



Strengthening Legal Representation
for Dependent Children:
A Best Practice Guide
for Attorney and CASA Collaboration



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INTRODUCTION

Georgia law states that each child involved in a dependency case is a party to the proceedings and must be represented by both an attorney and a guardian ad litem (GAL). An appointed attorney owes the child all duties imposed in an attorney-client relationship and must ensure that the child's legal interests are protected. A guardian ad litem advocates for the child's best interests, and whenever possible, this role must be fulfilled by a CASA volunteer appointed by the court. The attorney for a dependent child may dually serve as the GAL, unless or until a conflict of interest arises, at which point a separate GAL must be appointed. In such circumstance in which the attorney simultaneously serves as a GAL, the appointment of a CASA volunteer is also permissible.

The best form of legal representation for a child incorporates the dual appointment of both an attorney and a CASA volunteer as GAL. Children require an attorney to protect and represent their legal interests in the courtroom. Attorneys file written motions, responses or objections when necessary to protect the child's interests, and they present relevant evidence, including witnesses and exhibits, and initiate appeals when necessary. In addition, children undoubtedly benefit from the appointment of a CASA volunteer, who has the time, compassion, and drive to devote to a child's case and to pursue the child's best interests both in and out of court by advocating for safety, appropriate services and timely delivery, permanency, and well-being. Moreover, the appointment of a CASA volunteer adds another perspective by incorporating interested community members, who are in a unique position to build trust and a rapport with all involved.

To afford dependent children in Georgia with the best legal representation, it is critical that the attorneys and CASA volunteers' respective roles and purpose are clearly defined and understood as mutually beneficial. Open dialogue and a common understanding allow for mutual accountability for providing quality representation and advocacy and minimize misconceptions that could potentially arise when paid professionals and community volunteers work together for a common cause. These erroneous beliefs detract from common interests and goals. Depending on the circumstances of the case and local court practice--a CASA volunteer, as a lay GAL who lacks a formal legal education--may be perceived as operating at a disadvantage in the courtroom setting. Furthermore, CASA volunteers viewed as "do-gooders"--possessing good intentions but lacking the

training and support needed for such an influential role in court proceedings--may be underutilized, yet these volunteers bring first-hand information, life experience, and incorporate community values. Likewise, paid professionals may be less effective if they are seen as devoting too little time and effort to child representation in light of their compensation rather than exhibiting a genuine interest in helping children and families. These misconceptions can create an unintended, negative impact on those involved in the case.

This document is intended to provide a framework for the relationship between attorneys and CASA and begins with an exploration of the crucial roles and responsibilities assumed by both the attorney and the CASA volunteer. The continuing analysis addresses the issues impacting their working relationship in an attempt to clarify respective roles and to ultimately affirm that collaboration leads to positive outcomes for children. With an appreciation for each individual's unique skills and complimentary roles, it is anticipated that the potential for conflicts can be avoided and that the primary focus will remain on the best representation for a dependent child throughout the proceedings. To ensure quality child representation, the partnership between an attorney and CASA volunteer should be structured to include a clear understanding of their roles, cross-training, frequent communication, and an agreed upon conflict resolution process.

The applicability and enforceability of these guidelines should extend to all CASA staff and volunteers, as well as to all attorneys who serve children in dependency proceedings. It is strongly encouraged that the children's attorneys and CASA leadership, with the support of the court, will jointly develop a MOU/protocol to facilitate specific nuances of their local relationship.

ROLES OF THE ATTORNEY AND GAL

The appointed attorney and CASA volunteer must clearly understand the definition and division of their responsibilities. Dependency cases require both expert legal representation and thorough investigation and monitoring.

Role of the Attorney

Upon appointment, and regardless of the model of representation, the attorney owes a child all duties imposed by the law in an attorney-client relationship and is bound by the Rules of Professional Conduct. Duties imposed on the attorney include explaining the nature of the attorney-client relationship to the child in a manner appropriate to his or her developmental level,

advocating for the expressed wishes of the child, counseling the child, maintaining confidences, and ensuring that his or her legal interests are protected at all times.

Under the Georgia Rules of Professional Conduct 1.14, when a client has diminished capacity and is unable to make adequately considered decisions in connection with representation, the attorney is still expected to maintain a normal client-attorney relationship as far as reasonably possible. While an attorney may take protective action, as appropriate, for a client with diminished capacity, Comment 1 to Rule 1.14 notes that children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

The attorney must meet with the child to ascertain his needs, circumstances and views in a manner appropriate to the developmental level and consult with a separately appointed GAL on the case as appropriate. Providing counsel and advice is a significant responsibility owed to the child and includes a duty of informing him of the status of the proceedings and the right to be present and participate. Under Rule 1.2 of the Rules of Professional Conduct, the attorney is required to abide by the child's express preferences concerning the objectives of representation and should consult with the child to determine the means by which such objectives are to be pursued. The attorney will then take such action on the child's behalf, but may limit the scope of the representation if limitation is reasonable under the circumstances.

Under Rule 1.6, privilege attaches to information that the child discloses to the attorney and said information shall not be revealed without the child's informed consent. An exception exists for circumstances in which honoring the duty of confidentiality would result in the child's exposure to a risk of probable harm. Ethical questions begin to arise when an attorney is dually appointed as GAL regarding whether the attorney is bound to keep information confidential when it is in the best interests of the child to disclose.

Role of the GAL

A primary distinction between the role of an attorney and a GAL is that the GAL makes recommendations in the best interests of the child without being bound by the child's express preferences or confidentiality. The entire foundation of the guardian ad litem role rests on the duty to advocate for the child's best interests throughout all proceedings. Under the federal Child Abuse

Prevention and Treatment Act (CAPTA), the state is required to appoint a guardian ad litem in every case involving a victim of child abuse or neglect. The GAL may be an attorney, a lay GAL, or a CASA volunteer, and such person is tasked with the responsibility of obtaining a first-hand, clear understanding of the situation and needs of the child and making recommendations to the court concerning the best interests of the child. This is in contrast to the role of a GAL under the Civil Practice Act, which dictates that a GAL shall be appointed for an infant or incompetent person with the premise of bringing an action and directing counsel on his behalf. In juvenile courts in Georgia, the role of a GAL is not to direct the course of litigation. Instead, the relevant, codified duties of a GAL include the following:

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 the child prior to hearings;
2. In a manner appropriate to child's developmental level, ascertain 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 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 the child's best interests;
9. Advocate for timely court hearings to obtain permanency for the child;
10. Protect the cultural needs of the child;
11. Contact the child prior to any proposed changes in placement;
12. Contact the child after changes in 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 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, updates on child's adjustment to placement, DFCS's and respondent's compliance with 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;
16. When appropriate, encourage settlement and the use of any alternative forms of dispute resolution, and participate in the processes to the extent permitted; and
17. Monitor compliance with the case plan and all court orders.

In an attempt to fulfill the aforementioned duties and responsibilities, the GAL considers thirteen best interest factors in the context of the child's age and developmental needs. As required by statute, the judge must consider and evaluate the following twenty factors in rendering his or her decision:

1. The physical safety and welfare of the child including food, shelter, health, and clothing;
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 such other 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;
5. Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for 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;
9. The mental and physical health of all individuals involved;

10. The home, school, and community record and history of such child, as well as any health or educational special needs of such child;
11. Such child's community ties, including church, school, and friends;
12. Such child's background and ties, including familial, cultural, and religious;
13. The least disruptive placement alternative for such child;
14. The uniqueness of every family and child;
15. The risks attendant to entering and being in substitute care;
16. Such child's wishes and long-term goals;
17. The preferences of the persons available to care for such child;
18. Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child;
19. Any recommendation by a court appointed custody evaluator or guardian ad litem; and
20. Any other factors considered by the court to be relevant and proper to its determination.

Evaluating each of these factors allows the GAL's recommendations to be carefully considered by the court in a dependency proceeding.

VARIOUS PRACTICE MODELS

Legal representation is provided several different ways in Georgia. Juvenile courts use contract attorneys and staff attorneys. The contract attorneys may rotate between representing parent and child clients or may exclusively represent children. Some circuits utilize the public defender's office to serve children. A growing number of juvenile courts have a dedicated GAL/child attorney(s) that are county employees, and a few jurisdictions have a dedicated child's attorney office, independent from the court, which employs full-time attorneys.

The appointment model plays a distinct part in exploring the role and collaboration with child attorneys. Several common appointment methods exist in Georgia.

Best Interest Attorney

A common practice model is the appointment of a GAL attorney to represent the child's best interests. In addition to presenting and questioning witnesses, GAL attorneys make recommendations to the court at the close of evidence, and some submit a written report. However, due to ethical considerations, attorneys serving as GAL may not testify. Strengths of this model, as it relates to attorney/CASA collaboration, include that the attorney is able to strategize

and jointly develop a theory of the case with the CASA volunteer and can provide the court with comprehensive information for the judge to make his or her best interests determination. Furthermore, no challenges exist with representing non-verbal children, and it avoids any discomfort of children directing counsel. The best interest attorney shares a child's wishes with the court, and his wishes are a factor to consider in making best interest recommendations; however, critics of this model contend that the child's wishes may not be given equal consideration and that an attorney, who may have limited specialized training or experience in juvenile court, is allowed broad discretion in evaluating best interests. Furthermore, attorneys who practice under this model may be uncomfortable balancing best interest advocacy within the context of the Rules of Professional Conduct.

Client-Directed Attorney

Other jurisdictions appoint every child a traditional attorney. The child's attorney is client-directed, and the child controls the objectives of the case with his expressed wishes and preferences—formulated after proper counseling—dictating the direction the attorney takes. The attorney elicits the child's preferences in a developmentally appropriate manner, advises the child, and provides guidance. Client-directed representation does not include “robotic allegiance” to each directive of the child-client; some critics of the model argue that the attorney is simply a mouthpiece for the child. Instead, high-quality, client-directed representation involves the attorney's function as a counselor and requires skillful communication between the attorney and child-client. The goal of the relationship is an outcome that serves the client, mutually agreed upon by the attorney and child, following exploration of all options.

To the extent that a child cannot meaningfully participate in the formulation of his position (either because the child is pre- or non-verbal, very young, or for some other reason is incapable of meaningful communication), the attorney will formulate and present a position that serves the child's interests. Such formulation must be accomplished through the use of objective criteria, rather than solely the life experience or instinct of the attorney. The criteria should include, but not be limited to, determining the child's circumstances through a full and efficient investigation; assessing the child at the moment of the determination; examining each option in light of the parent and family network; and utilizing medical, mental health, educational, social work, and other experts.

The engagement and empowerment of the child are strengths of the client-directed model. This model also ensures that the child's wishes and goals are conveyed to the court. Moreover, the clear, distinct role of the attorney ensures that no potential for conflicts of interest will arise between the child's interests and wishes. Challenges that exist with this model include that non-verbal and young children may not be able to direct litigation or have the decision-making capacity or willingness to form considered wishes in regards to all of the different facets of their cases. Furthermore, older youth may make decisions that are not in their best interests. In addition, complexities exist within the context of the substituted judgment analysis, as considering what a child's values and preferences would be if he could talk is subjective. Attorneys must be careful to ensure that substituting judgment is not perceived as a disguised best interest determination and that a child's circumstances--and not the attorney's personal values--guide the direction of the case. When attorneys are appointed in this capacity, a separate GAL must be appointed and questions may arise regarding information sharing and communication.

Dual Role Attorney

Many jurisdictions utilize dual role attorneys. Dual role attorneys are appointed as the child's counsel and also serve as GAL so long as there is no irreconcilable conflict between an attorney's obligations to the child client and her duties as a GAL. In the event of a conflict, the attorney must withdraw as GAL. Some attorneys who practice under this model regard their role on a sliding scale and, depending on the age and developmental level of the child, will be more best interest focused or more client-directed. Strengths of this model include that the child is empowered and engaged in the process. It ensures that the child's wishes, goals, and best interests are all equally conveyed because an ongoing conflict analysis by the attorney ensures that both the child's wishes and best interests are protected. Challenges with this model again include that a child might not have the capacity or willingness to form considered wishes. In addition, the attorneys face a complex analysis regarding substituted judgment and best interests, and courts might be reluctant to acknowledge the attorney's distinct roles, duties, and conflicts. Some courts choose not to utilize this model of appointment due to the numerous ethical considerations regarding accessing and utilizing confidential information as well as other inherent propensities for conflicts.

TRAINING AND APPOINTMENT

State law dictates that pre-appointment training for guardians ad litem shall be approved by the Office of the Child Advocate for the Protection of Children (OCA). For attorneys serving in the role of GAL, these pre-appointment training requirements can be satisfied within the attorney's existing

continuing legal education obligations; they do not require completion of further training hours in addition to those currently required by the State Bar of Georgia. Attorneys often acquire the requisite pre-appointment training through Child Welfare Attorney Trainings sponsored by the Committee on Justice for Children held at the State Bar, Guardian ad Litem trainings hosted by OCA, or by attending the Georgia Association of Counsel for Children's annual Youth Law Conference. Attorneys are responsible for ensuring their pre-appointment training has been approved by OCA. The local CASA programs will ensure that appointed attorneys are familiar with the practices of CASA in their local jurisdiction by providing a copy of the pre-service training materials, extending the opportunity for new attorneys to participate in pre-service or in-service training as either a participant or presenter, and/or ensuring staff are available to address any of the attorney's concerns or questions that may arise during the course of a case.

Prior to appointment, a CASA volunteer receives training appropriate to the role, meets all requirements of an affiliate CASA program, and is actively supervised by such program. The CASA volunteer is trained to understand the role of an attorney and, in particular, the differing responsibilities and duties of attorneys who represent the child's best interests by serving as GALs and those who are client-directed. Attorneys may present to new volunteers at pre-service training or present at an in-service opportunity. Ensuring that CASA volunteers possess a general knowledge of attorney roles and responsibilities helps clarify any confusion of duties, validates the importance of their own personal contribution to a case, and can reduce any feelings of intimidation.

Ideally, volunteers and attorneys can attend training sessions together. Continuing legal education credits can be authorized for training sessions to encourage attorneys to participate in cross training. CASA programs can plan in-service training calendars to include topics of interest to both attorneys and volunteers. With adequate preparation, both attorneys and CASA volunteers will have realistic expectations of and respect for each other's duties, obligations and capabilities.

Appointment

Once a CASA volunteer has been appointed and the order has been executed, the child's attorney is notified of the assignment and provided with a copy of the appointment order for the case record. CASA staff members also notify volunteers who the child's attorney is and ensures contact information is provided. CASA appointment remains effective until permanency is achieved and/or

the court no longer exercises legal jurisdiction. In some circumstances, the appointment may be extended to include a time-limited aftercare period after reunification or after termination of parental rights until the adoption's finalization.

INITIAL AND ONGOING CASE COMMUNICATION

Communication between the attorney and CASA volunteer at the onset and for the duration of the case helps to ensure that each individual possesses the relevant information necessary to carry out his role effectively, helps to prevent disagreements that may impede the court process, and allows the attorney and CASA to share information, which will likely assist them in their respective roles. Upon appointment by the juvenile court, the assigned CASA volunteer will transmit a copy of the Order of Appointment to the attorney, unless the court has already performed this task, and the CASA volunteer and attorney should meet soon after their respective appointments to discuss the case, share information, and strategize to the extent permissible under the jurisdiction's practice model.

In circumstances in which they are not working towards the same outcome, an attorney directed by the child's wishes and a CASA volunteer may be restricted in their communication to the attorney interviewing the CASA volunteer because of the limitations imposed by confidentiality and the attorney client privilege. Contrastingly, communication between a CASA volunteer and a GAL attorney will likely be more collaborative since each person is focused on a determination of what is in the best interests of the child. Communication between a CASA volunteer and a dual role attorney boasts its own set of challenges, as collaboration may begin at the onset of the case and then be limited later if a conflict of interest arises. As a best practice and to minimize any potential issues, the dual role attorney and CASA volunteer should discuss this possibility at the beginning of the case. Understanding that an attorney cannot disclose the basis of the conflict to preserve confidentiality and to avoid compromising the child's position, he should still notify the CASA volunteer if he must become client-directed.

Initial Investigation and Assessment Phase

All GALs are required to conduct independent assessments of a child's case to facilitate their determination of the child's best interests. When the court appoints both a GAL attorney and a CASA volunteer to a dependency case, the attorney and CASA volunteer may decide which party is best suited to each aspect of the investigation and can agree to divide the duties accordingly. An

agreement upon a narrowed set of manageable responsibilities demonstrates mutually beneficial cooperation and will ensure an expedient and thorough investigation, ultimately resulting in the best outcomes for the child.

When both an attorney GAL and CASA volunteer are appointed, it may be beneficial for the attorney to focus his time and efforts on matters of law and the legal aspects of the case and for the volunteer to center his energy to investigate, report, and monitor factual circumstances. This arrangement does not enable one representative to adopt a hands-off approach – it remains of paramount importance that both the attorney and CASA volunteer get to know the child by visiting regularly and assessing the situation. If the child’s circumstances do not render it unreasonable, the CASA volunteer and GAL attorney could make arrangements to visit the child together, at least initially, to jointly explain each representative’s distinct role, the child’s right to be in court, and to answer any legal questions. This joint communication is also beneficial to the child, who can be assured that both the attorney and the CASA volunteer are working together to ensure that his or her best interests are made known to the court.

Under this team approach, the CASA volunteer formulates recommendations based on the investigation of factual circumstances, and the GAL attorney determines legal strategies. The unifying goal is to represent the best interests of the child. The CASA cannot achieve this goal without the expertise of counsel, nor can the attorney succeed in court without the diligent preparation of the CASA volunteer. This relationship is primarily based on the unique position of CASA to provide individualized attention and a sense of urgency to each case. A CASA volunteer is generally assigned to no more than two cases at a time, generally has more time to devote to a particular case, and is a highly valuable resource because of his ability to obtain information informally--information that could be difficult for the attorney to acquire without formal discovery. For example, parents may be reluctant to talk to yet another lawyer, but CASA volunteers often appear less authoritative and intimidating, and they can help parents to understand the importance of implementing necessary changes, as well as elicit information relevant in the determination of the child’s best interests.

If a CASA volunteer is appointed to a case in which the child is represented by a client-directed attorney, each representative will likely need to conduct separate evaluations and personally and independently evaluate the best interest factors to ensure that the investigation is comprehensive

and reliable. Regardless of the role of the attorney, at this initial stage of proceedings, the CASA volunteer should still consult with the child attorney to discuss any relevant issues.

Ongoing Communication

The attorney and CASA volunteer must be accessible to each other and willing to invest the time to discuss the case as often as circumstances require. Ideally, regular communication between the attorney and the CASA volunteer should occur monthly via telephone, email, or face-to-face to best serve the child involved. However, at a minimum, the attorney and the CASA volunteer should communicate prior to court hearings and at any time there is a change in the circumstances of the case. Both parties should make every effort to communicate any updates and/or concerns to each other at the earliest possible time. Regardless of whether the attorney is client-directed or best-interests focused, continued communication between the two is essential in providing for the most comprehensive representation, thereby guaranteeing that the dependent child remains at the forefront of the matter at all times.

Regular consultation will ensure that the CASA volunteer can access legal guidance pertaining to the child when necessary and that the attorney receives updated information about the child and new case developments as soon as possible. When a GAL attorney is appointed, frequent communication allows the attorney and CASA volunteer to anticipate legal issues or problems, to contemplate any settlements and stipulations, to brainstorm, and to respond creatively to the child's unmet needs. In advance of any court hearing, the two should meet to prepare and develop recommendations based on factual information and legal strategy.

Courtesy should be extended to communicate with each other whenever there are known changes to the case, appointments need to be canceled or rescheduled, or to give advance notice of meetings. It is expected that specific protocols for communication and timeframes will be established on a local level and will be adhered to by both the attorneys and CASA volunteers, which include procedures for timely responses to voicemail and email. While CASA program staff may act as intermediaries between volunteers and attorneys to facilitate communication when necessary, it is best for the CASA volunteer and attorney to communicate directly.

PREPARATION FOR COURT

The CASA volunteer and GAL attorney should collaborate prior to court to maximize the effectiveness of the volunteer's advocacy.

State law requires that a GAL shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances in the case to which he has been appointed, to the same extent and in the same manner as the parties to the case are notified to such matters. If the attorney is aware that the CASA volunteer is unable to attend court proceedings, extra efforts should be made by both individuals to ensure satisfactory pre-trial communication and information sharing, where appropriate, is conducted.

The GAL is notified of the formulation of any case plan, as well as any pending moves and placement changes, of any case to which he is appointed, and may have the opportunity to be heard by the court about such plans. In addition, the GAL shall have notice of, and an opportunity to participate in, decision making meetings related to the child, including family team meetings and multidisciplinary team meetings.

The attorney should consult with the CASA volunteer when filing motions for review, facilitating agreements, filing termination of parental rights petitions, as well as preparing appeals. The CASA volunteer will be prepared to contribute and validate his recommendation to any stipulations, consents or settlement agreements that may arise. As a lay GAL, the CASA volunteer cannot engage in activities which resemble the practice of law and usually does not formally stipulate or consent; however, the CASA volunteer has the opportunity to articulate his opinion on the matter prior to the court's acceptance of the agreement. The attorney can also share court orders with the CASA volunteer to review prior to being signed by the judge, so the volunteer can offer input regarding an error or omission when applicable.

Both the CASA volunteer and the attorney encourage the court and all other parties to expedite the progress of the case to obtain permanency for the child as quickly as possible, and pursuant to state law, a GAL attorney and a CASA volunteer encourage settlement and promote the use of available alternative forms of dispute resolution and mediation and participate whenever possible.

INVOLVEMENT DURING COURT PROCEEDINGS

Whether appointed alongside an attorney GAL or as the sole GAL, the CASA volunteer is required to attend court hearings and other proceedings to advocate for the child's best interests and makes every effort to ensure this duty is fulfilled. The expectations of the CASA volunteer will be clearly communicated during the initial training process and reinforced by the CASA staff throughout case assignment. The volunteers are prepared and present in court to avoid any delays in the proceedings. Should circumstances arise in which a volunteer cannot be present, the volunteer supervisor will serve as a substitute and collaborate with the attorney as the volunteer would normally do.

Ideally, a GAL attorney and a CASA volunteer will sit together during court. This physical proximity strengthens representation through information sharing that enables the CASA volunteer and attorney to share information pertinent to the testimony, case presentation, or questions that may require the court's attention, and to influence the direction of the case and/or recommendations. The CASA volunteer often has information that is helpful to the testimony and evidence presented during court. If this is not exercised in partnership with the child's/GAL attorney, the court determines how and when CASA should share information and/or be recognized by the court during the hearing.

In several affiliate CASA programs, it is common practice for the judge to allow the volunteer to question witnesses directly or to pose the question to the judge to ask of the witness. It is the duty of the program's staff to ensure volunteers are adequately trained and prepared for this opportunity when it arises. The ability to ask questions of a witness serves to further reinforce the valuable contribution that which a CASA volunteer can make to a case and presents an opportunity to extract any relevant information that the attorneys might not have solicited.

The attorney should ensure that the CASA volunteer or staff person is included in any pre-trial hearings to guarantee that all relevant recommendations are shared prior to court. In addition, throughout court proceedings, a CASA volunteer should be encouraged to approach the bench during side bar discussions with counsel to ensure the best interests of the child are considered. If a child is brought into chambers to speak with the judge, the CASA volunteer should be permitted to accompany the child as well.

Testimony

According to state law, the court, a child, or any other party may compel a GAL for a child to testify as to the proper disposition of a proceeding. While the CASA volunteer should not be perceived as the attorney's client, it may be useful for the GAL attorney to routinely call the CASA volunteer as a witness to offer their shared direction and collaborative recommendations. Direct questioning encourages the volunteer to speak freely on the matter, provides a forum for recommendations, and helps avoid the potential for hearsay. Most importantly, given high caseloads and limited resources, the CASA volunteer is often one of a few constant and reliable figures involved in the case and is therefore able to maintain an ongoing relationship with the child from both personal observation and extensive knowledge of case history and progress. The GAL attorney should consider the CASA volunteer's knowledge as an asset, given the volunteer's unique ability to observe and note developmental and personal progress in relation to the child – aspects of life which can often be lost in the world of ever-changing placement and care providers. Additionally, the volunteer's testimony is particularly poignant when the child is not present. In such circumstances, the CASA serves a valuable role in giving a voice to the child. If the attorney anticipates calling the CASA volunteer to testify, he should notify the volunteer ahead of time to prepare and give a sense of what questions can be expected.

The law also states that the court shall ensure that parties have the ability to challenge recommendations made by a GAL or the factual basis for the recommendations in accordance with the rules of evidence applicable to the proceeding and that a 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 GAL's report, even if the GAL is not identified as a witness by a party. Since a party to the case has the right to challenge the recommendations and the factual bases for the recommendations made by the CASA volunteer, a volunteer should be prepared for such confrontation at each hearing, particularly when a client-directed attorney for the child has been appointed. CASA staff should help ensure volunteers are adequately trained and understand the nature of cross examination.

Recommendations

GALs provide written reports and make recommendations as to the best interest of the child. The CASA volunteer and attorney GAL may have similar or different recommendations regarding a case. No requirement exists to have the same recommendations, and if they are different, each individual

presents his own thoughts separately. Unlike a GAL, a client-directed attorney will not make a recommendation and will instead present the child's position.

At the end of proceedings, the CASA volunteer should be prepared for the judge to ask for recommendations as well as if there are any remaining questions. The attorney should remind the judge to ask for the CASA volunteer's recommendations if they have not been solicited prior to the close of evidence.

APPEALS PROCESS

A child is a party to the proceedings and has a right to appeal; however, in *In the Interest of W.L.H.*, the Georgia Supreme Court declared that a child does not have standing to appeal through his attorney without the consent or support of the child's GAL. If a child has been appointed a GAL attorney, the attorney handles the appeal on the child's behalf. If a child has a client-directed attorney and a separate CASA volunteer appointed as GAL, the CASA volunteer must acquiesce to the child's appeal in order for the attorney to proceed with filing.

While there may be circumstances in which it would not be in the best interests of the child to have his or her appeal granted, it is the position of Georgia CASA that a CASA volunteer should not limit a child's access to a higher court without careful consideration. If a CASA volunteer disagrees with a child's decision to appeal, the CASA volunteer or staff may consult with Georgia CASA.

Understanding that case law is ever-developing is extremely important, and both the attorney and the CASA volunteer should make reasonable attempts to stay abreast of current laws and practice.

INFORMATION SHARING

CASA Reports

CASA volunteers provide written reports to the court outlining detailed information regarding the child's best interests, including recommendations regarding placement of such child, the child's degree of participation at visitation, updates on the child's education, health, and well-being, and DFCS and parent's compliance with court orders and case plans. The report is a valuable tool in a dependency case, and the volunteer should devote adequate time and energy to ensuring that it is as comprehensive as possible, outlining what exactly is required to meet the best interests of the child. Parties and their attorneys shall be afforded an opportunity to examine reports received by

the court in advance of a court hearing at a mutually agreeable time. A CASA volunteer is required to submit a report regardless of whether the CASA volunteer and the attorney agree on their recommendations.

The CASA report is a crucial piece of evidence and can be used by the GAL attorney to direct the case. As noted previously, the CASA volunteer may be called as a witness on direct by the GAL attorney, but the volunteer should be aware of the likelihood of cross-examination, as parties and their counsel have the opportunity to controvert written reports and cross-examine those who created them. They should be prepared to be questioned on the recommendations contained in the report and the reasons supporting them. Therefore, the volunteer should ensure that the report meets all local program standards, contains current and relevant information, and is presented to the court as a comprehensive depiction of case progress since the last hearing.

Confidentiality

According to statute, CASA volunteers are entitled to access to all records and information relevant to the child's case, with the exclusion of those protected by disclosure. Such records obtained are deemed confidential and are not to be disclosed except as ordered by the court. However, the CASA volunteer's report should be made available to all parties involved in advance of the court hearings.

If a CASA volunteer is appointed alongside a GAL attorney, information sharing and collaboration is relatively straightforward, as they have access to the same information and share a mutual best interest focus. However, client-directed attorneys may not be able to share all of the information they have, and it is important for the CASA volunteer to understand that this is because of their ethical duties to the child-client, not because of a lack of trust or desire to communicate. Disclosures made by a child to the attorney are protected by attorney client privilege, and particularly in relation to a client-directed attorney, shall not be shared with the court or any other party.

DIFFERENCES IN CASE DIRECTION PHILOSOPHY

Because of individual perspectives and the diverse roles of an attorney and CASA volunteer, opinions about the case's direction and recommendations may differ, and neither party can expect that consensus will always occur. Nonetheless, attorneys and CASA are expected to share a mutual

commitment to maintaining a positive working relationship and to work together professionally and respectfully as they strive for the best outcome for the child involved.

A CASA volunteer is an independent voice for the child and charged with advocating for the best interest of the child, may disagree with the attorney's direction on behalf of the child or possess a different approach to a case altogether. Both the CASA volunteer and attorney should respect this difference, as it is not necessary for the child's attorney and CASA volunteer to come to agreement in their positions or for one to elevate above the other.

It is also important for the CASA volunteer to understand that a GAL or dual role attorney's direction and approach may necessarily change throughout a case. As noted at the beginning of this guide, it is the duty of the dual role attorney to represent the child's express preferences, unless they are seriously injurious to the child, whilst at the same time advocating for his best interests. If the child and the attorney agree on what the desired outcome of the case is, this can be simple to achieve. And, if this outcome is in the best interests of the child, the attorney may begin with the same direction as the volunteer. However, the child may express different preferences at a later stage of the case, and at that time, if the child cannot be counseled otherwise, the attorney will have to reevaluate and adopt a new approach. The CASA volunteer should recognize that the duty to advocate for the child's best interests then rests solely on him for the remainder of the case.

CONFLICT RESOLUTION

By establishing frequent communication and having a clear understanding of the responsibilities the attorney and CASA volunteer each possess, most disagreements can be prevented. Participation in quarterly stakeholder meetings, held to discuss implementation of new protocols and practices as well as any other issues that have arisen and need further discussion, often eliminate the need for filing a grievance, as conflicts are avoided through building relationships and trust. However, in the event concerns arise that either the CASA volunteer or attorney has acted outside his respective role or has overstepped boundaries, a clear process for sharing and resolving grievances should be in place.

Grievance Procedure

An attorney-CASA protocol should be created to include methods for handling concerns that arise between an attorney and a CASA volunteer when they are unable to resolve it themselves. Usual

practice includes addressing the issue with the respective supervisors, who would assist in determining the best course of action for facilitating reconciliation. While it is hoped that any grievance can be resolved with the supervising staff, astringent circumstances may require the involvement of the Court or others.

It may become necessary for the CASA program and/or attorney to request dismissal of a CASA volunteer through the court. If it is determined that the attorney has acted outside his professional duties, the CASA program may notify the court and/or the bar depending on the severity of the situation.

CONCLUSION

Establishing an effective and proficient working relationship between CASA volunteers and attorneys is crucial; research and experience have demonstrated that it is unrealistic to expect that either an attorney or CASA volunteer can adequately represent children alone. Children need and deserve the best quality representation possible, and the dual appointment of both an attorney and a CASA volunteer meets this need. As with many joint endeavors, the individuals are able to perform the tasks they are trained and prepared to do, and by specializing and combining strengths, an even better result emerges.

This Guide assists in enabling all attorneys, CASA staff, and volunteers to work cooperatively and efficiently and to maintain a positive working relationship to achieve the best outcomes for children. When the child's attorney and CASA volunteer function together in an atmosphere of mutual respect and commitment to collaboration, abused and neglected children receive the best quality legal representation and can be assured that their voices have been heard by the Court.

RESOURCES

- ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings (2011)
- ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (2003)
- “CASA Volunteers and Attorneys: A Partnership That Works,” Rebecca H. Heartz, MA & Irene Cooke, JD. (September 1995)
- Child Abuse Prevention and Treatment Act, 42 U.S.C. §5106A(b)(2)(B)(xiii)
- Civil Practice Act, O.C.G.A. §§ 9-11-17(c), 9-11-19(c)
- Formal Bar Advisory Opinion 10-2, adopted by the Supreme Court of GA, Case No. S11U0730, January 9, 2012
- Georgia Proposed Model Code
- Georgia Rules of Professional Conduct
- Health Insurance Portability and Accountability Act, 45 C.F.R. § 164.512(e)
- In the Interest of W.L.H., 314 Ga. App. 185 (2012)
- Legal Academy—“A Child’s Right to Counsel in Dependency Proceedings,” Willie Lovett, Trenny Stovall, Aimee Stowe. (April 16, 2013)
- NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001)
- O.C.G.A. §§ 15-11-103, 15-11-104, 15-11-105, 15-11-106
- Uniform Law Commission (National Conference of Commissioners on Uniform State Laws) Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings (2006)



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