

## **Public Guardianship: Sources of Guidance Regarding Potential Conflicts of Interest**

### **Guardianship Statute (excerpt)**

#### **N.C.G.S. § 35A-1213. Qualifications of guardians.**

(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

...

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. (emphasis added)

### **National Guardianship Association Standard 16 – Conflict of Interest**

- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interest rather than for the interests of the person.
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing, and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
  - A. The Guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.
    1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.
    2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
    3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, and exception can be made, provided that the exception is in best interest of the person. Reasons for the exception must be documented and the court notified.
  - B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
  - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
  - D. The guardian may not be in a position of representing both the person and the service provider.
  - E. A guardian who is not a family guardian may act a petitioner only when no other entity is available to act, provided all alternatives have been exhausted.

- F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardians' primary duty and responsibility is always to the person.
- G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available the guardian discloses this arrangement to the court.
- H. The guardian shall neither solicit nor accept incentives from service providers.
- I. The guardian shall consider various ancillaries or support services providers and select the providers that best meet the needs of the person.
- J. A guardian who is an attorney or employs an attorney may provide legal services to a person only when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict interest. The guardian who has an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.
- K. The guardian may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to the person under the guardianship, and shall disclose such transactions of interested parties and obtain prior court approval.

### **National Association of Social Workers – Code of Ethics**

#### **1.06 Conflicts of Interest**

- (a) Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers should inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.
- (b) Social workers should not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.
- (c) Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)
- (d) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

### **North Carolina State Bar -- Rule 1.7 Conflict of Interest: Current Clients**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing. (emphasis added)

*Excerpt from comments:*

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

## **North Carolina Administrative Code – Child Welfare**

### **10A NCAC 70A .0103 REPORTS OF NEGLECT, ABUSE OR DEPENDENCY**

- (a) Reports of neglect, abuse, or dependency shall be referred to another county department of social services for investigation when the alleged perpetrator is an employee of the county department of social services, a foster parent supervised by that county department of social services, a member of the Board of Social Services for that county, or a caretaker in a sole-source contract group home or agency-operated day care facility.
- (b) When in the professional judgment of the county director the agency would be perceived as having a conflict of interest in the conduct of other child protective service investigations, the director may request that another county conduct the investigations. (emphasis added)

## **NC Division of Social Services Children's Services Manual – Chapter V: Jurisdiction in Child Welfare (excerpt/summary)**

### **Section 1: Purpose**

... Although N.C. is a county administered system, the protection of children knows no county lines, such as those regarding:

- where the child resides
- screening decisions
- whether a situation creates of conflict of interest
- case decisions
- Requests from one county to another will be honored
- Communication between county Department of Social Services (DSS) will occur when necessary to ensure the delivery of protective services

(emphasis added)

### **Section III**

#### **A. Intake/Screening ...**

##### **1.) Screening**

The report shall be documented on the [DSS-1402](#) (Structured Intake form).

The screening decision for all reports shall determine if the report:

- (a.) Meets criteria and is accepted (screened in)....
- (b.) Does not meet criteria and is not accepted (screened out)....
- (c.) Meets criteria and is accepted, but is referred to the county that has been determined to have the responsibility...
- (d.) When the county responsible for conducting the CPS assessment has been determined based on the residency of the child as defined in statute, and subsequently it is determined that a conflict of interest exists, a request shall be made to another county to conduct the CPS assessment for them.... (emphasis added)

...

#### **C. Conducting an Assessment with multiple counties involved**

##### **5.) Required activities in special CPS assessments**

###### **(a.) Conflict of Interest Assessments**

The county where the child resides shall determine whether or not a conflict of interest exists and shall immediately request assistance from another county DSS that would not create a conflict of interest *or* the perception of a conflict of interest.

The immediate request for assistance shall:

- (i.) Be verbal with acknowledgment by the assisting county;
- (ii.) Include a transfer of the completed [DSS-1402](#), central registry check and any other pertinent information gathered during the intake process to the assisting county by fax or email;
- (iii.) Include a brief identification of the conflict of interest; and
- (iv.) Be in accordance with all established timeframes for completion...

### **Child Welfare – Change of Venue Statute (as revised by SL 2013-129)**

#### **N.C.G.S. § 7B-400. Venue.**

...

(b) When the director in one county conducts an assessment pursuant to G.S. 7B-302 in another county because a conflict of interest exists, the director in the county conducting the assessment may file a resulting petition in either county.

(c) For good cause, the court may grant motion for change of venue before adjudication. A pre-adjudication change of venue shall not affect the identity of the petitioner. ...