal).

156. *In re A.N.B.*, 290 N.C. App. 151, 163 (2023) (citation omitted) (Rule 2 “must be ‘invoked cautiously’ and only in ‘exceptional circumstances’”); *Cryan v. Nat’l Council of YMCAs of U.S.*, 384 N.C. 569 (2023) (writ of certiorari is an extraordinary measure requiring a showing of substantial harm, wide-reaching issues of justice and liberty, or a considerable waste of judicial resources).

Appointing a Rule 17 GAL for an Unemancipated Minor Parent¹⁵⁷

The appointment procedures for a Rule 17 GAL for an unemancipated minor parent are different from (and more straightforward than) those for a respondent whose competency is raised as a substantial question before the court.

23. Who is an unemancipated minor parent?

An unemancipated minor is a person who is under the age of 18, does not have a court order of emancipation, and is not married.¹⁵⁸ Although the term “parent” is not defined in the Juvenile Code, a parent is a mother or father, whether biological or adoptive.¹⁵⁹ The Juvenile Code does not address putative fathers, but in practice, courts in A/N/D and TPR actions typically treat a putative father as a parent unless and until a court order concludes that he is not the father.

In some cases, both parents will be unemancipated minors. In others, only one parent will be an unemancipated minor.

24. What happens if an unemancipated minor parent is also a juvenile in a different proceeding?

In some circumstances, the unemancipated minor parent in an A/N/D and/or TPR action is also a “juvenile”¹⁶⁰ who is the subject of a separate A/N/D or TPR action. In these situations, the minor has the same rights to representation as a juvenile who is the subject of an A/N/D or TPR matter (including representation by a G.S. 7B-601 GAL) and as a parent (including the right to an appointed attorney and a Rule 17 GAL). As a result, there will be multiple persons who are representing a minor parent who is also a juvenile, and their roles and responsibilities will differ for each action.

25. When is a Rule 17 GAL required for an unemancipated minor parent?

The appointment of a Rule 17 GAL for an unemancipated minor parent is based on the minor’s age and varies depending on whether the action is an A/N/D or TPR proceeding.

For an unemancipated minor parent in a TPR action, regardless of their age, a Rule 17 GAL must be appointed.¹⁶¹ This appointment is in addition to the minor’s court-appointed counsel.¹⁶²

157. This section is limited to minor parents as opposed to minor respondents generally, as it is unlikely an unemancipated minor would be a guardian, custodian, or caretaker for a juvenile.

158. *See Shoaf v. Shoaf*, 282 N.C. 287, 292 (1972) (discussing age of majority and stating, “[t]he age of emancipation is precisely fixed—eighteen”); G.S. 48A-2 (“Age of Minors”); 7B-3400 (“Juvenile under 18 subject to parents’ control”); -3500 (allowing emancipation at age 16 via a court-ordered decree); -3509 (recognizing common law emancipation of minor through marriage).

159. *See In re Dunston*, 18 N.C. App. 647 (1973); *see also* 42 U.S.C. § 675(2) (defining “parent” as “biological or adoptive parents or legal guardians, as determined by applicable state law”); G.S. 48-1-102 (“Parent includes adoptive parent”); 12-3.3(3) (defining “father” (male parent) and “mother” (female parent), enacted by S.L. 2025-84, effective Jan. 1, 2026); *Green v. Carter*, 293 N.C. App. 51, 62 (2024) (reviewing dictionary definitions of “parent”; stating a parent is “[a] person who has begotten or borne a child; a father or mother”).

160. G.S. 7B-101(14) defines “juvenile” as a “person who has not reached the person’s eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.” Note that this definition differs from the one for “unemancipated minor.”

161. G.S. 7B-1101.1(b).

162. *Id.*

For A/N/D proceedings involving an unemancipated minor parent who is 15 years old or younger, a Rule 17 GAL must be appointed in addition to the minor's court-appointed counsel.¹⁶³

For A/N/D proceedings involving an unemancipated minor parent who is 16 or 17 years old, a court has discretion and “may” appoint a Rule 17 GAL on its own motion or on a motion of a party.¹⁶⁴ Other than age, no other criteria are provided for in the controlling statute (e.g., incompetency).¹⁶⁵ Regardless of whether a court appoints a Rule 17 GAL for a 16- or 17-year-old unemancipated minor parent, that parent is entitled to be represented by a court-appointed attorney.¹⁶⁶

26. Who raises the issue of a Rule 17 GAL for a minor parent? How and when is it raised?

The Juvenile Code does not address procedures for how a Rule 17 GAL is appointed to an unemancipated minor parent in a TPR or A/N/D action. Rule 17 does address the procedure for civil actions generally: after the defendant (the respondent in an A/N/D or TPR action) is served with a summons, the appointment may be made upon the written application of (1) the unemancipated minor parent's relative or friend or (2) any party, or by (3) the court's own motion. If service is made by publication, the application for the appointment of the GAL is made before service is completed.¹⁶⁷ If the respondent is served personally, the application may be made (1) by a friend or relative, (2) by another party if no application has been made by a relative or friend within ten days after service on the respondent, or (3) by the court at any time.¹⁶⁸

27. Are there special considerations regarding the discretionary appointment of a Rule 17 GAL for an unemancipated 16- or 17-year-old respondent parent in an A/N/D action?

Yes. In an A/N/D action, the court appoints provisional counsel to a respondent parent when the petition is filed.¹⁶⁹ For an unemancipated 16- or 17-year-old respondent parent, their provisional counsel could raise the issue of a Rule 17 GAL before the court. The attorney may first want to discuss the issue of a GAL with their client. The client may demonstrate that they understand the proceedings and express their desire not to have a GAL appointed to them. In that case, the attorney could notify the court and other parties that their client does not desire a GAL and instead wants to proceed with attorney representation only. Alternatively, the attorney could express their client's desire for a GAL. Other parties to the A/N/D proceeding may also raise the issue of the GAL appointment before the court.

163. G.S. 7B-602(b), *as amended by* S.L. 2025-16, § 1.9, effective for all actions filed or pending on or after Oct. 1, 2025.

164. *Id.*

165. The statutory provision addressing a Rule 17 GAL for a minor parent is separate from the provision addressing a Rule 17 GAL for a respondent parent who is incompetent. *Compare* G.S. 7B-602(b), *as amended by* S.L. 2025-16, § 1.9, *with* G.S. 7B-602(c).

166. *See* G.S. 7B-602(b).

167. G.S. 1A-1, Rule 17(c)(3).

168. *Id.*, Rule 17(c)(2).

169. G.S. 7B-602(a).

It is unclear if a hearing is required before a court may appoint a GAL for an unemancipated 16- or 17-year-old parent in an A/N/D action. The court has discretion when deciding whether to appoint a GAL to that respondent parent.¹⁷⁰ The court could look to the criteria addressed by the appellate courts when discussing competency—“whether the parent is able to comprehend the nature of the proceedings and aid her attorney in the presentation of her case.”¹⁷¹ A court may also consider the purpose of the GAL and how that balances with the 16- or 17-year-old parent’s paramount constitutional rights to care, custody, and control of their child.¹⁷² The GAL divests the respondent parent of the right to direct the litigation according to their own judgment, which impacts a parent’s constitutional rights in an A/N/D proceeding where their child is the subject of the suit.

28. What should the court order appointing a Rule 17 GAL for an unemancipated minor parent include?

An order appointing a GAL to an unemancipated minor parent who is a respondent in an A/N/D or TPR case should include findings addressing the respondent’s age and, for 16- and 17-year-old parents, their status as unemancipated.¹⁷³ For a 16- or 17-year-old unemancipated respondent parent in an A/N/D action, the order could also contain findings of fact that support the conclusion that a Rule 17 GAL is needed given the discretionary nature of the GAL appointment.¹⁷⁴ Including these findings in the order makes the record clear, such that if the order appointing a GAL is part of an order that is appealable under G.S. 7B-1001 and is appealed on that issue, the findings will provide the appellate court with the trial court’s reasoning when it exercised its discretion in appointing the GAL for the parent.¹⁷⁵ Entering an order with findings of facts that support the conclusion that a Rule 17 GAL is needed would also explain to the parent why a Rule 17 GAL was appointed to them.

170. *See id.* § 602(b), *as amended by* S.L. 2025-16, § 1.9, effective for all actions pending or filed on or after Oct. 1, 2025 (stating, “the court may appoint”).

171. *In re* Q.B., 375 N.C. 826, 836 (2020).

172. *See, e.g.,* *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re* E.B., 375 N.C. 310 (2020); *In re* B.R.W., 381 N.C. 61 (2022) (discussing parent’s paramount constitutional rights); *see also* *Y.H. v. F.L.H.*, 784 So. 2d 565 (Fla. Dist. Ct. App. 2001) (in adoption proceeding, relying on *Troxel* and holding that grandmother’s constitutional right to the care, custody, and control of her minor daughter did not affect her minor daughter’s own fundamental rights to care, custody and control of her own child, including decision to give her consent for her child’s adoption), *In re* D.L.S., 332 N.W.2d 293 (Wis 1983), *In re* Sadiku, 743 N.E.2d 507 (Ohio Ct. App. 2000), *In re* McCrary, 75 Ohio App. 3d 601 (1991) (all recognizing fundamental constitutional rights of minor parents to their own children).

173. For an example, see the form created by the North Carolina Administrative Office of the Courts, AOC-J-206, “[Order to Appoint, Deny, or Release Guardian ad Litem \(For Respondent\)](https://www.nccourts.gov/documents/forms/order-to-appoint-deny-or-release-guardian-ad-litem-for-respondent),” <https://www.nccourts.gov/documents/forms/order-to-appoint-deny-or-release-guardian-ad-litem-for-respondent>.

174. *Id.* Checkbox 4 on form AOC-J-206 is marked “Other” and provides space for findings of fact.

175. *See supra* [note 149](#).

Who May Serve as a Rule 17 GAL and Are They Compensated?

29. Who is eligible to serve as a Rule 17 GAL for a respondent in an A/N/D or TPR matter?

A court “may appoint some discreet person” as a GAL for a qualifying respondent.¹⁷⁶ This may include, for example, a friend or relative of the respondent. Although a GAL does not need to be an attorney, it is common practice in North Carolina to appoint an attorney to serve as a GAL in A/N/D and TPR matters. In determining who to appoint, courts may want to consider several factors, including the

- nature of the respondent’s incompetence;
- unemancipated minor parent’s age;
- scope of any limitations on the respondent’s ability to understand the proceedings and to assist in their representation;
- benefits of appointing a local attorney who is known to the court and who is familiar with the intricacies of A/N/D and TPR proceedings;
- ability of a potential non-attorney to cooperate with the respondent’s counsel and to act in the respondent’s interest;
- quality and nature of the relationship, if any, between a potential non-attorney and the respondent;
- availability of attorneys who are qualified to accept such appointments; and
- existence or potential existence of a conflict of interest.

30. Who is ineligible to serve as a Rule 17 GAL for a respondent in an A/N/D or TPR matter?

A respondent’s attorney cannot also serve as the respondent’s GAL.¹⁷⁷ Having the role of an attorney and the role of a GAL filled by two different people avoids potential conflicts of interest and allows a respondent to receive the benefit of the services of both an attorney and a GAL.¹⁷⁸

Nor can the role of a GAL for a respondent in an A/N/D or TPR matter be filled by (1) the GAL appointed to the juvenile in that proceeding or (2) a member of the GAL program, which exists for the purposes of juvenile representation.¹⁷⁹ Such an appointment would create a conflict of interest since the program would be representing two different parties in the same action.

A court should also be careful not to appoint someone other than an attorney as a Rule 17 GAL to a respondent if a conflict of interest exists. For example, a relative who is a child’s placement provider may have adverse interests with the respondent and should not be appointed as the respondent’s GAL even if the relative and respondent have a good relationship. A court should also be mindful of whether a relative or friend of a respondent would be unlikely to cooperate with and assist trial counsel for the respondent. For example, a relative or friend may be influenced by other people in the respondent’s life to not cooperate with the attorney or

176. G.S. 1A-1, Rule 17(b)(2).

177. G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR); *see also In re J.E.B.*, 376 N.C. 629 (2021) (Morgan, J., dissenting) (arguing that the relevant provisions of the Juvenile Code unambiguously preclude the same person from serving as both attorney and Rule 17 GAL for a respondent so as to allow the respondent to receive the benefit of both representatives’ services).

178. *J.E.B.*, 376 N.C. 629.

179. *See* G.S. 7B-601; *see generally id.* Art. 12 (“Guardian ad Litem Program”).

pursue the chosen strategy. Alternatively, a friend or relative may not be as responsive to trial counsel as a fellow officer of the court. Individuals who are not attorneys may also have difficulty grasping the issues in the matter, making them less effective in their role as GAL.

31. What effect does the appointment of a Rule 17 GAL have on a respondent's right to counsel?

The appointment of a GAL to a respondent parent does not affect the parent's statutory right to counsel, including the right to be represented by appointed counsel if indigent.¹⁸⁰ A GAL for a non-parent respondent also does not affect that respondent's right to be represented by an attorney. A court may not appoint the respondent's attorney to also serve as GAL for the respondent.¹⁸¹ The GAL and the attorney serve two different roles for the same respondent.¹⁸²

If a GAL is appointed, it seems unlikely that a respondent parent could knowingly and voluntarily waive their right to counsel.¹⁸³ This is because the GAL divests the respondent of their right to conduct the litigation according to their own judgment.¹⁸⁴ Additionally, in appointing a GAL based on a respondent's incompetency, a trial court has made a determination that the respondent does not understand the nature of the proceeding or is unable to adequately communicate with their attorney.

32. Are Rule 17 GALs for respondents compensated? If so, how?

In civil proceedings generally, Rule 17 allows an appointed GAL for a defendant to fix and tax the GAL's fee as part of costs.¹⁸⁵ The Juvenile Code, however, provides more specific guidance for A/N/D and TPR proceedings.

For A/N/D matters, a GAL who is an attorney and is appointed to an indigent respondent parent is paid a reasonable fee in accordance with the rules adopted by IDS. IDS does not distinguish in its current hourly assigned rates between an attorney who is appointed as a respondent's counsel and one who is appointed as a respondent's GAL; instead, there is one assigned rate for attorneys representing clients in A/N/D and TPR cases regardless of their role.¹⁸⁶

It is not clear who, if anyone, is responsible for the fees of a GAL appointed to an indigent respondent who is *not* the juvenile's parent in an A/N/D matter (e.g., a custodian, guardian, or caretaker who is a party to the proceeding¹⁸⁷). It may be that the provision in Rule 17 allowing an

180. See generally G.S. 7B-602 (A/N/D); -1101.1 (TPR).

181. See *supra* [Question 30](#).

182. See *J.E.B.*, 376 N.C. 629.

183. See G.S. 7B-602(a)(4), (a1) (waiver of counsel in A/N/D actions); -1101.1(a)(4), (a1) (waiver of counsel in TPR actions); *In re P.D.R.*, 224 N.C. App. 460 (2012) (vacating and remanding TPR based on question as to whether mother was incompetent and unable to waive counsel; had mother had Rule 17 GAL, that GAL would have made decisions for mother, including waiver of counsel, that are based on obtaining favorable result for her; decided under prior statutory language).

184. *Hagins v. Redev. Comm'n of Greensboro*, 275 N.C. 90 (1969) (quoted in *In re J.A.A.*, 175 N.C. App. 66, 71 (2005) (discussing prior version of GAL appointment statute for a respondent parent in a TPR action).

185. G.S. 1A-1, Rule 17(b)(2).

186. G.S. 7B-603(b); see also [IDS Policies, Rules, and Procedures](#), N.C. OFF. OF INDIGENT DEFENSE SERVS. (IDS), <https://www.ncids.org/ids-policies-and-rules/> (last visited Jan. 15, 2026); [New Rate Chart for PAC \[Private Assigned Counsel\] \(as of January 1, 2022\)](#), IDS (Jan. 5, 2022), <https://www.ncids.org/2022/new-rate-chart-for-pac-as-of-january-1-2022/>.

187. G.S. 7B-401.1(c)–(e).

appointed GAL for a defendant (respondent) to fix and tax the GAL's fee as part of costs would apply in this circumstance.¹⁸⁸ It is also possible that IDS would bear the cost of fees associated with such a GAL given the due process implications to the non-parent indigent respondent.¹⁸⁹

For TPR matters, the fees of a GAL who is an attorney appointed to an indigent respondent parent are paid by IDS.¹⁹⁰ Where the respondent parent is not indigent, a GAL's fees in a TPR "shall be a proper charge against the respondent if the respondent does not secure private legal counsel."¹⁹¹

Because the Juvenile Code only allows for the appointment of a Rule 17 GAL of substitution due to a respondent's age of minority or their incompetency, which is based on mental illness, intellectual disability, a physical condition, or other similar cause, IDS may reject payment for the appointment of a GAL that is not authorized by law. An order of appointment of a GAL to a respondent that includes findings and a conclusion about the respondent's unemancipated minor status or incompetency will provide an attorney who is appointed as a GAL with the documentation IDS may require for payment. This order may reduce barriers to payment by IDS, which arise when questions exist about the basis for a GAL appointment.

Not all GALs will charge fees. For example, some discreet person who is not acting in their professional capacity when serving as a GAL, e.g., a parent or relative, is unlikely to seek compensation. Others who are acting in a professional capacity may agree to serve pro bono.

Duties and Responsibilities of a Respondent's Rule 17 GAL in A/N/D and TPR Proceedings

Neither the Juvenile Code nor Rule 17 of the North Carolina Rules of Civil Procedure are expansive about the role and the specific duties of a GAL for a respondent.¹⁹² However, case law describes this GAL as a GAL of substitution.¹⁹³ Much of what is known about the GAL's role comes from appellate opinions and from applying North Carolina State Bar Formal Ethics Opinions and the Rules of Professional Conduct to the A/N/D and TPR contexts.

188. G.S. 1A-1, Rule 17(b)(2).

189. IDS policy (adopted July 2, 2008) provides that, pursuant to G.S. 7A-498.3 and 7B-602, the organization is responsible for paying the fees of an attorney appointed to an indigent non-parent respondent in an A/N/D matter where a court determines that (1) the respondent has a constitutionally protected interest triggering the right to due process and (2) due process requires appointment of counsel in the matter. The policy does not directly address the appointment or fees of Rule 17 GALs appointed to these same respondents. *IDS Appointment Policy*, *supra* [note 43](#).

190. G.S. 7B-1101.1(f).

191. *Id.*

192. *See In re W.K.*, 376 N.C. 269 (2020).

193. *See, e.g., In re T.L.H.*, 368 N.C. 101 (2015) (Rule 17 GAL of substitution is appointed if parent is incompetent; court discussed how prior version of statute also allowed for appointment of assistive GAL under G.S. 7B-1101.1(c), and not Rule 17, based on parent's diminished capacity, but that provision was repealed for cases filed or pending on or after October 1, 2013; under new statutory language effective in 2013, only Rule 17 GAL may be appointed for incompetent parent); *In re A.T.*, ___ N.C. App. ___, 923 S.E.2d 841 (2025) (noting that it is improper to classify a GAL as assistive given the statutory changes removing GALs of assistance based on diminished capacity and allowing for GALs of substitution only).

33. What is a Rule 17 substitute GAL?

The phrase, “substitute GAL”¹⁹⁴ and similar phrases arose in case law and refer to a Rule 17 GAL.¹⁹⁵ Under Rule 17, this GAL appears in a court action on behalf of an incompetent or minor party.¹⁹⁶ The notion of the GAL’s role being substitutive stems from the act of appointing the GAL divesting the party for whom they are appointed of that party’s “fundamental right to conduct his or her litigation according to their own judgement and inclination.”¹⁹⁷

Prior to October 1, 2013, a juvenile court had the discretion to appoint a GAL for a parent based on incompetence or diminished capacity, and case law established that the GAL’s role was one of either substitution or assistance, depending on the basis for the appointment. Those distinctions no longer exist following the enactment of Session Law 2013-129.¹⁹⁸ Since then, a Rule 17 substitute GAL is the only type of GAL that can be appointed to a respondent who is an unemancipated minor or who has been determined to be incompetent in an A/N/D and/or TPR action.¹⁹⁹ Any analysis of a GAL acting in an assistive versus substitutive capacity is improper.

34. Does the appointment of a Rule 17 GAL mean that a respondent has no preferences to be considered or role to play in an A/N/D or TPR proceeding?

No. While a GAL may substitute their judgment for that of a respondent on matters related to the A/N/D or TPR proceeding, one should be cautious about viewing the GAL’s role as one of total substitution, rendering the respondent powerless and without the ability to participate in the proceeding. The precise nature of a GAL’s role will depend on a variety of factors, such as the respondent’s age and maturity, the cause and extent of the respondent’s incompetence, and the nature of the litigation. While a GAL’s role may be viewed as one of substitution, that should not mean depriving the respondent of the right to participate in and make decisions about the case to the extent they are able to do so. The GAL’s role should include helping the respondent understand the case and participate as much as the respondent is able, while also exercising judgment and making decisions the respondent is unable to make to protect their interests.

For example, in a personal injury action, a GAL for a 17-year-old party would act differently from a GAL for a 6-month-old party. Teenagers have some ability to articulate their own interests and to participate in decision making. Similarly, a GAL for a parent who is in a coma should act differently from a GAL for a parent who has a developmental disability that prevents them from managing most of their own affairs but who can articulate opinions about at least some of the litigation.

194. See, e.g., *In re D.L.P.*, 242 N.C. App. 597 (2015).

195. See, e.g., *In re P.D.R.*, 224 N.C. App. 460, 469 (2012) (stating, under Rule 17, “if the parent is incompetent – the role of the GAL should be one of substitution”; decided under prior version of G.S. 7B-1101.1 for the appointment of a GAL to a respondent parent in a TPR).

196. See *Roberts v. Adventure Holdings, LLC*, 208 N.C. App. 705 (2010).

197. *Hagins v. Redev. Comm’n of Greensboro*, 275 N.C. 90, 102 (1969) (quoted in *In re J.A.A.*, 175 N.C. App. 66, 71 (2005)) (discussing prior version of GAL appointment statute for a respondent parent in a TPR action).

198. Section 17 of S.L. 2013-129 amends G.S. 7B-602, and section 32 amends G.S. 7B-1101.1 (TPR).

199. See *supra* [note 193](#). Use caution when researching opinions addressing GALs for respondent parents in A/N/D or TPR cases, as (1) G.S. 7B-602 (A/N/D) and -1101.1 (TPR) were amended significantly and (2) the holdings and reasoning of opinions discussing the prior versions of the law that allowed for a GAL of assistance have since been superseded by statute.

G.S. Chapter 35A provides additional guidance. Even a guardian appointed to a legally incompetent individual under Chapter 35A does not have absolute authority to act on behalf of the individual.²⁰⁰ While it is true that the “essential purpose of guardianship for an incompetent person is to replace the individual’s authority to make decisions with the authority of a guardian,” that authority applies only where “the individual does not have adequate capacity to make such decisions.”²⁰¹ Further, it must be “clear that a guardian will give the individual a fuller capacity for exercising his rights.”²⁰² The guardianship arrangement

should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him.²⁰³

In A/N/D and TPR matters, where the scope of the incompetency determination and the role of the GAL is narrower and is limited to the proceeding at hand, similar deference to a respondent’s personal capacity to understand and participate in the proceeding should be given.²⁰⁴

35. May a respondent testify after a Rule 17 GAL is appointed to that respondent?

Potentially. The Juvenile Code is silent on the question of whether a respondent who has been appointed a GAL may testify. The Rules of Evidence, however, provide that “[e]very person is competent to be a witness except as otherwise provided” in the rules.²⁰⁵ “A person is disqualified to testify as a witness when the court determines that the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her, or (2) incapable of understanding the duty of a witness to tell the truth.”²⁰⁶

The appointment of a GAL does not mean that a respondent is necessarily incompetent to testify; rather, the pertinent question is whether the respondent is qualified to testify pursuant to Rule 601 of the Rules of Evidence. An unemancipated minor parent has a GAL solely because of their age. There is no age requirement regarding a witness and their testimony. At least one published opinion refers to an unemancipated minor mother (who had a Rule 17 GAL appointed to her) testifying at an adjudication.²⁰⁷ A respondent who has a GAL because they were determined to be incompetent is someone who does not understand the nature of the proceeding

200. *See, e.g.*, G.S. 35A-1212(a); -1215(b) (authorizing clerks to enter an order limiting guardianship based upon the nature and extent of an individual’s capacity, retaining certain legal rights and privileges for the person to exercise independently).

201. G.S. 35A-1201(a)(3).

202. *Id.* § 1201(a)(4).

203. *Id.* § 1201(a)(5); *see In re A.H.-G.*, ___ N.C. App. ___, No. COA25-152, 2025 WL 3648514 (2025) (quoted in and applied to Rule 17 GAL appointed to unemancipated minor mother in A/N/D action).

204. *A.H.-G.*, ___ N.C. App. ___, 2025 WL 3648514.

205. G.S. 8C-1, Rule 601(a).

206. *Id.*, Rule 601(b).

207. *A.H.-G.*, ___ N.C. App. ___, 2025 WL 3648514.

or is unable to effectively communicate with their attorney. That does not mean, for example, that they do not know if they spoke with a social worker. Rule 601 controls the competency of witnesses.

If there is a question about a witness's competency to testify, a court may (1) conduct a voir dire;²⁰⁸ (2) observe the witness while testifying;²⁰⁹ or (3) receive evidence, e.g., the testimony of others,²¹⁰ as to the would-be witness's competency. The inquiry is a case-specific analysis.²¹¹

36. How does the role of a Rule 17 GAL appointed to a respondent in an A/N/D or TPR matter compare to a guardian appointed to a legally incompetent person in a G.S. Chapter 35A proceeding?

G.S. Chapter 35A grants clerks of superior court exclusive jurisdiction over, and provides the process for, adjudicating a person legally incompetent and appointing a guardian²¹² to make decisions on behalf of the person,²¹³ including, potentially, decisions related to housing and medical treatment as well as those affecting the person's income, assets, and debts.²¹⁴ A guardian appointed by the clerk to a person adjudicated legally incompetent has a significantly broader role than a GAL in an A/N/D or TPR matter. A GAL's role is limited to the proceeding in which they are appointed, and the appointment of a GAL does not divest the respondent of control over their life or property.²¹⁵ The term “*ad litem*” is a Latin phrase that means “[f]or the purposes of the suit[.]”²¹⁶ A GAL does not act for a parent outside of the court action. For example, the GAL does not consent to and sign a release of information for the respondent's medical care, even though that care may be related to the A/N/D or TPR action. Such action is beyond the purpose of the litigation.

208. *State v. Fearing*, 315 N.C. 167 (1985) (positively commenting on use of voir dire to determine competency of witness to testify); *see also State v. Spaugh*, 321 N.C. 550 (1988) (citing *Fearing*, 315 N.C. 167 (1985)) (clarifying that a voir dire, while not required, is one appropriate method for the court to fulfill its duty to exercise independent discretion in deciding a witness's competency).

209. *Spaugh*, 321 N.C. 550 (finding that the trial court's observation of the witness while she testified was adequate without a separate voir dire). Note that if a court waits until a witness testifies and then finds the witness incompetent, the preceding testimony may need to be disregarded. *See generally State v. Reynolds*, 93 N.C. App. 552 (1989) (in a case involving a jury trial, stating that the better practice is to determine competency before the witness begins to testify).

210. *State v. Roberts*, 18 N.C. App. 388, 391 (1973) (stating, in the context of a child witness, that “[t]here are, no doubt, situations in which the testimony of parents, teachers, and others might prove helpful to the trial judge in making his determination” as to witness competency).

211. The Rules of Evidence also authorize alternative modes of testimony for intellectually or developmentally disabled witnesses in civil cases. See G.S. 8C-1, Rule 616 for more on the procedures and modes of testimony available in these scenarios and for other relevant considerations.

212. There are three types of guardians under G.S. Chapter 35A: a guardian of the person as defined in G.S. 35A-1202(10), a guardian of the estate as defined in G.S. 35A-1202(9), and a general guardian as defined in G.S. 35A-1202(7).

213. G.S. 35A-1102.

214. *See generally* G.S. Ch. 35A, Arts. 8 (“Powers and Duties of Guardian of the Person”) and 9 (“Powers and Duties of Guardian of the Estate”).

215. *See Roberts v. Adventure Holdings, LLC*, 208 N.C. App. 705, (2010); *In re K.J.P.W.*, 297 N.C. App. 786, 790 (2025) (quoting *In re Q.B.*, 375 N.C. 826, 836 (2020)) (holding that a Rule 17 GAL appointment does not establish that a party is legally incompetent such that a guardian would be appointed to exercise a “broad range of powers with respect to . . . person and property”).

216. *Roberts*, 208 N.C. App. at 708 (quoting *Lawson v. Langley*, 211 N.C. 526, 49 (1937)).

37. How does the role of a Rule 17 GAL appointed to a respondent in an A/N/D or TPR matter differ from the role of a GAL appointed to a respondent in a G.S. Chapter 35A incompetency proceeding?

The role of a GAL appointed to a respondent in a Chapter 35A proceeding is more expansive than that of a Rule 17 GAL in an A/N/D or TPR matter.²¹⁷ In a Chapter 35A proceeding, the GAL must always be an attorney and is appointed under G.S. 35A-1107. The GAL in the Chapter 35A proceeding serves two primary purposes: (1) to act as the attorney for the respondent, presenting the respondent's express wishes at all stages of the proceeding, and (2) to make recommendations to the clerk concerning the respondent's best interests if those interests differ from the respondent's express wishes.²¹⁸

In contrast, a Rule 17 GAL appointed to a respondent in an A/N/D or TPR matter cannot serve as the respondent's attorney.²¹⁹ Further, a Rule 17 GAL may be "any discreet person" and is not required to be (although typically is) an attorney.²²⁰

38. What is the role of a Rule 17 GAL outside of court? What steps may a GAL take in fulfilling their duties?

A Rule 17 GAL should get to know the respondent to whom they are appointed and familiarize themselves with the facts and history of the respondent's case. Doing so requires a GAL to communicate with the respondent.²²¹ This communication should include learning about the respondent (including the respondent's incompetency, their ability and most effective ways to communicate, and the goals in the case) and explaining to them the role of the GAL and others in the proceeding. The GAL should also speak with the respondent's attorney, if there is one.

Communication between a GAL and either a respondent or their attorney is "privileged and confidential to the same extent that communications between" the respondent and the respondent's "counsel are privileged and confidential."²²² When a respondent is represented by an attorney, a GAL who is an attorney but is acting in their capacity as a GAL should be able to communicate with the respondent alone.²²³ It is unclear whether counsel for a respondent

217. Compare G.S. 35A-1107 with G.S. 1A-1, Rule 17.

218. G.S. 35A-1107(c).

219. See *supra* Questions 29–30; see also G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR); *In re* J.E.B., 376 N.C. 629 (2021) (Morgan, J., dissenting) (determining that the relevant provisions of the Juvenile Code unambiguously preclude the same person from serving as both attorney and Rule 17 GAL for a respondent so as to allow the respondent to receive the benefit of the services of both representatives).

220. See *supra* Question 29.

221. *In re* W. K., 376 N.C. 269 (2020) (commenting positively on a Rule 17 GAL having met with the respondent when discussing a lack of evidence that the Rule 17 GAL had not fulfilled their duties). A GAL may be able to better understand the communication needs of a respondent by speaking with the respondent's family or with others who have worked with the respondent, including DSS social workers or service providers. To help with communication needs, GALs may find the information and resources available through [Disability Rights North Carolina](https://disabilityrightsn.org/) (<https://disabilityrightsn.org/>) helpful in fulfilling the duties of their appointment.

222. G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR).

223. See N.C. State Bar, "[Lawyer Appointed as Guardian-Ad-Litem](#)," 2004 Formal Ethics Op. 11 (Jan. 21, 2005) [hereinafter 2004 Formal Ethics Op. 11] (acknowledging that because a GAL—even one who is an attorney—does not have a client-lawyer relationship with a parent, the GAL's conduct is not governed by the Rules of Professional Conduct, including, these authors presume, the prohibition on communication with a person represented by counsel under Rule 4.2 of the State Bar's Rules of Professional

could prohibit a GAL from meeting with their mutual client without the attorney present.²²⁴ There are likely benefits to the respondent, the GAL, and the respondent’s attorney meeting and communicating as a team for purposes of explaining the different roles of the GAL and the attorney and developing trial strategies. These team meetings may assist the GAL in helping the respondent understand the proceedings and the decisions being made.

A respondent’s GAL may also want to communicate with other case participants, including DSS social workers, the juvenile’s G.S. 7B-601 GAL, or other respondents and their counsel. This communication does not appear to be prohibited by the Rules of Professional Conduct and would not require the consent of counsel for those participants, if applicable.²²⁵ Still, a GAL—particularly one who happens to be an attorney—may choose to proceed with caution and, out of a sense of professional courtesy, may include counsel for other parties in conversations with the GAL.

A GAL should consider whether their participation in formal meetings between a respondent and DSS is required as one of their duties. For example, DSS may schedule a Child and Family Team (CFT) meeting or other type of meeting where the case plan involving the respondent may be revised.²²⁶ For a respondent who is incompetent, a court has determined that the respondent does not understand the nature of the proceedings and requires the appointment of a GAL to stand in the shoes of the respondent. Ensuring that the respondent understands any changes to a family services agreement—changes that result from a CFT—that may ultimately impact reunification with that respondent is one of the GAL’s duties. This does not mean that a respondent cannot engage in activities involving their child or in case planning without the presence of their GAL, e.g., visitation or an unannounced home visit by a DSS social worker.

Conduct), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2004-formal-ethics-opinion-11/?opinionSearchTerm=guardian%20ad%20litem>; see also N.C. State Bar, “[Communication by Guardian ad Litem with Represented Person](#),” 2006 Formal Ethics Op. 19 (Jan. 19, 2007) [hereinafter 2006 Formal Ethics Op. 19] (opining that a G.S. 7B-601 GAL for a juvenile (not a respondent) who is an attorney but who is not serving as the attorney advocate for the juvenile is not prohibited from speaking with parties who are represented by counsel because the GAL, despite being a lawyer, is not performing the role of an attorney and thus the Rules of Professional Conduct do not apply), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-19/>.

224. *But see* [2004 Formal Ethics Op. 11](#), *supra* [note 223](#), Inquiry and Opinion #4 & Inquiry and Opinion #5 (prior to legislative amendments to G.S. 7B-602(d) and -1101.1(d) making a Rule 17 GAL’s communication with a respondent and a respondent’s counsel confidential, opining on the ability of a parent’s attorney to advise the parent on how to speak with the parent’s GAL, if at all, in light of the then-lack of confidentiality owed by the Rule 17 GAL to the parent).

225. See [2006 Formal Ethics Op. 19](#) and [2004 Formal Ethics Op. 11](#), *supra* [note 223](#).

226. A Child and Family Team (CFT) meeting involves “structured, guided decisions with the family, their natural supports, and other team members about family strengths, needs, and problems and the impact they have on the safety, permanency, and well-being of the family’s child(ren) and youth.” A CFT requires a parent to be present and allows for that parent’s involvement in decision-making and planning for the child. A Family Services Agreement or safety plan will result from the meeting. See N.C. DEP’T OF HUM. SERVS., DIV. OF SOC. SERVS., CHILD WELFARE MANUAL 244–47 (June 2025) ([chapter on Cross Function topics](#)), <https://policies.ncdhhs.gov/wp-content/uploads/Cross-Functions-October-2025.pdf>. See also CHILD WELFARE MANUAL, [Permanency Planning Services Policy, Protocol, and Guidance](#), “Child and Family Team/ Permanency Planning Review Meetings: Permanency Planning Review Team Meetings” (Dec. 2025), <https://policies.ncdhhs.gov/wp-content/uploads/Permanency-Planning-Manual-12.5.2025.pdf>.

Rather, the GAL should consider where their involvement is most needed or may be required, including where changes are being made to services or expectations related to the respondent or where the respondent is being asked to sign a formal agreement or something similar.

In fulfilling their duties and to become familiar with the facts and history of a respondent parent's case, a GAL may also review relevant records in the A/N/D or TPR matter. The GAL may want to confer with the respondent's attorney about what records are relevant and how to access those records. For example, the attorney will have copies of court and DSS records, and the parent may sign a release for the GAL to access the parent's confidential medical records.

39. What is the role of a Rule 17 GAL inside of court?

First and foremost, when it comes to court proceedings, a GAL is responsible for attending all hearings in the matter to which they are appointed. In fact, once a GAL has been appointed to represent a respondent in an A/N/D or TPR proceeding, the trial court may not conduct a hearing without the presence of the respondent's GAL.²²⁷ No authority exists that would allow a GAL for a respondent to consent to a hearing being held in the GAL's absence.

Being present is not the GAL's only responsibility when it comes to hearings, however. The court of appeals has stated that "Rule 17 contemplates *active participation* of a GAL in the proceedings for which the GAL is appointed."²²⁸ A GAL who happens to also be an attorney may make strategic decisions with the respondent's attorney about how to best protect the respondent's interests. That strategy may include having the GAL perform some trial functions, such as questioning witnesses and making arguments to the trial court, so long as those actions are done at the direction of or in coordination with counsel who does not "functionally abdicate his responsibilities, leaving the GAL to 'act as the parent's attorney.'"²²⁹ Case law has not addressed whether a party may object to or a trial court may limit the role of a GAL in examining a witness or making closing arguments as part of the litigation strategy decided on by a respondent's attorney.

227. *In re* D.L.P., 242 N.C. App. 597 (2015) (vacating adjudication and disposition orders entered after hearings at which respondent's GAL was not present).

228. *Id.* at 601 (emphasis added) (internal quotation marks omitted), *In re* P.D.R., 224 N.C. App. 460, 469 (2012) (both quoting *In re* A.S.Y., 208 N.C. App. 530, 538 (2010)).

229. *In re* J.E.B., 376 N.C. 629, 636 (2021) (affirming TPR; GAL who was also an attorney did not violate G.S. 7B-1101.1(d) when cross-examining witnesses and presenting argument on the alleged grounds for termination of rights when parent's counsel did not abdicate their responsibilities as attorney for parent). In *J.E.B.*, underpinning the state supreme court's holding was the fact that at adjudication, despite the heavy involvement of the Rule 17 GAL, "the record reveal[ed] that respondent's counsel maintained control of the respondent's case, actively made strategic decisions regarding how to best protect respondent's interests, and served as respondent's counsel throughout the proceeding," including, for example, by acknowledging his role as counsel in open court, objecting on the respondent's behalf, informing the trial court when the respondent had no further evidence to offer, and by directing closing argument where the attorney argued first as to one ground before informing the court that the GAL would argue on the remaining grounds. 376 N.C. at 635. At disposition, the supreme court noted, respondent's attorney "controlled the presentation of evidence for respondent and conducted the direct examination of the respondent's only witness," whereas the GAL's examination of witnesses or performance of other trial functions was "either at the express direction of or in apparent coordination with" respondent's counsel, the transcript revealed. *Id.*

In cases challenging whether a GAL actively participated on behalf of a respondent, the appellate courts have held that a GAL is not required to speak for the sake of speaking if the GAL cannot offer anything more than what the respondent's attorney has advocated for.²³⁰ As a result, to demonstrate on appeal that a respondent's GAL failed to adequately protect the respondent's due process rights by not actively participating at trial, a party must specify the actions the Rule 17 GAL could have taken to secure a more favorable decision for the respondent—e.g., by identifying evidence or arguments the Rule 17 GAL could have offered beyond what trial counsel offered.²³¹

40. May a Rule 17 GAL who is appointed to a respondent testify?

For a GAL who is an attorney, the Rules of Professional Conduct do not apply since the attorney is serving only in the capacity of a GAL.²³² As a result, this GAL may be called to testify about non-privileged events or communications, even if the respondent themselves is competent to testify.²³³ For example, the GAL may provide conflicting testimony about what occurred at a meeting that took place where the GAL was present. Alternatively, the GAL may testify as to the respondent's wishes regarding the case. Although the GAL may testify, they cannot violate the privilege that applies to their communications with the respondent or with the respondent's attorney.²³⁴

41. What is the role of a Rule 17 GAL if a respondent is absent from a court hearing?

A GAL's role does not change due to the absence of a respondent, and the GAL should continue to perform any functions they are able to carry out despite the respondent's absence. If a respondent has an attorney in the proceeding, a GAL's role may include informing the attorney of the respondent's wishes and current understanding of the case as well as what the GAL believes is the proper course for the litigation. It may also include the GAL performing some trial functions as directed by the respondent's attorney, including, for example, questioning witnesses

230. *In re A.H.-G.*, ___ N.C. App. ___, No. COA25-152, 2025 WL 3648514 (2025) (relying on *In re W.K.*, 376 N.C. 269 (2020) (court found that it was not error when father's GAL spoke five times at one hearing and did not speak at later hearing, where father's attorney made arguments and neither record nor father on appeal showed that GAL could have offered anything more than repeating attorney's arguments)) (holding that unemancipated minor mother's GAL was not required to repeat objection made by mother's attorney to mother being called as a compelled witness when attorney objected on Fifth Amendment grounds; court conducted colloquy with mother about her Fifth Amendment rights that mother acknowledged she understood; and mother asserted her Fifth Amendment right in response to one question).

231. *A.H.-G.*, ___ N.C. App. ___, ___, No. COA25-152, 2025 WL 3648514, at *6 (citing *W.K.*, 376 N.C. at 276) ("Whether it be for the absence of additional evidence or actions by the Rule 17 GAL, the absence of an order defining the guidelines of the Rule 17 GAL's appointment in the record evidence, or the absence of any on-the-record discussion between Rule 17 GAL and Mother, 'we will not presume error from a silent record.'").

232. G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR); *cf.* 2004 Formal Ethics Op. 11, *supra* note 223 (relying on *In re Shepard*, 162 N.C. App. 215 (2004), issued prior to legislation altering the nature of a Rule 17 GAL's role and making the GAL's communications with a respondent and counsel confidential, acknowledging that a GAL for a respondent may testify without breaching duties owed to the respondent, and stating that a GAL's testimony is admissible as evidence in a TPR proceeding (unless prohibited on other grounds)).

233. See *supra* Question 35 (respondent testimony).

234. See G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR).

or making arguments.²³⁵ In the event a respondent does not have counsel and the respondent is not present, a GAL should move to continue the hearing to allow the respondent an opportunity to attend.

A GAL should not move to withdraw or be released from serving as a GAL because a respondent is not present in court or has not communicated with the GAL.²³⁶

42. What happens if a Rule 17 GAL is never able to make contact with a respondent?

A GAL should make appropriate efforts to contact and communicate with a respondent to whom the GAL is appointed. The GAL should first speak with the respondent's attorney to see if the attorney has any information on how to contact and communicate with the respondent. Other efforts may include sending a letter to any last known address of the respondent, emailing the respondent if an email address is provided, and attempting to call the respondent if a potential phone number exists. Social media may also provide contact information or details about the respondent's whereabouts. The GAL may also consider speaking with collaterals (e.g., a relative of the respondent) or other parties in the proceeding (e.g., a DSS social worker or a juvenile's GAL appointed pursuant to G.S. 7B-601) who may be able to help facilitate contact between the GAL and the respondent. A GAL should also check at every hearing to see if the respondent they are representing is in attendance at court and, if so, make efforts to speak with the respondent then.

A GAL stands in the shoes of a respondent and is still obligated to seek a judgment that is favorable for the respondent even if the respondent is absent or has not communicated with the GAL. The GAL "is considered an officer of the court and as such has a duty to represent the party he is appointed to represent to the fullest extent feasible and to do all things necessary to secure a judgment favorable to such party."²³⁷ Rule 17 contemplates the possibility that a GAL will represent a respondent who does not or cannot communicate with the GAL (e.g., a nonverbal infant or comatose individual). There is no authority for a GAL to withdraw from serving a respondent on the basis that the respondent has not made contact with the GAL and/or is not present at a hearing.²³⁸

235. *J.E.B.*, 376 N.C. at 636 (affirming TPR; GAL who was also attorney did not violate G.S. 7B-1101.1(d) when cross-examining witnesses and presenting argument on alleged grounds to terminate rights where GAL and trial counsel coordinated and where trial counsel did not abdicate their own responsibilities as attorney for respondent).

236. *In re A.S.Y.*, 208 N.C. App. 530 (2010) (reversing TPR; error for court to allow respondent's GAL to withdraw and not appoint a substitute GAL when respondent did not appear at the hearing). See "[When and How Does a Rule 17 GAL Appointment Terminate?](#)" *infra*, discussing the termination of an appointed GAL.

237. *A.S.Y.*, 208 N.C. App. at 538 (citation omitted); see *In re A.H.-G.*, ___ N.C. App. ___, ___, No. COA25-152, 2025 WL 3648514, at *6 (2025) (highlighting "the absence of an order defining the guidelines of the Rule 17 GAL's appointment in the record evidence").

238. See *supra* [note 236](#); *c.f.* N.C. RULES OF PRO. CONDUCT r. 1.16 (Declining or Terminating Representation) (N.C. STATE BAR 1997, amended 2003) (applying to attorneys serving as legal counsel); see "[When and How Does a Rule 17 GAL Appointment Terminate?](#)" *infra*, discussing the termination of a GAL's appointment.

43. May a court clarify the role and responsibilities of a Rule 17 GAL?

Yes. A court may clarify the nature of a GAL's appointment by articulating specific duties or setting limits and expectations, for instance, in the court's appointment order.²³⁹ Examples may include attending CFT meetings or reviewing a case plan with their client. Specific designated duties provide clarity not just to the GAL but to all parties in the action. If a GAL is directed to attend CFT meetings, DSS then knows to invite the GAL to the meetings. A court may not, however, order a GAL to perform a function that otherwise violates the law.²⁴⁰

44. Is a Rule 17 GAL authorized to execute a relinquishment for a child's adoption on behalf of a parent?

No. A GAL "appear[s] in the lawsuit on behalf of an incompetent or minor party,"²⁴¹ meaning the GAL's role is limited to the matter in which the GAL is appointed. A relinquishment is "the voluntary surrender of a minor to an agency for the purpose of adoption."²⁴² Relinquishments are governed by North Carolina's adoption laws, located in G.S. Chapter 48.²⁴³ An adoption action is a special proceeding before the clerk of superior court and is separate from an A/N/D or TPR action.²⁴⁴ However, it is possible for a respondent parent in an A/N/D or TPR action to decide during the course of those proceedings that they want to relinquish their rights to their child to the county DSS.

Under the adoption laws, an unemancipated minor parent has the legal capacity to execute a consent and relinquishment for their child's adoption.²⁴⁵ As a result, a GAL is not required for a consent or relinquishment made by an unemancipated minor parent.

Additionally, under the adoption laws, if a parent has been adjudicated incompetent,²⁴⁶ a specific process addressing that parent's consent and relinquishment must be followed. That procedure is set forth in G.S. 48-3-602. A court, which in an adoption proceeding is the clerk of superior court, must appoint a GAL for a parent adjudicated incompetent and, if the child involved does not have a guardian, a separate GAL for the child. The two GALs investigate

239. *C.f.* N.C. State Bar, "[Attorney Serving Dual Role of Guardian ad Litem and Advocate](#)," 2022 Formal Ethics Op. 1 (Apr. 22, 2022) (discussing the appointment of a GAL to a juvenile under G.S. 7B-601 in A/N/D matters and stressing the importance of attorneys seeking guidance and clarification from the court about the nature of the appointment and the GAL's role in different situations), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2022-formal-ethics-opinion-1/?opinionSearchTerm=Guardian>.

240. *See, e.g.*, the Juvenile Code's prohibitions against the same person serving as both a Rule 17 GAL and an attorney for the respondent. G.S. 7B-602(d) (A/N/D); -1101.1(d) (TPR).

241. *Roberts v. Adventure Holdings, LLC*, 208 N.C. App. 705, 708 (2010).

242. G.S. 48-1-101(15); *see also id.* § (4) (definition of "agency" includes DSS).

243. *But see* G.S. 7B-909 (post-relinquishment review hearings required in certain situations); -909.1 (requiring DSS to give notice to an attorney who is representing a respondent parent in an A/N/D action (1) of that parent's intent to execute a relinquishment and (2) of the arranged date, time, and location of the relinquishment; DSS must also advise the parent of their right to consult with their attorney regarding the relinquishment); -909.2 (post-adoption contact agreement and orders, enacted by S.L. 2025-16, § 1.18(a), effective Oct. 1, 2025).

244. *See* G.S. 48-2-100(a); -102(b); *see also id.* § 601(a1) (requiring transfer of adoption to district court when a question of fact, request for equitable relief, or equitable defense is raised before the clerk).

245. G.S. 48-3-605(b), (h) (consent); -702(b) (relinquishment incorporates G.S. 48-3-605(b), (h)).

246. In this context, the authors believe that this refers to an adjudication of incompetency through a G.S. Chapter 35A proceeding. *See, e.g.*, G.S. 35A-1112(d) (stating, "If the finder of fact . . . finds by clear, cogent, and convincing evidence that the respondent is incompetent . . ."), -1112(e) (stating, "Following an adjudication of incompetency . . ."). No similar language appears in G.S. 1A-1, Rule 17.

whether the adoption should proceed after assessing a variety of statutory factors.²⁴⁷ There must be a hearing where a court determines if it will be in the child's best interest for the adoption to proceed. If it is in the child's best interests, the court orders the parent's GAL to execute the consent or relinquishment. This process occurs through an adoption proceeding and is outside of the scope of the A/N/D or TPR action. It is possible for a clerk to appoint a person who is serving as a Rule 17 GAL for a respondent parent in an A/N/D or TPR action as the GAL in an adoption proceeding involving that same parent, but the clerk is not required to do so. If the clerk does appoint the same individual, the GAL would be executing the consent pursuant to a court order entered by the clerk in the adoption proceeding and not as a Rule 17 GAL for a respondent in the A/N/D or TPR proceeding.

45. Can a Rule 17 GAL appeal an order in an A/N/D or TPR proceeding or sign a respondent's notice of appeal in place of the respondent?

It appears not. To avoid any question about whether the signatories on the notice of appeal are proper, when practical, a respondent, their GAL, and their attorney should sign the notice of appeal.

When a respondent parent, guardian, or custodian is a non-prevailing party, they have the right to appeal certain final orders in an A/N/D action, and a parent also has the right to appeal an order terminating their parental rights.²⁴⁸ The Juvenile Code requires that a notice of appeal be signed by both the appealing party and their attorney, if any.²⁴⁹ A GAL does not sign a notice of appeal as an appealing party since a GAL is not a designated appealing party; the respondent the GAL represents is.²⁵⁰ The court of appeals has stated that rather than sign a notice of appeal, a GAL should

assure that the notice of appeal—or other pleading or legal document—is filed properly with the parents' signatures as required by the North Carolina Rules of Appellate Procedure [3.1], [as] it is not appropriate for the GAL to sign the notice of appeal in place of the parents.²⁵¹

The court of appeals held that the failure of an appealing party (the respondent themselves) and their attorney, if any, to sign a notice of appeal is jurisdictional and will result in a dismissal of the appeal.²⁵² The issue of who must sign—the respondent or their GAL—appears to have been definitively decided by the court of appeals in *In re Z.A.N.L.W.C.*²⁵³ However, the question of whether a GAL for a respondent may sign for the respondent as part of the GAL's duties may still be unresolved. In *In re Z.A.N.L.W.C.*, the court of appeals dismissed a mother's appeal of

247. See G.S. 48-3-602 (factors include evaluating a parent's current condition and any reasonable likelihood that the parent's competency will be restored, the parent's and child's relationship, adoption alternatives, and any other relevant factor).

248. G.S. 7B-1002(4) (standing to appeal); see *id.* § 1001 (appealable orders).

249. G.S. 7B-1001(c).

250. *In re Z.A.N.L.W.C.*, 297 N.C. App. 698 (2025) (relying on *In re L.B.*, 187 N.C. App. 326 (2007)) (decided under prior version of GAL statute in TPR action); *In re E.B.*, 285 N.C. App. 246 (2022) (unpublished).

251. *Z.A.N.L.W.C.*, 297 N.C. App. at 701 (quoting *L.B.*, 187 N.C. App. at 331).

252. *Z.A.N.L.W.C.*, 297 N.C. App. 698; *E.B.*, 285 N.C. App. 246 (both dismissing appeal for lack of jurisdiction when notice of appeal was signed by parent's GAL and attorney but not by parent).

253. 297 N.C. App. 698.

a TPR order because she failed to sign the notice of appeal when her GAL and attorney did, stating “the information in our record indicated mother was not incompetent” as defined by G.S. Chapter 35A.²⁵⁴ This seems to leave the question of whether a GAL may or must sign the notice of appeal for a respondent who is incompetent unanswered. In making its statement, the court of appeals did not note that a Rule 17 GAL may only be appointed for a respondent parent who is either incompetent or an unemancipated minor of a certain age.²⁵⁵ Two other appellate opinions published prior to *In re Z.A.N.L.W.C.* granted a writ of certiorari when a GAL signed for a respondent parent, but neither opinion discussed who should sign the notice of appeal—the respondent parent and/or their GAL.²⁵⁶

When and How Does a Rule 17 GAL Appointment Terminate?

Because a GAL is appointed for the purposes of a lawsuit, a GAL appointment will terminate when a court’s jurisdiction terminates. But there are circumstances that may result in a GAL’s appointment terminating prior to the termination of a court’s jurisdiction.

46. How long does a Rule 17 GAL appointment last?

A GAL for a respondent in an A/N/D or TPR proceeding serves beyond the immediate hearing, as the appointment is based upon the continuing needs of the respondent.²⁵⁷ The length of the appointment will depend on whether the appointment is based on the respondent’s age of minority or on incompetency.²⁵⁸

47. When does the Rule 17 GAL appointment end for an unemancipated minor parent?

In an A/N/D action, if a GAL was appointed for an unemancipated respondent parent who is 15 years old or younger, the court could terminate the GAL appointment when the respondent parent turns 16 years old. However, the court may determine that the GAL should remain in place for the unemancipated minor parent.²⁵⁹ Factors the court may want to consider in

254. *Id.* at 703 (the information in the record included court reports that mother had a GAL because of cognitive limitations and concern about her understanding of court; mother’s failure to appear at the TPR hearing despite appearing at other hearings in the A/N/D action; and court findings that mother had cognitive limitations, mental health diagnoses, and substance use issues but also had the ability to make reasonable progress to correct the conditions that led to her child’s removal but failed to do so).

255. See G.S. 7B-602(b), (c) (as amended by S.L. 2025-16 § 1.9, effective for all actions pending or filed on or after Oct. 1, 2025) (applying to A/N/D action); -1101.1(b), (c) (applying to TPR action).

256. *In re V.S.*, 280 N.C. 819 (2022) (granting writ of certiorari after trial court dismissed notice of appeal when mother and attorney signed but mother’s GAL did not); *In re Q.M., Jr.*, 275 N.C. App. 34 (2020) (granting writ of certiorari; commenting that mother’s first notice of appeal was defective when it was only signed by her attorney; defect was cured when second notice of appeal was signed by GAL; however, that notice was untimely).

257. See *In re D.L.P.*, 242 N.C. App. 597, 602 (2015) (holding that so long as a respondent cannot adequately represent her own interest, “the presence and participation of [an appointed] GAL is necessary in order for the trial court to proceed to final judgment, order or decree against any party so represented”) (citations, internal quotation marks omitted).

258. See *infra* Questions 47 and 48 for more.

259. See G.S. 7B-602(c), as amended by S.L. 2025-16, § 1.9, effective for actions pending or filed on Oct. 1, 2025. See [“Appointing a Rule 17 GAL for an Unemancipated Minor Parent,”](#) *supra*.

making this decision are the relationship between the minor parent and their GAL, the express preference of the minor parent regarding the continuation of the GAL's appointment, the minor parent's understanding of the case, and the stage the case is in.

If a court appoints a GAL to an unemancipated 16- or 17-year-old parent in an A/N/D action or to an unemancipated minor parent under the age of 18 in a TPR action, the appointment will end when the parent turns 18, as the parent is no longer a minor requiring the appointment of a GAL. For a GAL to continue to represent that parent who has now reached the age of majority, the court would have to follow the procedures for an incompetency determination and appoint a GAL based on the respondent parent being incompetent.

48. When does the Rule 17 GAL appointment end for a respondent who is incompetent?

A GAL appointed to a respondent parent in a TPR action will generally serve for the duration of the case. For an A/N/D action, the GAL appointment lasts for as long as the court retains jurisdiction and hearings are scheduled in the action, including through a TPR that is filed by motion in the A/N/D action.²⁶⁰

49. Can a respondent's competency be restored such that they no longer need a Rule 17 GAL?

Yes. A respondent who is incompetent requires the appointment of a GAL; however, it is possible that a respondent may regain their competency during the course of an A/N/D or TPR proceeding.²⁶¹ For example, a respondent could wake from a coma and make a recovery that enables them to understand the nature of the A/N/D or TPR proceeding. Similarly, a parent

260. An A/N/D action is "one continuous juvenile case with several interrelated stages" that are a series of various hearings, including hearings on the need for nonsecure custody (if applicable), a pre-adjudicatory hearing, the adjudicatory hearing, the initial dispositional hearing, and review or permanency planning hearings, that are conducted sequentially. *In re T.R.P.*, 360 N.C. 588, 593 (2006). G.S. 7B-906.1(k) and (n) authorize a court to retain jurisdiction but waive the holding of regular permanency planning hearings in a case such that the case is essentially inactive. At that time, the service of the GAL appointed to the juvenile under G.S. 7B-601(a) terminates, and the attorneys are released. *See, e.g., In re K.B.*, 290 N.C. App. 61 (2023), *aff'd on other grounds*, 368 N.C. 68 (2024). *See In re A.S.Y.*, 208 N.C. App. 530, 539 (2010) (citations, internal quotation marks omitted) (decided under a prior version of the Rule 17 GAL provisions of the Juvenile Code; vacating and remanding TPR; mother was deemed incompetent and appointed a Rule 17 GAL during an A/N/D case; a TPR motion was filed in the A/N/D case where mother was not present, and her GAL was permitted to withdraw; holding that because a GAL's "powers are coterminous with the beginning and end of the litigation in which he is appointed," once mother was determined to be incompetent, "it was necessary for [her] to be represented by a GAL throughout the neglect and dependency and termination proceedings, as long as the conditions that necessitated the appointment of a GAL still existed").

261. *See A.S.Y.*, 208 N.C. App. at 539 (emphasis added) (stating in regard to a Rule 17 GAL appointed under G.S. 7B-602, "it was necessary for respondent-mother to be represented by a GAL throughout the neglect and dependency and termination proceedings, *as long as the conditions that necessitated the appointment of the GAL still existed.*"); *In re A.E.*, 244 N.C. App. 344 (2015) (unpublished) (TPR affirmed; mother's Rule 17 GAL was released after court held competency hearing and determined mother was no longer incompetent; despite mother's mental health issues, she attended parenting classes and counseling, obtained appropriately-sized residence, and applied for numerous jobs); *In re N.P.*, 288 N.C. App. 488 (2023) (unpublished) (vacating and remanding adjudication and disposition order; Rule 17 GAL was improperly released without there being a competency hearing to determine if mother's condition necessitating the Rule 17 GAL appointment continued to exist).

who was unable to demonstrate their understanding of the proceeding because of significant untreated mental health issues may, after treatment, understand the nature of the proceedings such that they are no longer incompetent and in need of a GAL.

Neither the Juvenile Code nor Rule 17 addresses the restoration of a respondent's competency—either in definition or procedure.²⁶² However, for guidance, a trial court could look to the procedures used for initially determining whether a substantial question of incompetency exists and, if so, whether a respondent is incompetent. A respondent's GAL may raise the issue of the respondent's competency when the GAL believes the respondent has become able to understand the nature of the proceeding in which they are involved. In such circumstances, the court should hold a hearing where it receives evidence proving or disproving the respondent's understanding of the nature of the proceedings before making relevant findings and entering an order granting or denying the request to terminate the GAL's appointment.

50. Can a Rule 17 GAL file a motion to withdraw?

There is nothing that prohibits a GAL from filing a motion to withdraw; however, there is no criteria for what a court should consider when ruling on such a motion. A GAL should be mindful that a respondent who is incompetent is someone whom a court has determined does not understand the nature of the proceedings in which they are involved, so representing that respondent will have inherent challenges. Similarly, there may be inherent challenges with serving as a GAL for a minor. Because of these considerations and challenges, the acceptable reasons for withdrawing from an A/N/D or TPR case may be more limited than the reasons an attorney may assert to successfully withdraw from a typical case.²⁶³ A GAL should not withdraw simply because a respondent's attorney may be allowed to withdraw or because the respondent is absent from court or not in contact with the GAL.²⁶⁴ But there may be good reasons for a GAL's withdrawal, such as the GAL is suffering from a physical or mental condition that materially impairs their ability to represent the respondent or the GAL is closing their practice. If a court does grant a GAL's motion to withdraw, so long as the basis for the need for a GAL exists—the respondent's age or incompetency—a new GAL must be appointed.²⁶⁵

51. Can a respondent forfeit or waive their right to a Rule 17 GAL?

It appears not. An indigent respondent parent is statutorily entitled to be represented by appointed counsel;²⁶⁶ however, the statutory right to counsel is not absolute.²⁶⁷ A parent may forfeit that right to counsel through “egregious, dilatory, or abusive conduct” that “totally

262. See G.S. Chapter 35A, which establishes the exclusive procedure for adjudicating a person legally incompetent and may be instructive here, as it contemplates the possibility of restoration if it is determined by a preponderance of the evidence that a once-incompetent adult is now competent. G.S. 35A-1130(d). It seems likely that a motion in an A/N/D or TPR matter seeking to have a court determine that a respondent is no longer incompetent and resulting in an order releasing a Rule 17 GAL would come from the respondent's counsel, perhaps at the direction of the Rule 17 GAL. Nothing prohibits any other party from seeking the same outcome, nor the court from acting *sua sponte*.

263. See N.C. RULES OF PRO. CONDUCT r. 1.16 (“Declining or Terminating Representation”) (N.C. STATE BAR 1997, amended 2003).

264. See *A.S.Y.*, 208 N.C. App. 530.

265. See *id.*

266. G.S. 7B-602.

267. *In re D.T.P.*, 291 N.C. App. 165 (2023) (acknowledging the possibility that a party in an A/N/D or TPR proceeding may forfeit their right to appointed counsel).

undermine[s] the purposes of the right [to counsel] by making representation impossible and seeking to prevent trial from happening at all.”²⁶⁸ Alternatively, a court may determine that a respondent parent has made a knowing and voluntary waiver of counsel.²⁶⁹

While a qualifying respondent is also entitled to the appointment of a GAL,²⁷⁰ the GAL’s appointment is based upon the continuing needs of the respondent—either because of the respondent’s age or because the respondent has been found by a court to be incompetent. So long as a respondent’s condition warranting the need for a GAL exists, the court must ensure that the respondent is represented by a GAL.²⁷¹ Failure to do so will result in an appellate court vacating and remanding the order appealed from.²⁷² It is the active participation of a GAL that “effectively removes any legal disability of the party that is so represented.”²⁷³ Thus, it seems unlikely that a respondent can waive or forfeit their GAL.

Regarding forfeiture, if a respondent’s behavior is threatening towards their GAL or otherwise makes that GAL unable to remain in their appointed role, the court would have the discretion to release the GAL. However, so long as a respondent remains incompetent or is of an age that requires the appointment of a GAL, a court would be required to appoint a new GAL to the respondent.²⁷⁴ Because a GAL for a respondent does not have to be an attorney and can instead be any discreet person, in some cases it may be appropriate for a court to appoint as a GAL a friend or relative who has a preexisting relationship with a respondent who has been unable or unwilling to cooperate with an attorney in that role.²⁷⁵

Conclusion

A respondent’s Rule 17 GAL plays a crucial role in A/N/D and TPR proceedings. The role has evolved over time. Staying current on the law is important for practitioners and judges in these matters. Although our statutes and case law provide many answers, some questions remain. This bulletin explores issues related to the appointment of a Rule 17 GAL for a respondent to assist the parties, their attorneys, and the court involved in A/N/D and TPR proceedings.

268. *In re K.M.W.*, 376 N.C. 195, 209 (2020) (citations omitted).

269. G.S. 7B-602(a)(4), (a1) (A/N/D); -1101.1(a) (TPR); *see also In re J.M.*, 273 N.C. App. 280 (2020) (discussing waiver requirements).

270. G.S. 7B-602 (parent in A/N/D action); -1101.1 (parent in TPR action); *see supra* [Question 5](#), discussing a non-parent respondent’s right to a GAL in qualifying situations.

271. *In re A.S.Y.*, 208 N.C. App. 530 (2010) (quoted in *In re P.D.R.*, 224 N.C. App. 460 (2012)).

272. *See, e.g., A.S.Y.*, 208 N.C. App. 530.

273. *Id.* at 538 (quoted in *In re D.L.P.*, 242 N.C. App. 587, 601 (2015), and *In re A.H.-G.*, ___ N.C. ___, ___, No. COA25-152, 2025 WL 3648514, at *4 (2025)).

274. *A.S.Y.*, 208 N.C. App. 530 (quoted in *In re N.P.*, 288 N.C. App. 488 (2023) (unpublished)) (court allowed GAL to withdraw without appointing a substitute GAL).

275. *See supra* [Question 29](#) for a discussion of the considerations a court may make when exercising its discretion to appoint a discreet person as GAL for a respondent.