

Section 15-11-103 Child's right to an attorney; appointment of attorney (effective January 1, 2014)

(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article.

(b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child.

(c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship.

(d) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding.

(e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court.

(f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding.

(g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to:

- (1) Obtain and employ an attorney of such party's own choice;
- (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or
- (3) Waive the right to an attorney.

HISTORY: Code 1981, § 15-11-103, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Section 15-11-104 Application of provisions of Article 1; duty to provide notice to foster parents and others providing care

- (a) The court shall appoint a guardian ad litem for an alleged dependent child.
- (b) An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.
- (c) A party to the proceeding, the employee or representative of a party to the proceeding, or any other individual with a conflict of interest shall not be appointed as guardian ad litem.
- (d) A court 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 a guardian ad litem.
- (e) A lay guardian shall not engage in activities which could reasonably be construed as the practice of law.
- (f) Before the appointment as a guardian ad litem, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the Protection of Children. For attorneys, preappointment guardian ad litem training shall be satisfied within the attorney's existing continuing legal education obligations and shall not require the attorney to complete additional training hours in addition to the hours required by the State Bar of Georgia.
- (g) Any volunteer guardian ad litem authorized and acting in good faith, in the absence of fraud or malice and in accordance with the duties required by this Code section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section.
- (h) The court may remove a guardian ad litem from a case upon finding that the guardian ad litem 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 service as inappropriate or unnecessary.
- (i) A guardian ad litem shall not engage in ex parte contact with the court except as otherwise provided by law.
- (j) The 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.
- (k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding.
- (l) 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.
- (m) A guardian ad litem 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.

HISTORY: Code 1981, § 15-11-104, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Section 15-11-105 Duties of guardian ad litem

(a) A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed.

(b) In determining a child's best interests, a guardian ad litem shall 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. Such factors shall include:

- (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.

(c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum:

- (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 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.
- (d) (1) Except as provided in Article 11 of this chapter, 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.
- (2) A guardian ad litem shall 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 by the court about such plans.
- (e) Upon 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. Such records and information shall not include records and information provided under Article 11 of this chapter or provided under Chapter 4A of Title 49.

(f) All records and information acquired or reviewed by a guardian ad litem during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court.

(g) Except as provided in Code Section 49-5-41, regarding access to records, any guardian ad litem who discloses confidential information obtained during the course of his or her appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem shall maintain all information and records regarding mental health, developmental disability, and substance abuse according to the confidentiality requirements contained in Code Section 37-3-166, 37-4-125, or 37-7-166, as applicable.

(h) In the event of a change of venue, the original guardian ad litem shall, as soon as possible, communicate with the appointed guardian ad litem in the new venue and shall forward all pertinent information to the new guardian ad litem.

HISTORY: Code 1981, § 15-11-105, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-7/SB 364.