

INTENSIVE CARE

Best Practices In GAL Advocacy

WHY INTENSIVE CARE?

The GAL has very broad powers to affect the outcome of the case – if those powers are properly used.

The GAL role in our Code is one of the most intensive roles in Juvenile Court.

GAL ICU

Impartiality

Comprehensiveness

Ubiquity

WHAT IS A GAL?

There are two kinds of GALs provided for in the Code:

Attorney GALs and Lay GALs.

ITIO R.D., 346 Ga. App. 257 (2018) (the examples given in this case of things which constitute the practice of law included examining witnesses and making evidentiary objections).

WHAT IS A CASA?

“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.” OCGA 15-11-104(d)

The duties of the CASA are the same as those of the GAL. OCGA 15-11-106(a)(2)

The only statutory function of a CASA is as a GAL: the terms “CASA” and “Lay GAL” are interchangeable.

IMPARTIALITY

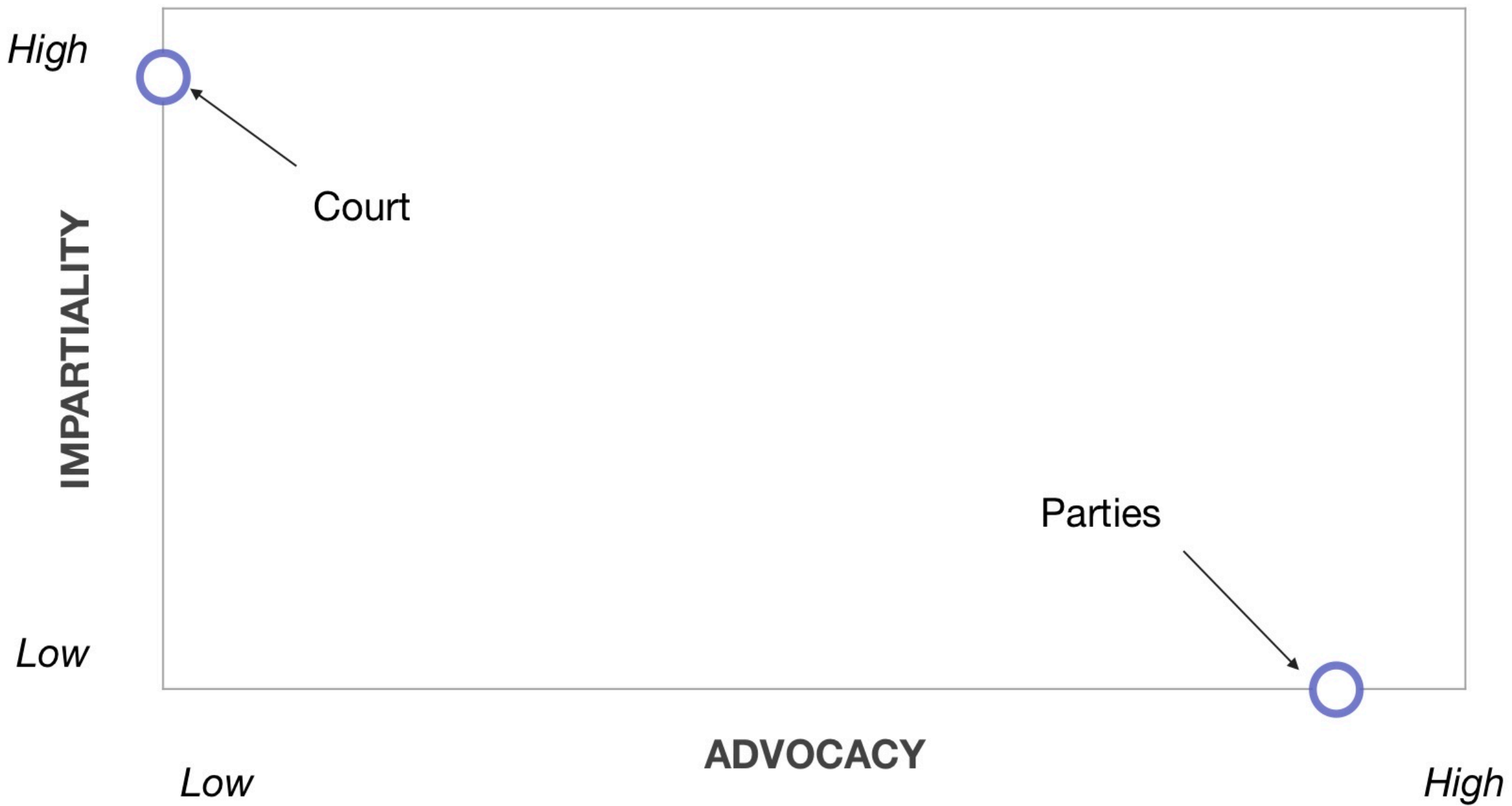
BEST INTEREST DETERMINATION

“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...”

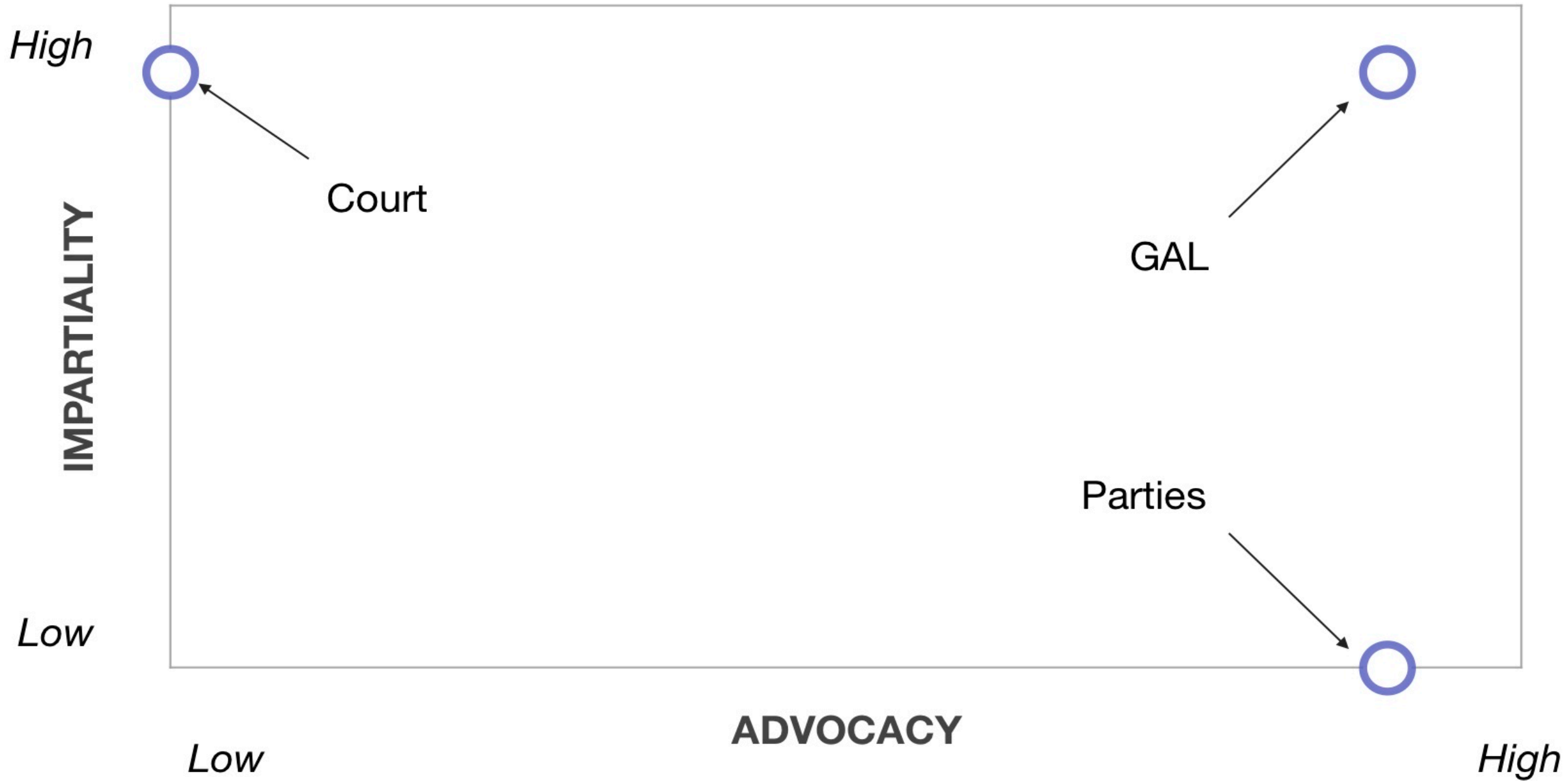
15-11-26 has 20 factors; 15-11-106 has 13.

The purpose of the best interest factors is to *objectify* the GAL recommendation. It is based upon *evidence* and must be rigorously supported – hence the requirement for written reports.

Advocacy-Impartiality Continuum 1



Advocacy-Impartiality Continuum 2



ITIO J.G., 350 GA. APP. 588 (6/19/19)

- Mom poisoned dad & child; dad took child to hospital. DFCS removed the child.
- Dad appeared pro se and stipulated to dependency. Child stayed with DFCS.
- Next hearing, dad has counsel and withdraws stipulation. DFCS declines to stipulate that the child is dependent. Evidence:
 - DNA positive – dad is biological father;
 - Dad resides with his brother and niece and is currently employed;
 - Dad's drug screen is negative;
 - Dad had criminal history, all before the birth of the child, including a child molestation charge that was reduced to misdemeanor battery with no conditions regarding children;
 - DFCS argues that child should be returned to dad because there's no dependency.
- GAL recommends non-reunification.
- Ct gives custody ultimately to grandmother.

ITIO J.G., 350 GA. APP. 588 (6/19/19)

- GAL's recommendation for non-reunification and custody to relative was based on the GAL's inability to to verify dad's living arrangements and place of employment, but this did not give the court a specific factual basis to deny the father a case plan.
- It was error to grant custody to the grandmother where there was no evidence of present dependency.
- [add quotation from AT's presentation]

“GALs may often 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 on a deeply-ingrained misunderstanding.”

~*GAL Advocacy Guide*



BEST INTEREST FACTORS DO NOT COME INTO PLAY UNLESS
THERE IS EVIDENCE OF PRESENT DEPENDENCY.

WHEN THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE
REMOVAL, CONTINUED REMOVAL, OR TERMINATION, THE BEST
INTEREST OF THE CHILD IS ALWAYS TO REMAIN IN OR BE
RETURNED TO PARENTAL CUSTODY.


IMPARTIALITY = INDEPENDENCE

The Independence of the GAL is essential to impartiality.

The ability of the GAL fully to investigate, 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.

“CAPTA makes it the job of 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”. In keeping with this broad mandate, the GAL in Georgia’s juvenile courts is not primarily a witness, but an advocate.

The Georgia Court of appeals has noted that, generally, a GAL is not a “witness called against” a party; that is, the GAL is not there to support or attack the position of any of the parties. *Simmons v. Williams*, 290 Ga. App. 644, 647 (2008).



“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.”

O.C.G.A. §15-11-104(m).

COMPREHENSIVENESS

COMPREHENSIVENESS

The GAL must conduct a thorough investigation out of court.

DISCOVERY & CONFIDENTIALITY

The GAL is required to “[c]ommunicate with health care, mental health care, and other professionals involved with [the] child's case” and to “[r]eview case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents”. 15-11-106(c)(5), (6).

The presentation of the order of appointment secures access for the GAL “to all records and information relevant to a child’s case to which he or she is appointed...” 15-11-105(e).

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. 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”, but that such disclosure requires a review of the material sought and an order by the court.

“[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.” *ITIO J.N.*, 344 Ga. App. 409, 411 (2018).

COMPREHENSIVENESS

The GAL must present a written report at each hearing* 15-11-105(c)(15)

This report, as for all writings considered by the court, must be properly tendered and admitted in evidence.

“Writing” or “recording” means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, magnetic impulse, or mechanical or electronic recording or other form of data compilation. 24-10-1001

“The Juvenile Code clearly contemplates that witnesses must be sworn and subject to cross-examination, hearsay will not be allowed (unless under a statutory exception), parties have the right to confront witnesses, and rules of evidence regarding the introduction of exhibits should be followed. Like the right to counsel, these rights are not optional.” *ITIO C.H.*, 343 Ga. App. 1, 13 (2017)

COMPREHENSIVENESS

The GAL must also take into account the evidence adduced at the hearing.

ITIO T.Y., 350 GA. APP. 553 (6/18/19)

- In 2015, mom consented to a dependency order placing her six children in DFCS custody.
- The mother made 2 motions to have the children returned to her, both of which were denied.
- In July 2017 the mother filed another motion for return. A multi-day hearing was held on August 31, Sept 22, and Sept 28, 2017. It was a factually complex case with many witnesses and exhibits. Court's order denying return was entered on Jan. 19, 2018. Mom appealed.

ITIO T.Y., 350 GA. APP. 553 (6/18/19)

- The seeming rationale was that the juvenile court believed that mom would not protect the children from her husband when he finished a five-year prison sentence that began in approx. 2017.
 - DFCS Case Manager: children should be returned to mom.
 - DFCS Supervisor: Children will not be protected when dad gets out of prison.
 - GAL: Children will not be protected when dad gets out of prison.
- Of note: “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 the children’s minority”.

ITIO B.R.J., 344 GA. APP. 465 (2018)

- The juvenile court found after an adjudicatory hearing that the children were dependent “as ‘a result of substance abuse by the children’s parent, ... [and 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”. Fifteen month after the entry of the adjudication order, DFCS filed a petition to terminate the mother’s parental rights. The juvenile court terminated, based in part upon the GAL’s recommendation.

ITIO B.R.J., 344 GA. APP. 465 (2018)

- The Court of Appeals concluded, after a lengthy recitation of the evidence adduced at the TPR trial, that “at the 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”. 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”.

ITIO B.R.J., 344 GA. APP. 465 (2018)

- The GAL testified that she “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.” Based on these concerns, the GAL recommended terminating the mother’s parental rights.

UBIQUITY

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The GAL is required by O.C.G.A. §15-11-105 to attend all hearings and “other proceedings” in order to advocate for the best interests of the child.

The best description of the GAL’s role in this respect is “quasi-party”.


UBIQUITY

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

UBIQUITY

The GAL is required by O.C.G.A. §15-11-105 to attend all hearings and “other proceedings” – “other proceedings” would include anything that could result in a court ruling, even indirectly:

- All hearings
 - Bench conferences
 - Conferences in chambers
 - Settlement meetings and mediations
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The GAL has a unique and uniquely powerful role in child welfare proceedings through the methodical presentation of evidence-based recommendations and impartial advocacy.



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