

A Child's Right to Counsel in Juvenile Court Proceedings

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Introduction

Representation of children is a complex issue that raises many questions: Do children or youth involved in juvenile court cases need lawyers? Do children have a right to legal counsel? Are children capable of directing their own representation? Does the benefit of counsel depend on the nature of the proceeding? Yet these individual questions are much more straightforward than the analysis of a child's right to counsel under Georgia's existing statutory and case law. As a result of inconsistent, unclear and sometimes conflicting guidance in the state's body of law, children's right to counsel in Georgia is mired in controversy.

A typical first step in the analysis divides the cases subject to juvenile court jurisdiction into types, distinguishing delinquency cases from deprivation cases. Empirical evidence suggests this is a false dichotomy; research documents a significant relationship between child maltreatment and delinquent behavior.¹ Further, in both types of cases a child can be removed from their home and have their personal liberties restricted. Nevertheless, the right to counsel in delinquency cases is embedded in formal guarantees of due process, while a protectionist approach underlies the traditional child representation model in deprivation cases. As juvenile law has become a more specialized area of legal practice and as cases involving youth and families become more complex, the issue of legal representation in both case contexts has become a critical issue for further examination.

Advocates for the right to counsel for children in delinquency cases guard vigilantly against any erosion of constitutional protections, and proponents of the right to counsel for children in deprivation cases are engaged in a national debate over the proper role of the child's representative. Ideological underpinnings aside, anecdotal evidence strongly suggests that the child's right to counsel is not implemented consistently, equitably or effectively in either type of case. In order to reconcile divergent practices and discordant philosophies, practitioners and policy-makers need clear and consistent legal guidance. The Proposed Model Juvenile Code, released by the Young Lawyers Division Juvenile Law Committee of the State Bar of Georgia, sets forth clear guidance on the right to counsel in delinquency and in deprivation cases based on national best practices and proposes a statutory framework for implementing the right consistently across cases.

This white paper first explores the constitutional and best practice arguments for a child's right to counsel in delinquency cases, and then examines the Proposed Model Code (PMC) provisions addressing these points. Next, this paper turns to the deprivation context and conducts a similar review of the legal requirements and best practices for child representation in deprivation cases, followed by an examination of the relevant PMC provisions. Finally, this

¹ See, e.g., Barbara Tatem Kelley, Terence P. Thornberry & Carolyn A. Smith, *In the Wake of Childhood Maltreatment*, OJJDP JUV. JUST. BULL. (1997), available at <http://www.ncjrs.gov/txtfiles1/165257.txt>.

paper concludes with a recommendation that the PMC provisions on child representation be adopted by the state of Georgia.

Delinquency

More than 40 years ago, the United States Supreme Court handed down the landmark decision of *In re Gault* that established the constitutional right of children to appointed legal counsel in juvenile delinquency proceedings.² The Court noted that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone,” and that therefore Due Process protections apply to children in delinquency cases.³ The Court acknowledged juvenile courts’ traditional *parens patriae* role,⁴ but held that because children can face loss of their physical liberty in these proceedings most of the protections afforded to adults facing similar losses of liberty, including the right to counsel, should apply.⁵ The Court noted that while informality in juvenile courts was intended to help children, “[t]he absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment.”⁶ Instead, the lack of Due Process protections such as the right to counsel had led to arbitrariness and a lack of fundamental fairness.⁷

The federal Juvenile Justice and Delinquency Prevention Act (JJDPA) passed in 1974 created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, whose charge included development of national juvenile justice standards.⁸ Those standards, published in 1980, require that children be represented by counsel in all proceedings arising from a delinquency action, beginning at the earliest stage of the decision process.⁹ The recommendations, combined with *Gault*, provide the backdrop against which advocates have framed their arguments for the full implementation and recognition of the right to counsel in juvenile delinquency cases.

Georgia law currently provides that “a party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency”¹⁰ This provision further states that counsel must be provided for any child not represented by a parent, guardian or custodian.¹¹ Children’s right to counsel in delinquency proceedings has been further affirmed by Georgia

² *In re Gault*, 387 U.S. 1 (1967).

³ *Id.* at 13.

⁴ *Id.* at 17. *Parens Patriae* refers to the “the state in its capacity as provider of protection to those unable to care for themselves.” BLACKS LAW DICTIONARY (8th ed. 2004).

⁵ *Gault*, 387 U.S. at 27.

⁶ *Id.* at 18.

⁷ *See id.* at 18-19.

⁸ Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 110-180 (codified as amended at 42 U.S.C. §§ 5601-5785 and scattered sections of 18 U.S.C.). The specific section creating the National Advisory Committee for Juvenile Justice and Delinquency Prevention was 42 U.S.C. § 5617, which was repealed effective Oct. 12, 1984 by Pub. L. 98-473, Title II, § 624.

⁹ National Advisory Committee for Juvenile Justice and Delinquency Prevention. (1980, July). 3.132 *Representation by Counsel—For the Juvenile*, Standards for the Administration of Juvenile Justice. (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice).

¹⁰ O.C.G.A. § 15-11-6(b) (2008).

¹¹ *Id.*

case law.¹² Unfortunately, despite the established legal foundation, securing the right to counsel in delinquency proceedings continues to present a challenge for the state. A 2001 study of access to and quality of representation in delinquency proceedings in Georgia documented systemic deficiencies including a fragmented justice delivery system resulting in “uneven and inconsistent” representation of children across counties, excessive caseloads for juvenile defense attorneys allowing for minimal client contact and inadequate preparation, and a striking absence of due process.¹³

Thus, the promise of *Gault* for fair and equal representation has gone largely unfulfilled in Georgia. Despite the degree of clarity and consistency in federal and state law, the right to counsel in delinquency proceedings is not uniformly implemented, and even when youth are afforded legal representation, inadequate resources and judicial ambivalence have given rise to processes and procedures that undermine the provision of counsel.

PMC Provisions on Child Representation in Delinquency Cases

Consistent with *Gault*, its progeny, and the recommendations of national and state policy bodies, the PMC clearly and unequivocally provides children the right to be represented by counsel at all stages of a delinquency proceeding.¹⁴ However, the PMC goes further than simply guaranteeing children the right to counsel. It includes additional provisions to ensure that the right to counsel is meaningful, including: (1) a provision that requires representation during any custodial interrogation of a child charged with a felony-grade offense;¹⁵ (2) a provision to remove any ambiguity about the right to access information and records that could be evidentiary in nature, specifically allowing such access to the child’s attorney upon presentment of an order of appointment;¹⁶ and (3) a provision preventing anyone from waiving the child’s right to representation by counsel.¹⁷

Representation During Custodial Interrogation

The PMC provides that “a child charged with an act that would be a felony if committed by an adult shall be represented by counsel during any custodial interrogation of the child.”¹⁸ Studies show that children are generally more compliant and suggestible during police interrogations than adults, and thus are at higher risk for false confession.¹⁹ Additionally, as will be discussed further below, developmental differences between children and adults suggest that children may not be fully competent to waive important rights, such as the right to remain silent

¹² See e.g., *K.E.S. v. State*, 216 S.E.2d 670 (Ga. Ct. App. 1975) and *A.C.G. v. State*, 205 S.E.2d 435 (Ga. Ct. App. 1974).

¹³ AMERICAN BAR ASSOCIATION AND SOUTHERN CENTER FOR HUMAN RIGHTS, *GEORGIA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS*. (Patricia Puritz and Tammy Sun, eds. 2001), available at <http://www.njdc.info/pdf/georgia.pdf>.

¹⁴ See P.M.C. § 15-11-706(a).

¹⁵ See P.M.C. § 15-11-706(c).

¹⁶ See *id.* at (e).

¹⁷ See *id.* at (b).

¹⁸ See *id.* at (c).

¹⁹ See GISLI GUDJONNISON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 380-81 (Wiley ed. 2003); Stephen Drizin & Gregg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Confessions?*, 34 N. KY. L. REV. 257 (2007).

or to have counsel present during interrogation.²⁰ Thus, requiring counsel to be present is the most effective way to protect a child's rights during interrogation. However, to ensure this provision is effective the language of the PMC provision should be clarified to "children who *could be charged*" instead of "children charged," because most interrogations occur before charges are brought.

Access to Records

Effective representation requires effective investigation and preparation. However, in Georgia delinquency practice, children's lawyers' access to certain types of records, such as the child's education and health records, is inconsistent and uncertain. To remove any ambiguity about the right to access information and records that could be evidentiary in nature, the PMC includes a provision specifically allowing such access to the child's attorney upon presentment of an order of appointment.²¹

Waiver of Counsel

The right to counsel in delinquency proceedings has taken on greater significance as transfers to adult court become more common and consequences for delinquency charges become more severe.²² In spite of its importance, juveniles are routinely allowed and sometimes encouraged to waive the right to counsel. A joint report issued by the American Bar Association and the Southern Center for Human Rights found that children were routinely permitted to waive counsel despite the statutory mandate guaranteeing representation at all stages of a delinquency proceeding.²³ The authors noted that in some counties an estimated 90% of children waive counsel, most without the benefit of having ever consulted with an attorney or being advised of the consequences of proceeding without a lawyer.²⁴

Georgia case law on the right to waive counsel is confusing and sometimes contradictory. Consistent with a strict interpretation of the statutory provision for a child's right to counsel at all stages of a delinquency proceeding, the Court of Appeals has held that the right to counsel cannot be waived where the child's parents are present but have a conflict of interest with their child.²⁵ However, the Court of Appeals has also held that the right to counsel may be waived unless the child is not represented by his parents, guardian or custodian²⁶ as long as the waiver is determined to be knowing and voluntary based on a totality of the circumstances.²⁷

²⁰ See Thomas Grisso, Laurence Steinberg, et. al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' capacities as trial defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003); *Miranda v. Arizona*, 384 U.S. 436 (1966).

²¹ See P.M.C. § 15-11-706(e).

²² See, e.g. O.C.G.A. § 15-11-28 (2008) (providing for a child who would otherwise be before juvenile court to be transferred to adult court in various circumstances); O.C.G.A. § 15-11-63 (2008) (making a number of delinquency offenses "designated felonies" with mandatory sentences of at least one year).

²³ AMERICAN BAR ASSOCIATION AND SOUTHERN CENTER FOR HUMAN RIGHTS, GEORGIA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 19-22 (Patricia Puritz and Tammy Sun, eds. 2001), available at <http://www.njdc.info/pdf/georgia.pdf>.

²⁴ *Id.* at 19-20.

²⁵ See *S. v. State*, 216 S.E.2d 670 (Ga. Ct. App. 1975).

²⁶ See *A.C.G. v. State*, 205 S.E.2d 435 (Ga. Ct. App. 1974).

²⁷ See *Crawford v. State*, 240 S.E.2d 824 (Ga. 1977); cf. *In re W.M.F.*, 349 S.E.2d 265 (Ga. Ct. App. 1986).

The PMC attempts to reconcile evidence-based best practice with Georgia’s current framework for the right to counsel and associated waiver practices. It expressly prohibits the waiver of a child’s right to counsel in delinquency and deprivation proceedings. Specifically, the PMC insists that “[N]either a child nor his parent, guardian, or legal custodian may waive the child’s right to be represented by counsel.”²⁸ Commentary to this provision notes that it is the position of the Institute of Judicial Administration and the American Bar Association’s Juvenile Justice Standards that a child’s right to counsel is not a right that can be waived²⁹ and also cites the urging of the Center for Policy Alternatives that states prohibit the waiver of counsel as a means to protect the child’s right to counsel.³⁰ The PMC provisions prohibiting waiver and the cited recommendations are consistent with the science on adolescent development and brain function, which show that children are less able to “recognize the risks inherent in the various choices they face or to consider the long-term, and merely the immediate, consequences of their legal decisions.”³¹ This suggests that children may lack the capacity to make a knowing and intelligent waiver of their right to counsel.

Some may question the constitutionality of prohibiting waivers because an adult has a constitutional right to waive counsel if the waiver is made voluntarily and intelligently.³² However, experts note that juvenile cases are legally distinguishable because the case establishing an adult’s right to waive counsel, *Faretta v. California*,³³ is grounded in the Sixth Amendment right to counsel, and other protections of the Sixth Amendment, such as the right to a jury trial, have been found to not apply in juvenile delinquency cases.³⁴ A child’s right to counsel in delinquency cases is grounded instead in the Fourteenth Amendment’s due process protections. These standards are less rigid and are subject to a more particularized inquiry as to the appropriateness of a given requirement in a particular situation.³⁵ While currently only Illinois prohibits waivers of counsel in all delinquency cases,³⁶ a number of other states prohibit waivers in at least some cases,³⁷ and others mandate guidelines for waiver, such as permitting

²⁸ P.M.C. § 15-11-706(b) (prohibiting waiver in delinquency proceedings). *See also* P.M.C. § 15-11-306(d) (prohibiting waiver by the child and any representative of the child in deprivation cases).

²⁹ INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS ANNOTATED, *Standards Relating to Pretrial Court Proceedings*, § 6.1(A) (Robert E. Shepard ed. 1996).

³⁰ Center for Policy Alternatives, *Juvenile Waiver of Counsel* (2007), available at: <http://www.stateaction.org/issues/issue.cfm/issue/JuvenileWaiver.xml>.

³¹ Thomas Grisso, Laurence Steinberg, et. al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ capacities as trial defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003).

³² *Faretta v. California*, 422 U.S. 806, 807 (1975).

³³ *Id.*

³⁴ INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS ANNOTATED, *Standards Relating to Adjudication*, § 1.2 cmnts. (Robert E. Shepard ed. 1996) (citing *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)).

³⁵ *See, e.g., Lassiter v. Dep’t of Soc. Serv.*, 452 U.S. 18, 24-25 (1981) (“Applying the Due Process Clause is therefore an uncertain enterprise which must discover what ‘fundamental fairness’ consists of in a particular situation...”).

³⁶ 705 ILL. COMP. STAT. § 405/5-170 (2008).

³⁷ *See, e.g., IOWA CODE* § 232.11 (2008); *TEX. FAM. CODE ANN.* § 51.10 (2008); *LA. CHILD. CODE ANN.* art. 810(D).

waiver only after consultation with counsel.³⁸ At least one state supreme court has already determined that some limitation of a child's right to waive counsel is constitutional.³⁹

The PMC provisions regarding counsel for children in delinquency matters would allow Georgia to better protect children's constitutional rights, and would be more effective than current law in guarding against unfairness and arbitrariness. Thus, these provisions should be adopted. Additionally, the PMC provisions prohibiting waiver of children's right to counsel should be adopted in both the delinquency and deprivation contexts.

Deprivation

Although a child's right to representation in delinquency cases is firmly established, the debate about the right of a child who is involved in a deprivation proceeding to be represented by legal counsel has eluded final and complete resolution. Practices are inconsistent across jurisdictions, both nationally and within Georgia, largely due to strongly held beliefs about the capacity of a minor to meaningfully participate in a legal proceeding. Additionally, strong remnants of the *parens patriae* doctrine under which juvenile courts have historically operated hinder full transformation of the proceedings from informal, problem-solving sessions to more formal hearings with procedural safeguards required and refined by contemporary jurisprudence.

Arguably, a child's right to traditional legal counsel in deprivation proceedings can be found within existing Georgia juvenile code provisions and in state and federal case law. For example, Georgia's current juvenile code explicitly provides that an attorney shall be appointed "to represent the child as the child's counsel" in any termination of parental rights (TPR) proceeding or appeal or rehearing related to the TPR.⁴⁰ Moreover, other provisions of the juvenile code can fairly be interpreted to afford children the right to legal representation beyond the context of a termination of parental rights proceeding. Under our existing statutory framework, a party is entitled to legal representation by counsel at all stages of any proceeding alleging deprivation.⁴¹ Nearly thirty years ago, the Court of Appeals confirmed that a child derives a right to legal representation from the child's status as a party, stating "[U]nder our juvenile code, all parties, including the child, should be represented by an attorney."⁴² At the federal level, while the Supreme Court has not specifically dealt with the deprivation context, much of the logic of *Gault* would seem to apply, because while children may not be locked up in deprivation cases, they are often removed from their homes and have their personal liberty restricted.⁴³ This seems to be the view of U.S. District Court for the Northern District of Georgia, which recently adopted the clear position that "foster children have both a statutory and a constitutional right to counsel in all deprivation proceedings, including but not limited to TPR proceedings" as parties to the action.⁴⁴ Yet despite this legal authority confirming a child's right

³⁸ See, e.g., MD. CODE. ANN., CTS. & JUD. PROC. § 3-8A-20 (2007); IND. CODE § 31-32-5-1 (2008).

³⁹ In re Amendment To Florida Rule Of Juvenile Procedure 8.165(a), 981 So.2d 463 (2008) (holding that a child can be required to consult with counsel before being permitted to waive counsel).

⁴⁰ See O.C.G.A. § 15-11-98(a) (2008).

⁴¹ O.C.G.A. § 15-11-6 (2008).

⁴² *McBurrough v. Dep't. Human Res.*, 257 S.E.2d 35 (Ga. Ct. App. 1979).

⁴³ *Gault*, 387 U.S. at 27; see also *infra* notes 2-7 and accompanying text.

⁴⁴ *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1357 (N.D. Ga. 2005).

to legal representation, most juvenile courts in Georgia do not provide traditional legal counsel for children in deprivation cases for various reasons.

Juvenile court originated as a problem-solving court in which proceedings were informal, intimate and protective, and its philosophical origins still linger in the conversation regarding a child's right to counsel. The more conservative approach to representation for children in deprivation cases is to appoint a guardian *ad litem* to substitute adult judgment for the child's and make a recommendation to the court as to what disposition will be in the "best interest of the child." Opponents of traditional legal representation for children are uncomfortable with the idea of a minor directing their own legal representation, and their reasoning is linked to the historical attribution of incompetency based on minority status. Invoking the traditional *parens patriae* mantle, opponents argue the absurdity of empowering a child with adult-like decision-making regarding the wisdom of returning to abusive parents or an unsafe home or other alternatives.

However, if an attorney is appointed to represent the child, a clear reading of the Georgia Rules of Professional Conduct counters that argument. Rule 1.14 confronts the attorney's ethical duty with regard to a client who is impaired because of age.⁴⁵ That Rule directs that a lawyer shall, to the extent possible, "maintain a normal client-lawyer relationship with the client."⁴⁶ Commentary to Rule 1.14 acknowledges that a child-client might not be able to make decisions about important matters in all respects, but "[N]evertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being."⁴⁷ Application of this rule to child custody proceedings is specifically contemplated by the commentary which concludes "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."⁴⁸ The state ethics rules confirm that an attorney who is representing a child-client is expected to act in accordance with the traditional duties attendant to a lawyer-client relationship and further, that a child's right to counsel is not qualified by the child's competency in other respects.

Another popular argument against affording children the right to counsel is based on the economics of the proposal. Almost without exception, children involved in juvenile court cases would qualify as indigent and, consequently, would be entitled to the appointment of counsel provided at no expense to them. Simply put, the argument holds that limited resources available to juvenile courts constrain the ability to appoint counsel. Opponents are particularly concerned about the suggestion that an attorney *and* a guardian *ad litem* must be appointed. However, both current law and the PMC provide the opportunity for the court to appoint CASA volunteers to serve as lay guardians *ad litem*, and thus courts could avoid additional costs by using these trained volunteers in those cases where a guardian *ad litem* needs to be appointed.⁴⁹ More importantly, financial considerations do not dictate the scope of protections required under the law, and fundamental fairness is not a function of resources.

⁴⁵ See Georgia Rules of Professional Conduct 1.14.

⁴⁶ *Id.*

⁴⁷ Commentary to Georgia Rule of Professional Conduct 1.14.

⁴⁸ *Id.*

⁴⁹ O.C.G.A. § 15-11-9.1; P.M.C. § 15-11-310.

With the recent release of the PMC, practitioners and policymakers in Georgia now have a clear direction for ending the debate through draft laws and procedures that are based on nationally recognized best practices. Certainly, Georgia’s court-involved children deserve the protections of due process and the benefits of recognized best practices.

PMC Deprivation

The PMC explicitly recognizes that a child has “the right to qualified and independent counsel at all stages of the proceedings.”⁵⁰ As a matter of settled legal principle, the right to counsel implies the right to effective counsel. Accordingly, the court is required to make the appointment “as soon as practicable to ensure adequate representation of the child and, in any event, before the first court hearing that may substantially affect the interests of the child.”⁵¹ The drafters of the PMC incorporate the best practice of vertical representation by directing the court to reappoint counsel who has previously represented the child in a deprivation proceeding and requiring continuous representation through any subsequent appeals.⁵²

In a preceding section, the PMC defines “party” to include a child subject to a deprivation proceeding, thereby clarifying the ambiguity arguably existing in current law.⁵³ All parties derive certain rights from that party status including the right to be represented by counsel. While the juvenile justice system and practitioners will likely struggle with the practicalities of implementing those rights for children in an equitable yet prudent manner, the stakes are sufficiently high to justify the safeguards. After all, the child is the reason for the action and will be impacted in significant and lasting ways by the decisions being made. Children have an undeniable interest in the integrity of their family and in their own safety and well-being.⁵⁴ Those interests must be adequately protected to achieve the best outcomes possible for children before the court.

When the child’s attorney cannot fully and adequately represent the child’s interest, a guardian *ad litem* can be appointed.⁵⁵ The PMC allows for such appointment at the request of the child’s attorney or upon the court’s own motion if the guardian *ad litem* “is necessary to assist the court in determining the best interests of the child.”⁵⁶ Importantly, the PMC does not suggest or require that two representatives be appointed to represent the child and certainly does not propose that two attorneys be appointed to advocate on the child’s behalf. Rather, the PMC requires the court to appoint counsel for the child identified in the petition and permits the additional appointment of a guardian *ad litem* should the circumstances of the case warrant such

⁵⁰ P.M.C. § 15-11-306(a).

⁵¹ *Id.* at (b).

⁵² *See id.* at (c).

⁵³ *See* P.M.C. § 15-11-105(19) (citing *Kenny A. v. Perdue*, 356 F. Supp.2d 1353, 1358 (N.D. Ga.2005) and *McBurrough v. Dept. of Human Res.*, 257 S.E.2d 35 (1979)).

⁵⁴ *See, e.g.*, *Kenny A. v. Perdue*, 356 F. Supp.2d 1353, 1360 (N.D. Ga. 2005) (“The Court finds that children have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents.”).

⁵⁵ The Proposed Model Code recognizes that a court appointed special advocate (“CASA”) can fulfill the role of guardian *ad litem*. *See* P.M.C. § 15-11-310.

⁵⁶ P.M.C. § 15-11-309(a).

appointment. The child's attorney will represent the child's legal interests in the matters pending before the court and, when separate best interests representation is necessary, a guardian *ad litem* can be appointed to make that determination and any related recommendations. In fact, the PMC establishes that if the child's attorney determines that the child lacks the capacity or refuses to direct the attorney with respect to a particular issue, the attorney can present a position to the court consistent with the child's best interest and any expressed objectives, or alternatively, request the appointment of a guardian *ad litem*.⁵⁷ Further, the child's attorney must request the appointment of a guardian *ad litem* if the child's expressed objectives of representation would place the child at risk of substantial harm and the child's attorney cannot counsel the child to adopt a more reasonable position.⁵⁸

In order to ensure the protection and advancement of the interests of a deprived child, the PMC sets forth the duties of a child's attorney and the duties of a guardian *ad litem*.⁵⁹ The role and responsibilities of each type of representative are separate and distinct. The most significant distinction between the duties of a child's attorney and a guardian *ad litem* is the focus of the guardian *ad litem* on the child's "best interests" as contrasted with the child attorney's focus on the child's expressed wishes and objectives for the representation.

Conclusion

Children involved in juvenile court proceedings have significant interests at stake and face life-long effects from decisions made by these courts. The PMC provisions regarding representation of children strike an appropriate balance between protection of children's best interests, due process considerations, best practices, and attorneys' professional responsibility. These provisions should be enacted by the Georgia General Assembly.

⁵⁷ P.M.C. § 15-11-307(c).

⁵⁸ P.M.C. § 15-11-307(d).

⁵⁹ See P.M.C. §§ 15-11-307 and 15-11-309, respectively. See also P.M.C. § 15-11-310 for duties of a court appointed special advocate in the role of GAL.