

**XXIX. GUARDIAN AD LITEM (G.A.L.) &
COURT APPOINTED SPECIAL ADVOCATE (C.A.S.A.)**

- A. Code Sections:** O.C.G.A. §15-11-8(4)(expense); O.C.G.A. §15-11-58(permanency planning); O.C.G.A. §15-11-9 (definitions, appointment); O.C.G.A. § 19-7-44 (paternity)
- B. Uniform Juvenile Court Rules:** See U.J.C.R. Rule 23.2 (G.A.L. in Parental Notification of Abortion cases)
- C. Procedure**

1. Generally. An attorney or court appointed special advocate, or both, may be appointed as the child’s guardian ad litem to appear on the child’s behalf. O.C.G.A. §15-11-9(b).

The term “court appointed special advocate” means a volunteer who has been screened and trained regarding deprivation, child development, and juvenile court procedures and has been appointed as a guardian ad litem by the court in a deprivation case. O.C.G.A. §15-11-9(a). This term is derived from organizations including “National C.A.S.A.”® and “Georgia C.A.S.A.”® which have been instrumental in supporting volunteer guardian programs.

2. Appointment.

a. What cases require a G.A.L. The court *shall* appoint a guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child’s behalf or if the interests of the parent, guardian or custodian appearing on the child’s behalf conflict with the child’s interests or in any other case in which the interests of the child require a guardian. O.C.G.A. §15-11-9(b).

b. In every deprivation case. Although Georgia law does not specifically require that a G.A.L. be appointed in every deprivation case, many courts take the position that a guardian ad litem should be appointed in every deprived case because of inherent conflict between the interests of the child and the interests of the parents. A 1976 Opinion of the Attorney General agreed that a guardian should be appointed in deprived cases. 1976 Op. Attorney General No. 76-131. In addition, Georgia receives funds under the Child Abuse Prevention and Treatment Act (PL 23-274)(1974) which requires that children involved in court proceedings because of allegations of abuse or neglect must have a guardian ad litem appointed to their cases.

c. In every termination case. OCGA §15-11-98(a) provides that “in any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as his counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same

person as his counsel.” Failure to appoint an attorney for the child in a termination case is reversible error. In re J.D.H., 188 Ga. App. 466, 373 S.E.2d 279 (1988).

d. In other cases.

(i) Unruly or Delinquent. Whenever the parent is the petitioner or a witness against the child in unruly or delinquency cases, there would appear to be a conflict requiring appointment of a G.A.L. If a parent, guardian or custodian does not appear at a hearing, the court should not proceed until a G.A.L. has been appointed. O.C.G.A. §15-11-6(b).

(ii) Custody case between parents. Superior Courts are increasingly using a G.A.L. in custody cases. See, e.g., Daniel v. Daniel, 235 Ga. App. 184, 509 S.E.2d 117 (1998). In fact, the denial of a motion to appoint a G.A.L. in an action between parents where both parties request the appointment can amount to an abuse of discretion. See Padilla v. Melendez, 228 Ga. App. 460, 491 S.E.2d 905 (1997).

(iii) Other litigation. O.C.G.A. §29-4-7 provides “when a minor is interested in any litigation pending in any court in this state and he has no guardian or his interest is adverse to that of his guardian, such court may appoint a guardian for the minor.” See Stewart v. Turner, 229 Ga. App. 119, 122-123, 493 S.E.2d 251 (1997).

(iv) Paternity/legitimation. See O.C.G.A. §19-7-44.

e. When the G.A.L. is appointed. A G.A.L. may be appointed at any stage of a proceeding under this article, on application of a party or on the court’s own motion. O.C.G.A. §15-11-9(b). National C.A.S.A. and Georgia C.A.S.A. urge appointment at the earliest stages of the proceedings. The “Guidelines for Georgia Courts in Deprivation Cases” Georgia Supreme Court Child Placement Project (Chapter 8, May, 1998) recommends that the G.A.L. be present at the 72-hour hearing.

f. Who can be a G.A.L. Some courts use only attorney guardians, others use a combination of attorneys and C.A.S.A.s or other trained citizens and volunteers, and yet others use C.A.S.A.s or trained citizens and volunteers exclusively. A party to the proceeding or the employee or representative of a party to the proceeding shall not be appointed. O.C.G.A. §15-11-9(b).

g. Order of appointment. The Court should enter an Order outlining the specific duties of the G.A.L. (See sample form in “D” below”).

3. Duties.

a. Generally. A guardian ad litem is to protect the interests of the child in all matters relating to the litigation. In re J.S.C., 182 Ga. App. 721, 723, 356 S.E.2d 754 (1987).

b. Recommendations. The guardian must be both an advocate for the child and an investigator for the court. National C.A.S.A. has recommended that a guardian should perform the following duties:

- Act as an independent fact finder whose task it is to review all relevant records and interview the child, parents, social workers, teachers, and other persons to ascertain the facts and circumstances of each child's situation.
- Ascertain the interests of the child, taking into account the child's age, maturity, culture and ethnicity.
- Seek cooperative resolutions to the child's situation within the scope of the child's interest and welfare.
- Provide reports, preferably written, of findings and recommendations to the court at each hearing to assure that all the relevant facts are before the court.
- Appear at all hearings to represent the child's interests, providing testimony when required.
- Explain the court proceedings to the child, when appropriate, in language and terms that the child can understand.
- Ask that clear and specific orders are entered for the evaluation, assessment, services and treatment of the child and the child's family.
- Monitor implementation of service plans and dispositional orders to determine whether services ordered by the court are actually provided in a timely manner, and are accomplishing their desired goal. Monitor the progress of a case through the court process and advocate for timely hearings.
- Inform the court promptly if services are not being made available to the child and/or family, if the family fails to take advantage of such services, if services are not achieving their purpose, and bring to the court's attention any violation of orders, new developments or changes in the child's circumstances.
- Advocate for the child's interests in mental health, education, and other community systems.

c. Report to the Court. National and Georgia C.A.S.A. teach that the guardian should prepare a report with recommendations and make the report available to all parties and the court. Many courts allow guardians to present their findings orally, in narrative form. See C.J.C.J. Guardian Ad Litem Committee "Survey of Guardian Ad Litem Practice" paper presented at Spring 1995 C.J.C.J. Conference, Jekyll Island, Georgia. In at least one case, the Court of Appeals has

even favorably considered post hearing recommendations submitted in writing to the trial court. See In re R.U., 223 Ga. App. 440, 477 S.E.2d 864 (1996).

Other courts, however, require the guardian to give findings and recommendations in the form of testimony, subject to cross-examination. See e.g., Matherly v. Kinney, 227 Ga. App. 302, 489 S.E.2d 89 (1997); In re C.D.C., 230 Ga. App. 237, 495 S.E.2d 872 (1998).

d. Courtroom participation. Statute or case law does not presently govern the extent of G.A.L. involvement in courtroom procedures, beyond the presentation of a report and recommendation. Through the appointment of a G.A.L., the minor is “in effect made a party to the action.” Miller v. Reiser, 213 Ga. App. 683, 446 S.E.2d 233 (1994). Thus, an attorney G.A.L. may be allowed to cross-examine, call witnesses, and object to whether the child should be required to testify. See e.g., In re S.L.W., 221 Ga. App. 509, 471 S.E.2d 579 (1996). National and Georgia C.A.S.A. recommend that non-attorney guardians have access to an attorney who can file legal motions, request a hearing, examine and cross examine witnesses and subpoena and introduce witnesses.

The G.A.L. has the right to appeal on behalf of the child. In re R.A., 226 Ga. App. 18, 486 S.E.2d 363 (1997).

4. Permanency Planning.

a. Attending case reviews and citizen foster care review panels. Although the involvement of the G.A.L. in the permanency plan often varies from court to court, National C.A.S.A. and Georgia C.A.S.A. recommend that the guardian participate in all planning or treatment meetings. In fact, O.C.G.A. §15-11-58(1)(3) permits the citizen review panel to recommend termination of parental rights directly to the G.A.L. The “Guidelines for Georgia Courts in Deprivation Cases” Georgia Supreme Court Child Placement Project (May 1998) also recommends that the G.A.L. be notified of all permanency proceedings.

b. Duty to determine whether termination proceedings should be commenced. Although a G.A.L. can be appointed at any time, and may be given such duties as the court may instruct, the deprivation statute provides that the G.A.L. may be appointed with “the duty of determining whether termination proceedings should be commenced.” This so-called “court’s right to a second opinion” (In re V.S., 230 Ga. App. 26, fn. 2, 495 S.E.2d 142 [1997]) can be found in three particular instances:

- (i) O.C.G.A. §15-11-58(g): If DFCS submits a case plan that recommends reunification is not appropriate, and if DFCS declares that it does not intend to seek termination, the court may appoint a G.A.L. to determine whether termination should be commenced;

(ii) O.C.G.A. §15-11-58(k): If, in the course of a hearing on a case plan, DFCS advises the court that it does not intend to seek termination, a G.A.L. may be appointed to determine whether termination should be commenced; and,

(iii) O.C.G.A. §15-11-58(l)(3): When the citizen review panel recommends that a petition to terminate parental rights be filed, a G.A.L. may be appointed to determine whether termination should be commenced.

5. Compensation. O.C.G.A. §15-11-8(4) “Reasonable compensation for a guardian ad litem” [shall be a charge upon the funds of the county upon certification thereof by the court]. In paternity actions, O.C.G.A. §19-7-44 provides that “payment of the guardian ad litem shall be as ordered by the court.”

6. Special Ethical Problems.

a. Attorney for the child can also be G.A.L. An attorney for the child may also serve as the G.A.L. because the fiduciary relationship to the children is the same in both instances. See Dawley et al v. Butts Co. DFACS, 148 Ga. App. 815, 253 S.E.2d 235 (1979).

b. G.A.L. who files termination petition. A G.A.L. who files a termination petition will be allowed to remain as petitioner in the case. But the G.A.L. becomes an “advocate for termination” and cannot also be the “advocate for the child” and a new G.A.L. must be appointed to represent the best interests of the child at the termination hearing. In re J.S.C., 182 Ga. App. 721, 723, 356 S.E.2d 754 (1987).

D. SAMPLE ORDER OF APPOINTMENT

IN THE JUVENILE COURT OF _____ COUNTY
STATE OF GEORGIA

IN THE INTEREST OF:
Minor child(ren).

Case Number:

ORDER APPOINTING GUARDIAN AD LITEM

Upon the application of a party or the Court’s own motion pursuant to O.C.G.A. §15-11-9, it is HEREBY ORDERED AND ADJUDGED as follows:

1. _____, is hereby appointed Guardian Ad Litem to protect the interest of the minor child(ren) named above until final disposition of the case or unless sooner discharged by the Court;
2. The Guardian Ad Litem shall be allowed access to the child(ren) by the caretaker of the child(ren), whether caretakers are authorized agencies including the Department of Family and Children Services, foster homes, parents, relatives, or health care providers; and
3. Upon presentation of this Order, and without any subpoena or further Court process, to any agency, hospital, organization, school, individual or office, human services and/or child caring agencies, public or private institutions and/or facilities, medical and mental health professionals, and law enforcement agencies, the Guardian Ad Litem shall be allowed to inspect and receive copies of any records, notes, and electronic recordings concerning the child(ren) that are relevant to the proceedings filed under this chapter without the further consent of the child(ren) or individual and authorized agencies who have custody or control of the child(ren); and
4. The Guardian Ad Litem shall hold any information received from any such sources as confidential, and shall not disclose the same unless allowed by the Court; and
5. The Guardian Ad Litem shall be given notice of all hearings and proceedings including by not limited to civil, criminal, and juvenile hearings, and all conferences including but not limited to multi-disciplinary team meetings, individual educational program meetings or conferences, involving the child(ren) and otherwise ordered by the Court; and
6. The Guardian Ad Litem shall appear at all hearings, court proceedings and monitor or attend case planning conferences to protect the best interest of the child(ren) unless otherwise directed by the Court; and
7. The child(ren), through the Guardian Ad Litem, shall have party status in any agreement or plan entered into on behalf of the child(ren).

This _____ day of _____, 19_____.

_____, Judge
Juvenile Court of _____ County