

## IX. TERMINATION OF PARENTAL RIGHTS

A. **Code Sections: O.C.G.A. § 15-11-58, 15-11-93 through 15-11-106**

B. **Uniform Juvenile Court Rule 15.1**

C. **Procedure**

1. **Jurisdiction.** The juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action for the termination of the legal parent-child relationship. An exception exists when termination is sought in connection with adoption proceedings and the biological father is not the legal father of the child. In that case the superior courts shall have concurrent jurisdiction to terminate the legal parent-child relationship. O.C.G.A. § 15-11-28.

2. **Venue.** O.C.G.A. § 15-11-29. A proceeding under this article may be commenced in the county in which the child resides. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced. However, for the convenience of the parties and witnesses, deprivation proceedings may be transferred from the county in which the child is present at the start of the proceedings to the county where the child resides. In addition, a proceeding to terminate parental rights may be commenced in the county in which the child resides in a foster home. Cain v. Department of Human Resources, 166 Ga.App. 801, 305 S.E.2d 492 (1983). Finally, when a superior court judge sits as juvenile court judge, hearings in connection with any proceeding under this article may be heard before the judge in any county within the judicial circuit over which the judge presides.

3. **Case Filing.** All cases begin with the filing of a complaint and petition. A petition may be made by any person who has knowledge of the facts alleged or is informed and believes that they are true. O.C.G.A. § 15-11-38.

"However, the intake officer shall make a preliminary determination as to whether a petition shall be filed. If the allegations appear to be legally sufficient for the filing of a petition, and it further appears that judicial action is in the best interest of the public and the child within guidelines established by the court, the intake officer may endorse a petition." UJCR 4.1.

Because many petitions for the termination of parental rights allege failure of the parent(s) to comply with prior orders of the court, it is important to observe that, "[I]n all cases where a petition references a prior court order, a copy of such prior court order shall be attached to the petition." UJCR 4.1.

The petition to terminate parental rights and all subsequent court documents in the proceeding shall be entitled "In the matter of \_\_\_\_\_, a child." The petition shall state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in Code Section 15-11-93. The petition shall set forth in ordinary and concise language the facts required pursuant to Code Section 15-11-38.1. O.C.G.A. § 15-11-95.

When a petition seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to the child, the petition shall be amended to include a certificate from the putative father registry disclosing the name, address, and social security number of 1) any registrant acknowledging paternity of the child; or 2) indicating the possibility of paternity of a child of the child's mother, for a period beginning no later than two years immediately prior to the child's date of birth. O.C.G.A. § 15-11-95(d). For information concerning the putative father registry, see O.C.G.A. § 19-11-9.

**4. Mandatory Filing by DFCS.** DFCS is required to file or join a petition for termination in the following circumstances: 1) when the child has been in DFCS custody for 15 of the past 22 months; 2) when the child is an abandoned infant; 3) when the parent has murdered or committed voluntary manslaughter of another child of the parent; 4) when the parent has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or 5) when the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent. At the same time, DFCS is required to seek permanent placement of the child through adoption. O.C.G.A. § 15-11-58(m).

However, a petition for termination is not required if 1) the child is being cared for by a relative, 2) the case plan documents a compelling reason why termination is not in the child's best interests, or 3) DFCS has not provided services necessary for the safe return of the child to the home. O.C.G.A. § 15-11-58(m).

**5. Appointment of Guardian Ad Litem.** In any proceeding for terminating parental rights or any rehearing of appeal thereon, the court shall appoint an attorney to represent the child as his counsel, and may appoint a separate guardian ad litem or a guardian ad litem who is the same person as his counsel. O.C.G.A. § 15-11-98. In deprivation cases, a CASA, an attorney, or both may be appointed guardian ad litem. O.C.G.A. § 15-11-9.

A party to the proceeding or his employee or representative shall not be appointed as guardian ad litem. O.C.G.A. § 15-11-9.

**6. Service of Summons - Generally.** Upon filing of the petition, a summons shall be issued on the child's parents, guardian, lawful custodian, and on the person presently having physical custody of the child. If the child is fourteen years old or older, the child shall also be served. O.C.G.A. § 15-11-39. If, prior to the filing of the petition, the paternity of a child born out of wedlock has been established in a judicial proceeding to which the father was a party, the father shall be served with summons as provided by this article. Such a father has the right to be heard unless he has relinquished all paternal rights regarding the child. O.C.G.A. § 15-11-96. *See Uniform Form JUV-7 for mandatory Summons and Process.*

A copy of the petition shall be attached to the summons in all cases other than service by publication. When served by publication, the notice shall indicate the general nature of the allegations and where a copy of the petition may be obtained by the child's parents, guardian, lawful custodian, and the person presently having physical custody of the child. Such copy shall be available from the court during business hours. A free copy shall be available to the parent or, upon request, shall be mailed to the parent. All summonses shall contain a statement to the effect that the hearing is for the purpose of terminating parental rights. O.C.G.A. § 15-11-96.

The Court of Appeals has held that O.C.G.A. § 15-11-96 is not unconstitutional because it only applies to fathers and not mothers. In the Interest of B.B.S., 253 Ga. App. 119 (2001); In the

Interest of V.M.T., 243 Ga. App. 732 (2000); In the Interest of D.B., 243 Ga. App. 473 (2000).

The summons shall be served at least 30 days before the time set for the hearing, and a copy of the petition shall be served together with the summons and shall be made in the manner provided in Code Section 9-11-4, relating to service in civil practice. O.C.G.A. § 15-11-39.1. In Re S.S., T.S., & S.S., 246 Ga. App. 248 (2000).

Personal service of a petition for termination of parental rights is statutorily and constitutionally required. Id.; See also In re C.I.W., 229 Ga. App. 481 (1997). Notorious service of the petition, by leaving a copy of the petition at the dwelling place or usual place of abode with a person of suitable age and discretion residing there in, is also allowed. In Re S.S.; O.C.G.A. § 9-11-4 (e)(7). Furthermore, actual notice of the hearing for the termination of parental rights is not adequate and will not cure defective service. In re S.S.; See also In Re D.R.W., 229 Ga. App. 571 (1997). An objection for defective service does not have to be made at the beginning of the hearing for the termination of parental rights. If the objection is made at the first practical opportunity, then the issue of defective service has not been waived. In Re S.S.; See also In re D.R.W.

Any suitable person under the direction of the court may make Service of the summons. O.C.G.A. § 15-11-39.1.

If, after reasonable effort, a party to be served with a summons cannot be found and his post office address cannot be ascertained, whether he is within or outside this state, the court may order service of summons upon him by publication in accordance with Code Sections 9-11-4 and 9-11-5. The hearing shall not be earlier than five days after the date of the last publication. If service is made by publication, the record should reflect the "reasonable effort" made to find the party. In Re: J.B., 140 Ga.App. 668, 231 S.E.2d 821 (1976).

The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing. O.C.G.A. § 15-11-39.1.

A biological father who is incarcerated out-of-state did not have his due process rights violated when the trial court denied his request to have arrangements made to have him transported to the termination hearing or to participate by phone. McKinney v. Jennings, 251 Ga. App. 18 (2001). Due process requires that, prior to the termination of his parental rights, the biological father receive notice and an opportunity to be heard. There is no constitutional entitlement mandating the father's right to appear personally at the termination hearing, and there is no authority mandating that he be allowed to participate by telephone. The Court held that the father's due process rights were met since he had notice of the hearing, an opportunity to present affidavit testimony, and an opportunity to be heard through his counsel.

**7. Service of Summons on Biological Father Who Is Not the Legal Father.** O.C.G.A. § 15-11-96(e). If there is a biological father who is not the legal father and he has not surrendered his rights, he shall be notified of termination proceedings in the following circumstances:

- a) if his identity is known to the petitioner or the petitioner's attorney;
- b) if he is a registrant on the putative father registry who has acknowledged paternity;

- c) if he is a registrant on the putative father registry who has indicated possible paternity of a child of the child's mother during a period beginning two years immediately prior to the child's date of birth; or
- d) if the court finds from the evidence, including but not limited to the affidavit of the mother, that such biological father has performed any of the following acts:
  - (i) lived with the child;
  - (ii) contributed to the child's support;
  - (iii) made any attempt to legitimate the child; or
  - (iv) provided support or medical care for the mother during her pregnancy or during her hospitalization for the birth of the child.

Notice shall be provided by registered or certified mail, return receipt requested, at his last known address, or by publication or personal service. If feasible, notice by mail or by personal service shall be used before publication. O.C.G.A. § 15-11-96(f).

If the identity of the biological father who is not the legal father is not known to the petitioner or the petitioner's attorney, then the court shall be authorized to require the mother to execute an affidavit in accordance with O.C.G.A. § 19-8-26(h) or show cause before the court if she refuses. If the court finds from the evidence, including but not limited to the affidavit of the mother, that the biological father has not performed any of the acts listed in (7)(d) above, and the petitioner provides a certificate from the putative father registry stating there is no entry acknowledging paternity or indicating possible paternity of a child by the child's mother for a period beginning no later than two years prior to the child's date of birth, then it shall be rebuttably presumed that the biological father is not entitled to notice of the proceedings. Absent evidence rebutting the presumption, no further notice or inquiry shall be required by the court, and the court shall enter an order terminating the rights of such biological father. O.C.G.A. § 15-11-96(g).

**8. Appointment of Counsel.** In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as his counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as his counsel. O.C.G.A. § 15-11-98.

In any case involving termination of parental rights in which no attorney was appointed by the trial court to represent the interests of the child, the judgment must be vacated and the case remanded to the juvenile court for retrial. In Re: J.D.H., 188 Ga.App. 466, 373 S.E.2d 279 (1988).

Because of the significant issues in termination of parental rights cases, some judges appoint attorneys to represent the interests of parents who cannot be personally served, even absent a request.

If the parent(s) of the child desire to be represented by counsel but are indigent, the court shall appoint an attorney for such parent(s). The appointment shall be a charge upon the funds of the county upon certification thereof by the court in the same manner as authorized for other expenses under Code Section 15-11-8. O.C.G.A. § 5-11-98.

If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and knows of his right to be provided with counsel by the court if he is an indigent

person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented indigent person upon his request. If the interests of two or more parties conflict, separate counsel shall be provided for each of them. O.C.G.A. § 15-11-6.

An indigent person is one who at the time of requesting counsel is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation. O.C.G.A. § 15-11-6.

**9. Discovery.** Discovery may be allowed in all cases where the termination of parental rights is requested. Any discovery so permitted shall be at the discretion of the judge to whom the case is assigned, and any such discovery allowed shall be made in conformance with Article V of the Civil Practice Act, O.C.G.A. §§ 9-11-26 through 9-11-37, except as modified by these rules. UJCR 7.1.

Any request for discovery shall be made in writing and shall state with particularity the subject, manner, time and place of discovery sought. The request for discovery must be accompanied by a Rule Nisi and must be served on all parties no less than three days, excluding weekends and holidays, before the hearing. The court may require that service be made on others in addition to the parties. If there are any objections to the requests for discovery, they should be made at the hearing or they are waived. UJCR 7.2.

Unless changed by the court, any request for discovery must be filed within 48 hours of the filing of the petition for a child in detention, and within fifteen days of the filing of the petition otherwise. The discovery shall be completed within fifteen days of the order for a child in detention, and within thirty days otherwise. The court may modify the filing requirements and discovery completion deadlines upon a showing of good cause. UJCR 7.3.

At the hearing set to determine whether discovery is to be allowed, the court shall enter an order outlining the discovery to be allowed and the time for completion of such discovery, and setting the date for the adjudicatory hearing. UJCR 7.4.

**10. Pretrial Procedure.** The court is authorized to require a pretrial conference which may result in an order controlling various aspects of the trial of the case. UJCR 7.5.

The court may require a physical or mental evaluation of any parent, stepparent, guardian, or child involved in a termination proceeding. O.C.G.A. § 15-11-100.

**11. Continuances.** "Except as provided in Rules 7.3 and 8.6, any request for continuance shall be made in conformance with Article VII of the Civil Practice Act, O.C.G.A. § 9-10-150, through or on stipulation of counsel alone. Permission of the court is required for all continuances." UJCR 7.7.

However, in cases involving allegations of deprivation, the granting of continuances beyond the statutory limitations as defined in O.C.G.A. § 15-11-39(a) shall be by written order, and the specific reason for the continuance must be stated therein. UJCR 11.3.

**12. Conduct of the Hearing.** Only the parties, their counsel, witnesses, other persons accompanying a party for his assistance and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. UJCR 26.1, O.C.G.A. § 15-11-78(a).

Hearings are conducted without a jury and may be adjourned from time to time in the court's discretion. O.C.G.A. § 15-11-41(a). See In the Interest of G.L.H., J.H., and J.H., 209 Ga.App.

146, 433 S.E.2d 357 (1993), where the court continued final determination of the case for six months while seeing if the parent could comply with an interim order.

Unless waived by the juvenile and his parent, guardian, or attorney, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. O.C.G.A. § 15-11-41(b). See In the Interest of L. G., 230 Ga. App. 153, 495 S.E.2d 628 (1998).

UJCR 2.3 requires that the court reporter who is appointed by the judge shall attend all hearings as required by the judge, or at the request of any party, provided appropriate financial arrangements are made with said reporter in advance.

**13. Findings of Fact.** There can be no termination by default. Responsive pleadings are not required. UJCR 7.6.

The juvenile court is a court of special and limited jurisdiction, and its judgments must show on their face such facts as are necessary to give it jurisdiction of the person and subject matter. If the order of a juvenile court fails to recite the jurisdictional facts, the judgment is void. Williams v. Department of Human Resources, 150 Ga.App. 610, 258 S.E.2d 288 (1979).

A dry recitation by the court that certain legal requirements are met is not sufficient to satisfy the requirement for specific findings of fact. In Re: H.T., 198 Ga.App. 463 (1991).

All orders must contain findings of fact and conclusions of law in support of the petition or dismissal of the petition. UJCR 11.2.

Reasonable Efforts. The court is not required to find that the Department of Family and Children Services made reasonable efforts to reunite the child and parents. A reasonable efforts finding is only an issue at deprivation hearings and is not an issue in a termination of parental rights inquiry. In the Interest of A.M.B. et al., children, 219 Ga.App. 133 (1995).

Two-Prong Test. In deciding the issue of termination, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in O.C.G.A. § 15-11-94(b). If the finding is positive, then the court shall consider whether there is clear and convincing evidence that termination is in the best interests of the child. The court should consider the physical, mental, emotional, and moral condition and need of the child, as well as the child's need for a secure and stable home. O.C.G.A. §15-11-94 provides an extensive, but not exhaustive, list of legal reasons that may authorize termination of parental rights.

Order for termination was reversed even though the evidence supported the juvenile court's findings that the children were deprived, that the deprivation was due to lack of proper parental care and control, and that the deprivation was likely to continue. On appeal, the Court held that a mother's inability to care for her children does not necessarily mean that her current relationship with them is detrimental or that continuing the legal relationship between parent and child is inherently harmful to the children. The Court noted that the record did not contain any expert testimony on these issues. In the Interest of D.F., L.F., and A.F., 251 Ga. App. 859 (2001).

Opportunity Interest. The court is authorized to terminate the biological father's parental rights if it is evident that he abandoned his opportunity interest in developing a relationship with his child by failing to file a petition to legitimate after receiving notice of his need to do so in order to protect his parental rights. In the Interest of D.B., 243 Ga. App. 473 (2000); See Also In the Interest of V.M.T., 243 Ga. App. 732 (2000), In the Interest of D.M. and D.M., 244 Ga. App. 361 (2000).

Aggravating Circumstances. A parent's incarceration alone may not compel a termination of parental rights, but it can support a termination when there are sufficient aggravating circumstances. In Re M.C.L., 251 Ga. App. 132 (2001). Aggravating circumstances include a history of repeated incarcerations for repeated criminal offenses, which are likely to continue upon release, and that prevent one from caring for a child.

Bifurcated Proceedings. It is permissible but not necessary to bifurcate the termination of parental rights hearings into adjudication and disposition phases. Powell v. Department of Human Resources, 147 Ga.App. 251, 248 S.E.2d 533 (1978), overruled on other grounds, Chancey v. Department of Human Resources, 156 Ga.App. 338, 274 S.E.2d 728 (1980). In Re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S.Ct. 2046, 60 L.Ed.2d 657 (1979).

Oral and Written Reports. In dispositional hearings involving deprivation of a child, all information helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value, even though not otherwise competent in the hearing on the petition. The parties or their counsel shall be afforded an opportunity upon request to examine and controvert written reports so received and to cross-examine individuals making the reports, except that portions of such reports not relied on by the court in reaching its decision which, if revealed, would be prejudicial to the interests of the child or any party to the proceeding, may be withheld in the court's discretion. Confidential sources of information need not be disclosed. O.C.G.A. § 15-11-56(c).

**14. Dismissal.** In matters involving termination of parental rights, the court shall dismiss the petition, with findings of fact and conclusions of law, if the evidence fails to sustain the allegations by clear and convincing evidence. UJCR 11.2.

**15. Judgment.** Except when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk, and for the purposes of appeal, shall not be considered as an entry of judgment until stamped as filed by the clerk. UJCR 17.1. An order terminating the parental rights of a parent under this article is without limit as to duration and terminates all the parent's rights and obligations with respect to the child, and all rights and obligations of the child to the parent arising from the parental relationship, including rights of inheritance. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another, nor has the parent any right to object to the adoption or otherwise to participate in the proceedings. O.C.G.A. § 15-11-93.

An order of disposition shall be issued by the juvenile court no later than one year after the filing of the Petition required by O.C.G.A. § 15-11-95 provided that no just cause has been shown for delay. O.C.G.A. § 15-11-106.

**16. Appeals.** On appeal, the style of the case shall substitute the child's initials for his name. UJCR 6.4. Appellant shall pay all costs for transcribing the recording of a case on appeal. However, upon filing of a pauper's affidavit with the clerk and a showing to the court the appellant is unable without undue financial hardship to pay the cost of transcribing the record, the court shall authorize payment of such costs from county funds. UJCR 21.2. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976).

In all cases of final judgments of a juvenile court judge, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the superior court. However, no such judgment or order shall be superseded except in the discretion of the judge; rather, the

judgment or order of the court shall stand until reversed or modified by the reviewing court. O.C.G.A. § 15-11-3. Appeals of termination of parental rights cases are taken to the Court of Appeals and are not discretionary appeals.

In any rehearing or appeal, the court shall appoint a lawyer to represent the interests of the child. O.C.G.A. § 15-11-98.

**17. Inadmissibility of Record.** The record of the testimony of the parties adduced in any proceeding under this article shall not be admissible in any civil, criminal, or any other cause or proceedings in any court against a person named as respondent for any purpose whatsoever, except in subsequent deprivation or termination proceedings involving the same child or deprivation or termination proceedings involving the same respondent under this article. O.C.G.A. § 15-11-101.

**18. Post Trial.** If, upon the entering of an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall first attempt to place the child with the child's extended family or with a person related to the child by blood or marriage. A thorough search for a suitable family member shall be made by the court and the Department of Human Resources in attempting to effect this placement. A placement effected under this paragraph shall be conditioned upon the family member who is given permanent custody or who is granted an adoption of the child agreeing to abide by the terms and conditions of the order of the court. O.C.G.A. § 15-11-103.

Effective July 1, 1996, the legislature modified this Code Section by adding the following sentence: "**A placement shall be made under the terms of this paragraph only if such a placement is in the best interest of the child.**" The purpose of the sentence is to recognize that placement with people related by blood or by marriage should not automatically have priority over other permanent home resources for children. One effect of this sentence is to allow placement of a child with a foster parent with whom the child has bonded if the foster parent is willing to adopt the child. The court may weigh the merits of placing the child with persons related to the child by blood or by marriage versus placing the child with the foster parents who may already have a parent-child relationship with the child. The court's decision would be the placement that is in the child's best interest.

In determining whether or not there is a parent having parental rights, the court will look not only to the biological or "legal" father and mother, but also at third persons who stand in loco parentis, whom the court has equated with parents. Where there is a person standing in loco parentis who has taken a voluntarily relinquished child into their family and cared for them, it is not the legislative intent that the child be automatically removed from that home and placed with a state or county agency just because there is no biological or "legal" father or mother with parental rights. *In Re: M.A.F.*, 254 Ga. 748, 334 S.E.2d 668 (1985) (decided under former O.C.G.A. § 15-11-54; repealed July 1, 1986).

The court should seek to place custody first with the Department of Human Resources, then with a licensed child-placement agency, then in a foster home, and lastly with some other designated receiver. *Department of Human Resources v. Ledbetter*, 153 Ga.App. 416, 265 S.E.2d 337 (1980) (decided under former O.C.G.A. § 15-11-54; repealed July 1, 1986).

The court shall transmit a copy of every final order terminating the parental rights of a parent to the Division of Family and Children Services Adoption Unit of the Department of Human Resources within 15 days of the filing of such order. The address is Room 501, 878 Peachtree Street, Atlanta, GA 30309. O.C.G.A. § 15-11-103.

**19. Yearly Review.** If a petition seeking the adoption of the child is not filed within one year after the date of the dispositional order, the court shall then, and at least yearly thereafter as long as the child remains unadopted, review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted. The court may then enter such orders as it deems necessary to further the adoption, including, but not limited to, another placement.  
O.C.G.A. § 15-11-103.