



Georgia Bar Journal

August 2007 • Volume 13 • Number 1



Gerald M. Edenfield
45th State Bar President

Georgia Bar Journal

August 2007 ■ Volume 13 ■ Number 1

14



GBJ Legals

14

Are We Witnessing
the Erosion of Georgia's
Separate Property Distinction?

by Rachel A. Elovitz

22

The Next Generation
of Child Advocacy

*by Hon. Steven C. Teske
and Melissa Dorris Carter*



22

GBJ Features

30

A Brief Overview
of the Proposed New Georgia
Rules of Evidence

*by Paul S. Milich
introduction by Robert D. Ingram*

36

Negotiating With
a Road Map

by Douglas J. Witten

42

Business, Pleasure Mix
at 2007 Annual Meeting

by Jennifer R. Mason

50

Cook Says: There is Hope

by Jay Cook

52

Edenfield Plans
for New Bar Year

by Gerald M. Edenfield

56

Gerald M. Edenfield:
A Reputation Built
on Service

by Joel Alvarado

60

Past President Receives 2007
Distinguished Service Award

by Johanna B. Merrill

62

Bob Brinson Wins
James M. Collier Award

by Len Horton

64

LFG Enjoys Another Year
at the Annual Meeting

by Lauren Larmer Barrett

66

Young Lawyers Division
Celebrates 60 Years

by Deidra Sanderson

Departments

6 From the President

10 From the Executive Director

12 From the YLD President

70 Bench & Bar

76 Office of the General
Counsel

78 Lawyer Discipline

80 Law Practice Management

82 Casemaker

84 Writing Matters

86 South Georgia Office

88 Section News

90 Professionalism Page

92 In Memoriam

94 CLE Calendar

98 Notices

119 Classified Resources

120 Advertisers Index

50



66



76



The Next Generation of Child Advocacy

Protecting the Best Interest of Children by Promoting a Child's Right to Counsel in Abuse and Neglect Proceedings

by Hon. Steven C. Teske and Melissa Dorris Carter

The field of children's law is based on a relatively young body of law that has emerged over the past 130 years. As the field continues to mature, policies and practices are continually scrutinized to ensure that the hundreds of thousands of children brought before juvenile courts across the country are adequately protected and the mission of the juvenile court is properly executed. The facet of children's law that is currently receiving the greatest attention is the examination of the child's status as a party to abuse and neglect (deprivation) proceedings and rights derived from that status, particularly including the right to be represented by legal counsel.

The further development of the representation paradigm for children who are involved in deprivation proceedings has been constrained by inconsistencies in federal and state law requiring "representation" of

children through the appointment of an attorney or lay guardian ad litem (GAL). Two competing approaches have emerged: the "best interest" GAL model and the traditional attorney-client model. Generally speaking, the role of a child's attorney is to represent the child as a client, providing legal services for a child and abiding by the same ethical and professional duties owed to an adult client. By comparison, a GAL, who may be an attorney or a lay advocate, is an officer of the court whose role is to assist the court in discerning and protecting the child's best interest.

The thesis of this article is that Georgia law is settled. Children are indeed parties to the deprivation proceedings concerning them and as such, are entitled to representation by legal counsel. Contemporary case law decisions, state statutes, and constitutional principles support this conclusion. Further, as parties, children are also entitled to participate meaningfully in court proceedings. The challenge posed to juvenile court stakeholders is to craft a practice solution that is stringent enough to uphold these rights for every child in every case and flexible enough to adjust for the differences of individual children.

In its August 2004 edition, the *Georgia Bar Journal* published an article titled "A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings," co-authored by Melissa Dorris Carter, one of the authors of the present article.¹ That piece analyzed the federal and state statutory and constitutional bases supporting a child's right to legal repre-

sentation in civil abuse and neglect proceedings. Although Georgia's statutory scheme is ambiguous in this area, the conversation begun nearly three years ago has continued among a number of juvenile judges throughout the state, and the position advanced in the 2004 article has gained strength and momentum. Although progress has been made toward reaching a consensus on the issue since the *Journal* last looked at this aspect of the law, the practice across the state has not changed dramatically. Every day, juvenile court judges are making decisions about children and their families with no guarantee that the child's wishes will be conveyed in court. This article will discuss the recent decision of *Kenny A. v. Perdue*² and its effect on children's right to counsel in abuse and neglect proceedings, and will propose a strategy that accommodates the legal and best interest concerns of children while

simultaneously minimizing costs to local governments.

The Effect of *Kenny A. v. Perdue*

At the time that the *Journal* published the last article, the state of Georgia and DeKalb and Fulton counties were vigorously defending a class action lawsuit filed by Children's Rights, a self-described national watchdog organization headquartered in New York that seeks child welfare system reform through litigation and policy initiatives.³ Children's Rights filed suit in the U.S. District Court for the Northern District of Georgia on June 6, 2002, on behalf of nine named plaintiffs seeking injunctive and declaratory relief against the agencies and officials responsible for operating the state's foster care system, including the Georgia Department of Human Resources, the Division of Family and

Children Services (DFCS), and Fulton and DeKalb counties.⁴ The plaintiffs alleged that the foster care systems operating in Fulton and DeKalb counties had a number of serious problems, including children languishing in foster care, children experiencing multiple placement moves while in state custody, and inadequate health and educational services for children in foster care. Additionally, the plaintiffs asserted a claim against Fulton and DeKalb counties for the alleged failure to provide adequate representation for children in deprivation and termination of parental rights (TPR) cases.⁵

The plaintiffs' claim against the county defendants alleged that effective legal representation was structurally impossible to provide due to the excessively high case-loads maintained by the child advocate attorneys in Fulton and DeKalb counties.⁶ Plaintiffs' counsel argued that the failure to pro-



vide effective and adequate legal representation to children before the court in cases alleging deprivation violated the plaintiffs' due process rights under the Georgia Constitution and certain statutory provisions relating to TPR proceedings.⁷ The county defendants filed a motion for summary judgment on the issue, arguing that because the Georgia Code specifically requires provision of legal counsel only in TPR proceedings, children in foster care do not have a right to effective legal representation in general deprivation proceedings.⁸ Ruling on the motion, Judge Marvin Shoob concluded that "foster children have both a statutory and a constitutional right to counsel in all deprivation proceedings, including but not limited to TPR proceedings."⁹ The court found authority in O.C.G.A. §15-11-6(b), which states that "a party is entitled to representation by legal counsel at all stages of any proceedings alleging . . . deprivation."¹⁰

The authors of the August 2004 *Journal* article did not resolve the issue of the child's status as a party, instead finding a right to counsel through the second clause of O.C.G.A. §15-11-6(b) based on the inherent conflict of interest between a child and his or her parents in the context of the deprivation proceeding. The court in *Kenny A.*, however, clearly concluded that a child is a party to the proceeding, citing *McBurrough v. Department of Human Resources*.¹¹ The apparent ambiguities on this issue dissolve when analyzed within a broader context that includes delinquency proceedings. The court's authority to appoint a GAL applies to delinquency proceedings and is appropriate in circumstances involving conflicts between the child and the parent. An example would be when a non-indigent parent refuses, for any number of reasons, to retain counsel, which could be to the child's detriment. Regardless of these apparent ambiguities, the law is settled by *Kenny A.* Although some jurists have opined that the case has

no precedential value because it resulted in a settlement agreement and therefore is applicable only to the defendants in the case, these jurists, and especially local governments, should reconsider this position. No barriers exist to the plaintiffs' taking aim at other counties and filing similar suits. Should this occur, these potential defendants will be at a disadvantage with the legal conclusions reached in *Kenny A.* After all, the agreement reached in *Kenny A.* was the result of the court's conclusion that a child is a party and entitled to counsel.

A Child as a Party to a Deprivation Proceeding

The Supreme Court of Georgia has stated, "[A]ll persons who are directly or consequentially interested in the event of the suit should be made parties."¹² A child who is before the juvenile court due to allegations of parental abuse or neglect has an undeniable interest in his or her life, care and well-being. Moreover, the child has a liberty interest in not being removed from the care and custody of his parents without a proper showing of competent evidence that meets appropriate standards of proof that such separation is justified. Finally, the child is bound by the court's judgment as any other party is so bound. For these reasons, the child is "directly or consequentially interested" in the case and therefore, a child is indeed a party to the deprivation proceedings. Although the child's position might overlap with the position of his or her parent(s) or the state agency, the child is a unique party to the case, with a discrete and independent viewpoint.

As a party, the child is entitled to the same rights as any other party, including the right to be represented by counsel, the right to present evidence and cross-examine witnesses, the right to consent to a judgment and to appeal a judgment, and the right to be present in court or at least made available to

counsel during the proceedings. This academic argument is persuasive until attempts are made to translate it into actual practice.

The fundamental principle upon which the child welfare and juvenile court systems operate is protection of the child. American society assumes that every child needs a certain degree of protection due to perceived limitations of the child's age and developmental abilities. When children suffer from abuse and neglect, the inclination to protect them from further harm is heightened. Thus, historically, representation of children has taken the form of a substituted judgment model, and the children themselves are not invited or expected to attend the court proceedings involving their families.

Representing a Child as the Subject of the Proceeding: The Best Interest Generation

Most commonly, a GAL represents children. Federal law has required appointment of a GAL since passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974.¹³ CAPTA does not define "guardian ad litem," but the 1996 reauthorization of the Act modified the requirement that to qualify, a GAL "may be an attorney or a court appointed special advocate (or both)."¹⁴ Regardless of whether the GAL is an attorney or a court-appointed special advocate (CASA),¹⁵ the GAL represents the child's best interest. By definition, the GAL stands in the place of the child and in that role, substitutes his or her judgment for the child's. The GAL/CASA is an officer of the court, who is appointed by the court to provide an independent voice for the child. Importantly, the GAL/CASA is not bound by confidentiality and can be called as a witness and cross-examined by the parties. This best interest model, under which the GAL advocates for what the GAL believes is best for the child, should be contrasted

with a traditional client-directed representation model, under which an attorney zealously advocates for the expressed wishes of the client and is bound by duties of loyalty and confidentiality and other rules of professional conduct. If the GAL is representing the child's best interest, then who is representing the child's legal interests?

Representing a Child as a Client: The Next Generation

As expressed in *Kenny A.*, the child's due process interests include an interest in safety, health and well-being; an interest in maintaining the integrity of the family unit and having a parent-child relationship; an interest in being protected from abusive and neglectful parents; an interest in being protected from an erroneous decision to terminate parental rights; and an interest in proper treatment by the state while in its custody.¹⁶ In addition, the liberty interests of a child in state custody are at risk as a result of the child's being subject to placement in residential and institutional facilities that significantly restrict physical liberty.

The issue of loss of liberty is of particular concern because of the irony that results when comparing the treatment of children in delinquency and deprivation proceedings. Query why children who are accused of doing harm to others are entitled to counsel because they may lose their liberty by placement in state custody, while children who are victims of abuse and neglect and likewise are subject to placement in state custody are customarily not afforded the right to counsel. All of these interests, and conceivably more, are at risk when a deprivation case is brought against a family, and legal counsel is necessary to protect the child's interests from infringement. Juvenile court judges, GALs, and CASAs do not adequately militate against the risk of error. Indeed, in its order denying the

defendants' motion for summary judgment, the court in *Kenny A.* noted that the Legislature did not intend the appointment of a GAL as a substitute for the appointment of counsel.¹⁷

Moreover, the best interest model is nonsensical. What is in the child's "best interest" is the standard that controls every party's argument, regardless of their divergent agendas or different positions. The judge does not need to be reminded of the best interest standard in a deprivation proceeding. Rather, the role of the judge is to hear evidence and testimony from all parties, including the child, and make a determination based on that information as to what outcome will best serve the child's interests. Indeed, it is the judge, and not the GAL/CASA, who ultimately decides what is in the child's best interest.

The authors of the August 2004 article on a child's right to legal representation drew comparisons between a child's right to counsel in a delinquency proceeding and a child's right to counsel in deprivation proceedings. To continue with that line of reasoning, it is notable that the public policy of the state of Georgia, as reflected by legislative enactments, is that at age 13, children who have committed certain offenses can be incarcerated for life. These children are expected to direct their own defense when legal proceedings are instituted against them. If a 13-year-old child is presumed capable of meaningful participation in his legal defense under those circumstances, the same 13-year-old child is equally as capable of assisting counsel in a deprivation proceeding and being seated at counsel table.

Suppose Sue is neglected by her mother. Sue's grandmother may pursue a private custody action in superior court. Georgia law mandates that a superior court consider the wishes of an 11-year-old in a custody matter, and a child age 14 or older has a right to select the parent with whom he or she

desires to live. The child's selection is presumptive unless the court determines that such a custodial arrangement is not in the best interest of the child.¹⁸ Thus, there is clear, established precedent in Georgia law to solicit the voice of the child and factor it into the court's ultimate decision. On the other hand, if DFCS removed Sue, the "best interest" model of representation would significantly reduce the likelihood of Sue's wishes being heard in juvenile court because a recommendation as to the custodial arrangement that would serve Sue's "best interest" would supersede Sue's selection. How can a different level of participation be justified in a case involving the same child, the same contestants, and the same facts? No compelling reason exists why children should be treated differently in a deprivation proceeding.

The Georgia Rules of Professional Conduct contemplate a client-directed model of representation for children in deprivation proceedings. The ethics rules apply to all practicing attorneys, and no exception is made for attorneys who represent children. In fact, Rule 1.14, "Client Under a Disability," directs an attorney to "maintain a normal client-lawyer relationship" with a client whose ability to make adequately considered judgments in connection with the representation is impaired due to the age of the client.¹⁹ The "normal client-lawyer relationship" includes duties of undivided loyalty, competence, communication and confidentiality, among others.²⁰ The phrase also imparts the expectation that the child-client is a party to the proceeding and is therefore expected to attend all significant court appearances.

The commentary to Rule 1.14 recognizes, as argued above, that "children as young as five or six years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."²¹ The Model Rules

of Professional Conduct, upon which the Georgia Rules are based, have recently been amended, and now designate a minor client as one with "diminished capacity" rather than a disability.²² Likewise, the two leading authorities on juvenile law, the American Bar Association (ABA) and the National Association of Counsel for Children (NACC), recommend the model of the "child's attorney" in their "Standards for Lawyers Who Represent Children in Abuse and Neglect Cases."²³ This model, as the ABA and NACC describe it, calls for an attorney to provide legal representation to a child, owing all of the duties characteristic of a traditional attorney-client relationship, while recognizing that under certain circumstances this model will not best serve the child-client. When the child-client is preverbal, very young, or otherwise incapable of meaningful communication, the attorney is directed to engage in substituted judgment and advocate for what the

attorney believes is in the child's best interest.

The Role of CASA in a Client-Directed Child Representation Model

Advancement of a client-directed model of legal representation for children in deprivation cases under either of the above recommendations does not foreclose the need for a GAL or CASA. As a lay-GAL, the CASA cannot perform any legal function on behalf of the child. "The ultimate goal of a CASA volunteer is to help make sure the child has a safe, permanent home."²⁴ This goal is common ground for the CASA volunteer and the child's attorney, and with this shared objective, the CASA volunteer and the child's attorney are an effective and powerful team. Indeed, the federal district court in *Kenny A.* concluded that, read together, O.C.G.A. § 15-11-6(b) and O.C.G.A. § 15-11-9(b) "expressly require the appointment of both an

attorney and a guardian ad litem in cases where the child is not represented by his or her parent, guardian or custodian."²⁵

A CASA should be promoted in all courts to serve as an aid to the court to facilitate reasonable efforts, monitor state and parental compliance with court orders and case plans, and conduct social studies to expedite the placement of children in the most family-like setting. Furthermore, the appointment of a CASA or GAL is necessary when the child's attorney determines that the child's expressed wishes would be seriously injurious to the child. In that scenario, the child's attorney should continue representing the child's expressed wishes but request appointment of a separate GAL to represent the child's best interest.²⁶

Conclusion and Recommendations

Since the August 2004 *Journal* article on this topic, a growing number of juvenile courts and

**Even a lawyer
can't argue with
these results.**

Recently, MLM, a lawyers professional liability insurance company, surveyed over 400 of its customers. Of those, over 95% said they would recommend MLM to others. Here's why:

"Personal yet professional, especially like the prompt responses to any questions or needs . . . and for the policyholder dividend as well."

"I am a new customer and I have been very pleased with the application assistance I have received, and with the quote and online purchasing option."

"High level of service and an understanding of the profession that a general insurance company does not have."

"Good, solid product; reasonable fair pricing; always in the market."

© 2006 Minnesota Lawyers Mutual. All rights reserved.



MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY

800.422.1370 | www.mlmins.com

child welfare communities have embraced the legal arguments supporting a child's right to legal counsel and the recognition that a child is a party to the proceeding. The practical and philosophical barriers to implementing this framework are more difficult to overcome. Legal arguments aside, human nature gives even veteran juvenile court professionals pause at the suggestion that a child who has already suffered abuse or neglect should be present in court to listen to his or her parents testify to the nature and degree of those abusive acts. How can the court be sure that it is not causing additional harm and trauma by subjecting the child to a retelling of such a painful experience? Or is such participation therapeutic at some level? How can bright-line rules be drawn when each child will react uniquely?

At a minimum, children deserve—and have an established right to—a competent attorney to represent their legal interests and expressed wishes in abuse and neglect proceedings. Moreover, as parties to the action, children technically have a right to be present at all proceedings. A bright-line mandate requiring all children to be present in court, however, ignores reality. Some children will not want to participate in court, and indeed, others could experience further trauma as a result. Some children cannot meaningfully participate in the proceedings or in their representation, and for others, the balance of interests dictates against disrupting a school day to deliver them for court and the hours of waiting for their case to be called. Recognizing that children have a right to meaningful participation in the case, which generally includes a right to be present at significant court hearings, a decision to exclude a child from a hearing should be made based on a particularized determination that (1) the child does not want to attend, is too young to sit through the hearing, or would be

traumatized by attendance; or (2) other extraordinary circumstances dictate against having the child present.²⁷

Children have a statutory and constitutional due process right to adequate legal counsel to represent their wishes and legal interests throughout the life of a deprivation case. Thus, all children should receive the benefit of the appointment of legal counsel at every stage in the proceeding. Moreover, that attorney should abide by a client-directed model of representation under most circumstances and should engage in substituted judgment and “best interest” advocacy only when the child-client cannot meaningfully communicate with the attorney. In circumstances in which the attorney cannot reconcile the child's expressed wishes with what is in his or her best interest through the attorney's counseling role, the attorney should request the appointment of a separate GAL or CASA to represent the child's best interest while continuing in the role of the child's attorney zealously advocating for the child's legal interests.

In the alternative, as a compromise, the legal presumption should be established that legal counsel shall be appointed for youth who are 13 years of age or older, consistent with the treatment of children in other types of cases. Again, that attorney should represent the legal interests and expressed wishes of the client. The court, on its own motion or upon the request of the child's attorney, should appoint a CASA to represent the child's best interest as a complement to the attorney's advocacy of the child's legal interests. In this way, the juvenile court judge will be presented with a comprehensive picture of the child's needs and wishes to inform the decisions made in the case. Adopting this approach will require a paradigm shift among some judges who have assumed that the effectuation of *Kenny A.* would require an additional attorney and therefore addi-

tional costs to the counties. This assumption is wrong because GALs are not required to be attorneys. Attorneys serving as GALs have become a custom and practice in juvenile courts across the state. The model proposed by the authors simply requires the juvenile courts to take the GAL hats off the attorneys and place them on volunteers such as a CASA. Let attorneys do what they are trained to do: advocate for the legal interests of their clients.

Juvenile court judges and practitioners will continue to wrestle with the translation of the academic arguments supporting a child's status as a party to his or her own deprivation proceeding and the derivative rights to adequate legal representation and to meaningful participation in the case into actual practice in their courtrooms. The authors challenge all juvenile court stakeholders to embrace these concepts despite the challenges presented by the complex family dynamics, individual idiosyncrasies, sophisticated and nuanced legal and social work decision-making, and limited resources that characterize deprivation cases. The talented juvenile court judges and practitioners in this state are up to the test and the result will be better outcomes for children. 



Hon. Steven C. Teske was appointed to the juvenile bench in Clayton County in 1999. Prior to taking the bench, he was a

partner in the law firm of Boswell & Teske LLP and represented Clayton County Department of Family and Children Services prosecuting abuse and neglect cases in juvenile court. He is president-elect of the Georgia Council of Juvenile Court Judges and was appointed by Gov. Sonny Perdue to the Children and Youth Coordinating Council and the Department of Juvenile Justice Advisory Board.



Melissa Carter is the training director for the Supreme Court of Georgia's Committee on Justice for Children. In this position she

assists in the management of Georgia's Court Improvement Project, a federally-funded program focused on improving the processing of civil child abuse and neglect cases in the state's juvenile courts. Since graduating from the University of Illinois College of Law in 2002, Melissa has dedicated her career to a specialization in child advocacy, both through public policy advocacy and private legal practice.

Endnotes

1. Beth Locker & Melissa Dorris, *A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings*, 10 GA. B.J., Aug. 2004, at 12.
2. 356 F. Supp. 2d 1353 (N.D. Ga. 2005).
3. See http://www.childrensrightrights.org/site/PageServer?pagename=home_page.
4. First Amended Complaint, *Kenny A. v. Perdue*, No. 1:02-cv-1686 (N.D. Ga. 2003).
5. See *id.*
6. See *Kenny A.*, 356 F. Supp. 2d at 1355.
7. *Id.* at 1357.
8. *Id.*
9. *Id.*
10. O.C.G.A. § 15-11-6(b) (2006).
11. 150 Ga. App. 130, 257 S.E.2d 35 (1979).
12. *Gormley v. Wilson*, 176 Ga. 711, 711, 168 S.E. 568, 569 (1933). See also *Barry v. Slappey*, 229 Ga. 109, 110, 189 S.E.2d 394, 395 (1972).
13. Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA), Pub. L No. 93-247, 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101-06 (2000)).
14. 42 U.S.C. § 5106(b)(2)(A)(xiii) (2003).
15. A CASA is a specially-trained community volunteer who is appointed by a judge to advocate for the best interest of an abused or neglected child who is involved in a juvenile court deprivation proceeding. Georgia CASA website,

<http://www.gacasa.org>.

16. See *Matthews v. Eldridge*, 424 U.S. 319, 332-335 (1976).
17. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005).
18. See O.C.G.A. § 19-9-3(a)(4), (6) (2007). Note that prior to amendments enacted in the 2007 legislative session, the right of selection by a child 14 or older was controlling on the court's decision. O.C.G.A. § 19-9-1(a)(3)(A) (2006).
19. GA. RULES OF PROF'L CONDUCT R.1.14(a).
20. See *id.* R. 1.1, 1.4, 1.6, 1.7.
21. *Id.* R. 1.14 cmt. 1.
22. MODEL RULES OF PROF'L CONDUCT R. 1.14, available at ABA Center for Professional Responsibility, http://www.abanet.org/cpr/mrpc/rule_1_14.html.
23. ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by House of Delegates Feb. 5, 1996). See also ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by NACC Oct. 13, 1996).
24. Georgia CASA website, <http://www.gacasa.org>.
25. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005) (emphasis added). O.C.G.A. § 15-11-6(b) provides in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings alleging . . . deprivation . . . Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them."

O.C.G.A. § 15-11-9(b) provides:

The court at any stage of a proceeding under this article, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or if the interests of the parent, guardian, or custodian conflict with the child's interests or in any other case in which the

interests of the child require a guardian.

26. See e.g., ABA/NACC Standards for Lawyers Who Represent Children in Abuse and Neglect Cases, R. B-2 (1996). Comments to Rule B-2 note that the primary conflict between the two roles arises when the child's articulated position differs from what the lawyer deems to be in the child's best interest. At no time must an attorney abide by a child's directives that are illegal, frivolous, or potentially harmful. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. The lawyer's advice and guidance can often persuade the child to abandon or change an imprudent position or identify alternative choices. Where the two positions cannot be reconciled, the lawyer must remain in the lawyer-client role due to the confidential relationship and privileged communications involved.
27. See *id.* R. D-5 cmt. (1996).

Earn up to 6 CLE credits for authoring legal articles and having them published.

Submit articles to:

Donald P. Boyle Jr.

Georgia Bar Journal

104 Marietta St. NW, Suite 100

Atlanta, GA 30303

Contact sarah@gabar.org

for more information

or visit the Bar's website,

www.gabar.org.

