

# ***Professionalism Makes the Difference in Effective Attorney GALs***

## **I. INTRODUCTION, Ashley Willcott, J.D., CWLS**

### **A. BINDING STANDARDS OF REPRESENTATION**

In every case alleging abuse or neglect of a child, the Court must appoint an attorney and a guardian ad litem for the child. The child's right to an attorney cannot be waived. The same attorney may serve in both capacities, absent a conflict between the attorney's duties to the child as client and the attorney's considered opinion of the child's best interests. In the event such a conflict arises, a separate attorney or a qualified lay advocate may be appointed to serve as guardian ad litem. OCGA 15-11-103 (attorney) and 104 (guardian ad litem).

The child's attorney serves the child in a traditional lawyer-client role, with traditional duties of loyalty, confidentiality and competency. The child's attorney must advocate for the child's expressed wishes. The attorney must explore the child's understanding and freedom from intimidation or manipulation, counsel the child as to the pros and cons of the child's articulated position, and investigate options and services to promote the child's desired outcome.

ABA Standards describe the basic obligations of the child's attorney (See Appendix A below). Georgia law charges the guardian ad litem with advocating for the child's best interests. A lay guardian ad litem must complete training appropriate to the role. The statute prefers the guardian ad litem be a Court Appointed Special Advocate (CASA) if not an attorney. The new code outlines the factors a guardian ad litem should consider in determining the best interests of the child and the duties a guardian ad litem must perform. O.C.G.A. 15-11-105.

## **APPENDIX A**

### **ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version)**

#### **Part I – Standards of Practice for the Child's Attorney**

##### **A-1. The Child's Attorney.**

The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

##### **A-2. Lawyer Appointed as Guardian Ad Litem.**

A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's

expressed preferences.

## B. GENERAL AUTHORITY AND DUTIES

### B-1. Basic Obligations.

The child's attorney should:

- (1) Obtain copies of all pleadings and relevant notices;
- (2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- (3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- (4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- (5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- (6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- (7) Identify appropriate family and professional resources for the child.

## II. WHAT IS "BEST PRACTICES" ATTORNEY GAL REPRESENTATION

### A. Professional Communication

Selections from the Lawyer's Creed and Aspirational Statement on Professionalism by the Chief Justice's Commission on Professionalism.

- a. **As GAL** – advocating in the best interest of the child
- b. **With Clients:** offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

**As to clients**, I will aspire:

- (a) To fully informed client decision-making. As a professional, I should:
  - (1) Counsel clients about all forms of dispute resolution;
  - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
  - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
  - (4) Communicate promptly and clearly with clients; and,
  - (5) Reach clear agreements with clients concerning the nature of the representation.

- c. **With SAAGs:** offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

**As to opposing parties and their counsel,** I will aspire:

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:

- (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
- (2) Grant reasonable requests for extensions or scheduling changes; and,
- (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:

- (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
- (2) Be courteous and civil in all communications;
- (3) Respond promptly to all requests by opposing counsel;
- (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

- d. **With Judges:** To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

**As to the courts, other tribunals, and to those who assist them,** I will aspire:

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:

- (1) Avoid non-essential litigation and non-essential pleading in litigation;
- (2) Explore the possibilities of settlement of all litigated matters;
- (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
- (4) Avoid all delays not dictated by a competent presentation of a client's claims;
- (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
- (6) Advise clients about the obligations of civility, courtesy, fairness,

cooperation, and other proper behavior expected of those who use our systems of justice.

### **III. ISSUES SPECIFIC TO ATTORNEY GALs**

a. Distribution and use of Reports (at what hearings)

15-11-105 (c)(15) written reports see also (14)

15-11-105(c)(8) attend all hearings

15-11-104 (l) and see (k)

b. Seeing the child

15-11-105 (c)(1) see also (11) and (12)

15-11-104 (h)

RPC 1.4

c. Communication with parties and access to the child(ren)

15-11-105 (4), (5) and (15)

RPC 1.6 Confidentiality

RPC 3.4 Fairness to Opposing Party and Counsel

RPC 4.1 Truthfulness in Statements to Others

RPC 4.2 Communication with Person Represented by Counsel

RPC 4.3 Dealing with Unrepresented Person

RPC 4.4 Respect for Rights of Third Persons