

**APPOINTMENT AND PAYMENT OF GUARDIANS AD LITEM IN  
ABUSE, NEGLECT, AND DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES**

**Introduction:**

On December 18, 2012, the North Carolina Court of Appeals issued an opinion in *In the Matter of P.D.R.*, 737 S.E.2d 152 (2012), which held that there were two types of guardians ad litem (“GALs”) that could be appointed to respondents in termination of parental rights proceedings pursuant to the prior version of G.S. 7B-1101.1. The first type of GAL was substitutive, where the GAL stood in the shoes of an incompetent respondent and “‘replace[d] the [respondent’s] authority to make decisions.’” *Id.* at 158. The second type of GAL assisted a respondent with diminished capacity who could not adequately act in his or her own interest. *Id.*

In response to that opinion, the General Assembly enacted Session Law 2013-129, which amends both G.S. 7B-602 and 7B-1101.1 to eliminate the assistive type of GAL for respondents in abuse/neglect/dependency and termination of parental rights cases. The amended statutes became effective on October 1, 2013 and apply to all actions filed or pending on or after that date. Thus, effective October 1, 2013, IDS no longer has authority to pay assistive GALs for respondents with diminished capacity, and only has authority to pay substitutive GALs for respondents who are incompetent.

**IDS Policy:**

Effective October 1, 2013, appointed GALs in these cases must do the following:

- ✓ If the GAL was appointed prior to October 1, 2013 and the Order states that s/he is serving as an assistive GAL, s/he should file a motion to withdraw as of October 1, 2013 and should not render any services in the case after that date.
- ✓ If the GAL was appointed prior to October 1, 2013 and the Order does not state whether s/he is serving as an assistive or substitutive GAL, s/he should file a motion asking the Court to issue an Order clarifying the role as of October 1, 2013. A GAL should not render any services in a case after October 1, 2013 unless and until s/he has an Order with specific findings stating why the respondent is incompetent and that s/he has been appointed as a substitutive GAL. If a GAL renders services after October 1, 2013 without such an Order, s/he is risking non-payment for those services.

All fee applications submitted by appointed GALs for respondents in abuse/neglect/dependency and termination of parental rights that include services rendered on or after October 1, 2013 must meet one of the following conditions:

- ✓ If the respondent is an adult and the GAL has never sent IDS Financial Services an Order clarifying that the GAL’s role is substitutive, the fee application must be accompanied by an Order with specific findings stating why the respondent is incompetent and that the GAL is fulfilling a substitutive role. Fee applications that include services after October 1, 2013 and that are not accompanied by such an Order will be returned unpaid.

- ✓ If the respondent is an adult and the GAL has previously sent IDS Financial Services an Order clarifying that the GAL's role is substitutive, the GAL must write on the top of the fee application "Order provided with [insert date of disposition or ending date of services this fee requested] fee application."
- ✓ If the respondent is a minor, the GAL must write on the top of the fee application form "minor respondent." In such a case, the respondent is incompetent by operation of law and the GAL is substitutive by definition.

**Questions:**

If you have questions about this policy or its application in a specific case, please contact:

- ✓ IDS' Parent Representation Coordinator, Wendy Sotolongo, at (919) 354-7230 or [Wendy.C.Sotolongo@nccourts.org](mailto:Wendy.C.Sotolongo@nccourts.org); or
- ✓ IDS' Assistant Director, Whitney Fairbanks, at (919) 354-7200 or [Whitney.B.Fairbanks@nccourts.org](mailto:Whitney.B.Fairbanks@nccourts.org).

Policy adopted September 1, 2013 and effective October 1, 2013.

**Authority:**

G.S. 7B-602 and 7B-1101.1