



Adjudication and Disposition Hearings

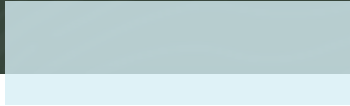




**Understand the
fundamentals of
effective
adjudication and
disposition
hearings**



**Understand the
rights of the
parties and the
roles of the child's
representatives**



**Understand how to
integrate best
interest factors
into decision
making**



LEARNING OBJECTIVES



THE BIG PICTURE



JURISDICTION

A juvenile court's ability to exercise authority over the parties is **dependent upon the existence of jurisdiction as defined by the evidence entered into the record.**

LIMITED JURISDICTION

A court of limited jurisdiction has authority to hear and decide cases only of a particular subject matter.

Wex Online Legal Dictionary, Legal Information Institute, Cornell University Law School, 2022.

JURISDICTION

“The juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action ... [c]oncerning any child who ... [i]s alleged to be a dependent child.”

OCGA 15-11-10(1)(C).



**PURPOSEFUL ADVOCACY FROM PETITION
THROUGH DISPOSITION:**

CREATE THE ROAD MAP FOR YOUR CASE

OCGA § 15-11-152. Contents of petition

“A petition alleging dependency ... shall set forth plainly and with particularity:

- (1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought;
- (2) [child’s name and address];
- (3) [parents’ names and addresses];
- (4) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and
- (5) Whether any of the information required ... is unknown.

OCGA § 15-11-152. Contents of petition

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(1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought;

Case Resolution begins with the Petition

Concise, specific grounds for dependency in petition



Evidence that is relevant at trial



Grounds for dependency found by the court



Case plan goals would resolve an adjudicated ground for dependency



Disposition order incorporates case plan goals



Progress on case plan goals reviewed until case resolution

Before the Adjudication Hearing

**Time limits for
filing of petition**

OCGA 15-11-151

**Service of
process**

OCGA 15-11-161

Discovery

**OCGA 15-11-170
(mandatory,
discretionary,
reciprocal)**

**Time frames for
the hearing**

OCGA 15-11-181



The Adjudication Hearing

The **Adjudication** is the “trial” – the stage of proceedings where the court determines whether allegations of dependency, abuse, or neglect **in the petition** concerning a child are **supported by the evidence** and, therefore **legally sufficient** to allow state to intervene and overrule parental decisions.



CLEAR AND CONVINCING EVIDENCE

“[T]he party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt” (emphasis added).

Colorado v. New Mexico, 467 U.S. 310, 316 (1984)

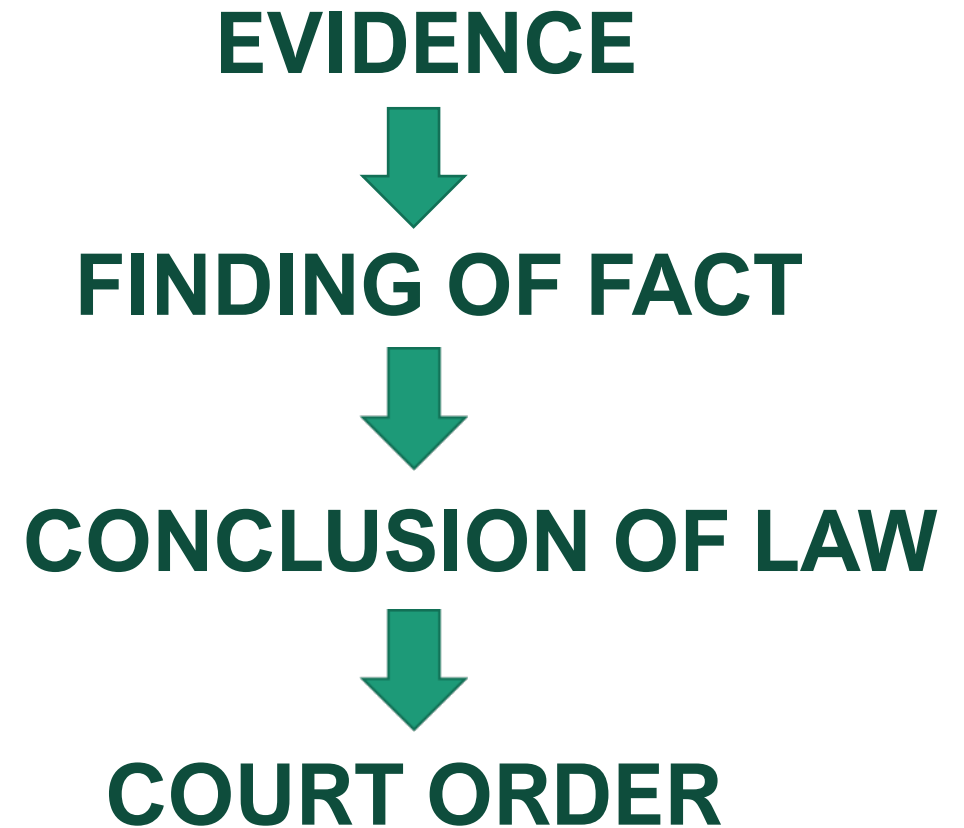
Prepare for the Adjudication Hearing

What is your desired outcome?

What conclusions must the court make to order outcome?

What facts must the court find in order to make those conclusions?

What evidence needs to be entered or refuted to prove those facts?



Building blocks of a court order

EVIDENCE



FINDING OF FACT



CONCLUSION OF LAW



COURT ORDER

Uncontested positive drug screen - meth
Mother's admission to daily meth use
Doctor testimony: Child diagnosed with failure to thrive; child was extremely malnourished



The mother uses methamphetamine daily
The child failed to thrive due to the mother neglecting her medical and physical needs



The child is dependent due to substance abuse by the mother; CTW



Parties shall appear for Final Disposition Hearing
Temporary Custody to DFCS

The Dependency Trial

Petitioner must provide CCE that:

- Service was properly effected as required by 15-11-161
- Child is abused or neglected as a result of the parent's action or lack of action



Conducting the Adjudication Hearing

O.C.G.A. 15-11-181

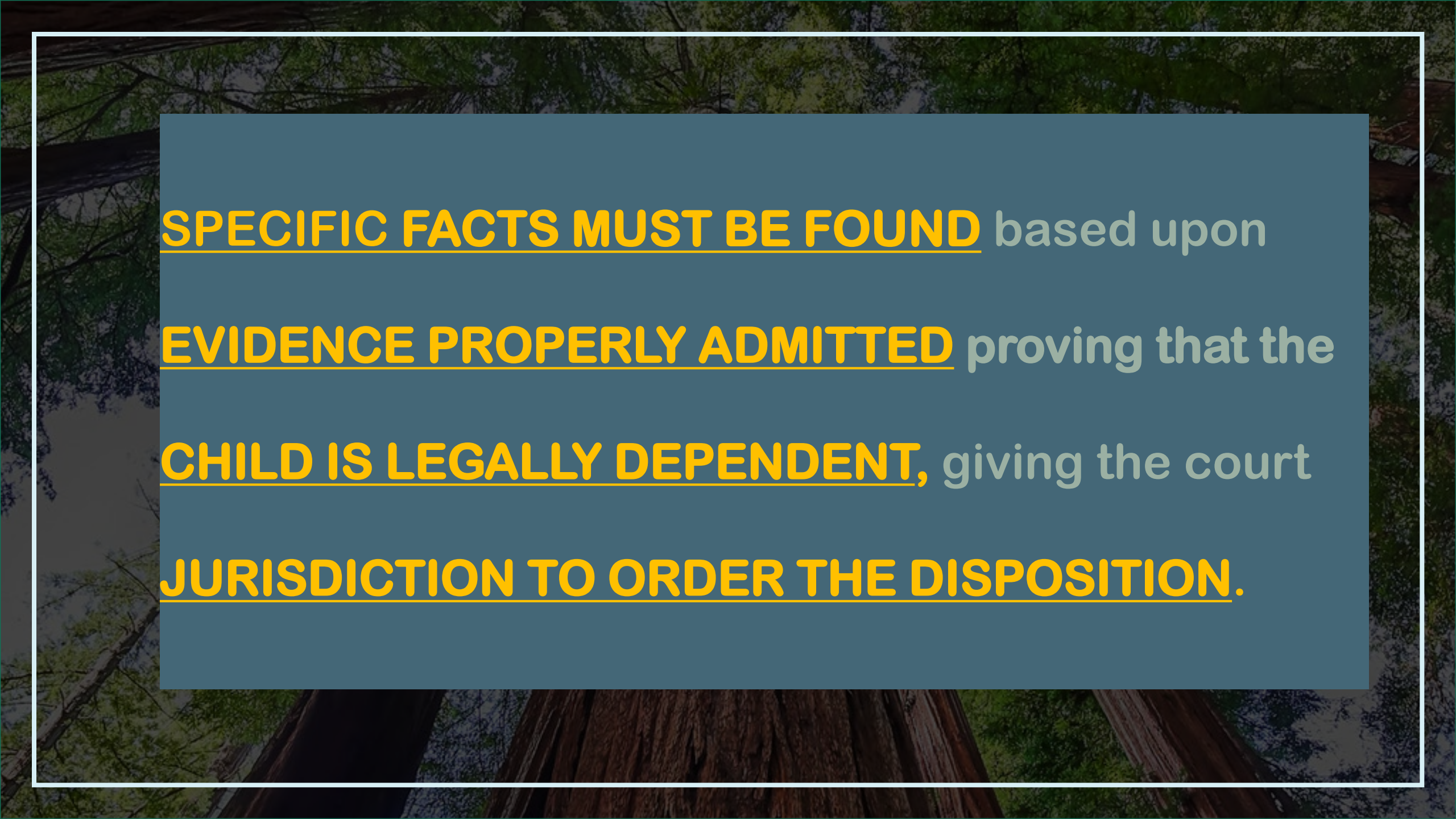
Title 24 (Georgia Rules of Evidence) applies in full.

Privilege limited to attorney/client communications and religious leader communications.

After hearing evidence, court shall make and file specific written findings as to whether the child is a dependent child

If the court finds the child is not a dependent child, it shall dismiss the petition and discharge any prior orders or restrictions

NO DEPENDENCY = NO JURISDICTION



SPECIFIC FACTS MUST BE FOUND based upon
EVIDENCE PROPERLY ADMITTED proving that the
CHILD IS LEGALLY DEPENDENT, giving the court
JURISDICTION TO ORDER THE DISPOSITION.

Stipulations and “Proffers”

STIPULATION:

A formal agreement, especially of a fact in evidence ... In evidence and trial practice, a stipulation is an agreement between the parties in the action as to **a specific fact** that might otherwise be contested.

Stipulation Definition, *Bouvier Law Dictionary* (2012 edition), *available at* Fastcase.

Stipulations and “Proffers”

PROFFER:

An offer to produce or do something. Proffer is an **offer** to produce evidence, make an argument, or proceed with any other aspect of a case...”(emphasis added).

Proffer Definition, *Bouvier Law Dictionary* (2012 edition), *available at* Fastcase.

Adjudication by Stipulation or Consent

Due process protection:

- Is the parent *knowingly, intelligently, and voluntarily waiving* his/her trial rights?
- Does the parent have the capacity to enter into a consent order?
- Has the parent been afforded adequate time to be fully counseled by an attorney?

Stipulate to specific facts as being true or that a piece of evidence is admissible

Court still makes conclusions of law

There must still be specific findings of fact to support dependency.

Child presence and participation

OCGA 15-11-181(b)(3)

Child has a right to be present unless court **finds after considering evidence of harm** to such child that will result from his or her presence at the proceeding, that being present is not in the child's best interests

Continuances beyond time limits

O.C.G.A. 15-11-110

Court must find after hearing:

- Not contrary to child(ren)'s interests
- Good cause exists
- Amount of time is (as short as) necessary

Facts supporting continuance must be entered on the record

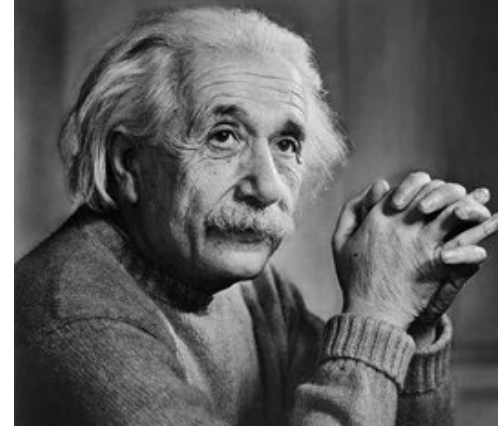
IT/O I.L.M., 304 Ga. 114 (2018)

Concluding the Hearing

- Ensure specific findings of fact and conclusions of law are on the record, even when facts are stipulated
- Make clear, specific orders on the record
- Engage parents and children to make sure they understand what has occurred
- Set disposition hearing within 30 days and identify tasks to be accomplished, including submission of proposed case plan and filing of disposition report.

If you can't explain it **simply**, you don't understand it well enough.

– Albert Einstein



What Happens between now and the Disposition Hearing?



This is not break time!

- For the Agency
- For the other parties
- For the parent attorney
- For the child attorney
- For the CASA/GAL
- For the Court
- For anyone else



The Disposition Hearing



WE MADE A

"GOOD PLAN"

Disposition is the stage where the court (1) determines what goals must be accomplished to remedy the grounds for dependency, (2) incorporates a case plan, and (3) determines who shall have custody of the child in the meantime.

Before the Disposition Hearing

- Review relevant documents and evidence
- Prepare witnesses and create plan to enter documents into the record
- Analyze the proposed case plan in light of the grounds for dependency and family needs
- Reflect on decision-making process to guard against institutional bias
- Determine who must be present at the hearing
- Counsel client and manage client expectations



The Case Plan

- ASFA requires that the Agency develop a case plan within 60 days from the child's removal from the home (45 C.F.R. §1356.21(g)(2)).
- GA law requires the case plan to be filed within 30 days following physical removal of the child from the home and at every subsequent review. O.C.G.A. § 15-11-200(a).



The Disposition Hearing

Agreements by the Parties

- When a Consent Order of Disposition is proposed to the court, the judge and all parties should take special care to ensure that the order is complete and specifically tailored to remedying dependency grounds
- All details of the case plan should be reviewed and consented to by the parties, and the stipulated case plan should be entered into evidence for incorporation into the Disposition Order
- Disposition should only order services rationally related to the jurisdictional findings of the court



O.C.G.A. 15-11-210

Disposition Hearing

(a) Completed within 30 days of Adjudication Hearing

(b) Any relevant, reliable, and necessary evidence including hearsay

(c) **Before determining the appropriate disposition, the court shall receive in evidence (summarized):**

- The social study report (if required) and **the child's proposed written case plan.**
- Evaluations
- Any study or evaluation made by a guardian ad litem appointed by the court
- Other relevant and material evidence

Types of Disposition Orders – Custody

OCGA 15-11-212(a)(2)

- Remain with parent subject to conditions for protection of the child
- Transfer temporary legal custody to:
 - Any person, including biological parent, who is found qualified by a study, prioritizing kin
 - Public or private agency authorized to receive care of the child (except DJJ and DBHDD)
- Transfer jurisdiction via ICPC

Types of Disposition Orders

OCGA 15-11-212(a)(4)-(5)

- The court may order services “designed to assist in deterring future conditions of dependency or other conduct or conditions which would be harmful to a child or society,” and
- The court may order the parent “to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes...”

Types of Disposition Orders

OCGA 15-11-212(a)(6)-(7)

The court may order DFCS to implement the approved plan.

The court may order child support consistent with the child support guidelines in OCGA 19-6-15.

Types of Disposition Orders

OCGA 15-11-212(b)

The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations **shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court.** The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child.

OCGA 15-11-213 Written Findings of Fact

Any order of **disposition shall contain written findings of fact to support the disposition** and case plan ordered. Before making an order of disposition, the court shall consider the following:

- (1) Why the **best interests** and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered...
- (2) The **availability of services** recommended in the case plan;
- (3) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;
- (4) The appropriateness of the particular placement made or to be made by the placing agency; and
- (5) **Whether reasonable efforts were made to prevent or eliminate the necessity of a child adjudicated as a dependent child's removal and to reunify his or her family after removal from the custody of his or her family unless reasonable efforts were not required. The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of such removal.**

Order Duration and Dispositional Hearings

OCGA 15-11-214: Disposition orders continue in force “until the purposes of the order have been accomplished.”

- Disposition order should clearly state its goals
- Once purposes accomplished, no more dependency = court loses jurisdiction over the family
- Subsequent dispositional hearings must address question of whether goals remain appropriate and whether purposes of order have been accomplished

Dispositional Hearings

“Dispositional hearings” include ALL HEARINGS where the disposition is considered and can be modified by the Court.

- Disposition Hearing
- Initial Judicial Review and Subsequent Review Hearings
 - Permanency Hearing
 - Placement Change Hearings
 - Return of Custody Hearings
 - Others?

Dispositional Hearings

SB28 – passed 2021, effective 1/1/22

Modified the juvenile code to make it clear that in addition to the Disposition Hearing, **the court in all other dispositional hearings “may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child,”**

- Placement Change Hearings
- Initial and Subsequent Review Hearings
- Permanency Hearings
- Dispositional hearing after TPR adjudication
- Adoption Status Review Hearings

IN THE BEST INTEREST
of
the children

+

Checklist



Representing youth and advocating for their best interests

○

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OCGA 15-11-103 Right to Counsel

15-11-103(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.

O.C.G.A. 15-11-105 Guardian ad Litem duties

(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.

Georgia Rules of Professional Conduct

RULE 1.2 SCOPE OF REPRESENTATION

RULE 1.3 DILIGENCE

RULE 1.4 COMMUNICATION

RULE 1.6 CONFIDENTIALITY

RULE 1.7 CONFLICT OF INTEREST

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

RULE 2.1 ATTORNEY AS ADVISOR

RULE 3.7 ATTORNEY AS WITNESS



Georgia Rules of Professional Conduct

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

A lawyer is required to abide by the client's decisions regarding the objectives of representation and to consult with the client to determine the means by which they are to be pursued.

1.6 Confidentiality of Information

A lawyer shall maintain in confidence all information gain the professional relationship with a client, including that which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent.



Georgia Rules of Professional Conduct

1.14 Client with Diminished Capacity

When a client has diminished capacity and is unable to make adequately considered decisions in connection with representation, the lawyer is still expected to maintain a normal client-attorney relationship as far as reasonably possible.

Comment 1

A client with diminished mental capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Children as young as 5 or 6 years old, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

The dual role and conflicts of interests

O.C.G.A. 15-11-104(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.

**Considered
opinion of the
child's best
interests**

VS.

RULE 1.2 SCOPE OF REPRESENTATION

RULE 1.3 DILIGENCE

RULE 1.4 COMMUNICATION

RULE 1.6 CONFIDENTIALITY

RULE 1.7 CONFLICT OF INTEREST

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

RULE 2.1 ATTORNEY AS ADVISOR

RULE 3.7 ATTORNEY AS WITNESS

AND MANY MORE...

Georgia Supreme Court re: Dual Role

“When it becomes clear that there is an irreconcilable conflict between the child’s wishes and the attorney’s considered opinion of the child’s best interests, the attorney **must withdraw as the child’s guardian ad litem.**”

Formal Advisory Opinion 16-2, Supreme Court of Georgia, December 11, 2017.

Georgia Supreme Court re: Dual Role

“The attorney may not withdraw as the child’s counsel and then seek appointment as the child’s guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would owe a continuing duty of confidentiality.”

Formal Advisory Opinion 16-2, Supreme Court of Georgia, December 11, 2017.

Child legal representation

2021 extensive research study on the effect of quality legal representation:

When well-trained attorneys who practice standards-based representation represent children and youth in child abuse and neglect proceedings, young people experience:

- 45% higher reunification rate
- 30% reduction in the rate of placement moves
- 65% reduction in the rate of non-normative school moves

Washington State Center for Court Research, (2021) Evaluation of the Washington State Dependent Child Legal Representation Program. Olympia, WA: Administrative Office of the Courts.

NACC

National Association
of Counsel for Children



RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT PROCEEDINGS (2021)

www.naccchildlaw.org/page/StandardsOfPractice



DETERMINING BEST INTERESTS

“ . . Above all, this chapter shall be liberally construed to reflect the paramount child welfare policy of this state is to determine and ensure best interests of its children.”
15-11-1

The purpose of the article on dependency is “to ensure that the health, safety, and bests interests of a child be paramount concerns in all dependency proceedings.”
15-11-100.

“Whenever a best interests determination is required, court shall consider and evaluate all factors (20) affecting the best interests of the child in context of child’s age and developmental needs.” 15-11-26.

“In determining a child’s best interests, a guardian ad litem shall consider and evaluate all factors (13) affecting the best interests of a child in context of a child’s age and developmental needs.” 15-11-105(b).

BEST INTERESTS IN OUR JUVENILE CODE



“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.”

The Guardian ad Litem in Dependency Proceedings: A Guide to Best Interest Advocacy

**If we are all about the kids, why are the
child's best interests only considered after
the parents' rights?**

There is a “fundamental liberty interest of natural parents in the care, custody, and management of their child”.

Santosky v. Kramer, 455 U.S. 745, 753 (1982).

“The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.”

Troxel v. Granville, 530 U.S. 57, 65 (2000).

The Fundamental Liberty Interest

Why are the child's best interests only considered after the parents' rights?

A parent has the unencumbered constitutional right to determine what is and is not in his/her child's best interests

The state is ONLY allowed to interfere with that right AFTER the court has found the parent to be unfit to make these decisions.

Why are the child's best interests only considered after the parents' rights?

It is not WHETHER best interests are being considered, but WHO has the right and authority to make that decision

It is a question of court jurisdiction to remove parental autonomy

No dependency = No government authority to intervene in the family and usurp the parents' decisions about what is in the child's best interests



Guiding Principles of Best Interests Determinations

Avoid
reacting
emotionally



The importance of family integrity and preference for avoiding removal

The health, safety, and/or protection of the child

The importance of timely permanency decisions

The provision of care, treatment, and guidance that will assist the child in developing into a self-sufficient adult

Guiding Principals of Best Interests Determinations



A best interest recommendation should not be the result of gathering information and then merely making an intuitive leap to a recommendation.

The recommendation must be the result of a thoroughly contemplated examination of the facts from the child's position through the lens of the best-interest factors, which are designed to take personal opinion and preference out of the calculation and to make the recommendation as objective as possible.

Guiding Principals of Best Interest Determinations



Guiding Principals of Best Interest Determinations

Recognize the importance of family preservation and start from the presumption that staying with family is in the child's best interests. Make yourself be convinced otherwise by strong, independent evidence.

Advocate for lasting permanency, preserving familial connections when possible

Remain culturally, intellectually, and economically humble.

Recognize your own internal bias and how disproportionality impacts children in the system

Advocate from a trauma-informed perspective

Seek to improve a child's experience in foster care

Collaborate and cooperate with the courts, parties, providers and others

Humility

is not thinking less of yourself
but thinking of yourself less
- CS Lewis

"Cultural humility, on the other hand, is a practice of self-reflection on how one's own background, experiences, and expectations impact a situation or interaction."

Adilene Rogers

***MAKING A
RECOMMENDATION IS NOT
THE SAME THING AS
ADVOCATING FOR IT.***

**USE THE BEST INTEREST
FACTORS TO THOROUGHLY
PREPARE, SUPPORT YOUR
POSITION, AND STRENGTHEN
YOUR ADVOCACY**

Best Interest Factors

- Child's **physical safety** and welfare, including food, shelter, health, and clothing
- Love, affection, bonding, and emotional ties between **child and parent** or caregiver
- Love, affection, bonding, and emotional ties between **child and siblings** (including half and stepsiblings)
- Child's **need for permanence**, including 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
- **Capacity and disposition of each parent** or person available to care for child to give love, affection, and guidance and to continue education and rearing of child
- **Home environment** of parent or person available to care for child considering promotion of child's nurturance and safety rather than superficial or material factors
- **Stability** of unit and presence or absence of support systems within community to benefit child
- **Mental and physical health** of all individuals involved
- **Home, school, and community record and history** of 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 child
- **Uniqueness** of every family and child
- **Risks** attendant to entering and being in substitute care
- Child's **wishes** and long-term goals
- **Preferences** of persons available to care for child
- Evidence of **family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse** in any current, past, or considered home for child
- **Recommendations** from a guardian ad litem
- **Any other factors** considered by court/GAL to be relevant and proper to its determination

O.C.G.A. § 15-11-26 (court); O.C.G.A. 15-11-213 (Disposition hearings); O.C.G.A. § 15-11-105 (GAL)

Weighing Best Interest Factors

- Apply all BI factors to the facts
- Recognize when you are giving a factor more weight than another conflicting factor
- Analyze why you believe that factor is more important in this case
- Check how your own experiences are affecting your decision
- Seek independent professional advice when helpful





What personal experiences, cultural norms, and fundamental beliefs color your assessment of best interests?

Checking Bias and identifying how your personal experience is affecting your decision

What personal experiences might influence your decision?

What objective evidence are you relying on?

Where are your assumptions bridging the gap between the objective evidence and your recommendation?

What evidence do you need to remove your assumption and base it on objective evidence?



Fiona is deeply established in her school and community, with many close friends, a church that she loves, and a basketball team that is her tribe. She was removed into a foster home in the same school and community as her family home. It is clear that reunification will not be viable. Fiona's maternal grandparents, who live on the other side of the country, would like her to be placed with them. Which permanent placement is in the child's BI?

1. You were severely traumatized by an unexpected cross country move at a young age which contributed to your struggle with drug use in early adulthood
2. You grew up in a military family, moved frequently, love new experiences, and have made friends all over the world.

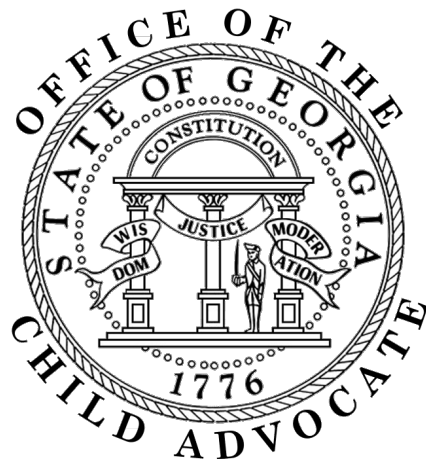
**What additional information do you need? How can you objectify your analysis?*

Adrian's mother has severe untreated mental health diagnoses that have prevented her from being able to care for Adrian for over three years. Father is deceased. Adrian is placed in an adoptive placement with his half-sister (paternal) with whom he has lived with for his entire life and is closely bonded. Adrian is also closely bonded with his mother despite her illness, and when her mental health was treated properly, she was an excellent mother. Is it in Adrian's BI to be adopted by the foster parent?

- You are an only child raised by a single mother and your mom is your rock.
- You did not know your parents, but you grew up in foster care with your sister and can't imagine life without her.

**What additional information do you need? How can you objectify your analysis?*

Final Thoughts and Comments?



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