

CHAPTER SIX – ETHICAL DILEMMAS FACED BY AN ATTORNEY GUARDIAN AD LITEM

When representing a child through the Office of the Child Advocate, the statute clearly indicates that an attorney GAL's duty is to the child. In defining the representation of the child, the statute further indicates that the scope of representation is the child's best interests. Finally, the AGAL shall have confidentiality with the child client unless disclosure is necessary to protect his or her best interests. 29 Del. C. § 9007A(c).

What the first two sentences mean is that the child is the client, albeit perhaps one under a disability. Rule 1.14. The child should be treated as a client, utilizing the rules of professional responsibility. When defining the scope of representation of that child, the attorney should be guided by the child's best interests. **Rule 1.2** addresses scope of representation. When initially receiving an OCA case, the AGAL must make sure to review the scope of representation – best interests -- in terms the child can understand. The attorney should explain that while the scope includes the wishes of the child, there are also many other things that must be considered. See 13 Del.C. § 722 for

guidance and refer to notes from the Nuts and Bolts training as to how to meet and discuss this with a child client. And always remember, if the best interests recommendation made to the Court conflicts with the child client's expressed wishes, there is a potential conflict which may require two lawyers to represent the child. In these circumstances, please call OCA immediately to discuss how best to proceed to ensure the child's rights are protected.

The third sentence indicates that there is confidentiality between the attorney and child client. However, an escape clause is provided which states "unless disclosure is necessary to protect the child's best interests." **Rule 1.6** supports this by allowing disclosure "to comply with other law or court order." OCA is also mentioned in the comments following Rule 1.6. Confidentiality should be kept with the child client when at all possible or practical. Only rare circumstances require a disclosure -- primarily where there is no other way to protect your client's safety.

PLEASE REMEMBER TO KEEP TRACK OF THE TIME YOU SPEND ON EACH CASE AND REPORT IT TO OCA AT THE END OF YOUR CASE SO THAT WE CAN ACCURATELY DOCUMENT THE PRO BONO EFFORTS OF OUR ATTORNEYS.

ALSO, PLEASE REMEMBER TO NOTIFY US UPON CONCLUSION OF YOUR CASE SO THAT WE MAY KEEP ACCURATE RECORDS AND REPORT ACCURATE STATISTICS.