The Guardian ad Litem in Dependency Proceedings:
A Guide to Best Interest Advocacy

2nd Edition

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INTRODUCTION

In response to the necessity created by the passage of the Child Abuse Prevention and Treatment Act (CAPTA) of 1974, the role of the Guardian ad Litem (GAL) in Georgia's juvenile courts was stitched together from GAL practice in other areas, sometimes without comprehensive integration into the many statutes that impact the work of the GAL. The juvenile code defines the role of the Guardian ad Litem and CASA volunteer with little guidance as to how that role should be exercised. Taken together with case decisions and ethical rules, Georgia law presents a paradox: the GAL role in dependency proceedings is inherently unique. While it draws upon familiar legal constructs, it does not mirror them. The GAL role, fulfilled through specific activities prescribed by law, is similar to other advocacy roles in juvenile court, and yet in many ways, it is strikingly different.

An additional complexity is created by Georgia's statutory preference for Court Appointed Special Advocates (CASAs) as lay GALs. Since its inception, CASA advocacy has evolved to respond and adapt to the needs of the court, the child welfare system, and the children and families served, and there are now more than 2,700 CASA volunteers serving as GALs for over half of the children in dependency proceedings across Georgia.

Thus, the idea for this Guide was born from inquiries, frustrations, and debates that occur on a consistent and regular basis about the use of GALs and as a deliberate attempt to support consistency in the application of best interest advocacy across the state, whether a Guardian ad Litem is a CASA volunteer, an attorney, or both. Without clear direction, confusion or legal barriers that arise specific to GAL practice could unnecessarily detract from the court's time and attention to children and families or could limit judicial access to best interest recommendations.

And, as the representation of children and best interest advocacy continue to garner attention and resources directed towards effectiveness, this Guide offers a reference to clarify the role of the GAL and of the CASA volunteer's role as GAL and to provide direction for practice and courtroom advocacy. The analysis contained herein is offered to support judges and attorneys and provide a resource to CASA affiliates by guiding the interpretation of statutory obligations and requirements as issues arise. The Guide offers authority and analysis to improve best interest advocacy and clarify a GAL's role in dependency proceedings[1] as both an informative practice resource and procedural reference. Part I discusses the practical inclusion of a GAL in dependency proceedings, while Part II delves into the foundational and conceptual essence of the role. Common issues are divided into sections for ease of use and quick reference. The Practice Appendices provide an in-depth discussion of the application of the statutory best-interest factors in actual cases and background on the CASA network in Georgia. The Model Appendices contain model forms designed for the CASA network, but which may also be adapted for other GALs.

[1] As used in this Guide, the term "dependency proceedings" includes dependency proceedings, terminations of parental rights, legitimations, permanent guardianships, and all other proceedings that are ancillary to dependency proceedings.

PART I

1. The GAL and CASA Volunteer Role

Federal law requires each state to provide guardians ad litem (GALs) for children in dependency cases through the Child Abuse Prevention and Treatment Act (CAPTA)[2], which provides that each state shall enact laws:

> requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, … who may be an attorney or a court appointed special advocate …, shall be appointed to represent the child in such proceedings – (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child.[3]

State law outlined in O.C.G.A. § 15-11-104(a) requires that the "court shall appoint a guardian ad litem for an alleged dependent child." The role of the GAL in Georgia is the same as under CAPTA, which is not surprising since the CAPTA requirement drove the adoption of the Georgia statute on this subject: The GAL is appointed to advocate for the child's best interests.[4] The GAL is an officer of the court appointed for the specific purpose of making a full investigation, or assessment, of relevant facts in order "to obtain first-hand, a clear understanding of the situation and needs of the child" so that the GAL may then "make recommendations to the court concerning the best interests of the child." By relying on statutory best-interest factors to support their recommendations, GALs provide an objective assessment of the child's situation and are essential participants in the proceedings. The GAL may be an attorney or a CASA volunteer, or the court may appoint both.[5]

The main distinction is that lay GALs may not engage in activities that constitute the practice of law.[6] "Practice of law" is fairly broadly defined in O.C.G.A. § 15-19-50, which includes "[r] epresenting litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body." Some characteristic activities of the practice of law in a courtroom proceeding have been described as "examining witnesses, making objections, and preserving issues for appeal."[7]

Georgia's Juvenile Code prioritizes the use of CASA volunteers as lay GALs: "The court

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[2] Originally enacted in 1974 and placed within Title 42 of the United States Code, CAPTA has been frequently amended, but the requirement that each child shall have a GAL has never changed.

[3] 42 U.S.C.A. § 5106a(b)(2)(xiii).

[4] O.C.G.A. § 15-11-105(a).

[5] O.C.G.A. §15-11-104. The court may also appoint the same person to serve as the child's attorney and GAL.

[6] *Id. See also, In re R.D.*, 346 Ga. App. 257 (2018).

[7] *In re W.L.H.*, 292 Ga. 521, 529 (2013) (dissenting opinion).

shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as guardian ad litem."[8] A CASA volunteer operates as a lay Guardian ad Litem even if that volunteer happens to be an attorney by trade.[9]

CASA volunteers may be known more by their organizational taglines or logo than by precise legal definitions, but a CASA volunteer is, in essence, a branded lay (non-attorney) GAL.[10] The CASA model is one based on community volunteers being properly screened, trained, and supported to execute the role of the Guardian Ad Litem and is recognized by both CAPTA and Georgia law. Georgia law defines a "Court appointed special advocate" or "CASA" as a community volunteer who:

> (A) Has been screened and trained regarding child abuse and neglect, child development, and juvenile court proceedings;
> (B) Has met all the requirements of an affiliate court appointed special advocate program;[11]
> (C) Is being actively supervised by an affiliate court appointed special advocate program; and
> (D) Has been sworn in by a judge of the juvenile court in the court or circuit in which he or she wishes to serve.[12]

The role of the GAL and the CASA volunteer is identical: "The role of a CASA volunteer in juvenile court dependency proceedings shall be to advocate for the best interests of the child."[13] This is exactly the role of the guardian ad litem in Georgia law: "A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed."[14]

Some courts consider the role of the CASA volunteer as a "friend of the court," a designation that is not found in Georgia law. These courts attempt to use the CASA volunteer, not as a GAL, but as a source of *informal* information about the child's needs and wishes.[15] There is no statutory authority for the use of the CASA volunteer in this "benevolent-helper" role or for a CASA volunteer to act in any capacity other than as a GAL. This use applies even if the court appoints an attorney GAL, as the CASA volunteer's role, duties, and responsibilities are not affected by the appointment of an additional GAL who is an attorney.[16]

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[8] O.C.G.A. § 15-11-104(d).
[9] Care should be taken to not create disparities within the CASA model in which one CASA volunteer is preferred to another because of his or her technical expertise. The appointment and selection process of a specific CASA volunteer is a decision that lies exclusively with the CASA program. On rare occasions when preferences for individual volunteers are expressed, the CASA program should work to manage the expectations, caseloads, and disparities that special requests may create.
[10] In addition to the juvenile code, CASA volunteers and staff are also required to adhere to *National and Georgia CASA's Local Programs Standards*, which in some instances offer more prescriptive requirements than outlined in the statute.
[11] Defined in O.C.G.A. § 15-11-2(4).
[12] O.C.G.A. § 15-11-2(16).
[13] O.C.G.A. § 15-11-106(b).
[14] O.C.G.A. § 15-11-105(a).
[15] O.C.G.A. § 15-11-105(b)(7) does require the GAL to consider the child's "wishes and long-term goals," but this is only one of several elements that the GAL is required to consider in formulating a best-interest recommendation.
[16] O.C.G.A. § 15-11-106(a)(2).

If the court appoints a CASA volunteer, that volunteer is performing the role of a lay GAL with all of the duties, powers, and responsibilities specified for a GAL under O.C.G.A. §§ 15-11-104 and 105 regardless of whether there is also an attorney serving as GAL. A GAL (whether a CASA or not) is not a "friend of the court," but an officer of the court – an individual sworn into a privileged role as an integral participant in court proceedings.

Though Georgia law is clear that the role of the GAL (whether CASA volunteer or otherwise) is to advocate for the best interests of a child, it does not provide much detail on how that advocacy is to be exercised in court. Is the GAL primarily a witness, a party, or something else? The idea that the GAL acts merely as a fact witness is inconsistent with CAPTA. In particular, the federal requirement that the GAL shall be appointed to "represent" the child raises the level of the GAL's role far above that of a witness. Clearly, this "representation" means, as Georgia law provides, advocating for the child's best interests. The GAL is an officer of the court with highly specialized duties and responsibilities.

2. The Duties and Responsibilities of a GAL

The GAL has perhaps the most expansive set of duties, responsibilities, and authority of anyone other than the judge. The scope of the duties and authority of the GAL is set forth in O.C.G.A. § 15-11-105(c).[17] These responsibilities cannot be modified by the court unless the child's circumstances render them unreasonable:

> (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;
> (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;
> (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;
> (4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;
> (5) Communicate with health care, mental health care, and other professionals involved with such child's case;
> (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;
> (7) Review all court related documents;
> (8) Attend all court hearings and other proceedings to advocate for such child's best interests;
> (9) Advocate for timely court hearings to obtain permanency for such child;
> (10) Protect the cultural needs of such child;

[17] O.C.G.A. § 15-11-262(f) provides that the "role of a guardian ad litem in a termination of parental rights proceeding shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter."

(11) Contact the child prior to any proposed change in such child's placement;
(12) Contact the child after changes in such child's placement;
(13) Request a judicial citizen review panel or judicial review of the case;
(14) Attend judicial citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last judicial citizen panel review and include an assessment of the DFCS permanency and treatment plans;
(15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;
(16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
(17) Monitor compliance with the case plan and all court orders.

The GAL must be appointed by the court having jurisdiction over the case.[18] In addition, both federal and state law require that GALs receive special training before being appointed on cases. Federal law requires that the GAL receive training "appropriate to the role, including training in early childhood, child, and adolescent development;"[19] while state law requires that CASA volunteers be "screened and trained regarding child abuse and neglect, child development, and juvenile court proceedings,"[20] and that all GALs "shall have received training appropriate to the role of the guardian ad litem, which is administered or approved by the Office of the Child Advocate for the Protection of Children."[21]

The GAL, then, is an officer of the court with broad authority and responsibility to examine every aspect of a case in order to make an informed recommendation to the court. The GAL's recommendation reflects specialized training and a thorough assessment of the specific facts of the child's case and circumstances. In this sense, the GAL is not "the voice of the child;" that is the role of the child's attorney. The GAL may make recommendations that are not ultimately in line with the child's wishes, even though the recommendation must take those wishes into account.

[18] O.C.G.A. § 15-11-104(a); O.C.G.A. § 15-11-2(35). In addition, O.C.G.A. § 15-11-106(a)(1) requires a GAL who is a CASA volunteer to be sworn in before undertaking his or her duties. See also O.C.G.A. § 15-11-2(16)(D). Presumably, CASA volunteers must be sworn in by the court in order to make them officers of the court. See Model Appendix 1 for the Model CASA Volunteer Oath. Attorney GALs are sworn in when they are admitted to practice law and are always officers of the court. The Code does not address the situation of a non-CASA lay GAL, but these persons would need to be sworn in as well.
[19] 42 U.S.C.A. § 5106a(b)(2)(xiii).
[20] O.C.G.A. § 15-11-2(16)(A).
[21] O.C.G.A. §15-11-104(f).

3. Independence of the GAL

The independence of the GAL is of the utmost importance. The ability of the GAL to conduct a full assessment, apply the best interest factors, and advocate for the best interests of the child must not be limited by any concern for fear or favor from any party or from the court.

Though the GAL is appointed by the court and functions as an officer of the court, the GAL must maintain independence from the court. There is a phrase commonly used in some courts to the effect that the GAL functions as "the eyes and ears of the court." The GAL is not the "eyes and ears of the court." The court has its own eyes and ears, and they function only in the context of a hearing. The GAL is not there to go beyond the evidence and to tell the court "what really happened:" those facts are determined by the totality of the evidence. The court, as legal factfinder, sees and hears *evidence in hearings* (including the report and recommendation of the GAL and the evidence adduced by all the parties) and *only* evidence in hearings. Evidence is what the eyes and ears of the court perceive.

In keeping with this principle that the court knows nothing which has not been introduced in evidence at a hearing, it is extremely important that the GAL and judge avoid *ex parte* communications – communications with the court in which all parties are not included. This kind of communication with the court is explicitly prohibited by O.C.G.A. § 15-11-104(i). GALs should avoid bringing facts to the court's attention outside of hearings. GALs are required by statute to provide written reports to the court, to request hearings, and to communicate as necessary with the court, but these communications should always be in writing and should be sent to every party *at the same time* they are sent to the court.[22]

While some might find it contrary to practice, it could be argued that a GAL should not also be a court employee to avoid any question of the GAL's ability to advocate independently. The courts who employ lay and attorney GALs are likely aware of the risks and have safeguards in place to minimize situations that may create even an appearance of a conflict of interest. Some of these risks may also extend to independent GAL/CASA programs, which are afforded office space within the juvenile court. In addition, *Georgia CASA Local Program Standards* prohibit foster parents, DFCS employees, or DFCS contractors from serving as CASA volunteers.

GALs should use the expertise gained through training and experience and apply the facts uncovered by their own first-hand assessment to the best interest factors to make a reasoned recommendation as to the child's best interests, without regard to whether the court or any other party may agree or disagree. The duties of the GAL require complete independence and autonomy within the framework of the responsibilities and authority provided by the law.

[22] Procedures specific to the local jurisdiction for CASA practice should be outlined in a protocol between the court and CASA program, a sample of which is included in Model Appendix 2.

4. The GAL as a Unique Officer of the Court

The GAL's role is inherently unique. Is the GAL a party? No, the GAL is not a party in the traditional sense. Party status denotes those who have rights at stake in a court proceeding. O.C.G.A. § 15-11-2(52) defines "party" in dependency actions as "the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter. . . ." In this context "guardian" means a legal guardian exercising custody over a child who is subject to a judicial proceeding. It does not refer to a GAL. Some have proposed that a GAL is among those "other person[s] subject to [a] judicial proceeding" under the Juvenile Code. However, the "other person subject to any judicial proceeding" was included in the code's definition primarily to account for noncustodial putative fathers (who by virtue of their status would not fall within the other categories of "parent" or "legal custodian").

In addition, such a person "subject to [a] judicial proceeding" would include those who are allowed by the court to intervene in an action, even though not meeting the definition of "the state, a child, parent, guardian, [or] legal custodian."[23] It is not uncommon for foster parents or relatives providing placement to be allowed to intervene when a child seems to be lingering in foster care.

The GAL does not have rights at stake in the proceeding and so is not a party. Moreover, O.C.G.A. § 15-11-104(c) makes it clear that a party cannot be appointed as the GAL. This provision simply means that no person with an interest in the case should be the GAL: the GAL must maintain independence from both the court and the parties.

It might be useful to describe an "advocacy-interest continuum," which posits that for the traditional participants in a legal proceeding, impartiality decreases as advocacy increases. Advocacy is tied to an interest in the outcome of the case, as illustrated below.

[23] Intervention is a complex issue, but generally, persons may intervene in an existing action when they have a legal interest that might be harmed if the case were to proceed without them. Intervention makes the individual a legal party to the case. In most cases in juvenile courts in Georgia, whether a person may intervene in a dependency matter is wholly within the discretion of the court. A GAL cannot be a "person subject to [a] judicial proceeding" because GALs cannot be parties.

This illustration is a diagram of motivations. The parties to the case are not impartial: the petitioner seeks a specific outcome, and the respondents are usually trying to prevent or modify the outcome. The parties advocate for their respective positions and interests, but they do not do so impartially. Conversely, the court must be impartial, but the court does not advocate for a particular outcome: it must impose whatever outcome is demanded by the applicable evidentiary standard, notwithstanding whatever the judge's personal feelings or opinions may be. In a sense, at least within the parameters of a case, the court and the parties are at opposite ends of the motivational continuum. Now, add the GAL and compare:

The GAL is the only participant in the child welfare proceedings who must *advocate impartially*, making the GAL unique in the proceedings. The GAL is neither the court nor a traditional party but shares attributes with both the court and the parties, zealously advocating for what's in the best interest of the child and altering positions as needed. The parties have a specific objective in mind at the beginning of the case and work to achieve that outcome by approaching evidence with *utilitarian* motives driven by an agenda. They are not so much concerned with reliability as with usefulness; they are not as interested in communicating raw information as much as they are in modifying, re-interpreting, and explaining it. The petitioner files the case making specific allegations that must be proven. The respondents seek to disprove or to mitigate the allegations of the petition. GALs gather information with *diagnostic* motives with no agenda. They want to find out the most reliable version of facts. The GAL has no desired stake or interest in the outcome other than ensuring the best interests of the child are clearly presented to the court. Though the GAL certainly advocates for a particular outcome once all of the information has been reviewed through the assessment, the GAL remains open to changing the recommendation based on changes in cir-

cumstances or new developments presented through evidence at the hearings. In this sense, the GAL's motivation is more like the court than it is that of the parties;[24] therefore, it is appropriate that the GAL is an officer of the court.[25]

There are numerous kinds of officers of the court. Most provide some kind of service to the court, such as court clerks[26] and court reporters.[27] Attorneys are officers of the court with a primary responsibility for advocacy.[28] GALs for minor children are also advocate officers of the court.

Though the GAL is an advocate officer of the court, the GAL never advocates in the same manner as attorneys for the parties do: that is, the GAL completes a thorough assessment and considers all of the facts before applying the objective best-interest factors and arriving at a recommendation. Even then, though the recommendation may happen to align with the wishes of one of the parties, it is not motivated by that alignment and is subject to change based on further developments in evidence.

Still, the GAL in juvenile court has statutory authority that looks very like that of a traditional party representative. O.C.G.A. § 15-11-105(c) requires the GAL to "[a]dvocate for timely court hearings," "[r]equest a judicial citizen review panel or judicial review of the case," "encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted," and "[m]onitor compliance with the case plan and all court orders."[29] These are not the duties of a court-appointed expert or mere fact witness, and they apply to all GALs, whether attorney or lay.

Balancing the GAL's independence and impartiality with the requirements of the participation, monitoring duties, and ability to request hearings, it is clear the GAL is a unique officer of the court.

5. Time of Appointment

The GAL should be appointed at the earliest time possible. O.C.G.A. § 15-11-104(a) states that "[t]he court shall appoint a guardian ad litem for an alleged dependent child," but does not specifically state when this appointment must occur. Conversely, the court must appoint an attor-

[24] This objectivity is gained through experience and rigorous attention to personal motivation and cognizance of bias, as well as attentive supervision in the case of CASA volunteers serving as GAL. In reality, practice often highlights the need for rigorous pre-appointment and on-going training, as well as periodic performance evaluations.

[25] Guardians ad litem in Georgia are "officers of the court." *See Kesterson v. Jarrett*, 291 Ga. 380, 391 (2012).

[26] *See, e.g.*, O.C.G.A. § 17-5-55.

[27] O.C.G.A. § 15-14-21.

[28] Ga. Rules of Prof'l Conduct, Preamble (2020).

[29] The Court of Appeals has opined in dicta that "[i]n at least one other context, a GAL has acted essentially as another party to the litigation, representing the best interest of the child" because in that case, the GAL "made motions in the lower court." *In re R.D.*, 346 Ga. App. 257, 263 n. 18 (2018) (citing *Pate v. Sadlock*, 345 GA. App. 591 (2018), a custody case in which an attorney GAL moved for a hearing and brought matters of concern before the court). Though *Pate* involved an attorney GAL, O.C.G.A. § 15-11-105(c) gives similar authority to all GALs.

ney for the child "before the first hearing that may substantially affect the interests of the child."[30] O.C.G.A. § 15-11-106(a)(2) requires that when a CASA is appointed as GAL, such appointment occur "at the earliest possible stage of the proceedings."

The GAL should be appointed prior to the Preliminary Protective Hearing. O.C.G.A. § 15-11-145(d)(2) requires that the guardians ad litem have the right to participate in the preliminary protective hearing (usually the first hearing in a dependency matter) "if a guardian ad litem has been appointed." This does not mean that the appointment of a GAL is optional at the preliminary protective hearing (PPH): CAPTA requires that the GAL is present at every stage of a dependency proceeding.[31] The full context of the Georgia Code section is that "[a] child's attorney and guardian ad litem [shall have the right to participate in the PPH] if a guardian ad litem has been appointed." In light of the federal requirement, this section should be read to mean "if a *separate* guardian ad litem has been appointed;" that is, if the attorney for the child does not also serve as the child's only GAL.[32] This fact is made clear by the GAL's duty to "attend *all court hearings* and other proceedings to advocate for [the] child's best interests."[33]

There are often logistical problems that may prevent the attendance of a GAL at the PPH, especially when the GAL is a CASA volunteer. The model appointment order created by Georgia CASA addresses this issue for CASA volunteers serving as GALs by allowing the court to authorize the participation of CASA staff when the volunteer's presence is impracticable.[34]

In any case, the GAL appointment must occur before the adjudication hearing because O.C.G.A. § 15-11-181(b)(2) requires that the guardians ad litem have the right to participate in the adjudication hearing.

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[30] O.C.G.A. § 15-11-103(b).

[31] CAPTA requires states to provide assurances that "in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem … shall be appointed to represent the child in such proceedings…." 42 U.S.C.A. § 5106a(b)(xiii).

[32] This argument is enhanced by the fact that O.C.G.A. § 15-11-160(a) directs that a summons for an adjudicatory hearing must issue to the "guardian ad litem, if any." O.C.G.A. § 15-11-104(a) requires the appointment of a GAL for "an alleged dependent child" – the child is no longer "alleged dependent" once the adjudicatory hearing is complete if the court finds that the child is dependent. O.C.G.A. § 15-11-181(b)(2) specifies that both the attorney and GAL for the alleged dependent child have the right to participate in the adjudication hearing. Read in context, then, O.C.G.A. § 15-11-104(a) should be read to mean that summons must issue to the "guardian ad litem, if any has been appointed besides a dually-appointed child attorney/GAL." This interpretation would create clarity and consistency regarding the use of "if any" in each of these statutes.

[33] O.C.G.A. § 15-11-105(c)(8) (emphasis supplied).

[34] The Juvenile Code defines a "CASA Volunteer," in part, as one who is actively supervised by an affiliate CASA program. The CASA Appointment Order, included in Model Appendix 3, provides that the CASA volunteer supervisor may testify for the named CASA volunteer if the volunteer cannot be present. This procedure would be appropriate in proceedings in which a) hearsay is admissible and b) the supervisor has sufficient information to testify, if necessary, to the factual basis for the recommendation.

6. Notice, Presence, and Participation in Hearings and Other Proceedings

What is the practical result of treating the GAL as an officer of the court? It is the only treatment that allows full scope for the advocacy role and simultaneously protects impartiality.

6.1 Notice

The GAL is an integral participant in every proceeding; therefore, the Juvenile Code requires that a GAL receive notice of all proceedings:

> A Guardian Ad Litem shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of a child's case which he or she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters.[35]

"Notice" is simply the means by which persons are notified of the time and place of hearings or of other significant case developments. The GAL must receive the same notice as parties receive. This means that written notice of each hearing must be provided to the GAL (except the PPH hearing, notice of which may be provided orally36), as well as notice of changes in placement, mediations, settlement or status conferences – anything for which the parties must receive notice.
It is essential that the GAL receive timely notice of each hearing or other proceeding to ensure that the GAL can be present. The Juvenile Code makes the point that the GAL must "[a]ttend all court hearings and other proceedings to advocate for such child's best interests,"[37] which includes bench conferences, conferences in chambers, mediations, citizen review panels, and any other kind of "hearing" or "proceeding" that could affect the outcome of the case.[38]

6.2 Presence and Participation

Whenever the parties' representatives are present with the judge, the GAL must be present in the discussions, whether the encounter occurs in or out of the courtroom. CAPTA, after all, requires that the GAL be appointed "to represent the child."[39]

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[35] O.C.G.A. § 15-11-105(d)(1).
[36] O.C.G.A. § 15-11-145(b).
[37] O.C.G.A. § 15-11-105(c)(8).
[38] CASA volunteers serving as GALs should also attend family team meetings, meetings about placement moves, and other case reviews with DFCS as outlined in the DFCS-CASA Protocol (a copy of which may be obtained from Georgia CASA) and DFCS Policy 17.10. (http://odis.dhs.state.ga.us/ViewDocument.aspx?docId=3005996&verId=1).
[39] 42 U.S.C.A. § 5106a(b)(2)(xiii).

It should be clear that because the GAL is not a witness, but an officer of the court required to attend and participate in all hearings, the GAL should not be subject to sequestration.[40] The GAL must hear the testimony of all witnesses so that the recommendation is based not only upon the out-of-court assessment, but also upon the evidence as developed at the hearing. The GAL clearly cannot do this if he or she is excluded from any portion of the proceedings. Sequestration is incompatible with the GAL's duty and right to participate in the hearing or other proceedings.

It is clear that the primary purpose of the GAL during a hearing (in addition to the statutory duties outside of hearings) is to advocate for the best interest of a child by providing a recommendation to the court. The lay GAL will have no control over the presentation of evidence by the parties and will not be able to call witnesses. A lay GAL cannot object to evidence or ask for its exclusion. Yet, the lay GAL should have some way of making inquiry into the evidence as it develops in order to ensure that planned recommendations are supported by evidence. There are two main ways to accomplish this goal.

First, the lay GAL should cultivate a relationship with the representatives of all of the parties. As stated before, the GAL is an impartial advocate; therefore, the GAL should not be "for" or "against" any of the parties, even if the ultimate recommendation is not favorable to any party. The GAL will in many cases have as much information as the DFCS case manager and in some cases will have more. This aspect makes the GAL a valuable resource for all of the parties. If a lay GAL is aware of potential witnesses who would provide testimony to support the GAL's best-interest recommendation, the GAL should decide which party would be most likely to call such a witness and work with that party's attorney to see that the witness is called.

A word of caution is in order, however. The GAL must always maintain independence and should not assist any party in identifying witnesses who will help that party to prevail. *The GAL's only interest in identifying witnesses is to see that the court hears the factual information necessary to support the GAL's recommendation.* While the GAL's goal and a party's interest may overlap (and thus provide the incentive for a party to call a witness identified by the GAL), the GAL must take care to avoid any appearance of partisanship. In many cases, this goal may be achieved by working closely with the child's attorney, as required by O.C.G.A. § 15-11-105(c)(4): the child's goals and the GAL's recommendations may frequently coincide. Should no party's attorney be aligned with the evidence a CASA volunteer serving as GAL seeks to admit, the CASA program can request that an attorney be appointed or seek its own counsel.

Second, whenever a witness is testifying, courts should ask the lay GAL if the GAL has any questions for the court to pose to the witness.[41] This practice allows the lay GAL the opportunity to bring up points salient to the GAL's out-of-court assessment, permits the GAL full participation in the hearing,

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[40] "Sequestration" is the practice of excluding a witness from hearing the testimony of other witnesses. O.C.G.A. § 24-6-615.

[41] Courts will, of course, reserve the right to refuse to ask any particular question that the court deems irrelevant or otherwise inappropriate. The court may rephrase the question, allow the lay GAL to rephrase the question, or move on to another question.

and avoids any appearance of the practice of law. Lay GALs and CASA program leadership should work with courts to ensure that this procedure is understood and made the usual practice of the court.[42]

If the GAL is not present, hearings should not normally go forward. The court is required to receive a recommendation from the GAL at each hearing, and as noted elsewhere, the GAL cannot provide a recommendation without hearing the evidence and being able to comment upon that evidence or modify the recommendation in light of it. Moreover, the parties must be able to call upon the GAL to testify as to the factual basis for the recommendation. None of these things can happen if the GAL is not present, or in the case of GALs who are CASA volunteers, if there is not at least a supervisor present who can fulfill these duties.

6.3 Monitoring Compliance and Advocating for Reasonable Efforts

One of the most important duties of the GAL is to "[m]onitor compliance with the case plan and all court orders."[43] Many of the GAL's other duties flow directly from this one, which is only logical since the Code makes the GAL an integral party to the formulation of the case plan. O.C.G.A. § 15-11-105(d)(2) requires that the GAL be "notified of the formulation of any case plan of a child's case which he or she is appointed and may be given the opportunity to be heard about such plans," and § 15-11-200 provides that the GAL is one of the persons entitled to "written notice of the meeting [to formulate the case plan] at least five days in advance of such meeting."

O.C.G.A. § 15-11-105(c)(15) requires the GAL to provide written reports to give the court ". . . updates on [the] child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, [the] child's degree of participation during visitations, and any other recommendations based on the best interests of the child." This duty of the GAL is instrumental in the court's fulfillment of its statutory duty at all review hearings to evaluate "the extent of compliance with the case plan of all participants."[44] With broad access to information regarding the child and the other parties granted by O.C.G.A. § 15-11-105(c)(5), (6), and (7) and § 15-11-105(e),[45] the GAL is best placed to monitor the parties' compliance. Unlike the parties, who are positionally motivated to point out the shortcomings of others while downplaying their own, the GAL is unbiased and can provide the court with objective assessments of the performance of all the parties.

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[42] These issues require systemic or program-level conversations, perhaps at stakeholder meetings, and should be outlined in the Court-CASA Protocol. See Model Appendix 2 for the Model Court-CASA Protocol.

[43] O.C.G.A. § 15-11-105(c)(17).

[44] O.C.G.A. § 15-11-218(a)(3).

[45] The provisions of O.C.G.A. § 15-11-105(c) cited above empower the GAL to "(5) Communicate with health care, mental health care, and other professionals involved with such child's case; (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents; [and] (7) Review all court related documents." O.C.G.A. § 15-11-105(e) provides that "[u]pon presentation of an order appointing a guardian ad litem, such guardian ad litem shall have access to all records and information relevant to a child's case to which he or she is appointed when such records and information are not otherwise protected from disclosure pursuant to Code Section 19-7-5 [exempting from disclosure certain records of child abuse reported to law enforcement or a district attorney]."

Court orders in dependency matters are largely therapeutic: based on the evidence provided at hearings, they put in place a plan for services designed to remediate the causes of abuse and neglect and to move the child to permanency. An objective assessment of how all the parties are doing assists the court in making necessary changes to the plan of services and, when necessary, to the permanency plan. Such an assessment can also inform the parties' practice, supporting (for example) a request for a child to be placed in the parent's home, a motion for change of placement, a motion for non-reunification, or even a petition for guardianship or termination of parental rights.

In keeping with all that has been discussed so far in this Guide, it should be clear that the GAL's reports on compliance should not move beyond their statutory scope and become punitive. For instance, GALs seeking or urging that parties (usually parents) be held in criminal contempt for non-compliance with court orders is far more than monitoring and reporting on compliance. Such activity goes beyond the pale of objectivity and impartiality: the goal of criminal contempt is not to incentive compliance, but simply to punish.

While it is many a practitioner's experience that GALs tend to focus on the compliance of parents, the statutory duty of the GAL is to include DFCS in its assessment. Commentary on DFCS' compliance with court orders necessarily touches on whether the agency is making reasonable efforts to move the child to permanency.[46] Like findings regarding the parties' compliance with orders, findings regarding reasonable efforts are best highlighted by effective GAL advocacy. The GAL is the only participant in the proceeding, aside from the court, which is required to consider the child's best interests, and questions regarding the provision of reasonable efforts go to the heart of the child's best interests. The issue of reasonable efforts also affects the matter of compliance with court orders: if the agency has not made reasonable efforts in the provision of appropriate services to the parent, the parent's non-compliance with a court order regarding those services may be excusable. The question of the agency's reasonable efforts touches on every aspect of the case and should be the subject of careful examination and zealous advocacy by the GAL.

6.4 Settlement Meetings and Mediations

One of the GAL's duties is to encourage, where appropriate, settlement and the use of alternative dispute resolution.[47] If the parties' representatives are together outside of the presence of the court negotiating or otherwise working to affect the outcome of the case, the GAL must be present and participating in the negotiations. The GAL must have an opportunity to weigh in on the outcomes of mediations, the outcome of other settlement conferences, and to be heard by the court on the acceptance of stipulations. The court must find that settlements and the results of stipulations are in the best interest of the child,

[46] O.C.G.A. § 15-11-218(a)(9) requires the court at each review hearing to inquire into "[w]hether reasonable efforts continue to be made to prevent or eliminate the necessity of the removal of a child adjudicated as a dependent child and to reunify his or her family after removal, unless reasonable efforts were not required."

[47] O.C.G.A. § 15-11-105(c)(16).

and the Code requires the court to hear a recommendation from the GAL on this question in all types of proceedings. The GAL cannot necessarily veto settlements reached by the parties, but each settlement agreement must be received by the court and adopted by it, and the GAL must be heard by the court as to how the settlement will affect the child's best interests.

Mediations require special mention. As noted above, the GAL is called upon to encourage settlement and alternative dispute resolution. Mediations are governed by the rules of the Georgia Supreme Court Commission on Dispute Resolution.[48] Though the Code requires that, upon an order of the Juvenile Court, the *parties* are to mediate,[49] the GAL will need to be present for the opening and closing sessions of the mediation to advocate for the child's best interests in the mediation. The mediator may also find it useful to have the GAL meet with the parties individually during the mediation. Once a mediation agreement has been reached, the court must find that the agreement is in the child's best interests before incorporating it into an order.[50] Prior to making this determination, the court will need to hear from the GAL, so the GAL must be familiar with the agreement.[51]

6.5 Advocating for Timely Court Hearings

Another GAL responsibility is the requirement for the GAL to ensure that the case stays on track. The GAL is required generally to "[a]dvocate for timely court hearings to obtain permanency for [the] child"[52] and specifically to "[r]equest a judicial citizen review panel or judicial review of the case."[53] These provisions make the GAL a primary agent for ensuring one of the legislative purposes behind Article 3 of the Juvenile Code, namely, "that dependency proceedings are conducted expeditiously to avoid delays in permanency plans for children."[54]

It is important to note that the responsibility to request hearings belongs to all GALs and not just to those who are attorneys. This requirement is another instance of the special role of the GAL in dependency cases, yet lay GALs may feel some trepidation here. Unlike attorneys, they may not be used to requesting hearings and unsure of how to do this. The Juvenile Code provides no instructions, but generally, the GAL may request a hearing in any appropriate manner so long as the communication to the court is provided simultaneously to all the parties.[55]

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[48] *See* O.C.G.A. §§ 15-11-20(b) and 15-11-22(a). The Rules of the Commission on Alternative Dispute Resolution may be found at the website of the Georgia Office of Dispute Resolution (https://godr.org/about-us/rules/).

[49] O.C.G.A. § 15-11-20(c).

[50] O.C.G.A. § 15-11-25(b).

[51] O.C.G.A. § 15-11-26 sets forth the factors that the court "shall consider" whenever a best-interest determination is required. Among those factors which the court "shall include" in its consideration is number 19: "Any recommendation by a court appointed custody evaluator or guardian ad litem." This requirement is frequently overlooked in practice when dependency cases are sent to mediation.

[52] O.C.G.A. § 15-11-105(c)(9).

[53] O.C.G.A. § 15-11-105(c)(13).

[54] O.C.G.A. § 15-11-100(2).

[55] *See supra* § I.3 regarding ex parte communications.

For example, at the conclusion of a hearing, the GAL may orally request (in the presence of all parties) that another hearing be scheduled. The GAL may send an email or letter to the court (copied to the representatives of all the parties) requesting the hearing. The request should inform the court of the reason for the hearing. The particular procedure preferred by the court should be worked out in advance, perhaps at a stakeholder meeting, or in the case of CASAs serving as GALs, in the Court-CASA Protocol.

It should also be noted that when a lay GAL requests a hearing, the GAL cannot conduct the hearing. The court should require the state and parties to address concerns, developments, or issues raised by the GAL. Even when the state does not request a hearing, it bears the burden of proof.[56] The GAL has no burden of proof or of production of evidence at all, and the burden of proof or of production of evidence can never shift to the GAL because the GAL is not a party.

7. Possible Conflicts with the Dual Role of Child's Attorney and GAL[57]

As discussed above, Georgia law permits both attorney GALs and lay GALs, and it is common in Georgia for courts to appoint the child's attorney as GAL and also to appoint a CASA volunteer. This practice of the dual role of the child's attorney can raise problems because of the risk of conflicts of interest that are possible with the appointment of one person to advocate for both the child's stated interests and best interests. There is always the possibility that the dually-appointed attorney will become conscious of an actual conflict and so will have to withdraw as GAL, but there are no inherent conflicts of interest with GALs who serve a single purpose.

An attorney who is also appointed to serve as a GAL has two conflicting roles: the attorney is acting simultaneously as best-interest advocate and stated-interest advocate. When there is a direct conflict between these two roles, the dual role must cease.[58] But even when there is no direct conflict between the child's stated interests and best interests, there are structural conflicts with dual appointments.

For instance, when an attorney for a child speaks with the child, the child's communications to the attorney are privileged;[59] however, when the GAL speaks to the child, those communications are not privileged. In fact, the GAL is required to report to the court the content of such communications. O.C.G.A. § 15-11-105(c) requires (in pertinent part) that the GAL interview the

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[56] *See infra* § II.2 on burden of proof.

[57] It is clear that the law allows for the dual appointment of one person as both child's attorney and GAL. See O.C.G.A. § 15-11-104(b); *see also In re A.P.*, 291 Ga. App. 690 (2008). However, the appellate courts and the legislature have not yet addressed the specific ethical and due-process issues raised in this section.

[58] O.C.G.A. § 15-11-104(b). *See also* Formal Advisory Opinion 16-2, Supreme Court of Georgia Case No. S17U0553 (Dec. 11, 2017), requiring the dually appointed attorney to withdraw as GAL in the event of a conflict.

[59] O.C.G.A. § 24-5-501(a)(2). *See also* Ga. Rules of Prof'l Conduct, R.1.6(a).

child prior to all hearings,[60] ascertain the child's "needs, circumstances, and views,"[61] contact the child before and after any placement change,[62] and prepare written reports summarizing information gained in the conduct of these and other statutory duties.[63] The GAL gathers the information in order to share it with the court and the parties in the form of a recommendation.

When the dually appointed attorney speaks with the child, are the child's communications privileged or not? How does the dual attorney/GAL fulfill the statutory requirements of the GAL role when that attorney cannot normally divulge the content of communications with the child? Communications with the child in an age-appropriate manner and the distillation of these communications into a report are at the heart of the GAL's role. But under Georgia law, the child's attorney cannot even distill the essence of the client's communications without the client's informed consent. For instance, when an actual conflict of interest occurs and the attorney requests to withdraw as GAL, the attorney cannot reveal client communications in explaining to the court the need to withdraw.[64] In order for an attorney serving as the child's lawyer and as GAL to fulfill statutory duties, the attorney would have to make a continuing record of the child's waivers of the attorney-client privilege at every hearing or risk violation of the laws of evidence and the Rules of Professional Conduct.

Also, the dual appointment creates a problem in procedural due process. Because the GAL role has the potential to be very influential with courts when making best-interest determinations for children, the law allows the parties to cross-examine the GAL regarding the GAL's report, but this right is lost when the GAL is also the child's attorney. In such an instance, the GAL will make a report without the parties having any way to delve into the factual basis underlying the recommendation.[65]

Further issues could arise should the dually appointed child attorney/GAL and the lay GAL concurrently exercise their overlapping duties. The specter arises of GAL-shopping by the parties' representatives or by the court, as well as the anomalous situation of two (or more) GALs giving conflicting best-interest recommendations.

This discussion should demonstrate the utility of appointing a GAL who is not also the child's attorney. The GAL who is tasked only with advocating for the child's best interests is much less likely to have to be replaced due to inherent conflicts of interest, and this practice provides a stable source of best-interest recommendations spanning the life of the case. Therefore, as O.C.G.A. § 15-11-104(d) provides, CASA volunteers should be appointed as GALs whenever possible, and attorneys should be appointed to represent the child's stated interests. This best practice avoids the potential of a conflict of interest from the dual form of representation.

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60 O.C.G.A. § 15-11-105(c)(1).
61 O.C.G.A. § 15-11-105(c)(2).
62 O.C.G.A. §§ 15-11-105(c)(11), (12).
63 O.C.G.A. § 15-11-105(c)(15).
64 Formal Advisory Opinion 16-2, Supreme Court of Georgia Case No. S17U0553 (Dec. 11, 2017).
65 See O.C.G.A. § 15-11-104(m).

8. Confidentiality of Records and Discovery

In order for the GAL to make a reasoned and informed recommendation to the court regarding the child's best interests, the GAL must conduct a thorough assessment. This advocacy requires that the GAL have access to all of the parties and to their relevant records and documents, as well as to witnesses to be called by the parties. O.C.G.A. § 15-11-105(c) gives seventeen specific minimum requirements for this assessment, but these may be summarized by saying that the GAL must confer with everyone involved in the case and in the treatment of the child and family; review all relevant records regarding the child and family; stay informed of all changes regarding the child's placement, services, or other aspects of the case; contact the child frequently; and attend all hearings to advocate for the best interests of the child.

The GAL will gather quite a bit of information and should keep detailed records so that the recommendation to the court may be adequately supported and explained. Juvenile court files and records are not generally available to the public for inspection;[66] however, this restriction does not apply to the GAL, whose statutory duties require the review of "all court related documents."[67] The GAL also has access to a number of records and other information regarding the child that would normally be confidential: the GAL is required to "[c]ommunicate with health care, mental health care, and other professionals involved with [the] child's case"[68] and to "[r]eview case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents."[69]

Presenting the appointment order gives the GAL access "to all records and information relevant to a child's case to which he or she is appointed. . . ."[70] The only exceptions to this broad grant of access concern certain initial reports of abuse by mandated reporters, records and information provided to the Office of the Child Advocate, and records of the Department of Juvenile Justice.[71]

The GAL is required to treat as confidential all information gathered or reviewed pursuant to the appointment order.[72] A GAL who discloses confidential information obtained during the course of his appointment shall be guilty of a misdemeanor,[73] and a failure to abide by confidentiality laws, which results in the inappropriate dissemination of such material, is punishable as contempt of court with a maximum punishment of 20 days incarceration or a $1000.00 fine.[74]

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66 O.C.G.A. § 15-11-704.
67 O.C.G.A. § 15-11-105(c)(7).
68 O.C.G.A. § 15-11-105(c)(5).
69 O.C.G.A. § 15-11-105(c)(6).
70 O.C.G.A. § 15-11-105(e).
71 *Id.* "Code Section 19-7-5" refers to mandated reporters, the reference to "Article 11 of this chapter" to the Office of the Child Advocate, and "Chapter 4a of Title 49" to the Department of Juvenile Justice.
72 O.C.G.A. § 15-11-105(f).
73 O.C.G.A. § 15-11-105(g).
74 O.C.G.A. §§ 15-11-705(b), 15-11-31(a).

It is important to note that this confidentiality requirement applies to "[a]ll records and information acquired or reviewed" by the GAL, not just to those sources that are normally deemed confidential.[75] All parties and the GAL are required to maintain the confidentiality of information received during a dependency proceeding.[76] While sharing information with *parties* to a dependency matter is not normally prohibited by this confidentiality requirement since all parties operate under the same restrictions, the GAL is not allowed to share information with persons or entities outside of the dependency case without a court order. This means that the GAL may not, for example, share information with law enforcement officers or prosecutors at a Multi-Disciplinary Team (MDT) meeting or with stakeholders at a Child Abuse Protocol (CAP) meeting.

The ban on sharing confidential information applies to information acquired because of the special relationship, duties, and responsibilities granted to the GAL by the appointment order and statutory provisions. Information obtained in other ways is not confidential. For example, if a child's parent meets with the GAL as part of the GAL's duty to ascertain all the facts and circumstances of the case, information conveyed to by the parent is confidential. If a GAL happens to see a parent intoxicated at a restaurant, that information is not confidential: it could have been observed by anyone and did not come to the GAL solely because of the GAL's role in the case.

The GAL will want to ensure that the parties understand what the recommendation will be and the factual basis for the recommendation before each hearing. The GAL's principle of impartiality leaves open the possibility that the recommendation may be modified in light of evidence adduced at the hearing, but the parties should be aware of the GAL's recommendation as early as possible so that they may prepare to respond to it as they believe appropriate. In short, sharing information supporting the recommendation with the parties to the case is not "disclosure" in the sense used above.

Inappropriate disclosure may occur if the information sought is not directly related to the factual basis of the recommendation or if the request for information is very broad. The normal process that parties use to get information prior to hearings is called "discovery" and is governed by O.C.G.A. §15-11-170.[77] Parties should not normally need to request discovery of information in the GAL's file because the GAL should be communicating regularly with the parties. Moreover, the parties have the ability, discussed below,[78] of requiring the GAL to take the witness stand and be cross-examined as to the factual basis of the recommendation. Still, the GAL file may contain documentation that the GAL does not believe may be shared and which the attorney may need.

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[75] *Id.*

[76] 42 U.S.C.A. § 1506a(b)(2)(B)(viii), O.C.G.A. §§ 49-5-40, 15-11-41, & 15-11-704.

[77] The discovery procedures set forth in this code section are more restrictive than those allowed for in the Civil Practice Act (Title 9, Chapter 11, Article 5 of the Georgia Code). Where there are procedures provided in the Juvenile Code, those control over procedures provided elsewhere in the Georgia Code. See O.C.G.A. § 15-11-4.

[78] See *infra* § I.9, "Testimony by the GAL."

The Georgia Court of Appeals has held that "there is no absolute privilege that prevents discovery merely because a file belongs to, or the information was created, gathered, and maintained by, the GAL,"[79] but that such disclosure requires a review of the material sought and an order by the court (such a review is called an "*in camera* inspection"). "[A]lthough the confidentiality provision in OCGA § 15-11-105 does not create an absolute privilege, it prevents unfettered disclosure of the GAL's investigative materials."[80] Parties, then, may seek access to the material contained in the GAL's file, but such access requires that the court first conduct an inspection of the GAL's file to determine "whether any non-privileged information is 'so material to the [party's] case as to outweigh the policy . . . that a [GAL's] confidential information not be disclosed."[81]

The same procedure applies when a party to another case, perhaps in another court, requests access to the GAL file: the court in which the request is made must conduct an *in camera* inspection of the GAL file and determine if any information therein is suitable for release in that case. If the GAL's testimony is sought in another case or in another court, the GAL should not disclose information without a court order authorizing disclosure as provided for in O.C.G.A. § 15-11-105(f).[82]

An interesting case on the issue of the GAL's testimony is *In re B.H.*[83] The case involved a termination of parental rights in which a child in foster care alleged sexual abuse by the foster parents, both of her and of the foster parents' adopted child. The parents claimed that the child who made the allegations was not credible, and they attempted to call that child's former GAL to testify to that effect. The state successfully kept the former GAL from testifying, arguing that the former GAL would attempt to impeach the child using information gained as the child's best-interest advocate. The Court of Appeals agreed that the testimony of the former GAL was inconsistent with the GAL's role and would be an unnecessary violation of confidentiality.[84]

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[79] *In re J.N.*, 344 Ga. App. 409, 411 (2018).

[80] *Id.* The rationale used by the Court of Appeals relied only in part upon the fact that the GAL in that case appeared to be also the child's attorney. In the end, the decision considered O.C.G.A. § 15-11-105 as foundational to the confidentiality binding all GALs, whether attorney or lay. In practice, the bar for allowing discovery of the file of a lay GAL may be rather low, but the requirement of an *in camera* inspection applies nonetheless.

[81] *In re J.N.*, 344 Ga. App. 409, 412 (2018).

[82] The code lacks clarity here. While "court" is defined as the juvenile court in O.C.G.A. § 15-11-2(15), the juvenile court has no jurisdiction over cases in other courts, and when a GAL's testimony or records are sought in another court, the order allowing testimony or the in camera inspection must come from the court in which the testimony or records is sought. The burden of complying with these protective requirements is on the party seeking the information.

[83] *In re B.H.*, 295 Ga. App. 297 (2008).

[84] Id. at 299-300.

9. Testimony by the GAL

The GAL is not a witness, but an advocate. If a GAL is called as a witness for a party, the GAL's impartiality is endangered, as is the very advocacy role the GAL is appointed to fulfill. Under what circumstances may a GAL properly give testimony from the witness stand?

As noted above, CAPTA requires the GAL "to *represent the child* in [dependency] proceedings – (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child."[85] In keeping with this broad mandate, the GAL in Georgia's juvenile courts is not primarily a witness, but an advocate.[86] The Georgia Court of Appeals has noted that, generally, a GAL is not a "witness called against" a party;[87] that is, the GAL is not there to support or attack the position of any of the parties.

There are two statutory provisions related to GAL testimony: O.C.G.A. §§ 15-11-104(j) and (m). The first underlines the point made above that the GAL is a necessary participant at hearings. If the GAL does not appear, then "[t]he court, a child, or any other party may compel a guardian ad litem for a child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper disposition of a proceeding."[88] This is not a provision that allows for the GAL to be called as a fact witness,[89] but rather one that ensures that the GAL's recommendation and rationale are available to the court and the parties. If for any reason the GAL fails to appear for a trial or hearing, the court may compel the GAL's appearance and the GAL's recommendation.

The second provision provides that the GAL "who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the guardian ad litem's report even if the guardian ad litem is not identified as a witness by a party."[90] There is some ambiguity in the wording of this statute. Is its main idea that the only way in which a GAL may take the witness stand is for cross-examination regarding the factual basis of the report, and that this may happen even if the GAL is not listed as a witness by any party prior to the hearing? Or, is the emphasis an implication that the GAL may be listed as a witness by any party, to be called for direct examination during that party's case, but may be called for cross-examination even if not listed as a witness by a party on direct?

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85 42 U.S.C.A. § 5106a(b)(2)(xiii) (emphasis supplied).

86 *See* O.C.G.A. §§ 15-11-105(a) and (c)(8); see also O.C.G.A. § 15-11-106(b).

87 *Simmons v. Williams*, 290 Ga. App. 644, 647 (2008).

88 O.C.G.A. § 15-11-104(j).

89 The meaning of "fact witness" is important here. A fact witness is one who testifies to facts within the witness's personal knowledge – that is, to things the witness has witnessed. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter." O.C.G.A. § 24-6-602.

90 O.C.G.A. § 15-11-104(m). Under the reciprocal discovery procedures of the Juvenile Code, parties must, upon written request, provide (among other things) a list with the names and telephone numbers of all witnesses to be called for any trial or hearing. See O.C.G.A. § 15-11-170.

The best practice is to interpret this statute in the first way – to restrict a GAL's sworn testimony on the witness stand to an examination of the factual basis of and rationale behind the report. First, the weight of the second interpretation is implied rather than plainly stated, and in construing a statute, "a court must first focus on the statute's text."[91] Second, and most importantly, allowing a GAL to function as a fact witness impairs the GAL's advocacy role. Prior to the introduction of the GAL as a best-interest advocate, the only advocates in Georgia's courts were attorneys. Attorneys are generally forbidden to testify in a case in which they are advocating.[92] This prohibition is not because they might disclose confidential client communications: client communications are covered by other rules and laws.[93] Rather, attorneys are prohibited from being witnesses in their own cases because such a situation confuses the role of advocate and witness:

> A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment upon evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of proof.[94]

Attorneys are prohibited in most cases from acting as witnesses because they are primarily *advocates,* and they would have to argue the credibility of their own testimony to the court. "One purpose of this rule is to avoid a trial attorney having to argue his own credibility vis-à-vis the lack of credibility of conflicting testimony."[95]

The same rationale applies to the GAL advocating for the child's best interests. It is clear that the duties set forth in O.C.G.A. §15-11-105(c) amount to an overall duty to make an independent assessment based on information provided by others - and of evidence produced in court - and then to make a recommendation to the court based on this information. If GALs are allowed to be called as fact witnesses at hearings, then they will be basing their recommendation (at least in part) upon their own testimony. Such a situation utterly destroys the GAL's impartiality.[96] If the GAL is ever in the position of becoming a fact witness, the GAL should cease from representing the best interests of the child, just as an attorney for the child in an analogous situation would need to cease from representing the stated interests of the child.[97]

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[91] *State v. Brown*, 250 Ga. App. 376, 378 (2001).

[92] Ga. Rules of Prof'l Conduct R. 3.7 (2020).

[93] *See* O.C.G.A. § 24-5-501(a)(2).

[94] Ga. Rules of Prof'l Conduct R. 3.7, Comment 2 (2020).

[95] *Timberlake v. State*, 246 Ga. 488, 500 (1980).

[96] Consider the situation in which GALs (especially CASA volunteers serving as GALs) may "observe" visits and family time. It should be clear by now that GALs are officers of the court with specific statutory duties requiring impartiality. The GAL is not a service provider and should never be put in a position of being the only observer of visits, family time, or of any other activity that could place the GAL in a position of becoming a fact witness.

[97] *See supra* § I.7 for a discussion of GAL conflicts. The GAL's role under CAPTA is to "represent" the child, and the rules preventing attorneys from serving as fact witnesses flow, as discussed above, from the attorney's role as advocate. The GAL is also an advocate.

The only solution is to read O.C.G.A. §15-11-104(m) as providing the sole method by which a GAL may testify as a witness in their own cases. That is, they may be called only for the purpose of cross-examination regarding the report. The GAL is not a witness *for or against* any party: here again, we see the importance of the GAL's independence. But any party may call the GAL to the stand to question the GAL to challenge the factual basis for the recommendations.[98]

In such a circumstance, the court should ensure that questions put to the GAL do not go beyond what is necessary to examine this factual basis. Practitioners should recall in this context that the GAL is the only impartial advocate in the proceedings, and this impartiality would be deeply impaired if the GAL could be called as a witness for or against a party. As noted above, the recommendation of the GAL may happen to align with the desires of one or more parties, but the motivation for the recommendation is not that alignment, but rather the objective requirements of evidence viewed in light of the best-interest factors.

May the court call a GAL to the witness stand to testify as to the factual basis for the recommendation (as opposed simply to providing the recommendation)? In short, no.[99] O.C.G.A. § 24-6-614(a) allows a court to call only "a court appointed expert, . . . a witness regarding the competency of any party, . . . or a child witness" – otherwise the court must have the agreement of all parties before calling a witness. The GAL in a dependency matter is not a witness "regarding the competency of any party," a child witness, or an expert witness.

While the recommendation of the GAL may be a type of opinion evidence, Georgia statutes, as previously discussed, require the GAL not only to provide a recommendation, but to engage in advocacy. The GAL is required to *participate* in hearings and other court-related proceedings, monitor the compliance of parties with the orders of the court, and request court review hearings, etc.[100] These actions are far beyond the scope of an expert witness and to treat a GAL in a dependency matter simply as a witness drastically hobbles the ability of the GAL to perform statutory duties. Therefore, the court may not call the GAL to be cross-examined as to the factual basis of the recommendation without the agreement of all parties as required by O.C.G.A. § 24-6-614, but any of the parties may.[101] The court, of course, is required to call upon the GAL at every hearing to give a recommendation as to what disposition is in the child's best interests, but this is not the same as the court calling the GAL as a witness.[102]

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98 *See also*, O.C.G.A. § 15-11-104(k).

99 This is not to say that the court may not ask questions of witnesses. The court has wide discretion to examine witnesses (O.C.G.A. § 24-6-614(b)), but not in calling witnesses (O.C.G.A. § 24-6-614(a)).

100 O.C.G.A. § 15-11-105(c).

101 A good deal of information regarding the factual basis of the recommendation will, of course, be included in the GAL's written report, and a well-written report may reduce the need for parties to call the GAL to the witness stand. *See infra* § I.10 for a discussion of the GAL report.

102 It is important to make what some might perceive as a technical distinction between the court calling the GAL to testify as to the factual basis of the recommendation (something not allowed by the Rules of Evidence) and the court calling the GAL to perform the statutory duty of providing a recommendation (required by the Juvenile Code). The court has an obligation to allow the GAL to provide a best-interest recommendation and may ask for clarification

10. The GAL Report

The capstone of the GAL's participation in hearings is the making of a recommendation to the court; indeed, much of the work of the GAL is distilled in the report provided to the court.

10.1 General Considerations

The GAL is required to:

> [p]rovide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child.[103]

Practice varies by jurisdiction whether attorney GALs provide written reports. O.C.G.A. § 15-11-105 requires *all* GALs to submit written reports, subject only to situations in which the circumstances of the child make it impracticable. In practice, most lay GALs do provide written reports, as the *National and Georgia Local Program Standards* require CASA volunteers to submit them.[104] Why are GALs required to provide written reports?

First, a written report, once properly introduced as discussed later in this section, becomes part of the record of the case and provides a memorandum of the GAL's recommendation and of the facts that support that recommendation. The GAL is required to attend all hearings to advocate for the best interests of the child[105] and to provide written reports to the court and the parties.[106] Written reports are admissible prior to the disposition hearing only according to the rules of evidence,[107] which means that they are generally admissible after disposition, even over objection.[108]

Second, the properly written report will provide ample documentation that the GAL has fulfilled the statutory duties required by O.C.G.A. § 15-11-105(c). The report should demonstrate that the GAL has reviewed all relevant records, conducted necessary interviews, made a comprehensive evaluation of the child's situation, and continues to monitor compliance with the case plan and all court orders.

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when necessary to understand the recommendation, but the court may not call the GAL as a witness to testify as to the factual basis of the recommendation or to other facts. This subtle distinction is found in the purpose for which the GAL is called. For example, while the GAL is providing the recommendation, the representatives of the parties may not cross-examine the GAL without first calling the GAL to the witness stand for that purpose.

103 O.C.G.A. § 15-11-105(c)(15).

104 See Model Appendix 5 for the Model CASA Court Report template. With slight changes, this form may be used by attorney GALs as well.

105 O.C.G.A. § 15-11-105(c)(8).

106 O.C.G.A. § 15-11-105(c)(15).

107 O.C.G.A. § 15-11-104(l).

108 The parties may argue the relevance, credibility, and other persuasive aspects of the report once it has been admitted.

Third, the GAL is required not simply to make a recommendation based on the facts discovered by the GAL, but to "consider and evaluate" the statutory best-interest factors discussed in the following section. These factors are detailed and comprehensive, and it is difficult to demonstrate in an oral report how these factors actually affect and support the recommendation. The written report allows the GAL to be detailed and methodical in describing how the information discovered in the assessment of the case has resulted in the specific recommendation offered.

Because the GAL's recommendation will need to take into consideration the evidence presented at the hearing, the GAL will usually need to make an oral report to supplement the written report as well. The GAL cannot make a reasoned and informed recommendation if what happens at the hearing is not explicitly considered. The GAL's oral report must come before the evidence is closed. First, the parties must have the opportunity to call the GAL for cross-examination regarding the factual basis of the recommendation, as discussed above. Second, the GAL report is itself evidence that the court uses to make its best-interest determination.

10.2 Admissibility

The written report is not normally admissible at adjudicatory hearings (the dependency adjudication and the termination of parental rights hearing) because the report will often contain hearsay, which is not admissible at such hearings.[109] The GAL still has a statutory duty to make a recommendation at these hearings; however, the recommendation must be oral. Nevertheless, if the GAL has detailed information that might merit inclusion in a written report at an adjudication or termination hearing because it would be difficult to present orally, it is possible that the GAL could work with the parties to stipulate the written report into evidence. This action would require the agreement of all of the parties. Otherwise, since the Code requires the GAL to participate in an adjudication hearing, the GAL should provide an oral recommendation at the conclusion of the adjudicatory hearing. But the oral report, as much as the written report, should lay out for the court a clear line of reasoning showing how the facts and the best-interest factors lead to the recommendation.

The written report is admissible at all judicial reviews, permanency hearings, and other post-ad-

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[109] O.C.G.A. § 15-11-104(l) provides that "[a] guardian ad litem's report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding." With regard to termination of parental rights hearings, O.C.G.A. § 15-11-304 provides that these hearings are to be "conducted in accordance with Title 24." Title 24 prevents the introduction of hearsay over objection (unless a statutory exception applies). O.C.G.A. § 24-8-802. Because the GAL's written report will very likely contain hearsay, it may not be admissible at a termination hearing. However, despite the assumption made herein that GAL reports will often contain hearsay, an alternative consideration is that information contained in a GAL's report is included to explain the rationale for the GAL's recommendation. Therefore, it is not hearsay because it is not offered "to prove the truth of the matter asserted" (O.C.G.A. § 24-8-801(c)), but for purposes of explanation. Offering information to provide a rationale for the best-interest recommendation is analogous to testimony offered to explain conduct. Such testimony is not hearsay. *Ibrahim v. Talley & Assoc.*, 214 Ga. App. 609 (1994).

judication hearings because they are dispositional in nature, and hearsay is admissible.[110] Furthermore, the GAL is required by O.C.G.A. § 15-11-105(c)(15) to provide written reports to the court with no restrictions as to admissibility.[111] The intention of the General Assembly is that GAL reports submitted at the disposition hearing, or in all review, permanency, or placement hearings, are simply and automatically admissible. Objections as to any of the contents of the report will go to what weight and credibility the court will give to the report rather than to whether the report is admissible.

A document considered by the court in making its judicial determination, the GAL's written report must be formally admitted in evidence and made part of the record. Simply filing a document (including a GAL report) does not make it admissible in evidence. Filing and tendering in evidence are separate issues. The rules of evidence prohibit courts from considering documents that have not been introduced into evidence.[112] The court should not read the GAL report prior to its introduction into evidence at the hearing. Courts are not authorized to consider evidence prior to a hearing or at a hearing prior to its proper introduction into evidence. This procedure will require that, absent exigent circumstances, the report be provided to all parties in advance of the hearing.[113] The GAL report should be made a court exhibit and admitted by the court at an early stage of the hearing. This practice ensures that the court and other parties have time to consider and react to the contents of the report during the hearing.

10.3 Best Interest Recommendations and Legal Conclusions

O.C.G.A. § 15-11-105 makes the job of the best-interest advocate very broad indeed. The GAL is tasked with conducting "an independent assessment to determine the facts and circumstances surrounding the case" (15-11-105(c)(3)). While a lay GAL should not be engaged "in activities which could reasonably be construed as the practice of law" (15-11-104(e)), the GAL is a specially-trained and sworn officer of the court with specific statutory duties. What is in the best interest of the child is an expansive question, deeply involving all of the facts discovered by the GAL during the assessment and all of the evidence brought forward by the parties at each hearing.

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[110] O.C.G.A. § 15-11-210(b). 2021 Georgia Laws Act 138 (S.B. 28), effective January 1, 2022, made explicit that hearsay is admissible over objection at all review and dispositional hearings. The amendments add, "The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of an alleged dependent child [and to make the specific findings required by the Code Section in question]" at O.C.G.A. §§ 15-11-145(h), 15-11-215(f), 15-11-216(f), 15-11-230(f), 15-11-321(a.1), and 15-11-322.

[111] The only restriction on the GAL's presentation of a written report is that "a child's circumstances render [the provision of a written report] unreasonable" (O.C.G.A. § 15-11-105(c)). Though the child's circumstances might make full information difficult to obtain from the child, it is hard to imagine when the child's circumstances would make it unreasonable for the GAL to provide a written report at a hearing. Though the child is central to the GAL's recommendation, the child is not the only, or even the primary, source of information for the GAL report.

[112] *See, e.g., In re C.H.*, 343 Ga. App. 1 (2017).

[113] The court should make clear its rule regarding how far in advance the GAL report must be provided to the parties and include the rule pertaining to CASA reports in the Court-CASA Protocol. Many courts require that the report be provided at least five days prior to the hearing (this is the best practice endorsed by NCJFCJ's *The County Practice Guide* [http://www.gacip.org/wp-content/uploads/2020/10/CII-Best-Practice-Guide_annotatedOCT2015-copy.pdf]); many others require two days.

The "facts and circumstances surrounding the case" will almost certainly involve the question of whether the child has been abused or neglected, especially as the GAL is charged with considering the "physical safety and welfare of [the] child . . . ," any "evidence of domestic violence in any current, past, or considered home for [the] child," and [a]ny other factors considered by the guardian ad litem as relevant."[114] The GAL will necessarily make legal conclusions when assessing the evidence, but this is also what our system asks of lay jurors who lack the GAL's special training.

Still, it is more accurate to state that the GAL considers the facts of the case, not in order to reach or to argue a legal conclusion, but in order to communicate to the court what the child's best interests are. For instance, the lay GAL may tell the court that it is not in the child's best interests to return to the home because the GAL believes that sufficient evidence exists that the child has been subjected to physical abuse there. This is a legal conclusion based upon a thorough assessment of all the evidence. Without sufficient evidence that a child is dependent, *and* that removal or continued removal is necessary to protect the child from serious harm, the child's best interest is to remain with the parent or parents.[115] The GAL must necessarily reach legal conclusions in order to advocate for the child's best interests, but it is the latter which is the GAL's main focus.

11. The Best Interest Factors

The recommendation, which is the heart of the GAL report, must - after a thorough "first-hand" assessment - be based upon an analysis of the statutory best-interest factors. There are actually three sets of best-interest factors in the Juvenile Code. O.C.G.A. § 15-11-26 sets forth the twenty best-interest factors to be considered by the court "whenever a best interest determination is required." O.C.G.A. § 15-11-105(b) sets forth the thirteen factors to be considered by the GAL in dependency cases. Finally, factors for the court to consider at a termination of parental rights are set forth in O.C.G.A. § 15-11-310(b). Why are there multiple sets of best-interest factors? The differences between the court's factors in O.C.G.A. § 15-11-26 and the GAL's factors in O.C.G.A. § 15-11-105(b) may be an instance of inattentive drafting: it is difficult to contemplate why the GAL should not consider all of the factors that the court is required to consider. If the court will be concentrating on twenty factors, the GAL should be prepared to address those twenty factors since none of the parties is required to address best-interest factors. At a minimum, the GAL should be familiar with and consider the additional factors, and the court should be careful to make it clear in its orders that it has considered the twenty factors. Neither the GAL nor the court is required to address each factor explicitly, but summary statements that the factors have been considered, without a thorough discussion, should be avoided. The imprint of the factors should be clear in the resulting position on best interests and support for the GAL's recommendations.

[114] O.C.G.A. § 15-11-105(b)(1), (3), & (13).

[115] *See infra* § II.1.

The thirteen-GAL best interest factors are set forth in O.C.G.A. § 15-11-105(b):

(1) The physical safety and welfare of such child, including food, shelter, health, and clothing;
(2) The mental and physical health of all individuals involved;
(3) Evidence of domestic violence in any current, past, or considered home for such child;
(4) Such child's background and ties, including familial, cultural, and religious;
(5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child;
(6) The least disruptive placement alternative for such child;
(7) The child's wishes and long-term goals;
(8) The child's community ties, including church, school, and friends;
(9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;
(10) The uniqueness of every family and child;
(11) The risks attendant to entering and being in substitute care;
(12) The preferences of the persons available to care for such child; and
(13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination.

The judicial factors in O.C.G.A. § 15-11-26 build upon and do not conflict with the GAL factors: all of the GAL factors are included in the judicial factors. The judicial factors add the following (numbered as they occur within the Code section):

(2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child;
(3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of each of the children;
(4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child;
(6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child;
(7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors;
(8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child.

These are all elements the GAL will want to address; in fact, it is hard to see how the GAL could advocate effectively without considering these factors.

Once a court has determined that grounds exist for termination of parental rights, there are only seven factors that the court is required to address (though the court is still free to use all of the factors from O.C.G.A. § 15-11-26). The factors for termination of parental rights in O.C.G.A. § 15-11-310(b) are:

(1) [The] child's sense of attachments, including his or her sense of security and familiarity, and the continuity of affection for such child;
(2) [The] child's wishes and long-term goals;
(3) [The] child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;
(4) Any benefit to [the] child of being integrated into a stable and permanent home and the likely effect of delaying such integration into such stable and permanent home environment;
(5) The detrimental impact of the lack of a stable and permanent home environment on such child's safety, well-being, or physical, mental, or emotional health;
(6) [The] child's future physical, mental, moral, or emotional well-being; and
(7) Any other factors, including the factors set forth in Code Section 15-11-26, considered by the court to be relevant and proper to its determination.

But how, exactly, does the GAL use the best-interest factors? O.C.G.A. § 15-11-105(b) requires that the GAL "consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs." It must be remembered that the GAL's recommendation is not simply the result of gathering information and then making an intuitive leap to a recommendation. The recommendation must be the result of a thorough examination of the facts through the lens of the best-interest factors, which are designed to take personal opinion and preference out of the calculation and to make the recommendation as objective as possible. The best interest factors are there to challenge subjective opinions and conclusions. They cannot take away all subjectivity, but properly used, they will require the GAL to resist gut reactions and internal biases and to produce a recommendation that is more objective. [116]

12. GAL Role in the Appellate Process

GALs should stay abreast of appeals in their cases and of the reasons for the appeals. In a ruling that surprised many, the Georgia Supreme Court held in *In re W.L.H.*[117] that the child's attorney was not the appropriate person to decide that an appeal should be filed on the child's behalf. Rather, this decision was for the child's GAL. Under the particular facts of *W.L.H.*, the child's GAL did not believe an appeal of the dependency finding was in the child's best interests because the child was receiving "much-needed treatment in the state's care."[118]

[116] See the Practice Appendix 1: Best Interest Factors Application.
[117] *In re W.L.H.*, 292 Ga. 521 (2013).
[118] *Id.* at 525. The decision was rendered prior to the enactment of the 2014 Juvenile Code; therefore, the Supreme

This decision came before the enactment of the 2014 Juvenile Code, and one of the focal points was that "the minor is in effect made a party to the action and has standing *through the guardian ad litem* to appeal."[119] Although the Juvenile Court in *W.L.H.* appointed an attorney to represent the child, at the time, there was no statutory requirement for a child's attorney. The GAL was the only representative for the child required by statute. The current Juvenile Code makes the child a party in his own right,[120] and it is unclear whether this would create a different outcome in a similar appeal.

But, at the moment, the GAL seems to play an essential role in deciding whether a child should appeal a ruling of the trial court. The GAL should never restrict a child's access to appeal: if the GAL feels it would not be in the child's best interest to prevail on appeal, the GAL may file an appellate brief or an appeal. Of course, attorney GALs can do so on their own initiative, and lay GALs must have an attorney to file. In addition, the GAL may have useful information for one or more of the parties to the appeal regarding the child's best interests and should ensure it is shared.

13. Collaboration and Conflict Resolution

The Juvenile Code requires the GAL to consult with the child's attorney about issues in the proceeding and to communicate with providers and other professionals in the case;[121] however, no further guidance regarding collaboration is offered.

Despite the adversarial nature of court proceedings, professionalism should exist among the various parties, and the GAL should maintain a collaborative relationship with everyone involved in the case. The collaboration between GAL and the parties may include activities like sharing recommendations in advance to offering contributions to draft orders.

Occasionally, a GAL may encounter a situation in which a party, either on advice from counsel or on the party's own initiative, will refuse to communicate with the GAL. If that party is the child, the law is clear: the GAL is required to maintain in-person contact with the child in general and to interview the child prior to every hearing.[122] The GAL should apply to the court to remedy any obstacle to the GAL's meaningful communication with the child if it cannot otherwise be addressed. Should one of the other parties be disinclined or advised not to communicate with the GAL and the situation is unable to be rectified prior to the next hearing, the GAL must note this fact when making reports to the court and must consult other persons or records to fill this gap in communication. However, measures should be taken to address any concerns, conflicts, or grievances in the most amenable manner possible and directly with the individuals involved prior to seeking the court's involvement.

Court used the term "deprivation" instead of "dependency."

[119] *Id.* at 524 (citation omitted).

[120] O.C.G.A. § 15-11-2(52).

[121] O.C.G.A. § 15-11-105(c)(4) and (c)(5).

[122] O.C.G.A. § 15-11-105(c)(1).

On a systemic level, regular stakeholder meetings can create organic opportunities to discuss court improvement efforts and strengthen advocacy. The entire proceedings will be made stronger by this mutual accountability.

14. Case Closure and Release of GAL

At some point in every case, even diligent GALs will come to the end of their duties. Perhaps the personal situation of the GAL will require that the GAL be released or the circumstances of the case will naturally dictate the completion of the role (such as when the child achieves permanency, any after care has concluded, and the case is closed by the court). In any event, the GAL should ensure that the court executes a release order so that it is clear that the GAL is no longer required to exercise the statutory duties and responsibilities.[123] If the case continues, the GAL who is leaving should ensure that a new GAL is appointed and that the new GAL is provided with all relevant documentation and information gathered by the former GAL.

What about the situation in which the court or another party has concerns that the GAL is not fulfilling his or her responsibilities impartially or comprehensively or otherwise is not meeting the GAL's statutory responsibilities? Should there be concerns at any point that the GAL is not advocating impartially, is not conducting a comprehensive evaluation of the facts, is not making complete reports to the court, or is not fulfilling any other of the duties required by law, any party may request that the court remove the GAL.[124] The statute authorizes the court to remove the GAL "upon finding that the guardian ad litem has acted in a manner contrary to a child's best interests, has not appropriately participated in the case, or if the court otherwise deems continued services as inappropriate or unnecessary."[125] GALs who are CASA volunteers may also be removed because the court has found that "the CASA has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program."[126]
In practice, except in the most egregious circumstances, courts will want to admonish or redirect the GAL prior to ordering the GAL's removal, and if the GAL is a CASA volunteer, the party with the concerns may first address those concerns with the supervising staff member at the local CASA program. If necessary, Georgia CASA can also serve as an intermediary prior to seeking removal by the court when applicable.[127]

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123 See Model Appendix 6 for model release orders for CASA volunteers serving as GALs.
124 O.C.G.A. § 15-11-104(h).
125 *Id.*
126 O.C.G.A. § 15-11-106(c).
127 For more specific information on Georgia CASA, see the CASA Network in Georgia provided in Practice Appendix 2.

PART II

1. Foundational Principles

The foundation of all child welfare cases is the primacy of the parent-child relationship. The United States Supreme Court has held that the parent-child relationship creates a protected liberty interest under the United States Constitution.[128] What is protected is the interest of parents in the care, custody, and control of their children.[129] When the state seeks to intervene in the parent-child relationship, similar constitutional protections come into play as do in criminal cases.[130] This protection raises dependency proceedings above the level of normal civil cases. Child welfare or dependency matters may accurately be described as *enhanced protection civil matters* to distinguish them from other civil cases.

Enhanced protections take several forms. First, unlike general civil matters, dependency proceedings (like criminal cases) must be recorded. O.C.G.A. § 15-11-17(c) requires that all proceedings in juvenile courts "shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the proceedings."

Second, whereas parties are not generally entitled to be represented by counsel in most civil proceedings, they are entitled to counsel in dependency matters (like in criminal cases).[131]

Third, the constitutional protection known as "the right of confrontation" applies in criminal matters, where "the accused shall enjoy the right . . . to be confronted with the witnesses against him."[132] The gravamen of the right of confrontation is the ability of the accused to see, hear, and have counsel cross-examine the witnesses.[133] This feature of criminal law applies in dependency proceedings in Georgia.[134]

The constitutional protection for the parent-child relationship also requires certain legal presumptions operating in favor of the parent whenever any third party attempts to interfere with the parent's right to the care, custody, and control of the child. The court must presume that:

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128 *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

129 *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

130 *Blackburn v. Blackburn*, 249 Ga. 689, 693 (1982): "[D]ue process requires that we afford this liberty interest the same protection on appellate review as we afford those constitutionally protected interests in cases where a criminal conviction is had."

131 O.C.G.A. § 15-11-103(a), O.C.G.A. § 15-11-262(a).

132 U.S. Const. amend. VI. This provision is made applicable to the states through the Fourteenth Amendment to the United States Constitution. *Pointer v. Texas*, 380 U.S. 400, 403-405 (1965).

133 *See Davis v. Alaska*, 415 U.S. 308 (1974).

134 The principle was applied to termination-of-parental rights cases in *In re C.W.D.*, 232 Ga. App. 200 (1998), and in dependency cases (then called "deprivation" cases) in *In re B.H.*, 295 Ga. App. 297 (2008).

1) The parent is a fit person entitled to custody;
2) A fit parent acts in the best interests of his or her child; and
3) The child's best interest is to be in the custody of the parent.[135]

The basic presumption that a parent acts in the best interests of the child and that the child's best interest is to be in the custody of the parent must remain unless and until it is overcome by clear and convincing evidence to the contrary.[136] Doubts must be resolved in favor of parents and against petitioners.[137] Only when the petitioner's evidence makes its position *highly and substantially* more likely than not has that burden been met.[138]

The petitioner (usually the State) has the burden of proving by clear and convincing evidence *at every hearing* (prior to a termination of parental rights) that the child remains dependent and, where the child is removed from parental custody, that continued removal is necessary. This is true at review hearings and permanency hearings as well as at adjudication hearings.[139]

GALs must keep these principles firmly in mind. Every case begins with a presumption that the child's best interest is to remain in parental custody. The GAL must examine all of the facts and circumstances of the case, including the petitioner's evidence at hearings, to determine whether the petitioner has overcome its burden. What this means in practical terms is that the GAL will not concur in the removal of a child from parental custody when there is *some evidence* to support the petitioner's claims; nor when it appears that the petitioner's evidence makes it *more probable than not* that its claims are true. The GAL will only concur in a removal of the child when the GAL is satisfied that the petitioner's claim is *highly and substantially more likely to be true than not.* This is what is meant by "clear and convincing evidence," the standard used at every dependency hearing except for the Preliminary Protective Hearing.[140]

2. Burden of Proof and Standard of Proof

The burden and standard of proof must be kept in mind by the GAL at all times. As noted above, the petitioner bears the burden of proof in dependency matters: " . . . the party who brings the petition alleging [dependency], *not* the parent from whose custody the child is being removed,

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135 *Clark v. Wade*, 273 Ga. 587, 593 (2001). Note that Georgia's Juvenile Code defines a "parent" as "either the legal father or the legal mother of a child." O.C.G.A. § 15-11-2(51).

136 *See Troxel v. Granville*, 530 U.S. 57, 69-70 (2000).

137 *Id.*

138 *See Colorado v. New Mexico*, 467 U.S. 310 (1984).

139 *See, e.g.*, O.C.G.A. §§ 15-11-213, 15-11-218, 15-11-232. *But see* O.C.G.A. § 15-11-204(d) concerning non- reunification hearings. When certain aggravating circumstances are proved, the presumption in these proceedings shifts to one that reunification is detrimental to the child.

140 The legal standard of proof at the Preliminary Protective Hearing is "probable cause." O.C.G.A. § 15-11-146(a).

carries the burden of proof."[141] This means that it is up to the petitioner to prove that the child is dependent or remains dependent, that removal or continued removal from the parents' home is necessary to protect the child, and that reasonable efforts have been made to prevent or remedy the removal and to finalize the court-ordered permanency plan.

At each stage beyond the preliminary protective hearing, the standard of proof is "clear and convincing evidence." Clear and convincing evidence is "an intermediate standard of proof, which is greater than the preponderance of the evidence standard ordinarily employed in civil proceedings, but less than the reasonable doubt standard applicable in criminal proceedings."[142] The general civil standard of preponderance of the evidence requires that the petitioner provide proof sufficient to make its allegations more probable than not. At the other end of the spectrum, proof beyond a reasonable doubt requires a high degree of certainty, excluding "as nearly as possible the likelihood of an erroneous judgment."[143] Clear and convincing evidence requires proof that produces "a firm belief or conviction"[144] of the truth of the claims or that the petitioner's allegations are "substantially more likely" than not.[145]

The GAL, as an impartial advocate, must have the integrity to make a recommendation that is supported by the evidence, even if this action requires an outcome not favored by the GAL personally. This impartiality is a characteristic that the GAL shares with the court, as discussed above. The following words applied by the Georgia Court of Appeals to the juvenile court judge are equally applicable to the GAL: "[T]he juvenile court's preference that custody of a child remain with someone other than her natural parents is wholly without consequence, where the court lacks clear and convincing evidence to support that decision."[146]

3. Rights, Best Interests, and Advocacy

Recall again the discussion above regarding the Advocacy-Impartiality Continuum: the GAL is the only impartial advocate. In this Continuum, GALs may have concerns regarding how the best interests of the child should be balanced against the rights of the parents. It is not uncommon to hear GALs complain that the parents' rights may at times seem to outweigh the best interests of the child. This way of looking at the issue is based upon a deeply ingrained misunderstanding.

141 *In re G.R.B.*, 330 Ga. App. 693, 700 (2015). See also O.C.G.A. §§ 15-11-180 and 15-11-202(e).
142 *In re M.R.B.*, 350 Ga. App. 595, 596 (2019).
143 *Santosky v. Kramer*, 455 U.S. 745, 755 (1982) (citations omitted).
144 *Black's Law Dictionary* (5th Ed. 1979) at 227 (defining "clear and convincing").
145 Ho, Hock Lai, "The Legal Concept of Evidence," *The Stanford Encyclopedia of Philosophy* (Winter 2015 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2015/entries/evidence-legal/>.
146 *In re M.R.B.*, 350 Ga. App. 595, 596 (2019).

The Juvenile Code never requires the GAL or the court to balance the best interests of the child against the rights of the parents (or of the child, for that matter). There is no overlap between rights and best interests at all: rights ensure a fair and impartial *process*; they do not guarantee any particular *outcome*. Substantive rights, such as the fundamental liberty interest in family integrity, are secured and protected by procedural due process. The application of best-interest factors serves the purpose of setting forward the best *outcome* for the child; the impartial application of the best-interest factors assumes and depends upon the fair and impartial fact-finding and judicial *process*.

The rights of the parent and child serve to create a fair trial at which all parties have quality representation and have their voices heard by the presentation of evidence, the challenging of evidence, and the arguments made to the court. The GAL takes the facts - produced by a fair and impartial assessment and by the evidence presented in court - and applies the best-interest factors to those facts. The rights of the parties, properly protected and enforced, ensure that the court and the GAL have the best, most reliable evidence to analyze through the best-interest lens. There is absolutely no conflict between the rights of any party and the best interests of the child: they are things of a different kind with different aims. No GAL should have any concern arising out of the protection and enforcement of the rights of the parties. On the contrary, GALs should be concerned if the rights of the parties are not protected and enforced because in this situation, the reliability of the court process is called into question, and with it, the facts relied upon by the GAL and the court. When the rights of the parties are protected, the accuracy of the GAL recommendation is also protected.

Another common misunderstanding is the relationship between the best-interest factors and the burden of proof discussed above. The best-interest determination does not come into play unless the petitioner has proven the allegations in the petition by clear and convincing evidence.[147] This proof is required at every hearing, even after adjudication, because the court at every hearing must make a determination as to whether the child should be returned to the parent.[148] The application of the best-interest factors should, in some cases, assist the GAL in evaluating the evidence. But when there is insufficient evidence to support the removal, continued removal, or termination, the law requires that the child remain in or be returned to parental custody. There is a constitutional presumption that it is in the best interest of children to be with their parents, and this presumption is never overcome unless the petitioner produces clear and convincing evidence to the contrary at every hearing.[149]

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[147] There is a limited use of best-interest factors by the court outside of the ultimate question of dependency or termination of parental rights. *See, e.g.,* O.C.G.A. § 15-11-181(c) (court makes an interim determination, using a best-interest analysis, of whether certain third parties may be present during the adjudication hearing).

[148] *See, e.g.*, O.C.G.A. § 15-11-218(b) (at the conclusion of any review hearing, the court must consider whether the child should be returned to the parent).

[149] *See Santosky v. Kramer*, 455 U.S. 745, 755 (1982); In re G.M., 347 Ga. App. 487 (2018).

4. The GAL in the Adversarial System

The GAL's unique role is an asset to the adversary system in dependency matters. Some individuals have long been suspicious of the propriety of adversarial legal proceedings as a means for determining the best interests of children, but such suspicions are based on a misunderstanding of the adversarial system.

Consider the process of buying a car. There are many cars on the market with many competing claims made regarding their safety and reliability. While one could listen to the claims of the car dealers or take a car for a test drive to gain more knowledge about it, one would likely hear a range of biased salesmen's opinions and not be able to test a range of driving conditions to tell much. However, a wealth of information is available about the safety and reliability in the tests conducted by government agencies and by independent organizations, which are independent of the car dealers and manufacturers and which perform intensive tests. These tests place the car under stress, taking it even to the point in which systems and structures fail, so that consumers can know which cars will most safely and reliably meet their needs. It is the demanding and challenging nature of the tests that ensures that weaknesses are uncovered and addressed.

This scenario serves as a good analogy for the adversary system. Even when parties come together nominally in the name of a child, many competing interests remain at play. These interests could lead to bias and inflexibility. Parties may disagree about the very truth of the claims at issue. Judges are human, too, and are subject to their own biases and preconceptions. The antidote is the testing of evidence in an adversary proceeding. Just as we want to transport our families in a car whose structure and design have been proven through rigorous testing, so we want to ensure that courts, whose decisions have profound and lasting impacts upon families, have the most reliable information on which to base their decisions. Therefore, we subject all such claims to the process of cross-examination and argument. The idea is that only the most reliable claims will survive this adversarial testing and that the facts that form the basis of the court's decision will be the ones strong enough to serve as a foundation for legal conclusions.

In hearings in which little evidence is adduced, the tendency for everyone involved is to default to what they perceive as the safest position, and in child welfare matters, that position is often the state's position. The justification for this default seems to be that it is better in doubtful cases to err on the side of placing a child in foster care. Because the parent-child relationship enjoys constitutional protection, and because the petitioner always has the burden of proof, doubts must be construed against the petitioner. Therefore, the default position in a child welfare case should be that children remain with their parents.[150] This basic presumption must form the basis for all advocacy in child welfare matters and explains why all claims presented to the court must be tested

[150] *See supra* § II.1.

vigorously through the adversarial process. For party representatives, this practice would result in consistently calling witnesses, asking challenging questions on cross examination, and making vigorous arguments. For GALs, the result is the admission of a comprehensive written report and an oral report that consists of an obvious consideration of the best interest factors and not simply a consistent alignment with the state. (Of course, in any given case, an objective GAL may conclude that the state's position is in the child's best interests, but this should never be a default position).

The representatives of the parties have a clear duty under this system: they are to advance their clients' positions with energy and skill in order to create the environment in which claims may be sifted. The GAL has a unique and vital role: the GAL is independent from the parties and from the court and has a more objective motivation than the parties. The vigorous interaction of the parties' claims gives the court a kind of factual depth perception, much as information from each eye is refined by the brain into a clearer picture than either eye could provide on its own. But the GAL's assessment and report create another perspective, one which looks in on the subjectivity of the parties' positions and which further refines and clarifies the claims of the parties.

All of this assumes, of course, that all advocates are advocating and are not abdicating their roles through passivity. Normally, failures of advocacy on the part of adversarial parties leave only the loudest voice to prevail, and the court's ability to determine reliability is seriously impaired. When the GAL advocates impartially and comprehensively, the court has another perspective from which to check the claims before it, even when some of the parties' advocates are not performing as well. Such a situation is still not ideal, but it is better than one in which the petitioner (for example) prevails simply because no other party representative advocates zealously.

Therefore, it remains crucial that GALs advocate skillfully, persistently, independently, and impartially. When this type of advocacy occurs, the GAL possesses one of the most powerful roles in a dependency case, one upon which the parties and the court may rely to provide an objective assessment leading to clarity and reliability in decisions which have a deep and lasting impact on the families served.

CONCLUSION

The GAL in Georgia dependency matters plays a unique role and one that in practice may suffer from a lack of precision in the statutory and appellate law that circumscribes it. A best-practices approach requires that the resulting gray areas be explored thoroughly, and that reasonable and defensible positions be taken. The main conclusions reached in this Advocacy Guide may be set forth succinctly:

The GAL advocates, as the representatives of the parties do, yet does so from a standpoint of impartiality. The GAL has no preconceived outcomes and is required to form a position driven solely by the evidence. In this role of impartial assessor of the facts, the GAL's outlook is similar to that of the court. The GAL is somewhat of an outsider when the GAL's motivations are compared to those of the parties' representatives and yet, from a procedural standpoint, is a true insider: the GAL is intimately involved in every aspect of the court's processes and procedures in order to gain a thorough knowledge of the case and to distill that knowledge into an objective, compelling recommendation.

In order to fulfill rigorous statutory duties, the GAL in a dependency matter must remain fiercely independent of the agendas, motivations, and stated positions of the parties, even when there is some overlap between the desires of one or more of the parties and the child's best interests. The GAL does not belong to anyone; however, the GAL must listen carefully to everyone involved in the case and seek to understand their motivations.

It is important to remember that the GAL must remain independent of the court, though many GALs (especially newer ones) may find this obligation somewhat worrisome. If GALs do not challenge initial learnings and preconceptions (as these are discernible) presented to the court, the GAL risks perfunctory or simplistic recommendations that threaten best interest determinations.

The GAL recommendation stands out among the offerings of those who appear before the court as something truly unique. It is not the result of preconceptions about how the case should come out or of instinct or gut reaction; instead, it is the distillation of an objective assessment of all of the facts and circumstances of the case. A dutiful GAL will not be afraid to change the recommendation based on further developments or new evidence: this is an important aspect of the GAL's impartiality.

The GAL is required by law to submit written reports to the court except at adjudicatory hearings, and this requirement is not waivable unless the child's circumstances make it impracticable. The written report reflects the depth of the GAL's assessment of all of the facts

and circumstances of the child's case in light of the statutory best-interest factors. It is difficult to communicate such a detailed and logical process in an oral report alone. Because the GAL is required to submit written reports, these reports are automatically admissible after adjudication.

When diligently exercised, the role of the GAL is perhaps one of the most powerful in a dependency case. Conversely, anemic or *pro forma* advocacy devalues this important role and leaves the court to decide solely among the competing subjective interests expressed by the representatives of the parties. This situation may be the norm in other classes of courts, but the legislative and congressional intention expressed in both Georgia and federal dependency laws is for courts making child welfare determinations to have the assistance of an objective, unbiased advocate to provide a sort of factual depth-perception. Impartial advocacy is an essential element of clear judicial fact-finding.

Clarity and uniformity of practice create consistency and reliability. When laws lack clarity, nuances in court practice and procedure result. Justice in legal cases is essentially procedural; therefore, material differences in procedure have the potential to create injustice. As the results of judicial determinations in dependency cases have a deeper, more profound, and long-lasting impact on children and families than those of any other kind of court, it is meet and right that these determinations stem from uniform practices and procedures.

APPENDIX 1: BEST INTEREST FACTORS APPLICATION

The application of the best-interest factors can be somewhat mystifying for practitioners and courts. As noted above, the role of the factors is to make the recommendation more objective. Like everything a court considers, the determination of what is in the child's best interests must be based on evidence and follow a clear and logical train of thought. The GAL should not base a recommendation on instinct or gut feeling: anyone can do that. The reason that CAPTA requires GALs who are specially trained[151] is to ensure that best-interest recommendations flow from an evidence-based assessment process into a clearly articulated rationale firmly grounded in statutory considerations.

To illustrate the pitfalls of an approach to a best-interest recommendation that minimizes the use of the actual best-interest factors, consider an actual case.

In re B.R.J.[152] was based upon the following facts. The juvenile court found after an adjudicatory hearing that the children were dependent "as a result of substance abuse by the children's parent, . . . [that] [t]he substances abused are barbiturates, methamphetamine, and marijuana, and that the parents had not been cooperative with DFCS's efforts to provide resources and services."[153] Fifteen months after the entry of the adjudication order, DFCS filed a petition to terminate the mother's parental rights. At the termination trial, the trial court found, *inter alia*, that reasonable efforts to reunify the family had been unsuccessful, that the cause of dependency was likely to continue, and that continued dependency was likely to result in harm to the child.[154]

The GAL recommended terminating the mother's rights, and it appears that the trial court relied at least in part on the facts relayed by the GAL.[155] The trial court terminated the mother's parental rights, and the mother appealed.

The Court of Appeals noted that "[t]he mother's circumstances at the time of the termination hearing were significantly different from the circumstances which caused [the children] to be placed in the custody of DFCS," and that there was "evidence that the mother had made significant improvements in her housing, substance abuse and mental health circumstances."[156] Specifically, the Court of Appeals concluded, after a lengthy recitation of the evidence adduced at the TPR trial, that "at the

151 42 U.S.C.A. § 5106a(b)(2)(xiii).
152 *In re B.R.J.*, 344 Ga. App. 465 (2018).
153 *Id.* at 467.
154 These were among the statutory requirements for a termination of parental rights in the version of O.C.G.A. § 15-11-310(a)(5) in effect at the time of the hearing.
155 *In re B.R.J.*, 344 Ga. App. 465, 471, 472. (2018).
156 *Id.* at 474 (citations omitted).

time of the termination hearing, the mother had adequate housing, stable income, and clean drug screens, and she had completed a substance abuse treatment program; she had also undergone a mental health assessment, started counseling and treatment, and had completed an anger management program."[157] Finally, the opinion concluded that "[a]t the time of the termination hearing, the mother had made significant progress toward eliminating the causes of the dependency."[158]

Based on these findings, the Court of Appeals held that reasonable efforts to remedy the circumstances were not unsuccessful and that the cause of dependency was not likely to continue;[159] the Court also held that continued dependency was not likely to cause harm to the children.[160]

There is no indication that the GAL provided a written report, but since the termination hearing is an adjudicatory hearing at which the rules of evidence apply, the GAL is not normally required to do so.[161] The appellate record showed that the GAL based the recommendation on the following: that the GAL "observed a visit in the DFCS office . . . during which the mother encouraged the children to run through the office area in which the visit was taking place, though it was not designed to be a play area;" that the mother "became excited or angry when they discussed 'the whole topic of losing her children permanently' or when they discussed the parenting classes . . . ;" that "the new home was 'very nice,' but that the family had only been there two or three months at the time of the hearing;" and that she was concerned with anger management issues, especially "in that the children were 'rambunctious' and if placed together in a home 'with somebody with anger management issues . . . [it caused her to] worry."[162] Based on these concerns, the GAL recommended terminating the mother's parental rights.

These observations are the sorts of generalized concerns that the statutory best-interest factors are designed to address. Almost anyone, looking at a specific set of facts, will leap more or less immediately to conclusions. However, these conclusions, if they are to form the basis of a recommendation to the court, must be tested and weighed in order to ensure that they are not the result of inaccurate information, lack of full information, bias, or prejudice of any kind. That is exactly why we have statutory best-interest factors.

Application of the best-interest factors in the case above might have yielded an analysis like the following:[163]

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[157] *Id.*
[158] *Id.* at 475.
[159] *Id.*
[160] *Id.* at 476.
[161] *See supra* note 105 and accompanying text.
[162] *Id.* at 471.
[163] O.C.G.A. § 15-11-262(f) provides that the role of the GAL in termination proceedings is the same as that in dependency proceedings. Though the court has a truncated list of best-interest factors to consider in termination cases (O.C.G.A. § 15-11-310(b)), the GAL's application of statutory factors is the same as in dependency proceedings.

1. *"The physical safety and welfare of the child, including food, shelter, health, and clothing."*[164] At the time of the termination hearing, there were no overt physical safety threats to the children. The GAL was concerned about possible future threats stemming from anger management issues, but these were not specific. What harm, exactly, to the children's physical safety could be foreseen based on the mother's displays of anger or irritation? These displays, the GAL testified, stemmed from discussions of losing rights to the children and of difficulty in getting parenting classes completed. These are situations that any parent might well find disconcerting and irritating. Did the mother's level of anger or irritation manifest itself in her making threats, or did she throw or break things? How could her anger and irritation be tied to a specific threat of harm to the children? There was no evidence presented at the hearing that the children currently lacked food, shelter, or clothing, and they were all in good health. Safety decisions must center around the parent meeting a minimum sufficient level of care and the conditions for return. Careful consideration should be given to the threats of present danger, a child's vulnerability, and any protective capacities exhibited by the parent.

2. *"The love, affection, bonding, and emotional ties existing between the child and the parent and between the child and siblings" and the child's "sense of attachments."*[165] The mother's emotional outbursts at the thought of losing rights to her children might well be taken as evidence of her bond with them. The trial court's order noted that the mother had consistently visited with the children. There was no evidence that the mother's relationship with the children was harmful to them in any specific way.

3. *"The child's need for permanence, including the child's need for stability and continuity of relationships with . . . the parent, siblings, or other relatives."*[166] There was no evidence presented that the children were in need of any alternative permanency plan. There was no evidence that the children lacked a meaningful bond with the mother and with one another. And though the trial court found that one of the children was bonded to the foster parents, the Court of Appeals noted (in line with consistent and long-standing precedent) that "the juvenile court has no authority to sever the natural parent-child relationship simply because it believes the child would be better off with the foster family."[167] Also, "a mother's inability to care for her children does not necessarily mean that her current relationship with them is detrimental."[168] Also, there are other permanency options available besides termination of parental rights. Severing the parent-child relationship completely is the most drastic ruling that a dependency court can make (perhaps that any court can make, short of a death-penalty case) and should be reserved for instances in

[164] O.C.G.A. § 15-11-26(1); O.C.G.A. § 15-11-105(b)(1).
[165] O.C.G.A. § 15-11-26(2), (3), (5); O.C.G.A. § 15-11-105(b)(5).
[166] O.C.G.A. § 15-11-26(4); O.C.G.A. § 15-11-105(b)(9).
[167] *In re B.R.J.*, 344 Ga. App. at 476 (citation omitted).
[168] *In re A.T.*, 271 Ga. App. 470, 473 (2005).

which the parent-child relationship is irretrievably broken. The GAL should be able to explain why less drastic outcomes, such as permanent guardianship, are not appropriate before advocating that termination is in the child's best interests.

4. *"The home environment of each parent . . . considering the promotion of the child's nurture and safety rather than superficial or material factors."*[169] Though the mother was clearly poor, poverty is not, in itself, a ground for termination of parental rights.[170] The GAL concluded that the mother's home was "very nice," and three months of stability there could be taken as evidence that the mother could continue to reside there. There were certainly elements of the mother's home life that were not ideal, but the GAL cannot base a recommendation upon a return to an ideal that never existed previously and which is not likely to exist in households that struggle with poverty issues.[171] Again, the assessment regarding the home environment must be based on *safety* considerations.
5. *"The mental and physical health of all individuals involved."*[172] While the case manager expressed generalized concerns that the mother's mental health issues would interfere with the children's education,[173] the Court of Appeals noted that "…no mental health professional testified at the termination hearing about the mother's mental health (or the children's health), what treatment or counseling she needed, whether she was complying with professional treatment recommendations, [or] whether her mental health caused or was likely to cause specific harm to her children."[174] The burden of proof never shifts to the parents to prove anything, and since the petitioner did not offer proof that the mother had a mental health issue at all, and since the case manager's testimony on this point was simply an unqualified lay opinion,[175] the GAL's recommendation should have factored in the lack of competent evidence as to the mother's mental health issues.

In re T.Y. is a dependency case to consider.[176] The mother and a Mr. Turner (who was the biological father of five of the mother's six children) consented to an adjudication of dependency in which the court found that Turner had a pending criminal charge for excessive corporal punishment of T.Y. and other pending charges unrelated to the children. The court ordered a reunification case plan, which required the parents to "establish and maintain an appropriate home and

169 O.C.G.A. § 15-11-26(7); O.C.G.A. § 15-11-105(b)(13).
170 *In re C.T.*, 386 Ga. App. 186, 190 (2007).
171 *See* Janet L. Wallace, "Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights," 77 Mo. L. Rev. 95 (2012).
172 O.C.G.A. § 15-11-26(9); O.C.G.A. § 15-11-105(b)(2).
173 *In re B.R.J.*, 344 Ga. App. at 469.
174 *Id.* at 476.
175 Opinion testimony regarding the mother's mental health issues would have required an expert witness. The case manager was not tendered or qualified as an expert and so was restricted in the kinds of opinion evidence she could offer.
176 *In re T.Y.*, 350 Ga. App. 553 (2019).

income for the children, undergo psychological evaluations and any treatment recommended…, complete a parenting class, and fully cooperate with DFCS."[177]

At a subsequent hearing on the parents' motion for return of custody, there was evidence that there had been an allegation that Turner had sexually assaulted one of the children, but that there had been insufficient evidence to substantiate this claim.[178] At another hearing, the court found that the mother had given birth to another child but had hidden her pregnancy from DFCS, that the mother had failed to comply with her case plan, and that Turner had been sentenced to a five-year prison sentence for an unrelated felony.[179]

Nineteen months after the initial stipulation to dependency, the mother filed another motion for return of custody, this time without Turner (who was incarcerated). The children's pediatrician and the DFCS case manager concurred in this request.[180] A multi-day hearing followed in which the court heard the testimony of several witnesses. Ultimately, the court denied the mother's request for return of custody, and the mother appealed. The Court of Appeals vacated the ruling and returned the case to the trial court due to deficiencies in the trial court's order, namely the failure of the trial court to indicate which facts supported its conclusion, its intermingling of findings of fact and conclusions of law, and the lack in the order of "any discussion of the facts of the case within the context of the applicable statutes, the standard of review, or governing case authority."[181]

Interesting practice points can be gleaned from the decision of the Court of Appeals and from a review of the trial court's order. Though there were many issues covered in the days of the hearing, the court's decision seemed to center on a concern raised by the DFCS supervisor in her testimony: namely, the mother "refuse[s] to believe that Turner had sexually abused K.T., and she continues to choose her husband over her children."[182] The supervisor's ultimate concern was that "the children will not be protected when Turner is eventually released from prison."[183] Indeed, the trial court's order found that, despite the mother's claim that she had separated from Turner, Turner could in the future continue to pose a threat to the children:

> Mr. Turner poses no immediate threat to the children given his incarceration. However, it would be foolish for this Court to believe that he will remain incarcerated for the balance of these children's minority. It is this Court's belief that as soon as Mr. Turner is released, he and Mrs. Turner will be back together.[184]

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177 *Id.* at 555.
178 *Id.*
179 *Id.*
180 *Id.* at 555-56.
181 *Id.* at 561.
182 *Id.* at 558.
183 *Id.*
184 Order of Trial Court at 3, *In re T.Y.*, 350 Ga. App. 553 (2019).

The Court of Appeals noted that the GAL agreed with the assessment of the DFCS supervisor.[185]

The trial court also expressed concerns regarding more of the mother's future behaviors. Though the court found that the mother "has adequate housing and income for the children," it also found that the mother "seems to be so controlled by Mr. Turner that in the event of a divorce, she might simply give him the house, leaving her without housing for herself or the children . . . ," and that if benefits from Mr. Turner were reduced due to his incarceration, "Mrs. Turner may in fact not have adequate income to support herself, much less herself and the children."[186]

Before looking at how the best-interest factors may have affected a GAL recommendation, it is important to note that, insofar as the trial court's reasoning could be gleaned from its inadequate order, the major concerns expressed were all concerning possible future conditions that could lead to dependency, but which did not yet exist.[187] Possible future conditions cannot, standing alone, serve as a ground for present dependency.[188] Given this, how could the application of the best-interest factors have affected the GAL recommendation?

1. *"The physical safety and welfare of the child, including food, shelter, health, and clothing."*[189] The evidence found by the trial court was that, though there were still concerns, the mother had adequate housing and income and that Mr. Turner posed no threat due to his incarceration. There were no immediate safety threats identified that would have prevented the children from residing in the mother's home. All of the main concerns were regarding potential and future issues. Again, these possibilities cannot form the basis for removing the children or for preventing their return.

2. *"The love, affection, bonding, and emotional ties existing between the child and the parent, and between the child and siblings" and the child's "sense of attachments."*[190] The trial court found that the mother visited appropriately, rewarded the children for good behavior and good grades, and participated in doctor visits.[191]

3. *"The home environment of each parent . . . considering the promotion of the child's nurture and safety rather than superficial or material factors."*[192] The trial court found that the mother

185 *In re T.Y.*, 350 Ga. App. at 558.
186 Order of Trial Court at 3, *In re T.Y.*, 350 Ga. App. 553 (2019).
187 In fact, after remand from the Court of Appeals, the trial court entered a new order, which was itself appealed. In the second appeal, the Court of Appeals reached the merits of the case and reversed. The Court of Appeals found that the facts relied upon by the trial court "at best establish the potential for future dependency and do not establish by clear and convincing evidence present dependency." *In re T.Y.*, A20A1417, slip op. at 15 (Ga. Ct. App. Oct. 19, 2020).
188 *In re T.Y.*, 350 Ga. App. at 560.
189 O.C.G.A. § 15-11-26(1); O.C.G.A. § 15-11-105(b)(1).
190 O.C.G.A. § 15-11-26(2), (3), (5); O.C.G.A. § 15-11-105(b)(5).
191 Order of Trial Court at 4, *In re T.Y.*, 350 Ga. App. 552 (2019).
192 O.C.G.A. § 15-11-26(7); O.C.G.A. § 15-11-105(b)(13).

currently had "adequate housing and income for the children."[193] The Court of Appeals noted that a visitation supervisor "testified that the mother interacted well with the children and that her home was always clean" and that the DFCS case manager testified that the home was "clean and safe."[194]

4. *"The mental and physical health of all individuals involved."*[195] The trial court noted that the mother had "failed to adequately address her own mental health issues."[196] Yet there were no facts which demonstrated how the children were harmed by the mother's mental health issues. The court did find that the mother's "dishonesty places these children at risk for ongoing abuse and neglect,"[197] but seemed to tie this risk to the possibility of Turner's future return. No other facts were cited to support the finding that the mother's mental health posed a real risk to the children.

5. *"Evidence of domestic violence in any current, past, or considered home for such child."*[198] Though there was evidence that Turner had injured a child through excessive corporal punishment in the past, and though the court found that there was evidence that Turner had sexually abused one of the children, the trial court held that at the time of the hearing that Turner posed no threat due to his incarceration. There was no evidence cited regarding Turner's potential release date or conditions of parole. Yet this seemed to be the main concern voiced by the GAL, despite the fact that it was wholly an inchoate risk.

6. *"The child's wishes and long-term goals."*[199] Though only the children's birth years were included in the trial court's order, it appears that at the time the oldest children ranged from approximately five to eleven years old. There was no evidence in the court's order that the GAL had considered or reported to the court the wishes of the children.

Taken together, the best-interest factors highlighted here could very well have required the GAL reach a different conclusion. GAL recommendations must not be based on supposition, suspicion, or potential future risks.

These examples are simply for illustration. Perhaps the GAL in each of these cases had more convincing grounds for making the recommendation, but if so, these were not apparent from the record of the cases – perhaps because the GAL did not in either case provide a detailed oral

[193] Order of Trial Court at 3, *In re T.Y.*, 350 Ga. App. 552 (2019).
[194] *In re T.Y.,* 350 Ga. App. at 556.
[195] O.C.G.A. § 15-11-26(9); O.C.G.A. § 15-11-105(b)(2).
[196] Order of Trial Court at 4, *In re T.Y.*, 350 Ga. App. 553 (2019).
[197] *Id.*
[198] O.C.G.A. § 15-11-105(b)(3).
[199] O.C.G.A. § 15-11-105(b)(7).

report to the court. A verbal report that analyzed the best-interest factors objectively and in detail might have provided those more convincing grounds. In the alternative, the process of viewing the facts in light of the best-interest factors might have challenged the GAL's initial conclusions and forced a reconsideration, which would have resulted in a different recommendation. The best-interest factors are there to provide a challenge to subjective conclusions. They cannot take away all subjectivity, but properly used, they will certainly require the GAL to take a step back from gut reactions and internal biases and to produce a recommendation that is more objective.[200]

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[200] This brief discussion of these cases also raises another issue: whether the GAL is an attorney or a CASA volunteer, there must be a grasp of the legal requirements for the hearing at which the recommendation will be given. It appears that the GAL's concerns in *B.R.J.* all concerned evidence of dependency. There was little question that the children were dependent (at least, this element was not contested by the mother by appealing the underlying dependency adjudication). Had the GAL specifically addressed the best-interest factors, she would have had an opportunity to test her reasoning to determine whether her concerns constituted ample grounds for recommending termination of parental rights, which requires much more than evidence of current dependency. The GAL's testimony (at least as distilled by the Court of Appeals) shows no effort to demonstrate how her concerns touched on the legal requirements for termination of parental rights. Similarly, in *T.Y.*, it does not appear that there was present evidence of dependency (assuming that the court's reasoning can adequately be discerned given the issues identified by the Court of Appeals). The GAL's failure (at least on the record) to address the best-interest factors seems to have enabled the GAL to enter a recommendation that was actually contrary to the evidence.

APPENDIX 2: THE CASA NETWORK IN GEORGIA

Across the country, CASA volunteers have been assisting the court with making best interest recommendations since CAPTA was first enacted over forty years ago. Judicial support is essential to the existence and success of a CASA program in which CASA volunteers serve upon the invitation and appointment of the juvenile court judge. At the date of publication, CASA advocacy is available in nearly all counties in Georgia. CASA programs are locally-administered, independent, community-based organizations, which are governed by a local board of directors, county, or larger organization and exist for the sole purpose of recruiting, screening, training, and supporting volunteers to advocate for children who have experienced abuse or neglect and are involved in juvenile court dependency proceedings.

CASA volunteers serve children in dependency proceedings. When a CASA program can match all referrals with volunteer advocates, there may be additional availability to serve children involved in family preservation, private dependency actions, or other juvenile court cases with limited DFCS involvement. If there are not enough CASA volunteers to serve all children experiencing foster care, the CASA program works with the juvenile court to prioritize case assignments.

The local referral and assignment process and other specific court practices for CASA volunteers serving as GALs are outlined in the Court-CASA Protocol, updated at least once every four years. CASA volunteers may serve specialized populations, such as a youth who is dually adjudicated dependent and delinquent, and may continue to advocate for a child over the age of 18 if the child opts to remain in foster care and wishes for the CASA to remain involved.

CASA leaders are involved in Court Improvement Initiative (where applicable), stakeholder meetings, Family Treatment Court, and other multi-disciplinary work, cultivating relationships with the court, DFCS, legislators, and others within the community.

Juvenile court judge involvement and support of the local CASA program includes everything from participating in pre-service or in-service training opportunities to joining local recruitment efforts (like speaking at a civic club or authoring a newspaper article) to administering the volunteer oath, swearing in new CASA volunteers, and attending volunteer recognition banquets. The juvenile court judge is often one of the leading community champions of the CASA program. In addition, the judge maintains regular communication with the CASA program leadership and governance to keep abreast of the program's service capacity, growth, and other outcomes. The CASA program and judge are careful to prevent any ethical situations from arising. The juvenile court judge is prohibited from fundraising for the program, engaging in *ex parte* communication about cases, and should carefully consider serving as even an *ex officio* member of the board of directors.

Created in 1989, Georgia CASA was established to develop and support local CASA programs. Nearly thirty-five years later, Georgia CASA strengthens a network of affiliate CASA programs by offering technical assistance, training, and other resources and contributes to advancements within the child welfare system. Georgia CASA leadership sits on the Supreme Court's Committee on Justice for Children, attends the Council of Juvenile Court Judges seminars, participates in the Court Improvement Initiative, serves as faculty for the Multi-Disciplinary Child Abuse and Neglect Institutes (MDCANI), and engages in other opportunities to strengthen the quality of legal representation and improve hearing quality in dependency cases.

If you have questions, requests, or would like to discuss CASA operations, the Georgia CASA team is available to assist. Angela Tyner, Advocacy Director, and Jen King, Executive Director, can be reached at 404-874-2888.

APPENDIX 1: MODEL CASA VOLUNTEER OATH

COURT ORDER AND OATH
FOR CERTIFICATION OF CASA VOLUNTEERS

As part of the court's commitment to the child's best interests in juvenile court dependency proceedings and in compliance with both federal and state law, the Juvenile Court of ____________________________ County hereby accepts each person named in this document as a lay guardian ad litem and officer of this court.

Approval by this court certifies that each individual named has met the required qualifications set forth by statute and *National and Georgia CASA Local Program Standards.*

Each of the volunteers listed below has taken the following oath:

I,______________________, understand the duties and responsibilities of a lay guardian ad litem of this court and pledge to perform these duties to the best of my ability. I further pledge:

- To act in good faith and with unwavering commitment in the pursuit of each child's opportunity to grow and thrive in a safe and nurturing home and to achieve his or her full potential.
- To remain objective, professional, and relentless in my efforts to advocate for the best interests of each child assigned.
- To treat all children and families whom I encounter with dignity and respect no matter their circumstances, while preserving their history and connections and keeping all information gathered as confidential.
- To provide each child with well-informed, impartial advocacy that nurtures hope, seeks solutions, and stands in the gap between a challenging present and a promising future.
- To work collaboratively with community organizations and child welfare professionals to strengthen the foundation of the child's family, including parents, siblings, extended relatives, and temporary caregivers.
- To fulfill all responsibilities as required by law, orders of the court, and the CASA program.

This order is entered this ______ day of_____________________, 20 __.

____
Judge
______________County Juvenile Court

____
CASA Program Director

Court Appointed Special Advocates:
Name   Signature
____________________________________   _______________________________

APPENDIX 2: MODEL COURT – CASA PROTOCOL

This agreement is entered into by and between the Juvenile Court of ________________ County or Circuit (hereinafter "Court") and the CASA program of __________________ (hereinafter "CASA"). The terms of the protocol are as follows:

Pursuant to O.C.G.A. § 15-11-104 in dependency cases and O.C.G.A.§ 15-11-262 in termination of parental rights cases, the court shall appoint the child a guardian ad litem (GAL), and the court shall appoint a CASA to act as GAL whenever possible. A CASA volunteer may be appointed in addition to an attorney who is serving as GAL.

The role of a CASA volunteer in juvenile court dependency and termination of parental rights proceedings is to advocate for the best interests of the child as lay GAL. The appointment of a CASA volunteer to dependency cases, in addition to the appointment of an attorney, ensures a strong form of representation and advocacy for children who have experienced abuse or neglect. CASA volunteers have the time and commitment to provide individualized attention and a heightened level of urgency to the case, establish a relationship with the child, and remain committed until permanency is achieved.

I. Appointment of a CASA Volunteer

1. After CASA volunteers have been screened, trained, completed the requirements of an affiliate court appointed special advocate program, and sworn-in, they are eligible to be appointed as a CASA volunteer on a dependency case.

2. CASA volunteers are appointed to serve children in dependency cases in which DFCS has filed a petition and the child has been removed from the home.

    - *If the CASA affiliate serves family preservation cases or other cases with limited DFCS involvement, insert the types of cases here.*

3. The judge shall sign an Order appointing a CASA volunteer at the earliest possible stage of the proceedings, which imposes on the CASA volunteer all the duties, rights, and responsibilities of a guardian ad litem.

4. In addition to the preferred appointment of a CASA volunteer *sua sponte*, the request for CASA appointment can be made to the judge by the following individuals:
    - GAL Attorney/Child's Attorney
    - SAAG
    - Parent's Attorney
    - DFCS case manager
    - Citizen Review Panel member
    - Other party's counsel

5. When the referral occurs outside of the court proceeding, the referral should include the child(ren)'s name, DOB, type of dependency, DFCS caseworker's name and contact information, next hearing date/time, and any other notes that the person(s) believes are relevant. Also, a copy of the intake form, complaint/petition, any orders already generated, or other relevant documents may be attached.

6. CASA volunteers are assigned to no more than two cases at a time unless an exception is made by the affiliate CASA program. The CASA staff determines the program's ability to accept a new case referral based on volunteer availability. The CASA program will keep the Court informed about the availability of CASA volunteers.

7. If a case cannot be immediately assigned to a CASA volunteer, the designated CASA staff person will inform the Court that an appointment cannot be made at this time.

   - *Note: If the appointment of a CASA volunteer is not automatic in all cases, and volunteers are appointed to cases according to set criteria (i.e. availability, complexity, type of case, or some other practice), include the criteria and procedure here.*

8. An Order appointing the CASA volunteer is prepared by _______. [*Indicate whether the staff of the CASA office, juvenile court or SAAG will prepare the appointment order*.] The individual CASA volunteer and supervising CASA staff member will be stated by name on the Order. The duties and responsibilities of a CASA volunteer, as well as the CASA volunteer's access to information, will be included in the Order.

9. The prepared Order is signed by the judge, and the original is placed in the Court's file.

10. Copies of the Order are sent to the designated CASA staff member and the assigned CASA volunteer, and a copy is placed in the case file found in the CASA office. Copies of the Order are also distributed to the SAAG and DFCS case manager, GAL/child's attorney, parent'(s) attorney, and any other attorneys of record.

11. The Order appointing a CASA volunteer will remain in effect until further order of the court, the court's jurisdiction over the case ends, or the child reaches 18 years of age. If the child signs a voluntary placement agreement to remain in DFCS custody upon turning 18 years of age, a new order appointing CASA is entered.

II. Court Procedure

1. The Juvenile Court will provide the CASA volunteer with access to the appointed child(ren)'s juvenile court file, including all records and information relevant to the child's case that are not otherwise protected from disclosure by the Code.

2. The CASA volunteer shall receive notices, pleadings, or other documents required to be provided to or served upon a party and be notified of all court hearings, judicial review, judicial citizen review panels, and other significant changes of circumstances of the child's case, including notice of a child's pending placement move, to the same extent and in the same manner as the parties to the case are notified of such matters.

3. The CASA volunteer shall be notified of the formation of any case plan of the child's case and may be given the opportunity to be heard by the court about such plans.

4. When a CASA volunteer is appointed to a case, the CASA volunteer shall attend all court hearings and other proceedings to advocate for the child's best interests. If the CASA volunteer cannot be present for a hearing, a CASA staff member will attend the hearing to present the CASA's written report, be available for testimony, and take notes of the proceeding to update the CASA volunteer.

5. The CASA volunteer may request a court hearing of the case. To avoid any *ex parte* communication, CASA must ensure all parties are copied on any communication to the court.

    - *Note: Include your court's specific practice for making a request for a hearing here.*

6. The CASA volunteer prepares a written report for all hearings at which a GAL report is admissible. The CASA volunteer's approved, written report will be filed with the Court __ days prior to the hearing and distributed to the SAAG, DFCS case manager, GAL or child's attorney, the parents' attorneys, and any other attorneys of record at the same time. The Judge will review the report at the appropriate time, but not before the report has been properly admitted as an exhibit on the record. The CASA report will be tendered into evidence by the court.

    - *Note: If your program uses CPRS or has some other applicable practice for the submission of CASA reports, include the appropriate information here.*

7. The current CASA report template has been reviewed and agreed upon by the Court and the CASA director *[or advocacy director or lead advocacy coordinator]* and includes an opportunity for analysis of the applicable best interest factors. The report template is attached to this Protocol. Should the needs of the Court change for any reason or the CASA program sees the need to alter the format, the Court and the CASA director (or designated staff member) will meet to amend the report template.

8. A CASA volunteer, or the supervising staff member in the volunteer's absence, may be called to testify during a court proceeding by the Court or any party for purposes of cross examination concerning the factual basis of the CASA's recommendation.

9. The CASA volunteer will be allowed to participate in settlement meetings or mediations entered into by the parties of the case. Should the parties wish to enter a consent or stipulation that the CASA volunteer feels is not in the best interest of the child, the CASA volunteer shall have the opportunity to be heard by the Court regarding his or her concerns before the Court accepts the agreement.

10. The CASA volunteer or staff member may approach the bench during side bar discussions and participate in meetings of the parties in chambers to ensure the best interests of child(ren) are considered.

11. If the child is brought into chambers to speak with the Judge, the CASA volunteer will be permitted to accompany the child.

12. After the presentation of testimony and evidence, the Judge will ask the CASA volunteer for the CASA volunteer's oral recommendations and if there are any questions based on the evidence heard or if the CASA volunteer's recommendations have changed based on the evidence presented at the hearing.

13. As a lay guardian ad litem, a CASA volunteer shall not engage in activities which could reasonably be construed as the practice of law. A CASA volunteer may be permitted to ask a question of a witness through the judge or a similarly aligned party's attorney.

14. As an officer of the court and to make recommendations consistent with the role as guardian ad litem, the CASA volunteer must be present throughout the entire proceeding to hear all of the evidence presented and shall not be subject to the rule of sequestration.

III. CASA Involvement and Role Outside the Courtroom

1. A CASA volunteer conducts an independent assessment to determine the facts and circumstances surrounding the case, maintains regular and sufficient in-person contact with the child, and reviews all case-related documents in order to submit a written report to the court regarding the child's best interests.

2. The CASA volunteer is responsible for monitoring compliance of the case plan and all court orders until permanency is achieved for the child is found or the volunteer is released by the Judge.

3. Prior to any court hearings and throughout the life of the case, the GAL or child's attorney and the CASA volunteer shall discuss the case to share information and recommendations and collaborate to the extent permissible.

4. The CASA volunteer will participate in the Citizen Panel Review (if applicable) and provide a report if unable to attend.

5. The CASA volunteer is required to keep all information acquired, reviewed, or produced confidential except as ordered by the court. However, the CASA is authorized to share information as needed with the parties to the case and Family Treatment Court personnel. Should the CASA receive a request for discovery or subpoena for production of documents from a party or nonparty, the CASA should request that the court conduct an *in camera* inspection of the materials sought. The court should then issue an order on the motion.

6. The CASA program may assist a neighboring jurisdiction by conducting a courtesy visit. The CASA program will seek an order from the court when necessary. (See the Cross-Jurisdictional Support and Monitoring Guidelines for additional guidance).

7. The CASA director or designated staff member participates in any stakeholder meetings or local court improvement imitative meetings and trainings.

    - *Note: If CASA has a more direct role in hosting or planning said meetings, include that description here.*

8. [If applicable] The CASA designated staff member serves as a member of the team and participates in the FTC. (See FTC Protocol/MOU for additional guidance).

IV. Judge's Involvement Outside of the Courtroom

1. Outside of the courtroom, the juvenile court judge assists in community education and awareness as well as volunteer appreciation by recognizing CASA when speaking to community and civic groups. The judge may also participate in CASA recruitment events and volunteer orientations, share potential contacts, write newspaper articles, or partake in interviews, etc. to help recruit potential CASA volunteers.

2. While the judge(s) may attend CASA fundraising events, it is understood that the judge cannot solicit funds for the CASA organization outside of court or county designated funding.

3. The judge(s) will be invited to participate in pre-service or in-service training opportunities to share expectations for the CASA role or present on other related topics.

4. The CASA director [*and advocacy director or lead advocacy coordinator, if applicable*] should meet with the judge(s) [*monthly/quarterly*] to discuss court practice, local CASA data, and other relevant issues. Care should be taken by both parties to not engage in any *ex parte* communication.

5. On at least an annual basis or more frequently as needed, the judge should be invited to meet with the governing board of directors or sponsoring agency leadership to cultivate relationships, discuss any pertinent issues or grievances, and share relevant court and affiliate data. At a minimum, a current board listing is provided to the judge.

V. Case Closing Procedure

1. CASA volunteer appointments expire when the child turns 18 years of age or the court closes the case, unless the CASA volunteer has been ordered to monitor the case for time-limited aftercare.

    - *Note: If there are other circumstances when CASA might close a case prior to the child achieving permanency, include those here.*

2. A final release order is placed in the child(ren)'s file maintained in the CASA office.

3. The CASA program will maintain closed case files for seven (7) years after the close of the case.

4. If a child(ren)'s case is reopened, the CASA program will make an effort to assign the case to an available volunteer (preferably the same volunteer if the volunteer is still with the program).

VI. CASA Dismissal

1. A CASA volunteer may be removed from a case upon request of the program or if the court finds the CASA has acted against the child's best interest, has not appropriately participated in a case, or if the court otherwise deems continued service is inappropriate or unnecessary.

2. The court may discharge a CASA volunteer as an officer of the court or certified CASA volunteer upon finding that the CASA volunteer has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program.

    - *Note: Include program specific information regarding grievance or dismissal procedure here.*

VII. Legal Representation

1. A CASA volunteer or the CASA program may need legal representation to present evidence to further the best interests of the child. The request for representation will be made to the Court to facilitate access to legal representation for the CASA volunteer or CASA program.

VIII. Review of Protocol

1. The Court/CASA Protocol shall be reviewed at least every three (3) years; upon the appointment of a new juvenile court judge or CASA director; or changes in law, policy, local court rules, or program resources that substantially impact the relationship between the program and the court.

This agreement is entered into this _____ day of __________, 202_.

____
Juvenile Court Judge of __________ County/Circuit

____
Director of _____________ CASA program

APPENDIX 3: MODEL CASA APPOINTMENT ORDER

_________ COUNTY JUVENILE COURT
FILED IN THE CLERK'S OFFICE ON
_____ DAY OF ______________. 20____
____
DEPUTY CLERK

IN THE JUVENILE COURT OF ___________ COUNTY
STATE OF GEORGIA

IN THE INTEREST OF:

__________________________ SEX: ___ DOB: __________ CASE # ___________________

A child

ORDER APPOINTING COURT APPOINTED SPECIAL ADVOCATE

1. Pursuant to O.C.G.A. §§ 15-11-104, 15-11-105, 15-11-106, and 15-11-262, the court hereby appoints _____, a Court Appointed Special Advocate (CASA), as guardian ad litem for the following child(ren):

Child's Name	Mother/Father's Name

2. To fulfill the affiliate court appointed special advocate program's responsibility to actively supervise a CASA volunteer, the court authorizes __________, [position title], to assist and support the CASA volunteer in the full rendering of the volunteer's duties, including presenting the court report and recommendation and testifying as to the factual bases of the CASA volunteer's recommendation when necessary. O.C.G.A. §§ 15-11-2(4) and (16).

3. The CASA volunteer shall appear at all dependency and TPR court proceedings, child welfare meetings, mediations, settlement conferences, Family Treatment Court staffings, and any education or school-related meetings relating to the child(ren) and advocate for the child(ren)'s best interests at said hearings unless otherwise ordered by the court.

4. The CASA volunteer shall render all of the duties and responsibilities enumerated in O.C.G.A. § 15-11-105(c) when advocating for the best interest of the child unless the child's circumstances render them unreasonable:

    (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;
    (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;
    (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;
    (4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;
    (5) Communicate with health care, mental health care, and other professionals involved with such child's case;
    (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;
    (7) Review all court related documents;
    (8) Attend all court hearings and other proceedings to advocate for such child's best interests;
    (9) Advocate for timely court hearings to obtain permanency for such child;
    (10) Protect the cultural needs of such child;
    (11) Contact the child prior to any proposed change in such child's placement;

(12) Contact the child after changes in such child's placement;
(13) Request a judicial citizen review panel or judicial review of the case;
(14) Attend citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last citizen panel review and include an assessment of the DFCS permanency and treatment plans;
(15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;
(16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
(17) Monitor compliance with the case plan and all court orders.

5. The CASA volunteer is an officer of this court and shall assist the court and the parties by assessing the best interests of the child. O.C.G.A. § 15-11-2(35). In determining a child's best interests, the CASA volunteer shall consider and evaluate the factors contained in O.C.G.A. §§ 15-11-26 and 15-11-105(b).

6. Upon presentation of an order appointing CASA as GAL, the CASA shall have access to all records and information relevant to the child's case when the information is not protected pursuant to O.C.G.A. § 19-7-5 and shall not include records and information from the Office of the Child Advocate or the Department of Juvenile Justice. *See* O.C.GA. § 15-11-105(e). The Health Insurance Portability and Accountability Act (HIPAA) permits disclosures of protected health information (PHI) made in response to an order of a court or administrative tribunal. 45 C.F.R. § 164.512(e)(1)(i). The Family Educational Rights and Privacy Act (FERPA) permits the disclosure of personally identifiable information from an education record of a student made in response to an order of a court or administrative tribunal. 34 C.F.R. § 99.31(a)(9);20 U.S.C. §1232g. Accordingly, upon presentation of this order, any agency, hospital, school, organization, division, or department of the State, doctor, nurse or other health care provider, treatment facility, psychologist, psychiatrist, mental health clinic, police department, sheriff's office, or juvenile court shall permit the CASA to inspect and copy the contents of any and all records and reports relating to the child(ren), and/or the child(ren)'s parents, guardians, custodians, or potential custodians, or other caregivers including protected health information and the State Longitudinal Data System (SLDS/Infinite Campus/Parent Portal), without consent by the child(ren), child(ren)'s legal custodian, or the child(ren)'s parents. O.C.G.A. § 15-11-105(c)(6). Additionally, the CASA is authorized to inspect any DFCS records related to any past or present cases involving the child, the child's parent(s), the child's siblings, potential custodians, potential permanent placements, or other potential caregivers, as provided by O.C.G.A. §49-5-41(c)(5).

7. Furthermore, the CASA who presents this order shall be given the opportunity to communicate about the information requested, including protected health information, with employees of the agencies, hospitals, schools, organizations, divisions or departments of the State, doctors, nurses or other health care providers, treatment facilities, psychologists, psychiatrists, police departments, or mental health clinics from whom such information is sought. O.C.G.A. § 15-11-105 (c)(5).

8. The CASA shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all hearings, staffings, investigations, depositions, mediations, tribunals, appeals, or significant changes in the child(ren)'s circumstances, including pending placement moves, to which he/she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters. O.C.G.A. § 15-11-105(d)(1).

9. The CASA assigned to the child(ren) shall maintain any information acquired or reviewed pursuant to this order as confidential and shall not disclose such information except as ordered by the court. However, the CASA is authorized to share information as needed with the parties to the case and Family Treatment Court personnel. O.C.G.A. § 15-11-105(f). A CASA who has been appointed as an educational surrogate pursuant to federal law (P.L. 94-142) and federal regulation (34 C.F.R. 8300.514) shall be authorized to share information as needed to fulfill the duties of an educational surrogate.

10. This order shall remain in full force and effect until further order of the court. Unless otherwise ordered by the court, this order shall terminate automatically when the court's jurisdiction over the case ends or when the child reaches 18 years of age. O.C.G.A. §15-11-214(c).

IT IS SO ORDERED this _____ day of _________________, 20____.

____
JUDGE
________________ County Juvenile Court

APPENDIX 4: MODEL CASA APPOINTMENT ORDER, ECYS

IN THE JUVENILE COURT OF ___________ COUNTY
STATE OF GEORGIA

IN THE INTEREST OF:

___________________________ SEX: ___ DOB: __________ CASE # ____________________

A child

ORDER APPOINTING COURT APPOINTED SPECIAL ADVOCATE
FOR CHILD RECEIVING EXTENDED CARE YOUTH SERVICES

1. Because the above-named child has executed a voluntary placement agreement for extended care youth services pursuant to O.C.G.A. §15-11-340; and because the child has been a dependent child who remains in need of the protection of the court while receiving extended care youth services; and because the court is required pursuant to O.C.G.A. §15-11-341(b) to make best-interest findings regarding the provision of extended care youth services (see also O.C.G.A. §15-11-10(1)(F)); the Court hereby appoints __________, a Court Appointed Special Advocate, as guardian ad litem for the purpose of making best-interest recommendations to the court at each hearing in this matter.

2. To fulfill the affiliate court appointed special advocate program's responsibility to actively supervise a CASA, the court authorizes _________, [position title], to assist and support the CASA in the full rendering of the volunteer's duties, including presenting the court report and recommendation and testifying as to the factual bases of the CASA recommendation when necessary. O.C.G.A. §§ 15-11-2(4) and (16).

3. The CASA shall appear at all proceedings and hearings relating to the child and advocate for the child's best interests at said hearings unless otherwise ordered by the court.

4. The CASA is an officer of this court and shall assist the court and the parties by assessing the best interests of the child. O.C.G.A. § 15-11-2 (35). In determining a child's best interests, the CASA shall consider and evaluate the factors contained in O.C.G.A. §§ 15-11-26 and 15-11-105(b). The CASA shall, as applicable to a case of extended care youth services, perform the duties and responsibilities set forth in O.C.G.A. §15-11-105(c).

5. Upon presentation of an order appointing CASA as GAL, the CASA shall have access to all records and information relevant to the child's case when the information is not protected pursuant to O.C.G.A. § 19-7-5 and shall not include records and information from the Office of the Child Advocate or the Department of Juvenile Justice. O.C.GA. § 15-11-105(e). The Health Insurance Portability and Accountability Act (HIPAA) permits disclosures of protected health information (PHI) made in response to an order of a court or administrative tribunal. 45 C.F.R. § 164.512(e)(1)(i). The Family Educational Rights and Privacy Act (FERPA) permits the disclosure of personally identifiable information from an education record of a student made in response to an order of a court or administrative tribunal. 34 C.F.R. § 99.31(a)(9);20 U.S.C. §1232g. Accordingly, upon presentation of this order, any agency, hospital, school, organization, division or department of the State, doctor, nurse or other health care provider, treatment facility, psychologist, psychiatrist, mental health clinic, police department, sheriff's office, or juvenile court shall permit the CASA

to inspect and copy the contents of any and all records and reports relating to the child, and/or the child(ren)'s parents, guardians, custodians, or potential custodians, or other caregivers including protected health information and the State Longitudinal Data System (SLDS/Parent Portal), without consent by the child, child's legal custodian, or the child's parents. See O.C.G.A. § 15-11-105(c)(6). Additionally, the CASA is authorized to inspect any DFCS records related to any past or present cases involving the child, the child's parent(s), the child's siblings, potential custodians, potential permanent placements, or other potential caregivers, as provided by O.C.G.A. §49-5-41(c)(5).

6. Furthermore, the CASA who presents this order shall be given the opportunity to communicate about the information requested, including protected health information, with employees of the agencies, hospitals, schools, organizations, divisions or departments of the State, doctors, nurses or other health care providers, treatment facilities, psychologists, psychiatrists, police departments, or mental health clinics from whom such information is sought. O.C.G.A. § 15-11-105 (c)(5).

7. The CASA shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all hearings, staffings, investigations, depositions, mediations, tribunals, appeals, or significant changes in the child(ren)'s circumstances, including pending placement moves, to which he/she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters. O.C.G.A. § 15-11-105(d)(1).

8. The CASA assigned to the child(ren) shall maintain any information acquired or reviewed pursuant to this order as confidential, and shall not disclose such information except as ordered by the court. However, the CASA is authorized to share information as needed with the parties to the case and Family Treatment Court personnel. _ O.C.G.A. § 15-11-105(f). A CASA who has been appointed as an educational surrogate pursuant to federal law (P.L. 94-142) and federal regulation (34 C.F.R. 8300.514) shall be authorized to share information as needed to fulfill the duties of an educational surrogate.

9. This order shall remain in full force and effect until further order of the court. Unless otherwise ordered by the court, this order shall terminate automatically when the court's jurisdiction over the case ends or when the child reaches 21 years of age.

IT IS SO ORDERED this _____ day of _________________, 20____.

____
JUDGE
_________________ County Juvenile Court

APPENDIX 5: MODEL CASA REPORT

Last Name of the Case:		Hearing Date:	
Type of Dependency Hearing:		Judge:	
County:		Child's Attorney:	
CASA Volunteer Name:			

Child's Name	Case Number	DOB	Age	Gender	Time in Care

Assessment and Analysis

Provide recommendations for placement & permanency; highlight aspects of child's situation requiring urgency; describe parental progress, and include any issues for the Court's consideration. Connect the assessment to the specific hearing purpose. Use relevant BIC factors and QRGs.

Child's Wishes

Share the child's wishes for placement, permanency, visitation, education, normalcy, and any other relevant and important areas. (BIC Factor(s): 14, 16) This section should not include any CASA recommendations.

Nature of Removal/Findings of Dependency

Provide date of removal and allegations for dependency as listed in removal order, petition, and/or Order of Adjudication. Provide facts related to any prior DFCS/Court involvement, the situation that led to the removal, and services provided to prevent removal.

Safety Considerations

Share the safety concerns that prevent the child from returning home today. Provide a description of any current threats of danger, the child's vulnerability, and any protective capacities the parent(s) have to keep the child safe to determine whether the child can return home immediately. Consider whether the parent(s) can sustain a sufficient minimum level of care or if there is another individual involved who can offer caregiving support. (BIC Factor(s): 1, 6, 7)

Child's Placement

Child's Name	Current Placement Type	Time in Placement	Number of Previous Placements
	Enter the following as applicable: Foster Home Relative Placement - Maternal Relative Placement - Paternal Fictive Kin		

	Group Home/QRTP PRTF Own Home		

Child's Adjustment to Placement

Describe your direct observations of the child's comfort level and engagement. Include statements made by caregivers about the child's behaviors as well as statements from the child himself or herself.

Placement Stability

Describe any placement changes that have occurred, or that are pending, and provide reasons the change is necessary. Provide the duration of each placement the child has had. Share any concerns or emerging issues that could impact placement stability.

Normalcy

List activities the child wishes to or currently participates in, including social and extracurricular. Include whether the placement follows the Reasonable Prudent Parenting Standards according to child's age and development. (BIC Factor(s): 7, 9-12, 14, 16) See QRG(s): 12, 13, 28, 29

Recommendation for Placement

Provide recommendation for child's immediate placement while in care. Consider whether and how any recommended or potential placement changes align with the permanency plan. Use all relevant BIC Factors to support recommendations. See QRGs(): 12, 13.

Relative or Fictive Kin Placements & Connections

Potential Kin Placements

List identified possible relative/fictive kin placements and their respective relationships. Include whether the relative/fictive kin is willing to provide permanency for the child and whether a home evaluation has been completed for placement. See QRG: 7

Relative or Fictive Kin Connections

Describe relative/fictive kin connections and ongoing interactions with the child. Consider whether there are opportunities for family time (visitations) between these individuals and the children.

Recommendations for Relative/Fictive Kin Connection

Provide recommendations for child's placement/connection with any relative/fictive kin placements. Consider caregiver's needs and the provision of any services. Use all relevant BIC Factors to support recommendations. See QRG: 8

Sibling Connections (if applicable)

Placement of Siblings and Reason for Separation

Identify any siblings not currently in foster care, including any known adult siblings. Include the names, ages, and current placements for additional siblings not placed together. Explain the reasoning and rationale for sibling separation, if applicable.

Sibling Connections

Describe the frequency of sibling visitations for those siblings not placed together. Provide indications of building and strengthening a meaningful connection and relationship among those not placed together.

Recommendation for Strengthening Sibling Connections

Provide recommendations for strengthening sibling connections if placed separately. Consider the children's needs and the provision of any services that would be beneficial. (BIC Factor(s): 3, 4, 5, 7, 8, 9, 12, 13, 14, 15, 16, 17) See QRG: 23

Family Time (Visitation) Between Child and Parents

Frequency and Duration

Describe the current frequency and duration of family time (visits between the child and parents) as well as the current level of supervision provided.

Degree of Participation & Interaction

Include, if applicable, the degree of participation and interactions between the child and parent(s) and any observations by CASA or reported by the visitation supervisor of emotional connections and bonding displayed by both the child and parent(s).

Recommendation for Family Time

Provide recommendations for strengthening the parent-child relationship through family time, including whether it can be increased or whether any specific changes would further support reunification efforts. (BIC Factor(s): 2, 4, 5, 6, 9, 14, 15, 16, 17, 18) See QRG(s): 23, 25

Permanency

Current Permanency Plan Goal	State the current permanency plan goal as found on the Court Order or Case Plan: Reunification Adoption Permanent Guardianship APPLA Concurrent: Reunification and Adoption Concurrent: Reunification and Guardianship Concurrent: Reunification and APPLA

Permanency Plan Suitability

Explain why reunification continues to be appropriate or whether further efforts to reunify would be detrimental to the child. If reunification is no longer appropriate, state which permanency plan best meets the needs of the child and family, taking into consideration preserving the parent-child relationship and familial connections whenever possible. Include relevant facts to support this assessment.

Recommendation for Permanency

Provide a permanency recommendation and support it with all relevant BIC factors in the context of the child's age, developmental needs, and relationships. See QRGs: 16, 17

Court Order and Case Plan Progress

Parental Engagement and Participation with Court Order/Case Plan

List each case plan goal or court-ordered requirement and briefly describe each parent’s level of participation and engagement in the services provided using a bulleted format.

Challenges to Case Plan Completion

Describe any barriers to the parents accessing the services being provided. Include whether provided services are ADA compliant, if applicable. Consider whether DFCS is providing appropriate services to yield behavioral changes that will result in a successful, sustainable reunification and whether any different or additional services would better help achieve the current permanency plan.

Recommendations to Encourage Case Plan Progress

Provide recommendations for any additional services, programs, or supports that would encourage case plan progress that directly relate to the reason for the child's removal. See QRG(s): 9,10

Education and Childcare

Child's Name	Type of Education Setting	Total Number of Education Settings Attended Since Entering Custody
	Enter the type of education setting: Daycare Pre-School/HeadStart Traditional Classroom Special Education Residential Treatment/PRTF Placement Alternative School Hospital/homebound Instruction Virtual Learning College None	

Current Academic/Developmental Progress

For each child, provide the name of the current child care/educational facility attended and whether a change in schools occurred, the current grade level and whether it's appropriate for the child's age, the child's current academic/developmental performance/progress, a record of attendance, and any behavioral concerns.

Educational Supports and Services

Describe efforts to ensure a Free Appropriate Public Education (FAPE) is provided to the child, whether there is a current IEP or 504 Plan, and an update on the monitoring progress. Include whether the child's current school/classroom setting is appropriate and if any additional supports/services are needed to meet developmental milestones.

Recommendations to Ensure Educational Success

Provide recommendations as to what supports and services are needed. (BIC Factor(s): 5,10,11,14,16) See QRG(s): 26, 27

Health

Physical and Mental Health Needs

Include an update on the child's medical status, including whether well-checks and dental visits are current and if the child is developmentally on target with physical milestones. List any specific medical and psychological diagnoses and current medications. Include any adverse behavioral or physical effects from the medications and whether they are meeting their intended purposes. Describe any therapies/counseling that is provided, including the frequency and progress being made.

Recommendations for Additional Supports, Services, or Treatments

Make recommendations for any needed supports or services. (BIC Factor(s): 1,2,5,9,10,14,15,16,18) See QRG(s): 22,23

Cultural Considerations

Ties and Customs

Describe the continuation of the child's community ties and familial customs. Include whether any cultural considerations impact this child's circumstances (i.e. heritage, religion, sexual orientation, gender identity/expression) and if there are any unmet cultural needs. Consider whether the Indian Child Welfare Act (ICWA) applies.

Recommendations for Necessary Cultural Considerations

Recommend any needed supports or services to meet the child's cultural needs. (BIC Factor(s): 6, 7, 10, 11, 12, 14, 16) See QRG: 3

Older Youth (14+) (if applicable)

GA RYSE/ILP Participation

Include youth's participation in ILP activities. Consider any barriers that may be preventing participation. Describe the youth's academic, independence, and occupational goals. State whether the youth has an individualized WTLP and access to important documents.

Recommendations for Supports and Services to Transition to Adulthood

Provide any recommendations for supports or services to transition the youth to adulthood or to continue in foster care beyond age 18. (BIC Factor(s): 4, 5, 9, 10, 11, 14, 16) See QRG(s): 28, 29

Records and Research

Name of Individual Interviewed/Visited (include child)	Relationship to Child	Dates of Contact/Visit

Type of Report/Record	Source of Report/Record	Dates of Review

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Respectfully Submitted,

________________________ ________________________

CASA Volunteer Signature/Date CASA Program Staff Signature/Date

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The CASA Volunteer has been appointed by the juvenile court judge pursuant to O.C.G.A. § 15-11-104 (d) and 15-11-106 (a) (2). This report is submitted according to the duties of the appointed GAL as described by O.C.G.A. § 15-11-105(c)(15). The CASA volunteer reserves the right to amend this report based on additional information obtained in the court hearing.

This report, as well as any and all records and information acquired or reviewed by the GAL during the course of his or her appointment, shall be deemed confidential and shall not be disclosed except as ordered by the court or applicable statute. See O.C.G.A. § 15-11-105(f).

APPENDIX 6: MODEL CASA RELEASE ORDERS

IN THE JUVENILE COURT OF _________ COUNTY/CIRCUIT
STATE OF GEORGIA

IN THE INTEREST OF:	)	**CASE NUMBER:**
	)	
	)	
	)	
	)	
	)	

ORDER OF REMOVAL OF A CASA VOLUNTEER FROM A CASE

Pursuant to O.C.G.A. § 15-11-104(h), the Court removes the Court Appointed Special Advocate, _________, as Guardian ad Litem from the aforementioned case for the following reason:

- ❑ Permanency is achieved.
- ❑ The child is 18, did not remain in foster care, and is no longer under the jurisdiction of the court.
- ❑ The child is 18, is receiving extend care youth services, and the child has not requested the continued assistance of a CASA volunteer.
- ❑ It is necessary to remove the CASA volunteer from the case prior to permanency being achieved.
  - ❑ The CASA volunteer acted in a manner contrary to the child's best interests [*provide factual basis*].
  - ❑ The CASA volunteer has not appropriately participated in the case [*provide factual basis*].
  - ❑ The Court deems continued service is inappropriate or unnecessary.

The CASA volunteer is hereby relieved of all duties, rights, and responsibilities relating this to case, and all confidential records and information shall be returned to the CASA program accordingly.

SO ORDERED, this _____day of _____________________, 202_.

____
Juvenile Court Judge
________________ Judicial Circuit

IN THE JUVENILE COURT OF _________ COUNTY/CIRCUIT
STATE OF GEORGIA

ORDER FOR DISMISSAL OF A CASA VOLUNTEER

FROM THE AFFILIATE COURT APPOINTED SPECIAL ADVOCATE PROGRAM

Pursuant to O.C.G.A § 15-11-104(h) and § 15-11-106(c), the Court removes the Court Appointed Special Advocate, ______________________, as Guardian Ad Litem from any assigned cases and releases him/her from the affiliate CASA program.

The CASA volunteer is hereby relieved of all duties, rights, and responsibilities, and all confidential records and information shall be returned to the CASA program immediately.

SO ORDERED, this ___day of ____________________, 202_.

____
Juvenile Court Judge
_______________ Judicial Circuit