

Professionalism Makes the Difference in Effective Attorney GALs

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Guardian Ad Litem Training

Standards

- ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (NACC REVISED VERSION)
- WHAT ARE "BEST PRACTICES" FOR ATTORNEY GAL REPRESENTATION
- ISSUES SPECIFIC TO ATTORNEY GALs
- GEORGIA RULES OF PROFESSIONAL CONDUCT

ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (NACC REVISED VERSION)

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.

ABA Standards

(NACC Revised)

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.

ABA Standards

(NACC Revised)

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;

ABA Standards

(NACC Revised)

- 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;

ABA Standards

(NACC Revised)

- 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.

ABA Standards

(NACC Revised)

II. WHAT IS "BEST PRACTICES" ATTORNEY GAL REPRESENTATION

Professional Communication

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

ABA Standards

(NACC Revised)

As GAL – advocating in the best interest of the child

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.

ABA Standards

(NACC Revised)

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;

ABA Standards

(NACC Revised)

- (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.

ISSUES SPECIFIC TO ATTORNEY GALs

- a. Distribution & 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)

ISSUES SPECIFIC TO ATTORNEY GALs

b. Seeing the child

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

15-11-104 (h)

RPC 1.4

ISSUES SPECIFIC TO ATTORNEY GALs

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 & 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

Georgia Rules of Professional Conduct

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

Georgia Rules of Professional Conduct

Rule 1.4 Communication

a. A lawyer shall:

1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;
2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and

Georgia Rules of Professional Conduct

5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

- b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Georgia Rules of Professional Conduct

Rule 1.6 Confidentiality of Information

- a. A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.

Georgia Rules of Professional Conduct

- b.
1. A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:
 - i. to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
 - ii. to prevent serious injury or death not otherwise covered by subparagraph (i) above;

Georgia Rules of Professional Conduct

- iii. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- iv. to secure legal advice about the lawyer's compliance with these Rules.

Georgia Rules of Professional Conduct

2. In a situation described in paragraph (b)(1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.
2. Before using or disclosing information pursuant to paragraph (b)(1), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.

Georgia Rules of Professional Conduct

- c. The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph(b) without being subjected to disciplinary proceedings.
- d. The lawyer shall reveal information under paragraph (b) as the applicable law requires.
- c. The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

Georgia Rules of Professional Conduct

Rule 1.7 Conflict of Interest: General Rule

- a. A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

Georgia Rules of Professional Conduct

- b. If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:
 1. consultation with the lawyer, pursuant to Rule 1.0(c);
 2. having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation, and
 3. having been given the opportunity to consult with independent counsel.

Georgia Rules of Professional Conduct

- c. Client informed consent is not permissible if the representation:
1. is prohibited by law or these Rules;
 2. includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
 3. involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

Georgia Rules of Professional Conduct

Rule 1.14 Client With Diminished Capacity

- a. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

Georgia Rules of Professional Conduct

- b. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Georgia Rules of Professional Conduct

- c. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Georgia Rules of Professional Conduct

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. A lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Georgia Rules of Professional Conduct

Rule 3.3 Candor toward the Tribunal

- a. A lawyer shall not knowingly:
1. make a false statement of material fact or law to a tribunal;
 2. fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

Georgia Rules of Professional Conduct

3. fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
4. offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

Georgia Rules of Professional Conduct

- b. The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- c. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- d. In an ex parte proceeding, other than grand jury proceedings, a lawyer shall inform the tribunal of all material facts known to the lawyer that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

Georgia Rules of Professional Conduct

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- a. unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

Georgia Rules of Professional Conduct

- b.
 1. falsify evidence;
 2. counsel or assist a witness to testify falsely; or
 3. pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

Georgia Rules of Professional Conduct

But a lawyer may advance, guarantee, or acquiesce in the payment of:

- i. expenses reasonably incurred by a witness in preparation, attending or testifying; or
- ii. reasonable compensation to a witness for the loss of time in preparing, attending or testifying; or
- iii. a reasonable fee for the professional services of an expert witness;

Georgia Rules of Professional Conduct

- c. Reserved.; d. Reserved.; e. Reserved.;
- f. request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 1. the person is a relative or an employee or other agent of a client; or the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information; and
 2. the information is not otherwise subject to the assertion of a privilege by the client; and

Georgia Rules of Professional Conduct

- g. use methods of obtaining evidence that violate the legal rights of the opposing party or counsel; or
- h. present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

Georgia Rules of Professional Conduct

Rule 3.7 Lawyer as Witness

- a. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
 1. the testimony relates to an uncontested issue;
 2. the testimony relates to the nature and value of legal services rendered in the case; or
 3. disqualification of the lawyer would work substantial hardship on the client.

Georgia Rules of Professional Conduct

- b. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Georgia Rules of Professional Conduct

Rule 4.1 Truthfulness in Statements to Others

- In the course of representing a client a lawyer shall not knowingly:
- a. make a false statement of material fact or law to a third person; or
 - b. fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Georgia Rules of Professional Conduct

Rule 4.2 Communication with Person Represented by Counsel

- a. A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.
- b. Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.

Georgia Rules of Professional Conduct

Rule 4.3 Dealing with Unrepresented Person

- In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:
- a. state or imply that the lawyer is disinterested; when the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding; and

Georgia Rules of Professional Conduct

Rule 4.3 Dealing with Unrepresented Person

- b. give advice other than the advice to secure counsel, if a lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of a client.

Georgia Rules of Professional Conduct

Rule 4.4 Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

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