

# Advancing Child Representation in Georgia: Trends and Opportunities

The Summit  
November 27, 2017

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# The Peer Review Project



# What is the Peer Review Project?

- Joint effort between CJ4C and OCA to send Peer Reviewers to communities to assess quality and consistency in practice in dependency proceedings
- Logistics:
  - Peer Review team consisted of 6-10 attorneys and OCA investigative staff
  - Review consists of observations, interviews, post-review peer reviewer discussion



# What is the goal of Peer Review Project?

- Provide CQI in the legal representation and advocacy of children in dependency cases pursuant to State Bar's ethics and professionalism rules for children's attorneys, the juvenile code, and CAPTA requirements.
- Ensure that children's attorneys and GAL have necessary tools to provide effective legal representation and best interest advocacy in the context of issues facing their respective counties/circuit and facts presented in an individual case



# How Are the Sites Selected?

- Considerations:
  - 1<sup>st</sup> year - based on DFCS recommendation of lack of representation
  - Based on Fostering Court Improvement data regarding removal rates, placement moves, time to permanency
  - Diverse geographic locations and mix of urban, suburban, rural
  - Juvenile court judge's willingness to allow team to observe and be interviewed
- 2014 (10 counties, 83 cases)
- 2015 (22 counties, 100 cases)
- 2016 (18 counties, 128 cases)
- 2017 (16 counties, \*57 cases)—\*still compiling data



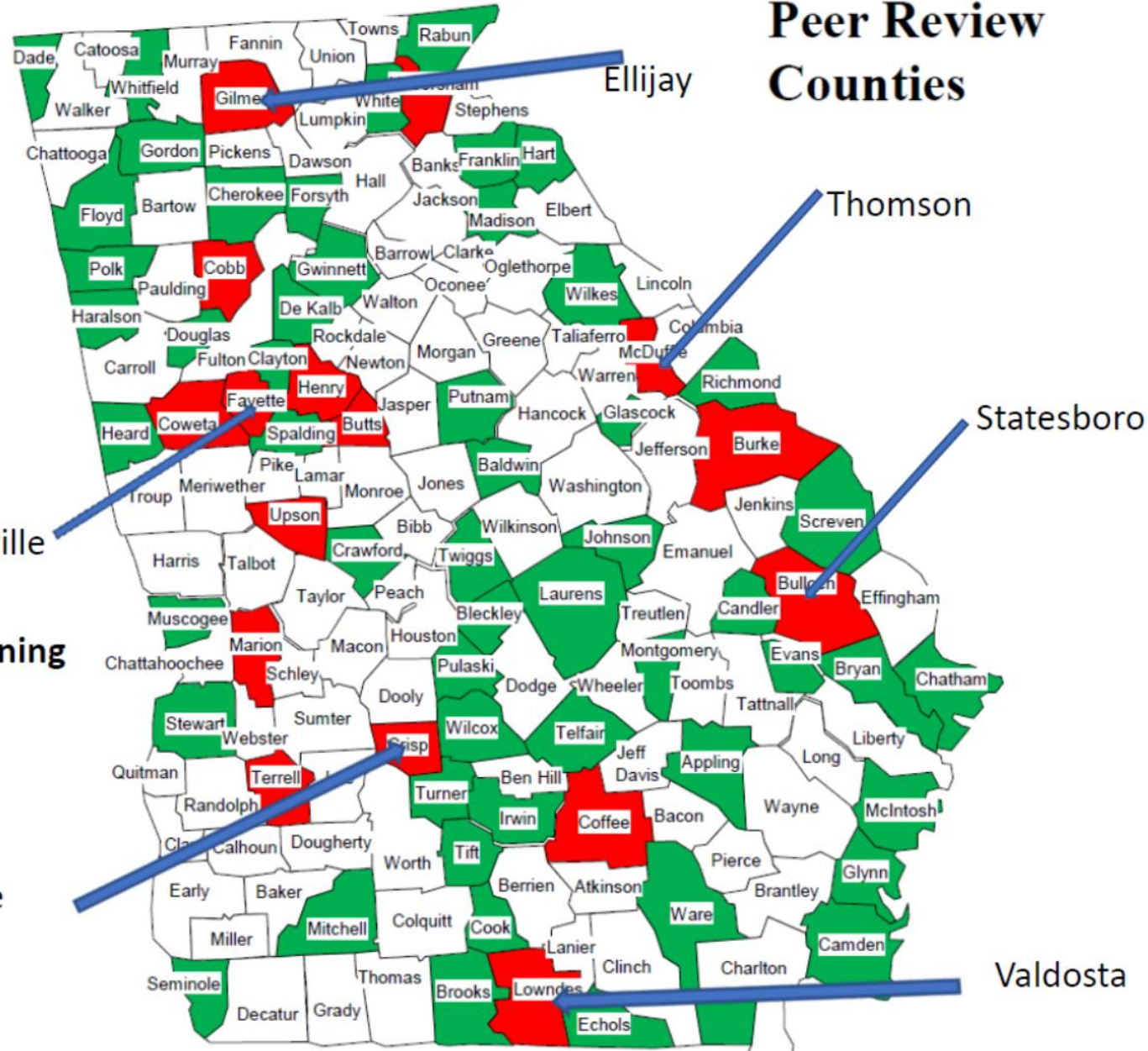
# Peer Review Counties

**2017  
Proposed**

**Already  
Visited**

**Proposed Training  
Sites**

**Cordele**



# What aspects of the hearing are reviewers observing?

- Original instrument was created by reviewing other states' assessment tools, GA law and professionalism rules, and the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases
- Both individual cases (observations) and overall court practice (interview) are included
- Identifying opportunities for and offering local training



# Court Practice and Interview

- Length of time in court
- Does court regularly expect evidence or ask questions to address the following:
  - Child participation/presence
  - Diligent Search
  - Efforts by all parties to achieve permanency plan
  - Father participation
  - ICWA
  - Immigration
  - Visitation and whether the visitation plan is developmentally appropriate
- Practice regarding the granting of custody to third parties
- Orders:
  - Does court use “fill-in-the-blank” orders? If not, who drafts court orders?
  - E-signing? E-filing?
  - Do all parties have an opportunity to review court orders before they are signed?
  - Average turn-around time for court orders?
- CPRS Usage
- Systemic factor issues
- Training needs/topics identified





# Individual Case Observation

- Type and length of hearing
- Attorney and GAL appointments (when appointed, role, use of CASA)
- Caregiver's notice of and participation in hearing
- Child's presence and engagement
- Due process
- Child's Attorney/GAL
  - Describe interaction between child & child's attorney/GAL
  - Evidence of hearing preparation (including meeting with child)
  - Describe presentation of child's position (independent from other parties): Requests made on behalf of child during hearing & outcome
  - Describe hearing participation by child's attorney
  - Evidence of knowledge of child's mental health, medical, educational and any special needs
  - Evidence of knowledge of state and federal law
  - Describe efforts to expedite permanency for the child
  - Visitation addressed with parents, siblings, and fictive kin/persons with demonstrated commitment
  - Evidence of knowledge of child safety issues
  - Submission of written report to Court? If GAL report submitted into evidence, does it contain all of the information required by code
  - Describe oral presentation of best interest prongs
  - Describe efforts to expedite permanency for the child



# Trends Identified from Observations



# Trends

- Lack of consistency of practice around the state
  - Initial requirements/ongoing standards for serving as child's attorney vary
  - Varying levels of involvement by child attorneys
- Systemic issues and attorney skill levels affect quality of child representation
  - Judges direct hearings from the bench
    - Lack of legal findings and reasonable efforts findings on the record
  - Hearings handled in summary fashion
  - Lack of knowledge pertaining to juvenile code and policy
    - Ex. regarding permanent guardianships
  - Lack of evidence
    - No written reports, or not on record
    - No best interest factors highlighted by GAL on the record
    - All written reports must be submitted into evidence and/or referenced/attached to resulting order. If a written report is not submitted to the court, an oral presentation regarding best interests needs to be made.



# Trends

- Legal representation for children looks different than counsel for parents or DFCS with regards to hearing preparation and trial advocacy
  - “Many child’s attorneys continue to view their role largely as responsive to the information presented by the SAAG and parent attorneys as opposed to a role in which the child’s attorney actively gathers and presents to the court evidence and witness testimony in support of the child’s position, participates in a thorough cross examination of witnesses, seeks to obtain rulings on the child’s position and to expedite permanency for the child through a motions practice, and presents oral and closing arguments in support of the minor client’s position.”
    - Low attorney participation during hearings, presenting child’s position only about 50% of the time and addressing best interest prongs only about 30% of the time.



# Trends

- Average hearing length is 20 minutes
- Most attorneys are dual role (2/3 of reviewed sites in 2016)
- Due process
  - Not all parties represented or given opportunity to be represented--inconsistent parent representation
- Child presence is low (time commitment, financial limitations) less than 20% of cases observed in 2016
  - Waiver of presence is low (25% in cases observed in 2016)
  - Even when present, engagement is low
- Lack of child contact
  - Generally acknowledged that pay scale does not allow for meeting with children outside of courtroom. Heavy caseloads compound the problem.
- Minimal use of CPRS
- ICWA and Immigration extremely rare



# Recommendations



# Recommendation: Consistent pre-appointment and ongoing training & minimum standards

- Why the inconsistency? Limited pool of attorneys, lack of funding for training and limited access to training
- Consistency in training and minimum standards will yield more consistency in representation
- Attorneys should consistently meet with their client, communicate accurately regarding the legal proceedings and the purpose of each hearing, solicit child's wishes, make a determination about child's presence, and clearly advocate for the child's position.
- Judicial expectations and accountability



# Recommendation: Due Process

- Guarantee due process of law, as required by the Constitutions of the United States and the State of Georgia, through which every child and his parents and all other interested parties are assured fair hearings at which legal rights are recognized and enforced. O.C.G.A. § 15-11-1
- Ensure due process rights have been protected for each party at each hearing – resulting appeals may delay a child’s permanency.
- Continued legal representation for the child until legal permanency is achieved.





# Child as a Party

As a party, the child has the right to:

- be present
- be heard
- present evidence
- cross-examine witnesses
- examine pertinent court files and records, and
- appeal the orders of the court

O.C.G.A. § 15-11-19



# Recommendation: Clearly defined roles for child's legal representatives

- No matter what model your court operates under, own it
  - Take an active role in hearings
- Process for handling conflicts
  - Conflict of serving in dual role capacity
    - When is a separate GAL necessary? Can the child be counseled? Court considerations.....
  - GAL responsibilities seem to apply more to non-lawyers/CASA—ethical
    - Written report submission and ability to cross-examine report author



# Right to Counsel and GAL— equal deference in GA

- A child has a right to an attorney, who owes to his client the duties imposed in an attorney-client relationship
- Right to an attorney cannot be waived by child or his representative
- Appointment must be made as soon as practicable, but prior to first court hearing that may substantially affect the child's interests
- Representation shall continue in any subsequent appeals unless excused by the court
- The court shall appoint a GAL
- Child's attorney may serve as GAL unless or until there is a conflict
- The court shall appoint a CASA to act as GAL whenever possible, and a CASA may be appointed in addition to an attorney who is serving as GAL

O.C.G.A. §§ 15-11-103, 104, 105



# Child Attorney Responsibilities:

- Obtain copies of all pleadings and relevant notices;
- Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- Identify appropriate family and professional resources for the child.



# Child Attorney Responsibilities, cont'd.

- Elicits the child's preferences in a developmentally appropriate manner, advises the child, and provides guidance.
- Represents the child's expressed preferences and follows the child's direction throughout the course of litigation.
- Client directed representation does not include "robotic allegiance" to each directive of the client. Client directed representation involves the attorney's counseling function and requires good communication between attorney and client.
- The goal of the relationship is an outcome which serves the client, mutually arrived upon by attorney and client, following exploration of all available options.



# GAL Role

1. Maintain regular and sufficient in-person contact and meet and interview child prior to court
2. Ascertain child's needs, circumstances, and views
3. Conduct an independent assessment
4. Consult with the child's attorney
5. Communicate with health care, mental health, and other professionals
6. Review case study and educational, medical, psychological and other relevant reports relating to child and respondents
7. Review all court-related documents
8. Attend all court hearings and other proceedings to advocate for BIC
9. Advocate for timely court hearings to obtain permanency
10. Protect the cultural needs of the child
11. Contact child prior to any proposed change in placement
12. Contact child after changes in child's placement
13. Request a judicial citizen review panel or judicial review of the case
14. Attend panels and if cannot attend, forward letter of child's status and assessment of DFCS's permanency and treatment plans
15. Provide written reports to court and parties on child's BIC
  - Recommendations regarding placement
  - Updates on child's adjustment to placement
  - DFCS and respondent's compliance with court order and treatment plans
  - Child's degree of participation during visits
  - Any other recommendations based on the BIC
16. When appropriate, encourage settlement and use of ADR and participate to extent permitted
17. Monitor compliance with case plan and all court orders



# Best Interest Factors

- Child's **physical safety** and welfare, including food, shelter, health, and clothing
- Love, affection, bonding, and emotional ties between the **child and parent** or caregiver
- Love, affection, bonding, and emotional ties between the **child and siblings** (including half and stepsiblings)
- Child's **need for permanence**, including the need for stability and continuity of relationships with parent, siblings, other relatives, and any other person who has provided significant care to the child
- Child's sense of **attachments**, including sense of security and familiarity, and continuity of affection for the child
- The **capacity and disposition of each parent** or person available to care for the child to give him or her love, affection, and guidance and to continue the education and rearing of the child
- **Home environment** of the parent or person available to care for the child considering the promotion of the child's nurturance and safety rather than superficial or material factors
- **Stability** of the family unit and presence or absence of support systems within the community to benefit the child
- **Mental and physical health** of all individuals involved
- **Home, school, and community record and history** of the child, as well as any health or educational special needs of the child
- Child's **community ties**, including church, school, and friends
- Child's **background and ties**, including familial, cultural, and religious
- **Least disruptive placement alternative** for the child
- The **uniqueness** of every family and child
- **Risks** attendant to entering and being in substitute care
- Child's **wishes** and long-term goals
- **Preferences** of the persons available to care for the child
- Evidence of **family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse** in any current, past, or considered home for the child
- **Recommendations** from a guardian ad litem
- **Any other factors** considered by the court/GAL to be relevant and proper to its determination

O.C.G.A. § 15-11-26 (court); O.C.G.A. § 15-11-105 (guardian ad litem)



# Recommendation: Consider team approach to representation: Utilize CASAs for GAL function

- To the extent possible, child attorney and CASA collaboration can be a huge benefit





# CASA's Uniqueness

- Provides individualized attention and in-depth investigation.
  - Volunteers appointed to 1-2 cases at a time.
- Brings a sense of urgency.
- Promotes safety, permanency, and well-being in and out of court.
- Makes independent best interests recommendations.
- Maximizes community resources and support.
- Develops supportive relationship with the child.



# Training Collaboration & Communication

- Pre-appointment training requirement should include understanding each other's roles
  - Attorneys can present at CASA pre-service or in-service trainings
  - CASA program can provide copy of training manual and extend opportunity to attend trainings
  - Opportunities for cross-training
- Appointment
- Investigation
  - Division of responsibilities, joint visits to the child when appropriate
- “Team approach” to case theory whereby CASA formulates recommendations based on the investigation of factual circumstances and GAL attorney determines legal strategies
- Readily accessible
- Regular communication
  - Best practice ongoing, but at a minimum prior to court and when there is a change in the circumstance of the case



# Preparation for Court and Involvement in Court

- Sharing of facts and interpretations of facts
  - CASA has access, built rapport with families and providers
- Notification
  - Of hearings, FTMs and other meetings, placement moves, formulation of case plans
- Consultation
  - Before filing motions, petitions, and appeals
  - Before entering into settlement agreements, stipulations, consents, orders
- Sitting together
  - Sharing information for posing questions
- Testimony
  - Calling CASA on direct, may be only source for some info
  - Collaborating during direct and cross examinations
- Recommendations



# Information Sharing & Differences in Case Philosophy

- CASA and GAL Reports
  - Shared in advance
  - Introduced as evidence
- Confidentiality
- Appeals process
- Consensus not always expected
- Have an established protocol for conflict resolution
  - Local MOU
    - Grievance procedure
  - Stakeholder meetings
  - Training and facilitated discussions



# Recommendation—Training: Trial Skills & Evidence

- Roles/statutory responsibility of lawyer vs GAL, dual role considerations
- Creating a record, admitting evidence, preserving issues for appeal
- How to write a GAL report; production of report in court
- Communication with children regarding legal proceedings and how to explain legal process to children
  - Interview child considering age, developmental and cultural appropriateness



# Recommendation – Training: Topical

- Placement stability
- Permanency
- Older youth
- Educational rights
- ICWA
- Runaway status
- Psychotropic meds
- Dissolved adoptions
- Dually adjudicated youth



# Recommendation: Ensure competent and adequately compensated representation

- Appointment/pay structure
  - Contract vs staff vs appointment list
  - In-court vs out-of-court time
  - Amount
- SAAG efforts



# Recommendation: Raise Your Bar!

- Professionalism, ethics, accountability
- Become a CWLS: <http://www.naccchildlaw.org/?page=Certification>
- Thank you for being here!





# Resources

- *Strengthening Legal Representation for Dependent Children: A Best Practice Guide for Attorney and CASA Collaboration*
  - <https://www.gacasa.org/wp-content/uploads/2017/06/Strengthening-Legal-Representation-Guide.pdf>
- NCJFCJ Enhanced Resource Guidelines:
  - <http://www.ncjfcj.org/EnhancedResourceGuidelines>
- ABA Standards
  - [https://www.americanbar.org/content/dam/aba/migrated/family/reports/standards\\_abuseneglect.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf)



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