The Ethics of Representing a Client with Diminished Capacity in Georgia: A Primer on Rule 1.14

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Introduction

Georgia Rule of Professional Conduct 1.2(a) sets forth the usual division of authority in an attorney-client relationship: the client decides the objectives of the representation, while the lawyer reasonably consults with the client about the means of achieving those objectives. Comment 4 to Rule 1.2, however, notes an exception: "In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14." This paper will summarize that guidance and identify some important questions about the lawyer's responsibilities when representing a client with diminished capacity.[1]

Issue #1: Whether the client needs the lawyer to take protective action

Rule 1.14 identifies two types of clients with diminished capacity. One type does not need the lawyer to take protective action. Instead, in the words of Rule 1.14(a), the lawyer "shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." The other type is a client who needs protective action, one who "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 needs to assign the client to one group or the other.

A lawyer must not be too quick to conclude that a client with diminished capacity needs protective action. As Comment 1 notes, "a client with diminished mental capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the

[1] There is little authority in Georgia interpreting Rule 1.14. We have attached as an appendix the text of Rule 1.14 and its comments, along with Formal Advisory Opinion 16-2, the only formal advisory opinion in Georgia interpreting Rule 1.14.

client's own well-being." On the other hand, the lawyer must be open to reevaluating an initial judgment that a client does not need protection. As the representation continues, facts and circumstances may come to light that warrant protective action. For example, a lawyer handing a public benefits matter may become aware during a home visit of severe risk to the client by reason of elder abuse.

Lawyers are not trained to make this judgment, but they must make it, nevertheless. Comment 6 provides guidance:

> In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

Note that several of these factors depend upon getting to know the client over a period of time, in order to know whether the client has a "variable" state of mind and whether the client's instructions are consistent with the client's "long-term commitments and values." There is also a confidentiality issue at this stage (discussed below).

Issue #2: How do you maintain a normal lawyer-client relationship?

If you determine that the client does not meet the criteria in Rule 1.14(b) for protective action, your obligation is to "as far as reasonably possible, maintain a normal client-lawyer relationship." How do you do that? Here, effective communication is the key. Think specifically about time, place, and manner of communication. For example, if the client's diminished capacity is due to age-related cognitive decline, it may be that the client is more alert in the

morning than in the evening. You may find that you need to repeat yourself to make sure that the client understands. The client may understand better if the conversation occurs in the client's home or other familiar space. Using plain language in both oral and written communication may be extremely helpful, especially with clients who have intellectual or cognitive disabilities. In addition, lawyers can incorporate a reflective listening process that allows the client to repeat or reflect back to the attorney what was heard in order to confirm understanding.

Another option is to obtain assistance of a family member or friend. As Comment 3 notes, "The client may wish to have family members or other persons participate in discussions with the lawyer." The usual formulation of the scope of the attorney-client privilege would include communications under these circumstances if the assistance of another is reasonably required. Beware, however, the family member whose "assistance" is self-interested or aggressive. As Comment 3 advises, "the lawyer must keep the client's interests foremost and … must look to the client, and not family members, to make decisions on the client's behalf."

To effectively communicate with the diminished capacity client, lawyers can adopt a holistic, collaborative, and engaged client-centered approach to representation. The goal is to utilize methods of communication that empower and enable clients to make choices and decisions that impact his or her own life.

Issue #3: If the client needs protective action, what does that mean?

If you determine that the client "is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest," then you have the option to take protective action. That action can range from modest to drastic. As Rule 1.14(b) notes, protective action includes "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." Comment 5 adds more detail:

> Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client.

Comment 5 goes on to provide guidelines for deciding among these alternatives. You "should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections." Specific attention should be given to the possibility of protective action in the form of supported decision-making rather than the more drastic alternative of guardianship.[2]

The most drastic form of protective action is to seek the appointment of a guardian. A guardianship strips the client of autonomy. One goal of choosing protective action is to minimize such intrusions. Comment 7 reminds us that "[i]n many circumstances … appointment

[2] For more information on supported decision-making, see https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/supported-decision-making/.

of a legal representative may be more expensive or traumatic for the client than circumstances in fact require." But sometimes appointment of a legal representative is the best protective action you can take. As Comment 7 also notes, if a client with diminished capacity has substantial property that needs to be sold for the client's benefit, or if the client is involved in litigation and needs a guardian ad litem, there is little choice but to seek the appointment of a legal representative.

Issue #4: Special issues relating to confidentiality

As we have noted, the lawyer's responsibilities differ depending upon whether the client with 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." If not, then the lawyer deals with the capacity issue by maintaining a "normal" client-lawyer relationship "as far as reasonably possible." If the client is at sufficient risk, then the lawyer may take protective action. Confidentiality issues arise at two stages. The first is in making the determination whether the client is at substantial risk and cannot act to protect his or her own interest. The second is in taking action to protect a client who falls into that category.

In making the determination whether the client fits the criteria in 1.14(b) for taking protective action, remember that Comment 6 guides that judgment. The lawyer considers "the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client." But, as noted, lawyers are not trained psychologists, and determining the extent and risks of a

client's diminished capacity may go beyond the lawyer's abilities. That is why Comment 6 also says, "In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician." Seeking that guidance almost invariably would require revelation of confidential information such as the lawyer's experience in interacting with the client. Those revelations, however, are often necessary and are made for the purpose of representing the client. They are therefore "impliedly authorized" under Georgia Rule of Professional Conduct 1.6(a).

If the lawyer reasonably determines that the client is at risk and cannot protect themselves, confidentiality again becomes an issue when the lawyer undertakes protective action. For example, protective action includes "consulting with family members." Those consultations will usually require the revelation of confidential information. Rule 1.14(c) explicitly permits these disclosures: "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." Comment 8 cautions the lawyer to limit such disclosures as much as possible and specifically to consider "whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client." The Comment concludes (unhelpfully), "The lawyer's position in such cases is an unavoidably difficult one."

APPENDIX

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.

(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.

(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.
The maximum penalty for a violation of this rule is a public reprimand.

Ga. R. Prof. Cond. 1.14

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished mental capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the lawyer should consider such participation in terms of its effect on the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d) .

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do

not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6 . Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[11] This rule is not violated if a lawyer acts in good faith to comply with the rule.

FORMAL ADVISORY OPINION 16-2
Approved And Issued On April 16, 2018 Pursuant to Bar Rule 4-403
By Order Of The Supreme Court Of Georgia

Supreme Court Docket No. S17U0553

QUESTION PRESENTED:
May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objection?

SUMMARY ANSWER:
When it becomes clear that there is an irreconcilable conflict between the child's wishes and the attorney's considered opinion of the child's best interests, the attorney must withdraw from his or her role as the child's guardian ad litem.

OPINION:

Relevant Rules

This question squarely implicates several of Georgia's Rules of Professional Conduct, particularly, Rule 1.14. Rule 1.14, dealing with an attorney's ethical duties towards a child or other client with diminished capacity, provides that "the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." Comment 1 to Rule 1.14 goes on to note that "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."[1]

This question also involves Rule 1.2, Scope of Representation, and Rule 1.7, governing conflicts of interest.[2] Comment 2 to Rule 1.7 indicates that "[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client."[3]

This situation also implicates Rule 3.7, the lawyer as a witness, to the extent that the guardian ad litem must testify and may need to advise the court of the conflict between the child's expressed wishes and what he deems the best interests of the child. Finally, Rule 1.6, Confidentiality of Information, may also be violated if the attorney presents the disagreement to the Court.

Statutory Background

Georgia law requires the appointment of an attorney for a child as the child's counsel in a termination of parental rights proceeding.[4] The statute also provides that the court shall additionally appoint a guardian ad litem for the child, and that the child's counsel is eligible to

serve as the guardian ad litem unless there is a conflict of interest between the lawyer's duty as an attorney for the child and the lawyer's "considered opinion" of the child's best interest as the guardian ad litem.[5] In addition to the child's statutory right to counsel, a child in a termination of parental rights proceedings also has a federal constitutional right to counsel.[6]

In Georgia, a guardian ad litem's role is "to protect the interests of the child and to investigate and present evidence to the court on the child's behalf."[7] The best interests of the child standard is paramount in considering changes or termination of parental custody. See, e.g., Scott v. Scott, 276 Ga. 372, 377 (2003) ("[t]he paramount concern in any change of custody must be the best interests and welfare of the minor child"). The Georgia Court of Appeals held in In re A.P. based on the facts of that case that the attorney-guardian ad litem dual representation provided for under O.C.G.A. § 15-11-98(a) (the predecessor to O.C.G.A. § 15-11-262(d)) does not result in an inherent conflict of interest, given that "the fundamental duty of both a guardian ad litem and an attorney is to act in the best interests of the [child].[8]

This advisory opinion is necessarily limited to the ethical obligations of an attorney once a conflict of interest in the representation has already arisen. Therefore, we need not address whether or not the dual representation provided for under O.C.G.A. § 15-11-262(d) results in an inherent conflict of interest.[9]

Discussion

The child's attorney's first responsibility is to his or her client.[10]
Rule 1.2 makes clear that an attorney in a normal attorney-client relationship is bound to defer to a client's wishes regarding the ultimate objectives of the representation.[11]
Rule 1.14 requires the attorney to maintain, "as far as reasonably possible . . . a normal client-lawyer relationship with the [child].[12] An attorney who "reasonably believes that the client cannot adequately act in the client's own interest" may seek the appointment of a guardian or take other protective action.[13] Importantly, the Rule does not simply direct the attorney to act in the client's best interests, as determined solely by the attorney. At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem. The attorney must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely under Rule 1.16(b)(3).[14]

The attorney may not withdraw as the child's counsel and then seek appointment as the child's guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would owe a continuing duty of confidentiality.[15]

This conclusion is in accord with many other states.[16] For instance, Ohio permits an attorney to be appointed both as a child's counsel and as the child's guardian ad litem.[17]

Ohio ethics rules prohibit continued service in the dual roles when there is a conflict between the attorney's determination of best interests and the child's express wishes.[18]
Court rules and applicable statutes require the court to appoint another person as guardian ad litem for the child.[19] An attorney who perceives a conflict between his role as counsel and as guardian ad litem is expressly instructed to notify the court of the conflict and seek withdrawal as guardian ad litem.[20] This solution (withdrawal from the guardian ad litem role once it conflicts with the role as counsel) is in accord with an attorney's duty to the client.[21]

Connecticut's Bar Association provided similar advice to its attorneys, and Connecticut's legislature subsequently codified that position into law.[22] Similarly, in Massachusetts, an attorney representing a child must represent the child's expressed preferences, assuming that the child is reasonably able to make "an adequately considered decision . . . even if the attorney believes the child's position to be unwise or not in the child's best interest.[23] Even if a child is unable to make an adequately considered decision, the attorney still has the duty to represent the child's expressed preferences unless doing so would "place the child at risk of substantial harm.[24] In New Jersey, a court-appointed attorney needs to be "a zealous advocate for the wishes of the client . . . unless the decisions are patently absurd or pose an undue risk of harm.[25] New Jersey's Supreme Court was skeptical that an attorney's duty of advocacy could be successfully reconciled with concern for the client's best interests.[26]

In contrast, other states have developed a "hybrid" model for attorneys in child custody cases serving simultaneously as counsel for the child and as their guardian ad litem.[27]
This "hybrid" approach "necessitates a modified application of the Rules of Professional Conduct.[28] That is, the states following the hybrid model, acknowledge the "'hybrid' nature of the role of attorney/guardian ad litem which necessitates a modified application of the Rules of Professional Conduct," excusing strict adherence to those rules.[29] The attorney under this approach is bound by the client's best interests, not the client's expressed interests.[30] The attorney must present the child's wishes and the reasons the attorney disagrees to the court.[31]

Although acknowledging that this approach has practical benefits, we conclude that strict adherence to the Rules of Professional Conduct is the sounder approach.

Conclusion

At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney must petition the court for removal as the child's guardian ad litem and must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16(b)(3).

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[1] Georgia Rules of Professional Conduct, Rule 1.14, Comment 1.
[2] Georgia Rules of Professional Conduct, Rules 1.2, 1.7.

[3] Georgia Rules of Professional Conduct, Rule 1.7, Comment 4.
[4] O.C.G.A. § 15-11-262(b) ("The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child").
[5] O.C.G.A. § 15-11-262(d) ("The court shall appoint a guardian ad litem for a child in a termination proceeding; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem").
[6] Kenny A. v. Perdue, 356 F. Supp. 2d 1353, 1359-61 (N.D. Ga. 2005), rev'd on other grounds, 2010 WL 1558980 (U.S. Apr. 21, 2010).
[7] See Padilla v. Melendez, 228 Ga. App. 460, 462 (1997).
[8]In re A.P., 291 Ga. App. 690, 691 (2008).
[9] See, e.g., Wis. Ethics Op. E-89-13 (finding no inherent conflict of interest with the dual representation of an attorney and guardian but concluding that if a conflict does arise based on specific facts, the attorney's ethical responsibility is to resign as the guardian).
[10] Georgia Rules of Professional Conduct, Rule 1.2.
[11] Georgia Rules of Professional Conduct, Rule 1.2, Comment 1.
[12] Georgia Rules of Professional Conduct, Rule 1.14.
[13] Id.
[14] Rule 1.16 (b)(3) of the Georgia Rules of Professional Conduct provides that a lawyer may seek to withdraw if "the client insists upon pusuing an objective that the lawyer considers repugnant or imprudent."
[15] See Rule 1.6(e) of the Georgia Rules of Professional Conduct.
[16] See, e.g., Wis. Ethics Op. E-89-13, Conflicts of Interests; Guardians (1989) (providing that dual representation as counsel and guardian ad litem is permitted until conflict between the roles occurs, and then the attorney must petition the court for a new guardian ad litem); Ariz. Ethics Op. 86-13, Juvenile Proceedings; Guardians (1986) (providing that a "lawyer may serve as counsel and guardian ad litem for a minor child in a dependency proceeding so long as there is no conflict between the child's wishes and the best interests of the child").
[17] Ohio Board of Comm'rs. on Griev. and Discipline, Op. 2006-5, 2006 WL 2000108, at*1 (2006).
[18] Id. at *2.
[19] Id.
[20] Id., quoting In re Baby Girl Baxter, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985) (superseded by statute on other grounds).
[21] Id. See also Baxter, 17 Ohio St. 3d at 232 ("[w]hen an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client's cause").
[22] See Conn. Bar Ass'n Comm. on Prof. Ethics, CT Eth. Op. 94-29, 1994 WL 780846, at *3 (1994); In re Tayquon, 821 A.2d 796, 803-04 (Conn. App. 2003) (discussing revisions to Conn. Gen. Stat. § 46b-129a).
[23] See Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(b), at 8-10, available at

http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_pdf/chapters/chapter_4_sections/civil/trial_panel_standards.pdf; See also In re Georgette, 785 N.E.2d 356, 368 (Mass. 2003).

[24] Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(d) at 11.

[25] In re Mason, 701 A.2d 979, 982 (N.J. Super. Ct. Ch. Div. 1997) (internal citations omitted).

[26] See In re M.R., 638 A.2d 1274, 1285 (N.J. 1994).

[27] See Clark v. Alexander, 953 P.2d 145, 153-54 (Wyo. 1998); In re Marriage of Rolfe, 216 Mont. 39, 51-53, 699 P.2d 79, 86-87 (Mont. 1985); In re Christina W., 639 S.E.2d at 777 (requiring the guardian to give the child's opinions consideration "where the child has demonstrated an adequate level of competency [but] there is no requirement that the child's wishes govern."); see also Veazey v. Veazey, 560 P.2d 382, 390 (Alaska 1977) ("[I]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years.") (superseded by statute on other grounds); Alaska Bar Assn Ethics Committee Op. 85-4 (November 8, 1985)(concluding that duty of confidentiality is modified in order to effectuate the child's best interests); Utah State Bar Ethics Advisory Opinion Committee Op. No. 07-02 (June 7, 2007) (noting that Utah statute requires a guardian ad litem to notify the Court if the minor's wishes differ from the attorney's determination of best interests).

[28] Clark, 953 P.2d at 153.

[29] Id.

[30] Id.

[31] Id. at 153-54; Rolfe, 699 P.2d at 87.