

THE ROLE OF THE GUARDIAN AD LITEM

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Federal Law

- Child Abuse Prevention and Treatment Act (CAPTA)
 - 42 U.S.C. § 5101 *et seq.*
 - Mandates that a guardian ad litem represent children subject to juvenile abuse/neglect proceedings or risk loss of federal funding related to child welfare.



State Law

- G.S. 7B-1200 *et seq.*
 - Established the GAL Program as a division of the Administrative Office of the Courts
 - Specifies that each local program consists of volunteers GAL's, program attorney, and paid program coordinator.



Team Player & Role



- Attorney Advocate
 - Duties outlined in statutes and GAL Contract
 - Only mandated player on the team

- Volunteer Guardian ad Litem
 - Advocate for child-client through work as investigator, interviewer, researcher, monitor, resource finder, recommendation developer, report writer, court order monitor, etc.



Team Player & Role (Cont.)

- Guardian ad Litem Staff Supervisor
 - Volunteer supervisor, volunteer/attorney communication broker, case manager

- ✓ Plus recruit, screen, train, supervise volunteers; cover uncovered cases; supervise staff; manage GAL program in county or judicial district; interagency liaison; etc.





Attorney Advocates and Program Staff
FY 2014-2015

- | Attorneys | Program Staff |
|---|--|
| <ul style="list-style-type: none"> • 80 Attorney Advocates on contract with the Guardian ad Litem Program • 10 Attorney Advocates who are state employees working full-time in local GAL district programs • 76 Conflict Attorneys • 1 Associate Counsel • 1 Appellate Counsel • 123 Pro Bono Appellate Attorneys | <ul style="list-style-type: none"> • 137 Guardian ad Litem District Program Staff (District Administrators, Program Supervisors, Program Specialists, Program Assistants) in 69 offices • 3 Regional Administrators <ul style="list-style-type: none"> – Iris Derrick – Cy Gurney – Geoff Farmer • 1 Administrator <ul style="list-style-type: none"> – Cindy Bizzell |



GAL Program Statistics



- Fiscal Year 2015-2016 (Year End Totals)
 - Total Children Represented: 17,019
 - Total Hearings (Completed): 65,042
 - Total Volunteers: 5,075
 - GAL Appellate Cases: 182



GAL Program Timeline Highlights

1983



Guardian ad Litem is established in the North Carolina Administrative Office of the Courts by the General Assembly. (N.C.G.S. 7B-1200) After pilots featuring different representation models were tested, the model of a GAL Volunteer and Attorney Advocate is selected as the most effective.



GAL Program Timeline Highlights



1989

Guardian ad Litem officially joins the National Court Appointed Special Advocates (CASA) Association, after several years of active involvement with the organization. North Carolina's attorney/volunteer model is recognized as the most effective best interest representation for children.





GAL Program Timeline Highlights

1998 The first standardized, statewide Volunteer Training Manual is published, establishing a rigorous training program for volunteers that was later adopted by National CASA and adapted for national use.





GAL Program Timeline Highlights

2002 The North Carolina Guardian ad Litem Program publishes a comprehensive practice manual for attorneys that represent children in juvenile court proceedings, and it is distributed statewide to judges and attorneys. Revised in 2007, the Guardian ad Litem Attorney Practice Manual continues to be a resource for attorneys and judges.



GAL Program Timeline Highlights



2010 The N.C. Supreme Court recognizes the team representation of the GAL Program consisting of a GAL Volunteer and Attorney Advocate coordinated by staff in which each team member has a division of responsibilities to ensure that the best interests of child clients are properly represented in juvenile court.
In re J.H.K., J.D.K. 365 N.C. 171 (2010).




GAL Program Timeline Highlights

2013



The North Carolina Guardian ad Litem Program celebrates 30 years of child advocacy.



Appointment (7B-601)





- Juvenile petition alleges abuse or neglect, GAL **shall** be appointed.
 - Mandatory
- Juvenile petition alleges dependency only, GAL *may* be appointed.
 - Discretionary



Appointment (Cont.)

- Termination of Appointment
 - GAL appointment terminates when the permanent plan has been achieved and approved by the court.
- Reappointment
 - *Good cause shown*
 - Motion of any party, including GAL, or *sua sponte*.



Appointment in TPR (7B-1108)

- ✓ If GAL appointed, representation continues in TPR.
- ✓ If an answer or response is filed that denies material allegations, then a GAL is appointed to represent the juvenile.
 - Mandatory (including private TPR)
- ✓ Before or after TPR grounds, GAL *may* be appointed to assist the court in determining the best interest of the juvenile.
 - Discretionary





No GAL Appointment

- Juvenile petition alleges delinquency or undisciplined, **NO** statutory authority for appointment.
 - Even if DSS is given custody *unless* DSS files a juvenile petition.
- In civil custody cases, **NO** statutory appointment.
 - Some districts use civil guardians
 - Not part of the GAL Program



Standing



- Juvenile is a party. 7B-601, 7B-401.1
- GAL & Attorney Advocate have standing to represent the juvenile in all actions under Subchapter I of Chapter 7B.
- *May* be authorized to accompany juvenile in criminal action when called as a witness in matter relating to abuse.
- Includes appellate representation.



Statutory Duties






Investigation +
Facilitation +
Litigation =
BEST INTEREST REPRESENTATION






Duties (Cont.)

- **Investigation**
 - Determine the facts
 - Needs of the juvenile
 - Available family & community resources to meet needs
 - Conduct follow up investigations to ensure orders followed



Duties (Cont.)

- **Facilitation**
 - Settlement of disputed issues
 - Consent orders
 - Negotiated stipulations



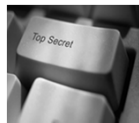
Duties (Cont.)



- **Litigation**
 - Offer evidence
 - Examine witnesses
 - Explore options with court at disposition



Confidentiality



- **Broad authority:**
 - Any information or reports
 - Confidential or not
 - In GAL's opinion, relevant to the case
- **GAL must maintain confidentiality**
 - No disclosure without order of court or authorized by law



Confidentiality




- **What about federal laws?**
 - HIPAA (Medical Records)
 - FERPA (Educational Records)
 - 42 C.F.R. Part 2 (Substance Abuse Treatment Records)




Conflict Representation

- Current Client Conflict
 - Minor mother and baby
 - No waiver
- Generational Conflict
 - Former child client of GAL Attorney
 - Possible waiver



<http://www.nccourts.org/Citizens/GAL/ResAtt.asp>




North Carolina
GUARDIAN AD LITEM
A CHILD'S ADVOCATE IN COURT




NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS


Appellate Representation

- Generally, not done by trial GAL Attorney Advocate
- GAL State Office notified of Appeal by Court Reporting Coordinator
- GAL Appellate Attorney assigned
 - In House Counsel
 - Pro Bono Attorney
 - Attorney Advocate Contractor
- Appointment of GAL Appellate Counsel







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Questions?





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