

**MISSISSIPPI’S GUARDIANS AD LITEM
NEED CLARIFICATION OF THEIR ROLE
AND RESPONSIBILITIES**

INTRODUCTION..... 1066

I. THE STATUTES, CASE LAW, AND RULES THAT HAVE
AN IMPACT ON GAL PROCEDURE 1068

A. *Mississippi’s Youth Court Act* 1068

B. *Mississippi Case Law Regarding GALs*..... 1071

C. *Mississippi’s Uniform Rules of Youth Court
Practice*..... 1071

II. THREE RECENT MISSISSIPPI APPELLATE OPINIONS
THAT AFFECT GAL QUALIFICATIONS 1074

A. *S.G. v. D.C.*..... 1074

B. *Jones v. Jones* 1077

C. *McDonald v. McDonald* 1078

1. The Majority Opinion..... 1078

2. Justice Pierce’s Concurring in Part and in
Result Opinion..... 1080

3. Justice Dickinson’s Specially Concurring
Opinion 1082

III.A PROPOSED REVISION TO MISSISSIPPI’S GAL
PROCEDURE 1083

A. *The GAL’s Qualifications and Certification* 1084

1. Does the GAL Need to Be Qualified as an
Expert?..... 1085

2. A Proposed Revision to GAL Certification..... 1088

B. *Other Areas that Need Clarification* 1089

1. The Appointment of the GAL 1089

2. Determination of Which Court Rules Will
Govern the Proceeding 1090

CONCLUSION 1092

APPENDIX 1094

INTRODUCTION

Consider this hypothetical. During a Mississippi chancery court custody proceeding, the mother alleges that the father abused their child. Per Mississippi statute, the chancellor must now appoint a guardian ad litem (GAL).¹ The chancellor appoints Bob Smith. But does Bob have the appropriate certification?² And must the court qualify him as an expert witness?³

Bob proceeds to interview the relevant parties—child, mom, dad, the Department of Human Services (DHS) caseworker, the child’s teacher, the child’s pediatrician, family members, etc. Using the facts gathered in his interviews, Bob begins to compile a report. But does the court want a written or oral report? And what type of recommendation does the court want Bob to provide in his report? Does it want Bob to render an opinion as to whether the abuse likely occurred? Or does it only want a recommendation as to which parent should have custody?

For that matter, is Bob the child’s advocate or an arm of the court?⁴ And, if the court calls Bob to testify, can he offer opinion testimony based on the hearsay evidence from his interviews?⁵ Another wrinkle in the fabric is deciding which rules govern the GAL’s role in a chancery court child protection proceeding—those

¹ MISS. CODE ANN. § 93-5-23 (2013) (“[I]n [custody cases in which an allegation of abuse arises] the court shall appoint a guardian ad litem for the child as provided under Section 43-21-121, who shall be an attorney.”).

² MISS. CODE ANN. § 43-21-121(3)-(4) (2009) (“The guardian ad litem shall be a competent person who . . . [has] received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of . . . training which shall be satisfactory to fulfill the requirements of this section.”).

³ In *McDonald v. McDonald*, Justice Dickinson wrote a specially concurring opinion, joined by four other justices, in which he stated that, per Mississippi’s Rules of Evidence, a GAL must be qualified as an expert witness to provide opinion testimony. 39 So. 3d 868, 887 (Miss. 2010) (Dickinson, J., specially concurring). See *infra* Part II.C.3 for discussion regarding this opinion.

⁴ In *S.G. v. D.C.*, “the Mississippi Supreme Court recognized that guardians may perform in either of [the] two roles.” DEBORAH H. BELL, *BELL ON MISSISSIPPI FAMILY LAW* 390 (2d ed. 2011) (citing *S.G. v. D.C.*, 13 So. 3d 269, 281 (Miss. 2009)). See *infra* Part II.A for discussion about the *S.G.* opinion.

⁵ See *supra* note 3 and accompanying text. And yet, the Uniform Rules of Youth Court Practice allow hearsay testimony at disposition hearings. See *infra* note 131 for discussion on hearsay testimony at dispositions; *infra* Part I.C for more discussion on the Uniform Rules.

set forth in the Uniform Rules of Youth Court Practice or the chancery court's usual rules and procedures.⁶

No Mississippi law has provided a clear answer for any of these arguably confusing questions. Mississippi's GAL rules are virtually all developed in case law. Currently, there is no centralized and clearly defined statute or rule for what qualifications a GAL should possess, what details a chancellor should provide a GAL upon appointment, and which court's rules (chancery court or youth court) will be followed in chancery cases involving allegations of child abuse or neglect. This Comment argues that, to truly protect the best interests of the child, the GALs need standards that are clear, uniform, and easily accessible. Specifically, this Comment argues for an explicit rule concerning GALs in Mississippi.

There needs to be either a revision to the existing rules or the adoption of a new uniform rule that clearly defines the GAL process. Such a revision or uniform rule would alleviate the confusion currently experienced by many GALs, both in chancery court and youth court cases involving child abuse and neglect allegations. The rule should address whether a GAL must be qualified as an expert or merely certified; what instructions a chancellor or youth court judge should provide the GAL regarding his role in the child protection proceeding; and whether the chancery court must follow chancery court rules or youth court rules during a hearing on allegations of child abuse or neglect.

Part I of this Comment discusses how Mississippi's Youth Court Act, Mississippi case law, and the Uniform Rules of Youth Court Practice have impacted the role of the GAL in Mississippi. Part II provides a summary of three recent Mississippi appellate opinions that discussed the GAL's role and built upon each other to hold that GALs should be qualified as expert witnesses before they present opinion testimony. Part III argues that the GAL role in general needs to be clarified more fully, especially with respect

⁶ Compare *McDonald*, 39 So. 3d at 887 (Dickinson, J., specially concurring) ("Since this is not a youth-court case, most of the authority cited in the CIPR opinion does not apply."), with MISS. UNIF. R. YOUTH CT. PRAC. 2(a)(2) (stating that these rules apply to "any chancery court proceeding when hearing . . . an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action").

to qualification or certification, appointment orders, and court rules.

I. THE STATUTES, CASE LAW, AND RULES THAT HAVE AN IMPACT ON GAL PROCEDURE

In 1974, amid concerns of the deficiencies in child abuse prevention programs, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA).⁷ A provision in CAPTA promised federal funds to states that passed laws creating child abuse and neglect prevention programs.⁸ As a result of CAPTA's funding enticement, every state in the country has enacted child abuse and neglect prevention programs and/or statutes.⁹

A. Mississippi's Youth Court Act

The Mississippi legislature enacted Mississippi's first Youth Court Act in 1946.¹⁰ The legislature amended the Act (Youth Court Law) several times over the years¹¹ in response to concerns

⁷ See Emily Gleiss, Note, *The Due Process Rights of Parents to Cross-Examine Guardians Ad Litem in Custody Disputes: The Reality and the Ideal*, 94 MINN. L. REV. 2103, 2106 (2010) (citing Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5106, 5116 (2012)). CAPTA was passed in response to the Supreme Court's decision in *In re Gault* and the proposal of the Uniform Marriage and Divorce Act. *Id.* at 2105 (citing *In re Gault*, 387 U.S. 1, 41 (1967) (holding, for the first time, that a child has a right to counsel in a delinquency proceeding)).

⁸ 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2012) (requiring that, in order to receive federal funding assistance, the state must have "in effect and [be] enforcing a *State law*, or . . . *state-wide program*, relating to child abuse and neglect that includes . . . provisions and procedures *requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem . . . shall be appointed to represent the child in such proceedings.*") (emphasis added).

⁹ See LISA S. NORED, CHILD ADVOCACY IN MISSISSIPPI § 2:2 (2013).

¹⁰ See Youth Court Act of 1946, ch. 207, § 1, 1946 Miss. Laws 173, 173; MISS. CODE ANN. § 7185-03 (1942).

¹¹ The Act was amended in 1964, 1966, 1973, 1975, 1977, and 1978. MISS. CODE ANN. §§ 43-21-1 through -43 (repealed 1979). The state legislature passed a revision of the act in 1979. See Youth Court Act of 1979, ch. 506, 1979 Miss. Laws 1046. The 1979 version repealed the 1946 Act and its subsequent amendments, and put in place a new Miss. Youth Court Act. See Youth Court Act of 1979, ch. 506, § 78, 1979 Miss. Laws 1046, 1087. Additionally, the 1979 revision adopted the short title of "Youth Court Law." MISS. CODE ANN. § 43-21-101 (2009).

regarding children at risk¹² and the due process of minors.¹³ CAPTA also greatly influenced its evolution.¹⁴ The Youth Court Law establishes the jurisdiction and procedures of a youth court case¹⁵ and grants exclusive original jurisdiction of all child protection proceedings to the youth court.¹⁶ Additionally, the Youth Court Law mandates that a court must appoint a GAL “[i]n every case involving an abused or neglected child which results in a judicial proceeding.”¹⁷

The chancery court, however, may retain jurisdiction of a child protection proceeding because

[w]hen a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney.¹⁸

¹² See NORED, *supra* note 9, § 3:1 (discussing the 1966 amendment that “specifically provided for the protection of children who have been physically abused or neglected”).

¹³ *Id.* (citing *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541 (1966)).

¹⁴ *Id.* (“In the 1974 and 1977 Amendments to the Youth Court Act, provisions specifically related to abuse and neglect issues were included. This was a reflection of the increased public awareness regarding the extent of child abuse and neglect as well as the enactment of [CAPTA].”); *see also supra* note 8.

¹⁵ See Youth Court Act of 1979, ch. 506, 1979 Miss. Laws 1046 (“AN ACT to establish youth courts; to set forth the jurisdiction, procedure, personnel and other powers and duties thereof . . .”).

¹⁶ MISS. CODE ANN. § 43-21-151(1) (Supp. 2014). For the chancery court exception for child protection proceedings, *see infra* note 18.

¹⁷ MISS. CODE ANN. § 43-21-121(1)(e) (2009).

¹⁸ MISS. CODE ANN. § 93-11-65(4) (2009). As you can see, the final sentence is nearly identical to the one in MISS. CODE ANN. § 93-5-23 (2013). *See supra* note 1. The

Therefore, should a child abuse or neglect allegation arise in a chancery court proceeding, the chancellor must appoint a GAL pursuant to Section 43-21-121 of the Youth Court Law.¹⁹ That section defines the GAL as one who has a

duty to protect the interest of [the] child for whom he has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. . . . The guardian ad litem shall be a competent person who has no adverse interest to the minor. *The court shall insure that the guardian ad litem is adequately instructed on the proper performance of his duties.*²⁰

However, ambiguity surrounding the framework of the youth court system created inconsistencies of procedure among the counties of Mississippi, which led to the adoption of the Uniform Rules of Youth Court Practice.²¹

reference to Section 43-21-151 points to a statute in the Youth Court Law, which, in a similarly worded statement, grants the chancery court jurisdiction over such a case. MISS. CODE ANN. § 43-21-151(1)(c) (Supp. 2014). The reference to Section 43-21-121 is discussed *infra* note 19.

¹⁹ See *supra* note 1. The domestic relations statute, MISS. CODE ANN. § 93-5-23, states that the appointment of a GAL for a child abuse or neglect allegation in chancery court is pursuant to MISS. CODE ANN. § 43-21-121, which is a statute under the Youth Court Law.

²⁰ MISS. CODE ANN. § 43-21-121(3) (2009) (emphasis added). See *infra* Part III.B.1 for discussion concerning the court's adequate instruction on the GAL's proper duties.

²¹ *Supreme Court Adopts Uniform Rules of Youth Court Practice*, ST. MISS. JUDICIARY (Jan. 14, 2009), https://courts.ms.gov/news/2009/1_08_09yourthcourtrules.pdf [hereinafter ST. MISS. JUDICIARY]. The article stated that

[t]he structure of Youth Courts vary across the state, and practices vary by jurisdiction. In the 20 counties which have a County Court, those judges also serve as Youth Court judges. In counties which do not have a County Court, the Chancery Judge appoints a lawyer to act in a judicial capacity as Youth Court Referee, or in a few counties, the Chancery Judge hears Youth Court cases. The city of Pearl has its own municipal Youth Court.

Id. The article went on to quote Supreme Court Justice Mike Randolph, co-chair of the Task Force for Youth Court Rules of Procedure, as saying, "Prior to the adoption of these rules, Youth Courts throughout the state lacked uniformity on procedures. . . . Uniformity is critical to assist litigants and practitioners. Whether they are in Pascagoula or Pontotoc, it ought to be the same." *Id.* See *infra* Part I.C for a discussion on the Uniform Rules of Youth Court Practice.

B. Mississippi Case Law Regarding GALs

Several Mississippi cases have further interpreted the Youth Court Law regarding GALs. “In *In the Interest of D.K.L.*, [the Mississippi Supreme Court] held that a GAL . . . ‘did not have an option to perform or not perform, rather he had an affirmative duty to *zealously represent the child’s best interest.*”²² The supreme court then held “[i]n *In the Interest of R.D.* . . . that ‘children are best served by the presence of a vigorous advocate free to investigate, consult with [the children] at length, marshal evidence, and to subpoena and cross-examine witnesses.’”²³ Then, seven years later, the supreme court “‘emphatically proclaim[ed] to the bench and bar that . . . the guardian [ad litem] must submit a written report to the court during the hearing, or testify and thereby become available for cross-examination by the natural parent.’”²⁴

C. Mississippi’s Uniform Rules of Youth Court Practice

In October 2007, then Chief Justice Smith of the Mississippi Supreme Court signed an order creating a task force, which was delegated the responsibility of “overseeing development of a set of uniform rules of procedure” for matters pertaining to juvenile delinquency and child protection proceedings.²⁵ The task force’s goal was to create uniformity and consistency among all of the courts in the state that handle such matters.²⁶ The Mississippi

²² *McDonald v. McDonald*, 39 So. 3d 868, 883 (Miss. 2010) (quoting *In re D.K.L.*, 652 So. 2d 184, 188 (Miss. 1995)) (emphasis added).

²³ *Id.* (quoting *In re R.D.*, 658 So. 2d 1378, 1383 (Miss. 1995)).

²⁴ *Id.* (quoting *D.J.L. v. Bolivar Cnty. Dep’t of Human Servs. ex rel. McDaniel*, 824 So. 2d 617, 623 (Miss. 2002)).

²⁵ Telephone Interview with William Charlton, Staff Attorney, Miss. Judicial Coll. (Oct. 4, 2014) [hereinafter Charlton Interview I]; *Task Force Begins Work on Uniform Rules of Procedure for Youth Courts*, ST. MISS. JUDICIARY (Jan. 8, 2008), <https://courts.ms.gov/news/2008/010708YourthCourtTF.pdf>. The task force included Justice Randolph, a youth court referee, three county court judges, and representatives from the DHS, the Department of Mental Health, the Department of Education, the Court Improvement Program, and the Administrative Office of Courts. See Charlton Interview I, *supra*; *Task Force Begins Work*, *supra*.

²⁶ Charlton Interview I, *supra* note 25; see also *Rules Committee to Review Youth Court Recommendations*, MISS. CTS., July 2008, at 4 [hereinafter MISS. CTS.], available at <https://courts.ms.gov/news/newsletters/mscourts608.pdf> (“[W]ith different levels of courts handling matters involving juveniles, ‘There is a lack of consistency.’” (quoting

Judicial College was charged, under the direction of the task force, with creating and presenting a final draft of the proposed rules to the Mississippi Supreme Court.²⁷

The drafters and task force named the proposal the “Uniform Rules of Youth Court Practice” (Youth Court Rules), and the rules were, in their estimation, the most efficient way to usher children through the juvenile system while incorporating youth court statutory standards and meeting federal requirements for funding.²⁸ The Mississippi Supreme Court adopted the Youth Court Rules on December 11, 2008,²⁹ and they became effective January 8, 2009.³⁰ The rules laid out the steps involved in a juvenile proceeding, from the intake,³¹ to the adjudication

Rankin County Court Judge Thomas H. Broome)). Another impetus for uniformity was to stay within CAPTA’s federal funding mandate by administering a statewide plan for the handling of child abuse and neglect cases. *See supra* note 8.

²⁷ Telephone Interview with William Charlton, Staff Attorney, Miss. Judicial Coll. (Dec. 11, 2014) [hereinafter Charlton Interview II]. The Miss. Judicial College “conducted a survey [of relevant members of] the juvenile justice system; studied juvenile court rules in other states; and extensively reviewed state and federal statutes and case law” in developing the rules. MISS. CTS., *supra* note 26, at 4.

²⁸ Charlton Interview II, *supra* note 27; ST. MISS. JUDICIARY, *supra* note 21 (“There has never previously been one comprehensive set of rules to complement the statutes and guide judges, attorneys, social workers, law enforcement and others who deal with the interests of children.”). The Rules were seen as a “one-source place to find answers . . . from step one all the way through.” Charlton Interview I, *supra* note 25; *see also* MISS. UNIF. R. YOUTH CT. PRAC. 7 (listing the federal laws and regulations that “impact funding for cases within the jurisdiction of the youth court”).

²⁹ *Summary of the Mississippi Uniform Youth Court Rules*, MISS. B. (Mar. 23, 2010), <http://bit.ly/1Bay900>. Before adopting the rules, the Supreme Court Rules Committee “review[ed] the [t]ask [f]orce recommendations and [made] its own recommendations to the entire nine-member court. The Supreme Court . . . then submit[ted the] proposed rules for public comment.” MISS. CTS., *supra* note 26, at 4.

³⁰ ST. MISS. JUDICIARY, *supra* note 21.

³¹ Intake involves the receipt and investigation of a report of “alleg[ed] facts sufficient to establish the jurisdiction of the youth court.” MISS. CODE ANN. § 43-21-351 (2009). “After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child . . . requires the youth court to take further action.” MISS. CODE ANN. § 43-21-357(1) (Supp. 2014). Rule 8 of the Youth Court Rules applies this statutory language to both youth court and chancery court child protection proceedings. MISS. UNIF. R. YOUTH CT. PRAC. 8(b)-(c). *See also infra* note 37 for discussion of MISS. UNIF. R. YOUTH CT. PRAC. 8(c) cmt.

hearing,³² to the disposition hearing,³³ and everything in between.³⁴

Most importantly for this Comment, the drafters and task force intended that the Youth Court Rules would achieve uniformity in the way both the youth courts and the chancery courts handled child abuse and neglect allegations.³⁵ First, the scope of the Youth Court Rules *includes* chancery court proceedings involving allegations of child abuse or neglect that first arise in the chancery court.³⁶ Next, the chancery court may refer such matters to the appropriate youth court, but, if the chancery court chooses to retain the case and hear the allegations, the court's procedures must mirror the procedures youth court would follow with such a case.³⁷ Also, the Youth Court Rules manual details the deadlines and procedures for handling child

³² "Adjudication hearing" is defined as "a hearing to determine whether a child is a delinquent child, a child in need of supervision, an abused child or a neglected child." MISS. UNIF. R. YOUTH CT. PRAC. 4 cmt.

³³ "Disposition hearing" is defined as "a hearing to determine the appropriate disposition for an adjudicated child." *Id.*

³⁴ Charlton Interview II, *supra* note 27. The Youth Court Rules incorporate not only procedural rules, such as deadlines, but also substantive law, such as the statutory requirements that must be satisfied in youth court proceedings. *Id.* See *generally* MISS. UNIF. R. YOUTH CT. PRAC.

³⁵ Charlton Interview II, *supra* note 27.

³⁶ MISS. UNIF. R. YOUTH CT. PRAC. 2(a)(2) ("Proceedings subject to these rules [include] . . . any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action . . ."). The rule's comment clarifies the authority of this rule, which is found in the Youth Court Law. *Id.* cmt. ("Chancery court may hear an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action. See MISS. CODE ANN. §§ 43-21-151(1)(c); 93-11-65(4) (2008).").

³⁷ MISS. UNIF. R. YOUTH CT. PRAC. 8(c) (laying out the intake procedure and actions to be taken after the intake screening of a child abuse or neglect allegation in a chancery proceeding). Once the intake recommendation has been made, "[t]he chancery court shall then, without a hearing, order the appropriate action to be taken or transfer the case and recommendation to youth court." *Id.* The comment to the rule states

Rule 8(c) is to assure, consistent with Rule 2 of these rules, that chancery court procedures for investigating charges of abuse or neglect are consistent with those applicable to youth court. . . . Upon receiving the intake recommendation, the chancery court must decide whether to hear the case or transfer it to youth court. *If the chancery court decides to hear the case, then it must follow all procedures required of a youth court under these rules.*

Id. cmt. (emphasis added).

protection proceedings,³⁸ and, according to the rules, these deadlines and procedures apply to any chancery court proceeding in which an allegation of child abuse or neglect is made.³⁹ Therefore, based on the clear wording of the Youth Court Rules, one could conclude that the rules of procedure for the GAL in a chancery proceeding involving allegations of child abuse or neglect are the same as the rules of procedure in the youth courts.⁴⁰

II. THREE RECENT MISSISSIPPI APPELLATE OPINIONS THAT AFFECT GAL QUALIFICATIONS

In 2009-2010, three Mississippi appellate cases discussed the necessary qualifications of GALs in chancery court proceedings involving allegations of child abuse or neglect. The opinion of each case steadily built upon the previous one in calling for the GAL to be qualified as an expert witness in order to render opinion testimony.

A. *S.G. v. D.C.*

In *S.G. v. D.C.*, the Mississippi Supreme Court held that the GAL's testimony was improper because he did not produce all of the relevant evidence regarding the abuse allegations.⁴¹ The

³⁸ The Youth Court Rules also establish procedures for children in need of supervision (delinquent), but this Comment is focusing solely on child protection proceedings.

³⁹ MISS. UNIF. R. YOUTH CT. PRAC. 4. This rule defines terms used in the Youth Court Rules, and “[c]ourt” means any youth court created under the Mississippi Youth Court Law or any chancery court when hearing, pursuant to section 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action.” *Id.* (emphasis added).

⁴⁰ Charlton Interview II, *supra* note 27 (“The chancery court must follow the Youth Court Rules when it puts on a youth court hat.”). Under the Youth Court Rules, there are specific deadlines for conducting adjudicatory and dispositional hearings to resolve issues concerning abuse and neglect. *See* MISS. UNIF. R. YOUTH CT. PRAC. 24(b)(1), 26(b)(1). In chancery court, as a matter of practice and in spite of Uniform Chancery Court’s Rule 1.10 governing discovery deadlines, the attorneys for the parties generally control the deadlines for everything pre-trial. *See, e.g.*, *Hammers v. Hammers*, 890 So. 2d 944, 956 (Miss. Ct. App. 2004) (“Trial judges are afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines . . .”). Thus, allegations of abuse and neglect may not be resolved as promptly as in youth court.

⁴¹ *S.G. v. D.C.*, 13 So. 3d 269, 279 (Miss. 2009). In this case, a maternal grandmother was seeking to intervene in a custody dispute in which her daughter, the

court's decision included a footnote briefly mentioning that the GAL had not been properly qualified as an expert witness under the *Daubert* standard; in fact, in the footnote, the court dismissed the idea that experience qualifies a GAL to deliver opinion testimony.⁴² But the court's true issue with the GAL was that his report did not marshal all the available evidence concerning the sexual abuse allegations, and he opined that the sexual abuse did not happen even though a psychological evaluation had evinced evidence to the contrary.⁴³

The court also spent several pages of the opinion analyzing the roles of both a GAL and a chancellor who appoints a GAL.⁴⁴ The court stated that a GAL's role varies with each case and so is "not subject to a simple, universal definition."⁴⁵ According to Mississippi precedent, the GAL might be an investigator for the court,⁴⁶ the child's attorney,⁴⁷ or a hybrid of the two.⁴⁸

children's mother, had alleged that the father sexually abused their daughter, and then the mother had run away with the children. *Id.* at 271-76. The GAL's report failed to address any of the particulars of whether the child had been sexually abused or who might have abused her. *Id.* at 274. Instead, the GAL's report focused on his opinion that the child had been "brainwashed" by someone against her father. *Id.* Justice Dickinson wrote the majority opinion. *Id.* at 271.

⁴² *Id.* at 274 n.5 ("The only qualification stated was that the guardian ad litem had served for many years as a guardian ad litem. In other words, the first time the guardian ad litem rendered such an opinion, he was not qualified, but thereafter, he was because he had done so before. We find such meager qualifications unacceptable as a matter of law, under the principles set forth in *Daubert v. Merrell Dow Pharms.* (adopted by this Court in *Miss. Transp. Comm'n v. McLemore*.)" (citations omitted).

⁴³ *Id.* at 274-75 ("Glaringly absent from the guardian ad litem's report is any discussion, evaluation or investigation of either the considerable physical evidence that Jane actually had been sexually abused . . . or the identity of the perpetrator. Instead, the guardian ad litem's interim report concentrated almost exclusively on whether, in his opinion, Jane had been 'brainwashed' . . .").

⁴⁴ *Id.* at 280-82.

⁴⁵ *Id.* at 280.

⁴⁶ *Id.* ("Some circumstances require that a guardian ad litem serve as an arm of the court, appointed to investigate and present to the court all necessary and material information which might affect the court's decision.")

⁴⁷ *Id.* ("Other circumstances might require the guardian ad litem to serve as the ward's lawyer, with all the duties, responsibilities, and privileges required . . .").

⁴⁸ *Id.* The court stated that one legal encyclopedia defines the "hybrid" role as "advising one or more parties as well as the court . . . and he or she has all the duties, powers, and responsibilities of counsel who represents a party to litigation." 43 C.J.S. *Infants* § 321, at 459, and § 334, at 477 (2004)." *Id.* The court then stated that Mississippi precedent has appointed GALs as counsel for the minor, as an arm of the court, or in a position that "may vary depending on the needs of the particular case.

Due to the complexity of the GAL's role, the supreme court cautioned chancellors to ensure that the order of appointment clearly states the reason for the GAL's appointment and his duties and responsibilities.⁴⁹ The order should expressly address the GAL's role and responsibilities in order to avoid any confusion amongst those involved in the proceeding.⁵⁰ In the *S.G.* decision, the supreme court found that the chancellor had *not* clearly defined the GAL's role,⁵¹ and so it "reiterate[d] for emphasis" its urging of clarity.⁵² But the court noted, interestingly given the argument it later made in *McDonald*,⁵³ that "the guardian ad litem was *entitled to his opinion*, but he should have presented at trial the allegations of abuse and both the evidence that substantiated the allegations and the evidence that did not."⁵⁴

The court's caution regarding the clear definition of the GAL's role in the appointment order was helpful for all involved in

The [GAL] may, in some cases, participate in the trial by examining witnesses. In some cases, the [GAL] may be called to testify" *Id.* at 280-81. The American Bar Association (ABA), however, feels differently. According to the ABA, "[a] lawyer should be either a Child's Attorney or a Best Interests Attorney." ABA, AMERICAN BAR ASSOCIATION SECTION OF FAMILY LAW: STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES § II cmt. (2003), *available at* <http://bit.ly/1ugUb3A>. The ABA Standards state that the lawyer should not fill a hybrid role and is never a witness. *Id.* Additionally, the ABA Standards do not "use the term 'Guardian Ad Litem'" because the GAL's role does not have a clear, centralized definition and has allowed a "venerable legal concept [to become] stretched beyond recognition." *Id.*

⁴⁹ *S.G.*, 13 So. 3d at 281 ("[C]hancellors should make clear: (1) the relationship between the guardian ad litem and the children . . . ; (2) the role the guardian ad litem will play in the trial; and (3) the expectations the trial judge has for the guardian ad litem.").

⁵⁰ *Id.* ("[Clearly stating the guardian ad litem's role] will make [his] relationships and general responsibilities clear to each of the parties (including those wards old enough to comprehend), the attorneys, the court, and to the guardian ad litem.").

⁵¹ *Id.* at 282. The chancellor created some confusion by viewing, at different times, the GAL's role as the children's attorney and as an investigator. *Id.* Those references were at odds with each other in that the former requires "loyalty, duties, and confidentiality" to the children while the latter requires that the GAL report everything that could affect the interests of the children, even if at odds with the children's wishes. *Id.*

⁵² *Id.* ("When making an appointment, we encourage chancellors to define clearly the role and responsibility of the guardian ad litem. Chancellors should not (as happened in this case) appoint a guardian ad litem to serve in the dual role of advisor to the court and lawyer for the child.").

⁵³ *See infra* Part II.C.

⁵⁴ *S.G.*, 13 So. 3d at 282-83 (emphasis added).

a child protection proceeding. The admonition concerning the GAL's qualifications, however, was not helpful because the court did not elaborate on *how* a GAL should become qualified as an expert.

B. Jones v. Jones

Less than seven months after *S.G.*, the Mississippi Court of Appeals decided the case of *Jones v. Jones*.⁵⁵ The court's decision referred to the footnote in *S.G.* and its statement regarding a GAL's qualifications.⁵⁶ The court also discussed the *S.G.* court's reasoning that "without a qualified expert assessment, the guardian ad litem's recommendations provided only personal opinions of the guardian ad litem that she was not qualified to render."⁵⁷ The court of appeals used this reasoning to determine that the GAL in *Jones* had lacked the qualifications necessary to render any opinion about whether the sexual abuse had occurred and remanded the case for further investigation.⁵⁸

Of course, the *S.G.* and *Jones* cases both centered around allegations of sexual abuse, and determining whether such abuse occurred requires the assistance of specially trained individuals. The *S.G.* GAL excluded from his report the opinions, rendered by qualified individuals, that sexual abuse had occurred. In *Jones*, the GAL did not appear to seek any assistance from qualified individuals as to whether the abuse occurred. But *S.G.* first opined, and *Jones* seemed to affirm, that a GAL must be qualified as an expert for *any* opinion testimony. Yet neither addressed the standards by which a GAL would be properly qualified to render opinion testimony.

⁵⁵ *Jones v. Jones*, 43 So. 3d 465 (Miss. Ct. App. 2009). This divorce case involved allegations that the father had sexually abused his children. *Id.* at 480. The GAL determined that no abuse had occurred and recommended joint legal custody, but the chancellor did not grant it. *Id.* The father appealed, claiming that the chancellor erred by not following the GAL's recommendation. *Id.*

⁵⁶ *Id.* ("See *S.G. v. D.C.* (Guardian ad litem qualifications should be based on the principles set forth in *Daubert.*") (citations omitted).

⁵⁷ *Id.* at 481 (citing *S.G. v. D.C.*, 13 So. 3d 269, 274 (Miss. 2009)).

⁵⁸ *Id.*

C. McDonald v. McDonald

Six months after *Jones*, the Mississippi Supreme Court handed down their opinion in *McDonald v. McDonald*, a complex case arising from the consolidation of the appeals of three separate custody decisions.⁵⁹ Each of the three custody decisions had involved allegations of child abuse or neglect, and, therefore, the trial court had appointed a GAL.⁶⁰ In the appeals, the mother objected to the GAL's written report, oral testimony, and methods by which the GAL conducted her duties.⁶¹ The *McDonald* decision included three opinions—the majority, a concurring in part and in result (CIPR), and a specially concurring—and each opinion discussed the GAL's role and/or testimony. The statements in these opinions demonstrate that there is disagreement among the justices regarding both the qualifications of a GAL and how the GAL can present his or her recommendations.

1. The Majority Opinion⁶²

In discussing the GAL, the court found that she had not strayed from the boundaries of her defined role, as compared to the GAL in *S.G.*⁶³ In addressing the GAL's duties, the court found

⁵⁹ *McDonald v. McDonald*, 39 So. 3d 868, 870 (Miss. 2010).

⁶⁰ *Id.* at 871-79. In Case One, the mother alleged physical and sexual abuse by the father, while the father alleged neglect on the part of the mother. *Id.* at 871-72. Case Two involved the father's allegations of neglect by the mother. *Id.* at 877. Case Three included allegations by the mother of physical abuse on the part of the stepmother. *Id.* at 878. Unfortunately for the children, custody bounced back and forth between the parents throughout the hearings. *Id.* at 871-79.

⁶¹ *Id.* at 882 (“Jennifer argues that the GAL exceeded the proper role of a GAL by offering hearsay testimony, as well as taking ‘on a role as a litigant/expert’ by providing a written report to the court, making recommendations, discussing the views of the court-appointed counselor, filing a motion, testifying, examining witnesses, and meeting ex-parte with the chancellor.”). In Case One, the GAL “submitted a report, testified, and questioned witnesses.” *Id.* at 873. In Case Two, the mother “argued that because the GAL had not filed a written report, [the mother] was ‘not in a position of being able to . . . attack the credibility of the report.’” *Id.* at 877. In Case Three, the mother again attacked the lack of a written report and “objected to the GAL ‘testifying to anything beyond her own personal knowledge.’” *Id.* at 879.

⁶² Justice Randolph wrote the opinion, joined by Carlson, P.J., Dickinson, Lamar, Kitchens, and Chandler, JJ. *Id.* at 870, 887.

⁶³ *Id.* at 883 (“The GAL in the case *sub judice* did not offer the type of testimony criticized in *S.G.* This GAL reported on matters required by her appointment, and consistent with a GAL's duties as outlined in *S.G.*”) (citations omitted).

that she had complied with the role as laid out by both the legislature and precedent.⁶⁴ First, the court relied on the duties it had outlined in the *S.G.* opinion.⁶⁵ The court then spent some time discussing the Mississippi case law that has helped define the GAL's role.⁶⁶

The court concluded by stating that the *McDonald* GAL “would have been derelict in her duty to zealously represent the boys’ best interests” if she had not conducted her duty as she did.⁶⁷ The court added that the chancellor had fulfilled his duty by weighing the recommendation with all of the other evidence rather than completely relying on it.⁶⁸

On the issue of the GAL's testimony, the court's discussion was brief. First, in a footnote, the court made a point of distinguishing a GAL's written report from hearsay testimony, by stating that written reports “by their very nature” often include statements that would be inadmissible hearsay if “offered into evidence at trial to prove the truth of the matter asserted Any such inadmissible hearsay, however, would not require exclusion of the entire report.”⁶⁹

As for the oral testimony in Cases Two and Three, the court found that, in Case Two, the chancellor was in error for admitting the oral testimony even though courts had traditionally allowed

⁶⁴ *Id.* at 882 (“[T]he GAL was simply following the provisions of the GAL statute and the pronouncements of this Court.”). When taking into account the mother's objection that the GAL “testif[ied], examin[ed] witnesses, and me[t] ex-parte with the chancellor,” the court's statement appears to validate the hybrid role of the GAL. *Id.*

⁶⁵ *Id.* at 882-83 (“[A] guardian ad litem appointed to investigate and report to the court is obligated to investigate the allegations before the court, process the information found, report all material information to the court, and (if requested) make a recommendation. . . . only after providing the court with all material information which weighs on the issue to be decided by the court, including information which does not support the recommendation.” (quoting *S.G. v. D.C.*, 13 So. 3d 269, 282 (Miss. 2009)).

⁶⁶ *Id.* at 883.

⁶⁷ *Id.* (finding that it was necessary for the GAL to “interview the boys, consider the opinions of experts, marshal evidence, make an independent recommendation, question witnesses, submit reports, and make herself available for cross-examination”). Again, this statement appears to affirm the hybrid role.

⁶⁸ *Id.* (“The chancellor did not allow the GAL to usurp his role as the ‘ultimate finder of fact.’ The chancellor heard all witnesses, read all the reports, and made his own decision based upon independent findings of fact.”) (citation omitted).

⁶⁹ *Id.* at 884 n.7.

it.⁷⁰ But, since the mother had agreed to modification rather than a full trial, the evidentiary issue was waived, so the court did not discuss it further.⁷¹ For Case Three, the court found that, since the mother's objection did not specifically address hearsay,⁷² the court did not have a chancellor's evidentiary ruling to address, and thus the issue was without merit.⁷³

In the end, the majority opinion did not provide much guidance on the issue of hearsay testimony other than to say the rules of evidence should have applied to this proceeding. The majority opinion did not make any statement regarding the GAL being qualified as an expert.

2. Justice Pierce's Concurring in Part and in Result Opinion⁷⁴

This opinion arose out of concern over the majority's finding that the rules of evidence did not allow the admission of the GAL's hearsay testimony.⁷⁵ The CIPR opinion rationalized, through an inferential line of reasoning based on Mississippi precedent, that "the rules of evidence may be relaxed" in chancery proceedings involving a child abuse or neglect allegation.⁷⁶

The reasoning began by stating that GALs can be appointed either through a Youth Court Law or domestic relations statute.⁷⁷ The opinion then mentioned that the supreme court had previously stated that "[t]raditionally rules of evidence have been relaxed in youth court proceedings."⁷⁸ Next, the opinion pointed out that Section 93-11-65 of the Mississippi Code requires that a

⁷⁰ *Id.* at 884 ("The [trial] court responded that GALs are allowed by 'historical practice' to offer hearsay testimony, and overruled the objection. We find that it was error for the chancellor to find that the rules of evidence did not apply in this adversarial proceeding.").

⁷¹ *Id.* at 884-85.

⁷² *Id.* at 884 n.9 ("She objected once, offering 'speculation' as the basis of the objection.").

⁷³ *Id.* at 884-85.

⁷⁴ Waller, C.J., joined the opinion while Graves, P.J. joined it in part. *Id.* at 890 (Pierce, J., concurring in part and in result). Although the CIPR opinion comes after the specially concurring opinion in the court's order, the specially concurring opinion was written in rebuttal to the CIPR, so this Comment discusses the CIPR opinion first.

⁷⁵ *Id.* at 888.

⁷⁶ *Id.* at 888 n.15.

⁷⁷ *Id.* at 888 (citing MISS. CODE ANN. §§ 93-11-65, 43-21-121 (2009)).

⁷⁸ *Id.* at 888 n.15 (quoting *In re T.L.C.*, 566 So. 2d 691, 700 (Miss. 1990)).

child protection proceeding in chancery court be handled similarly to a youth court proceeding.⁷⁹ Hence, the opinion concluded, “the rules of evidence may be relaxed” for the chancery court child protection proceeding.⁸⁰

The opinion then stated that the GAL’s role might require the reporting of some hearsay evidence.⁸¹ It offered, as an example in favor of this position, Massachusetts case law that had held that

[g]uardian ad litem reports may properly contain hearsay information. All that is required is that the guardian ad litem be available to testify at trial and that the source of the material be sufficiently identified so that the affected party has an opportunity to rebut any adverse or erroneous material contained therein. The guardian ad litem is free to make recommendations, provided the judge draws his own conclusions and understands that the responsibility of deciding the case is his and not that of the guardian.⁸²

The opinion argued that most Mississippi chancellors “follow this procedure—and are correct in doing so.”⁸³

The opinion then expressed unease over a child’s welfare in an emergency situation if the court is not allowed to hear the GAL’s testimony based on information obtained in a short amount of time.⁸⁴ It argued that the testimony should be allowed because

⁷⁹ *Id.* (“[P]roceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings.” (quoting MISS. CODE ANN. § 93-11-65(4) (Rev. 2004))).

⁸⁰ *Id.*

⁸¹ *Id.* at 888 (“In order to present ‘all necessary and material information’ which may be relevant to the trial court’s decision, it may at times be necessary for the guardians ad litem to present hearsay evidence.”).

⁸² *Id.* at 888-89 (quoting *Pizzino v. Miller*, 858 N.E.2d 1112, 1121 (Mass. App. Ct. 2006)) (emphasis added).

⁸³ *Id.* at 889.

⁸⁴ *Id.* (“Often, chancellors are forced to remove children from dangerous or unhealthy environments and must enlist the assistance of a guardian ad litem in doing so. In such cases, guardians ad litem are required to act swiftly to protect the best interests of children—and to fulfill that obligation, they must sometimes provide emergency testimony which contains hearsay.”).

chancellors are capable of assessing the testimony's reliability.⁸⁵ The opinion further argued that, emergency situation or not, if a court bars a GAL from providing full testimony as to his investigation, it could be undermining the court's duty to provide for the child's best interests.⁸⁶ The opinion concluded with a call for the adoption of "a rule specifically for guardians ad litem with guidance from chancellors, practitioners, guardians ad litem and other interested parties. The best interests of children demand it."⁸⁷

3. Justice Dickinson's Specially Concurring Opinion⁸⁸

Justice Dickinson wrote the specially concurring opinion, in which four other justices joined, to specifically express disagreement with the CIPR opinion.⁸⁹ This opinion stated the belief that the Mississippi Rules of Evidence "apply in chancery court—and they include no exception for [GALs]."⁹⁰ The opinion dismissed the majority of the CIPR's argument by stating that the present case was not a youth court proceeding, and, therefore,

⁸⁵ *Id.* ("Lest this Court forget, our chancellors understand the difference between hearsay and nonhearsay testimony and are capable of assigning the appropriate weight to the testimony provided by the guardian ad litem accordingly.")

⁸⁶ *Id.* ("In order for the guardians ad litem to assist the court in determining the best interests of children, they must fulfill their duty to interview all concerned and must also be able to testify as to the full extent of their findings. To hold otherwise would impede the chancellor's ability to determine what is in the best interests of children.")

⁸⁷ *Id.* at 890.

⁸⁸ Justice Dickinson was joined by the same justices from the majority opinion with the exception of Justice Kitchens. *Id.* at 887-88 (Dickinson, J., specially concurring). Although this is a concurring opinion, a majority of the justices joined. One could argue that it carries precedential weight. For instance, a similar concurring opinion was issued in *O'Cain v. Harvey Freeman & Sons, Inc.*, where five justices joined to establish the new rule of law that there is an implied "warranty of habitability" for rental housing in Mississippi. *O'Cain v. Harvey Freeman & Sons, Inc.*, 603 So. 2d 824, 831-33 (Miss. 1991) (Sullivan, J., concurring). Several decisions have since cited the *O'Cain* concurrence and the rule it established. *See, e.g.*, *Sweatt v. Murphy*, 733 So. 2d 207, 209-10 (Miss. 1999) (recognizing the warranty established in *O'Cain*); *Martin v. Rankin Circle Apartments*, 941 So. 2d 854, 859 (Miss. Ct. App. 2006) (accepting the warranty that "was first recognized in [the *O'Cain*] concurring opinion").

⁸⁹ *McDonald*, 39 So. 3d at 887 (Dickinson, J., specially concurring).

⁹⁰ *Id.*

most of the CIPR opinion's arguments were not relevant.⁹¹ The opinion further argued that, for anything that would be relevant, no Mississippi law allows the evidence rules to be relaxed.⁹² But, if Mississippi adopted a law that did allow a relaxation of the rules, the supreme court would be urged to "quickly overrule it" for the good of the children.⁹³

According to the opinion, a GAL cannot base any of his opinion on hearsay unless he has been "properly appointed under Rule 706 and qualified as expert[] under Rule 702 But hearsay used to support an expert's opinion is quite different from hearsay admitted as substantive evidence."⁹⁴ The opinion argued that public policy demands the evidentiary protection of hearsay.⁹⁵ But the opinion never stated how a GAL could become qualified as an expert.

III. A PROPOSED REVISION TO MISSISSIPPI'S GAL PROCEDURE

To clear up any confusion resulting from the previously discussed appellate decisions and/or inconsistent procedures among Mississippi's courts, there should be either a revision to the existing rules or the adoption of a new uniform rule to clearly define the GAL process for cases involving abuse or neglect allegations.⁹⁶ In order to truly protect the best interests of the child, the GALs need standards that are clear, uniform, and easily accessible.

First, the required qualifications of the GAL need to be firmly established, and the GAL's certification requirements could use

⁹¹ *Id.* But see *infra* Part III.B.2 discussing the Youth Court Rules' impact on child protection proceedings in chancery court.

⁹² *McDonald*, 39 So. 3d at 887.

⁹³ *Id.* ("But even if such authority existed here (as it apparently does in Massachusetts), we should quickly overrule it. Chancellors should not decide the fate of children based on pure, rank, un-cross-examined hearsay.").

⁹⁴ *Id.* (footnotes omitted).

⁹⁵ *Id.* at 888 ("And if we believe enforcement of the rule against hearsay is appropriate and necessary to protect the rights of murderers, rapists, and pedophiles, surely we think it necessary to protect the rights and interests of children and their parents.").

⁹⁶ It is important to note that this Comment is discussing mandatory appointments. Any distinction between the role of a mandatory GAL and a discretionary GAL would need to be addressed in any revision of the existing rules or adoption of a new rule.

some tweaking. Second, the rule should provide clear instruction to chancellors and youth court judges as to what information to include on the appointment order, especially when defining the GAL's role and responsibilities. Last, chancellors presiding over cases involving allegations of child abuse or neglect need to know which court rules to follow—the Uniform Rules of Youth Court Practice or the chancery court's rules and procedures.

A. *The GAL's Qualifications and Certification*

McDonald's specially concurring opinion stated that a GAL who offers opinion testimony about the best interest of the child must be qualified as an expert witness.⁹⁷ And yet, a GAL's recommendation in a child protection proceeding is based mostly on opinion testimony and hearsay.⁹⁸ The CIPR opinion, on the other hand, argued that a rule should be adopted that allows a GAL to present hearsay evidence.

Although a majority of the court joined the specially concurring opinion, it was not the majority opinion. Confusion over whether the opinion is binding⁹⁹ has yielded inconsistencies among the state's chancery courts. Some courts have ignored the expert witness mandate and continued operating in the traditional manner.¹⁰⁰

⁹⁷ *Id.* at 887. A recent decision gave the Mississippi Supreme Court an opportunity to expound further on this concurring opinion. In *Gately v. Gately*, the Court addressed whether the GAL had adequately fulfilled her duty. 155 So. 3d 296, 300 (Miss. 2015). The Court elected not to make a finding as to any possible inadequacy on the part of the GAL because it would not have affected the chancellor's ruling, which was "supported by substantial evidence." *Id.* The Court stated that "the chancellor properly fulfilled his role as factfinder by considering [the GAL's] oral report and her recommendation." *Id.* at 301. The oral report and recommendation, however, were based largely on hearsay. *Id.* at 299. The Court, if it so desired, could have used this decision to address hearsay again and clarify its stance from *McDonald*. For some reason, the Court did not seize that opportunity. See also Judge Larry Primeaux, *Substantial Evidence and the GAL Report*, BETTER CHANCERY PRAC. BLOG (Mar. 9, 2015), <https://chancery12.wordpress.com/2015/03/09/substantial-evidence-and-the-gal-report>. One explanation might be that the *Gately* GAL appointment was discretionary rather than mandatory—a subject for a separate article.

⁹⁸ See *infra* note 104 and accompanying text.

⁹⁹ See *supra* note 88.

¹⁰⁰ Interview with David L. Calder, Child Advocacy Clinic, Univ. of Miss. Sch. of Law, in Oxford, Miss. (Oct. 7, 2014) [hereinafter Calder Interview].

Some have tendered the GAL as an expert.¹⁰¹ One oft-appointed GAL, David Calder of North Mississippi, has drafted an Order Appointing Guardian Ad Litem, which includes clauses that qualify him as an expert witness and require the timely filing of any objection to this status.¹⁰² Other courts have not determined how to proceed.¹⁰³ The state's chancery courts need consistency in order to protect the best interests of children involved in cases alleging child abuse or neglect.

1. Does the GAL Need to Be Qualified as an Expert?

Mississippi courts had not affirmatively answered this question until the specially concurring opinion in *McDonald*. To date, no one has preserved the issue or perfected an appeal to get clarification. Therefore, there is no precedent to review. Additionally, none of the procedural rules have addressed this question.

The GAL plays a crucial role in a chancery court custody proceeding involving an abuse or neglect allegation. For the GAL to “zealously represent the child’s best interests,” he must have access to the people and to the records that might shed a light on the validity of the allegation and/or which parent to recommend as the most proper custodian. The GAL’s investigation centers on hearsay evidence—statements made by those interviewed and in the documentation; it accounts for the majority of the basis of the GAL’s opinion.¹⁰⁴ Therefore, it is virtually impossible for a GAL to fulfill his primary duty—to make a recommendation to the court—

¹⁰¹ *Id.*

¹⁰² See *infra* Appendix, Clauses 13-14. Mr. Calder began using this order after *McDonald* was decided; multiple chancellors have signed the order, and Mr. Calder has yet to receive an objection from any of the parties. Calder Interview, *supra* note 100.

¹⁰³ Judge Larry Primeaux, *Coming to Grips with McDonald*, BETTER CHANCERY PRAC. BLOG (June 20, 2011), <http://chancery12.wordpress.com/2011/06/20/coming-to-grips-with-mcdonald/> (“I have heard reactions to *McDonald* that just about cover the ball park. One chancellor has said that he and the other judge in his district no longer appoint GAL’s unless they are required by statute because they feel that *McDonald* has rendered the GAL role ineffective and superfluous. I have heard chancellors confess that they don’t have any idea where to go post *McDonald* when it comes to GAL’s. And GAL’s have come to me and said they are now quite confused as to what they can and can not do.”).

¹⁰⁴ Calder Interview, *supra* note 100; see Primeaux, *supra* note 103.

without stating an opinion that is formed primarily through hearsay evidence.

Traditionally, GALs have testified about matters revealed in their investigation with rare objections as to hearsay.¹⁰⁵ The judicial system has relied on the intelligence and prudence of the chancellor to recognize whether the GAL has been diligent and is providing reliable testimony.¹⁰⁶ The chancellor is not bound to the GAL's recommendation.¹⁰⁷ If a chancellor chooses a course other than that recommended, the law requires only that he defend his choice in the written opinion.¹⁰⁸

Applying an expert witness requirement would entail an overhaul of the GAL appointment system. To comply, the chancery court would have to qualify the GAL as an expert witness under the *Daubert* standard.¹⁰⁹ The GAL "must explain how [his] experience leads to the conclusion reached, why [his] experience is a sufficient basis for the opinion, and how [his] experience is reliably applied to the facts."¹¹⁰ Additionally, the court "must find that [the testimony] is properly grounded, well-reasoned, and not speculative."¹¹¹ Therefore, the real question would involve what experience is necessary to satisfy the standard. One could argue many fields in which a GAL might need experience: family law, child development, mental health, parental training and involvement; the list could go on. Yet each case involves a unique set of circumstances, many of which evolve as the GAL

¹⁰⁵ Calder Interview, *supra* note 100; *see also* Primeaux, *supra* note 103.

¹⁰⁶ *See supra* note 85; Primeaux, *supra* note 103 ("When the GAL proved to be less than diligent, the chancellor was free to discount or even disregard the findings and recommendations.").

¹⁰⁷ S.N.C. v. J.R.D., 755 So. 2d 1077, 1082 (Miss. 2000) ("Although this Court has required a guardian ad litem to perform tasks competently, there is no requirement that the chancellor defer to the findings of the guardian ad litem . . .").

¹⁰⁸ *Id.* ("[W]hen a chancellor's ruling is contrary to the recommendation of a statutorily required guardian ad litem, the reasons for not adopting the . . . recommendation shall be stated by the court in the findings of fact and conclusions of law.").

¹⁰⁹ MISS. R. EVID. 702 cmt. (discussing the 2003 amendment that followed the 2000 amendment of FED. R. EVID. 702, which was "adopted in response to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)").

¹¹⁰ FED. R. EVID. 702 advisory committee's note on 2000 amend. (discussing factors the courts could use to qualify a witness who is "relying solely or primarily on experience" rather than scientific methods).

¹¹¹ *Id.* (recognizing that not all expert testimony is based on scientific method).

investigates; it would be difficult to have training in every field one might encounter.

With a GAL who has served the court for years, the qualification of experience might pass with little to no objection.¹¹² But, a beginner GAL would have difficulty qualifying, and many counties in Mississippi have to routinely appoint beginners.¹¹³ Such situations would leave many chancery courts with a dearth of qualified GALs, and, therefore, a potential backlog of cases. Cases involving child abuse and neglect allegations cannot risk being delayed; if the allegations are valid, then the child could be left in a dangerous environment.

The GAL is appointed to fulfill a particular role—to investigate the child’s environment, including home, school, and extracurricular programs, and make a recommendation to the court “in the child’s best interests.” Courts would find it difficult to determine the experience necessary when each situation is unique.

Other states in the southeast handle this issue in various ways. Georgia’s court rules state that the GAL is “qualified as an expert witness on the best interest of the child(ren) in question.”¹¹⁴ The South Carolina Court of Appeals has found that the guardian ad litem’s testimony is admissible lay testimony in that the opinion is “rationally based on the witness’s perception, will aid the trier of fact in understanding testimony, and [does] not require special knowledge, skill, experience, or training.”¹¹⁵ The Court of Appeals of Texas has held that a GAL is allowed to review records and interview interested persons and has “the

¹¹² *Id.* (“Nothing in this amendment is intended to suggest that experience alone . . . may not provide a sufficient foundation for expert testimony. To the contrary, the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience.”). The GAL must, however, support his experience with factors such as those discussed *supra* note 110. *But see supra* text accompanying note 42.

¹¹³ *Guardian Ad Litem Training DVD*, MISS. B., <https://msbar.org/inside-the-bar/young-lawyers-division/yld-programs-events/guardian-ad-litem-training-dvd.aspx> (last visited June 1, 2015) (“For the past several years, Chancellors as well as Youth Court Judges throughout the state have often commented upon the noticeable shortage of certified guardians ad litem available to serve in their courts.”).

¹¹⁴ GA. UNIF. R. SUPER. CT. 24.9(7).

¹¹⁵ *Divine v. Robbins*, 683 S.E.2d 286, 294 (S.C. Ct. App. 2009) (finding the guardian ad litem’s opinion was “based on her personal interaction with [the family] and was probative in determining which parent was best suited to obtain custody”).

right to testify regarding [his or] her investigation and recommendations.”¹¹⁶ The Tennessee Supreme Court, however, ruled that a GAL’s report is not admissible evidence due to hearsay.¹¹⁷ Nevertheless, the court is allowed to review the report as a “tool” to “assist the parties.”¹¹⁸

Should it be determined that the GAL in Mississippi must be qualified as an expert to provide opinion testimony, the standards of such a qualification need to be clearly defined. In the alternative, a rule could be adopted that is specifically tailored to allow a GAL’s hearsay testimony. The rule could provide for a process by which the GAL submits a recommendation, allowing time for either party to object and/or to call any of the GAL’s sources to testify personally in court.

2. A Proposed Revision to GAL Certification

Regardless of whether a GAL must be an expert, Mississippi statute requires that a GAL be appropriately certified.¹¹⁹ Currently, the Mississippi Judicial College (Judicial College) initially certifies GALs through a six hour DVD course. Watching the course once per year certifies the GAL for the first two years. After that, the GAL can attend the Judicial College’s annual GAL training seminar, which basically “updates” the training received through the DVDs, including relevant case law decided in the previous year. Some GALs choose to attend the seminar from the beginning rather than watching the DVDs.

The Judicial College may want to consider revising the training material. Ideally, the certification would be adapted to fit the experience level of the GAL. There could be one set of training materials for new, and relatively new, GALs that fully discusses the field, rules, and relevant case law. For the more experienced GALs, there could be a set of materials that just updates any new

¹¹⁶ *Stoufflet v. Stoufflet*, No. 03-08-00003-CV, 2009 WL 722280, at *12 (Tex. App. Mar. 20, 2009).

¹¹⁷ *Toms v. Toms*, 98 S.W.3d 140, 144 (Tenn. 2003).

¹¹⁸ *Id.* The report may “assist[] the parties in preparing for an evidentiary hearing” or “assist the trial court by providing an overview of the evidence and by allowing the court to determine which of the issues are contested.” *Id.* At this time, no decisions or rules have addressed this issue in Alabama, Arkansas, Kentucky, or Louisiana.

¹¹⁹ *See supra* note 2.

and relevant information and/or revisions. That way, if an inexperienced GAL attends a seminar, he will receive more information than just the updates.

B. Other Areas that Need Clarification

In addition to the qualifications of a GAL, Mississippi's chancery court practices are inconsistent in the actual appointment of the GAL and the court rules followed in a case involving child abuse or neglect allegations.¹²⁰ One reason for the inconsistency might be the fact that the authority governing these areas is located in three separate locations.¹²¹

These inconsistencies could be avoided by enacting a GAL procedure—a sort of Uniform Rules of Guardian Ad Litem Procedure, if you will. Under such rules, the chancery court cases involving allegations of child abuse or neglect would operate under the same policies and thus be consistent throughout the state. The rules could provide a “one-stop shop for all things GAL,” from step one to the end of the process.

1. The Appointment of the GAL

These uniform rules should begin with the appointment of the GAL. The rules could first define the qualification and/or certification required, as discussed in Part III.A, *supra*.

The next step could be the order appointing the GAL, using a required form, with blanks for the court to fill in. The order might resemble the one in the Appendix.¹²² The order should include blanks in which the chancellor could clearly define the role the GAL is to fulfill—attorney for the child, arm of the court, or a combination of any of the two—and specifically what the GAL needs to investigate.

Mississippi statute already requires such an order, and the *S.G.* opinion emphasized its necessity (and definitions),¹²³ but not all of the courts address the requirement in clear terms. In *S.G.*,

¹²⁰ Calder Interview, *supra* note 100.

¹²¹ The rules and procedures are found in the Mississippi Code under both Domestic Relations (Title 93) and Public Welfare (Title 43) and in the Uniform Rules of Youth Court Practice.

¹²² This form was created by David Calder, as discussed *supra* note 102.

¹²³ See *supra* notes 20, 49 and accompanying text.

the supreme court found that the chancellor had poorly defined the GAL's role, which had led to some confusion among the parties.¹²⁴ In another example, one court, in an order appointing David Calder as GAL, merely advised him that his role was to investigate "all allegations in the best interest."¹²⁵ And in *Gainey v. Edington*, the court of appeals found that the chancellor had not defined the GAL's role clearly.¹²⁶ Vague and ill-defined appointments create confusion. The chancellors need to take the time to properly define the GAL's role and duties.

The order should also expressly state what report must be provided, what information should be in the report, that the report must be written, and what date the report is due. The order should inform the GAL whether the court will expect any testimony from him. Lastly, the order should provide authority for the GAL to have access to the parties and the documentation necessary for his investigation and should direct all parties to cooperate with the GAL. Such information would assist GALs in both youth court and chancery court cases involving allegations of child abuse or neglect.

2. Determination of Which Court Rules Will Govern the Proceeding

McDonald was decided in 2010, after the Youth Court Rules were adopted. But, since the original three *McDonald* cases predated the Youth Court Rules, the rules did not apply in the trial court's decisions. Should the original cases have been filed in 2009 or later, one could argue that the trial court would have had to follow the Youth Court Rules, as was discussed in Part I, *supra*.¹²⁷

By adopting the Youth Court Rules, the supreme court essentially mandated that the chancery courts adhere to them in cases involving allegations of child abuse or neglect.¹²⁸ Remember,

¹²⁴ See *supra* text accompanying note 51.

¹²⁵ Calder Interview, *supra* note 100.

¹²⁶ *Gainey v. Edington*, 24 So. 3d 333, 339 (Miss. Ct. App. 2009).

¹²⁷ See *supra* notes 36-39.

¹²⁸ See *supra* note 36. The comment to MISS. UNIF. R. YOUTH CT. PRAC. 2(a)(2) stresses that, while the chancery court may hear the allegation, "[a]ll proceedings on

one of the goals of establishing the Youth Court Rules was to create uniformity and consistency among all courts hearing such allegations.¹²⁹ And yet not all of the relevant courts follow this mandate.¹³⁰ A uniform rule for GALs should expressly state whether the Youth Court Rules apply in chancery court proceedings, so that everyone can be on the same page.

Interestingly, the fact that chancery courts should follow Youth Court Rules in such proceedings would essentially negate the entire expert witness argument, at least in abuse or neglect cases, since the Youth Court Rules, through Mississippi Rule of Evidence 1101, specifically allow hearsay testimony in a disposition hearing.¹³¹ Simply put, a chancery court proceeding concerning child abuse or neglect must follow the Youth Court Rules, and these rules allow hearsay evidence in the disposition hearing, which is the phase of the proceeding in which the GAL usually testifies and makes recommendations about the best interests of the child.

Even in the absence of a set of uniform rules, it is important to clarify the standards for appointment and rules. The courts appointing GALs need urging to clearly define the role and responsibilities. Furthermore, the chancellors hearing cases involving allegations of child abuse or neglect need to know whether the Youth Court Rules apply to all child protection proceedings and whether they must adhere to those rules.

the abuse and neglect charge shall be conducted in accordance with [youth court] rules.”

¹²⁹ See *supra* note 35 and accompanying text.

¹³⁰ Calder Interview, *supra* note 100.

¹³¹ MISS. UNIF. R. YOUTH CT. PRAC. 26(c)(3)(ii) (“The court may consider any evidence that is material and relevant to the disposition of the cause, *including hearsay and opinion evidence.*”) (emphasis added). The comment to this rule states that its source is the Mississippi Rules of Evidence and precedent. *Id.* cmt. (“The Mississippi Rules of Evidence do not apply to dispositional hearings.”); see also MISS. R. EVID. 1101(b)(3); *In re* S.C., 795 So. 2d 526, 529 (Miss. 2001) (“The youth court may hear any evidence that is material and relevant to [the] disposition of the cause, including hearsay and opinion evidence.”); *In re* R.D., 658 So. 2d 1378, 1383-84 (Miss. 1995) (“Dispositional hearings in youth courts are very informal, allowing for hearsay testimony as well as reports from various individuals or agencies who have information concerning the well being and ‘best interest’ of the minors before the court.”).

CONCLUSION

Recent Mississippi appellate decisions and the “hodge podge” of procedural rules for cases involving allegations of child abuse or neglect have created confusion in many of Mississippi’s chancery courts. First, a specially concurring opinion joined by five justices in the Mississippi Supreme Court’s 2010 *McDonald* decision stated that a GAL must qualify as an expert witness before offering opinion testimony, and yet the opinion did not establish the standards that would allow a GAL to qualify. Traditionally, courts have allowed GALs to offer opinion testimony in order to fulfill their duty of “zealously representing the child’s best interests.” Since the *McDonald* opinion, however, chancery courts across the state have handled the appointment of a GAL in various, and thus inconsistent, ways due to this ambiguity.

Second, Mississippi statute mandates that courts must clearly define, in the order of appointment, the GAL’s role and responsibilities. Many courts, however, are issuing vague orders. This can confuse the parties involved in the matter and lead to a misapprehension of the proper role and duties by the GAL. Finally, the Mississippi Supreme Court adopted the Youth Court Rules in 2009, with one of the goals being to establish uniformity and consistency among all courts handling matters involving child protection proceedings. This included chancery courts hearing matters involving allegations of child abuse or neglect. Many chancery courts, however, are still following chancery court rules when handling these matters, leading to inconsistency in the child protection process.

There needs to be either a revision to the existing rules or the adoption of a uniform rule for GALs in order to clear up any confusion and inconsistencies. First, the rule should state whether a GAL will be required to qualify as an expert witness and, if so, what factors will apply. Second, the rule could also revise the GAL’s certification requirements to provide more in-depth training for new GALs, while merely updating the training of experienced GALs. Third, the rule should urge all courts handling matters involving youth to clearly define a GAL’s role and responsibilities. The rule could include an example order for the courts to use. Last, the rule should inform chancery courts whether the Youth Court Rules or chancery court rules apply

when hearing matters involving allegations of child abuse or neglect.

Statutes and rules have been passed and rulings have been made with the intent of protecting children who might be in dangerous situations out of their control. In order to ensure that everyone is doing their part in this process, the rules and qualifications need to be clear. There is too much at stake to be impaired by an ambiguity or error.

*Kristine Simpson**

* J.D., The University of Mississippi School of Law, December 2015. The author wishes to thank Professor David Calder for his suggestion of this topic, his assistance in navigating the labyrinth of Mississippi's guardian ad litem system, and his edits. The author also thanks Dean Samuel Davis and Dean Deborah Bell for their assistance, advice, and edits.

APPENDIX

IN THE _____ COURT OF _____
 COUNTY, MISSISSIPPI

 PLAINTIFF

v.

Cause Number: _____

 DEFENDANT

ORDER APPOINTING GUARDIAN AD LITEM

THIS CAUSE came on to be heard this day in regard to [the request by _____] [on the Court's own Motion, etc.] for an Order appointing a Guardian ad Litem for the minor child _____ (date of birth _____), who is the minor child of the parties, _____ and _____. The Court, being fully advised in the premises, finds that _____ is a minor child under the jurisdiction of this Court who should have a Guardian ad Litem appointed in this Cause to investigate the matters alleged in these proceedings, and make a recommendation to this Court as to what would be in the best interests of the minor child. Based on the allegations made by the parties, the Court finds that the appointment of a Guardian ad Litem is **[discretionary or mandatory]** under Mississippi law.

The Court finds that _____, (whose address is _____, and whose contact information is: office telephone _____; fax _____; e-mail _____), is an attorney licensed to practice law in this state who has received the requisite training and is duly certified to serve as a Guardian ad Litem for the best interest of the minor child in this case. The Court is of the opinion that _____ shall be appointed as Guardian ad Litem for the minor child.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. _____ is appointed as the Guardian ad Litem representing the best interest of the minor child _____ in the above-styled cause, to

investigate and ascertain the facts, and make reports and recommendations to this Court as to what is in the best interest of the minor child. Specifically, the Guardian ad Litem shall investigate _____

2. The Guardian ad Litem shall prepare a written report (and any supplemental reports that may be necessary), which shall be provided to this Court concerning his/her investigation and shall make a recommendation as to what would be in the best interest of this child, in view of the claims and allegations that have been asserted by the parties. The Guardian ad Litem's report shall be served on the attorneys for the parties and filed under seal with the clerk of court. Any objections to the Guardian ad Litem's report shall be filed by the parties contemporaneously, within seven (7) days after presentation of the Report. The Guardian ad Litem's Report, along with any objections that may be timely filed by the Parties, may be considered by the Court on the hearing of the issues, as allowed under the rules of this Court.
3. The Guardian ad Litem's report shall be released only to counsel (including counsel's staff and experts) and the parties, and shall not be further disseminated unless otherwise approved by this Court. Any unauthorized dissemination of the Guardian ad Litem's Report, its contents or the contents of the Guardian ad Litem's file by a party or counsel to any person, shall be subject to sanctions, including a finding of contempt by this Court.
4. To fulfill his/her duties as Guardian ad Litem, _____ shall have immediate access to the minor child in this case, as well as access to all otherwise privileged or confidential information regarding the minor child and the parties which relates to the issues presented, without the necessity of any further Order by this Court or Release executed on behalf of the parties or the minor child.
5. Such information includes, but is not limited to, records of medical care and treatment, psychological care and treatment, counseling records, social services records, drug and alcohol treatment, evaluations, law enforcement records,

school records, records of trusts and accounts of which the child is a beneficiary, and any other records that are relevant to the case, including court records concerning the parties or their household members.

6. As the best interest attorney for the child, upon presentation of this Order by the Guardian ad Litem to any third party, including a doctor, psychiatrist, psychologist, hospital, medical care provider, counseling agency, organization, school, social service agency, counselor, therapist, law enforcement agency, bank or financial institution, the Clerk of this Court, the Department of Human Services, and any other person, or any private or public entity, the aforementioned persons or entities shall permit the Guardian ad Litem to inspect and/or copy any records relating to the minor child, without the necessity of formal consent or release by the minor child, or the child's parents or guardians or any further order of this Court.
7. The Guardian ad Litem shall maintain any information received from any such source as confidential, and shall not disclose such information except in reports presented to this Court and the parties in this Cause.
8. The Guardian ad Litem is hereby authorized to communicate directly with the parties in this case and shall not be required to communicate through counsel. The Guardian ad Litem is directed to send a copy of all correspondence with either party simultaneously to that party's counsel of record. The Guardian ad Litem is also authorized to communicate freely with the minor child in this case for whom he/she has been appointed, without any interference from the parties.
9. Within ten (10) days after the date of this Order, each party is hereby Ordered and directed to provide the following information in writing to the Guardian ad Litem:
 - a. A brief statement of the party's position on the issues concerning child custody, placement, support, and any other matters relating to the child's welfare and best interest;
 - b. A copy of each and every document in the party's possession upon which the party relies to support the party's position on child custody, placement and support,

- including, but not limited to, psychological or other professional reports or records;
- c. A list of all witnesses, including, but not limited to, medical, psychological and mental-health professionals, who have information supporting the party's position on child custody, placement and support, providing for each the name, address and telephone number;
 - d. A list of the party's employers for the preceding five (5) years, together with a statement of the work performed, hours and days regularly worked, and gross and net pay;
 - e. A list of all schools the child has attended;
 - f. A list of all counselors, psychiatrists, psychologists and other mental health professionals which the parties and/or the minor child has consulted within the past five (5) years, and a statement of any medical or psychological issues that the minor child may have;
 - g. A list of each street address at which the party has resided within the past five (5) years;
 - h. The names, addresses and telephone numbers of all persons who have relevant knowledge concerning the issues raised by the allegations that have been asserted by any person or entity in this case, including specifically the allegations of sexual abuse;
 - i. The names, addresses and telephone numbers of references, other than relatives, with whom the Guardian ad Litem may discuss the party's parenting ability and relationship with the minor child;
 - j. A copy of the transcript of any prior depositions, court hearings, or other proceedings relating to the minor child and the parties; and
 - k. The parties are directed to supplement the production of this information to the Guardian ad Litem as additional information becomes available.
10. Each party is hereby ordered and directed to cooperate fully with the Guardian ad Litem and to provide the Guardian ad Litem with truthful, accurate information promptly when requested to do so. This is a continuing order for disclosure, and the Court may refuse to allow the introduction into evidence of information that was not provided to the

Guardian ad Litem as provided in this Order, unless good cause is shown.

11. The Guardian ad Litem shall have full access to all evidence, depositions, and discovery materials prepared or propounded in regard to these proceedings.
12. The Guardian ad Litem may interview witnesses and participate in discovery and pretrial preparations in this case as necessary for his investigation. The Guardian ad Litem shall be provided notice and have the right to appear and participate on behalf of the minor child at any hearings, interviews, investigations, depositions or other proceedings in this case.
13. The Court specifically recognizes that the Guardian ad Litem shall be designated as an expert witness under Rule 706 of the Mississippi Rules of Evidence and Mississippi law, as provided in *S.G. v. D.C.*, 13 So. 3d 269 (Miss. 2009), and *McDonald v. McDonald*, 39 So. 3d 868 (Miss. 2010). Therefore, the opinions and recommendations offered by the Guardian ad Litem, and the factual basis for these opinions derived in the course of the investigation, shall be governed by Rule 702; Rule 703; Rule 803(6), (8), (24) & (25); and Rule 804 of the Mississippi Rules of Evidence, and any other applicable rules governing the presentation of expert opinions.
14. Any objections by any party to the qualifications of the Guardian ad Litem to serve as an expert witness, or to the appointment of the Guardian ad Litem as an expert witness in this case, shall be filed within fourteen (14) days after the date of entry of this Order of Appointment. Failure to timely file any such objections shall be deemed a waiver of any claims that the party may have on these issues.
15. The Guardian ad Litem is also specifically vested with all powers set forth in Rule 53(d) & (e) of the Mississippi Rules of Civil Procedure. Pursuant to Rule 53(g)(2), the parties are directed to serve any written objections to the Guardian ad Litem's written report within seven (7) days after service of the report on the parties.
16. The Parties shall be equally responsible for payment of expenses, including travel costs that may be incurred by the

Guardian ad Litem in investigating this case. The parties shall each pay _____ to the Guardian ad Litem within fourteen (14) days of the date of this Order, to cover anticipated travel costs and other expenses that will be incurred in regard to this investigation, including the cost of obtaining records from third parties that may be necessary. These payments shall be sent to _____
_____. Any additional expenses incurred by the Guardian ad Litem in excess of these initial payments may be assessed between the parties as determined by the Court.

- 17. The Guardian ad Litem shall be a party to any agreements or plans entered into between the parties that affect the minor child.
- 18. The Guardian ad Litem shall be designated by the clerk of court as counsel of record for the minor child, and shall be served with copies of all orders, pleadings, discovery, notices and other papers filed or served by any party.
- 19. The Clerk of Court is hereby directed to provide copies of this order to all parties and/or their counsel, and to the Guardian ad Litem at his/her address: _____
_____.

So Ordered, Adjudged and Decreed, this the ____day of _____, 20__.

CHANCELLOR
Order prepared by:

