

ADMINISTRATIVE ORDER NO. 100 GUIDELINES FOR GUARDIANS AD LITEM

The Supreme Court guidelines are recommended for the representation of children by guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq.* unless departure is authorized by the presiding judge or designee for good cause shown.

The appointing judge or designee should:

- 1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and
- 2) insure compliance with this Administrative Order.

A guardian *ad litem* should:

1) Conduct an independent investigation consisting of the review of all relevant documents and records including those of social service agencies, police, courts, physicians (including mental health), and schools. Interviews either in person or by telephone with the child, parents, social workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.

2) Determine the best interests of the child by considering such factors as the child's age and sense of time; level of maturity; culture and ethnicity; degree of attachment to family members, including siblings; as well as continuity, consistency, permanency and the child's sense of belonging and identity.

3) File appropriate pleadings on behalf of the child. Appear for and represent the best interests of the child at all hearings. All relevant facts should be presented to the court, including the child's position. If the child disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform the court of the disagreement. The court may, on good cause shown, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

4) ~~Provide reports at every hearing, such reports being written or oral at the discretion of the judge. Not submit reports and recommendations to the court, act as a witness or testify in any proceeding in which he or she serves as guardian *ad litem*, except as permitted by the exceptions to Kansas Rules of Professional Conduct 3.7(a). The guardian *ad litem* should submit the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents a case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.~~

5) Explain the court proceedings and the role of the guardian ad litem in terms the child can understand.

6) Make recommendations for specific appropriate services for the child and the child's family.

7) Monitor implementation of service plans and court orders.

8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which consists of not less than six (6) hours including one (1) hour of professional responsibility, and participate in annual continuing education consisting of not less than six (6) hours. Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children. Such hours of continuing education, if approved by the Continuing Legal Education Commission, shall apply to the continuing legal education requirements of Supreme Court Rule 802 and the minimum total hours annually required by that rule are not modified by these guidelines. The appointing judge or designee shall have the authority to approve the prerequisite education and continuing education not otherwise approved by the Continuing Legal Education Commission. Guardians ad litem shall be responsible for maintaining a record of their own participation in prerequisite and continuing education programs. Upon the request of the appointing judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this order. Such prerequisite education may be waived by the appointing Judge or designee upon showing of a need for emergency temporary appointment. The educational requirements shall be completed within six (6) months of appointment. These educational requirements shall not be effective for a period of six (6) months from the date this order is adopted by the Supreme Court.

COMMENT

The amendments in paragraph 3 were recommended so that the rule conforms with the 2003 amendments to K.S.A. 38-1505, which changed the GAL's role from representing the child to representing the best interests of the child.. See 2003 HB 2035.

The amendments in paragraph 4 were recommended because the former rule created an ethical problem for the GAL by requiring the GAL to serve both as an advocate and as a witness in the same matter, which is prohibited by Kansas Rules of Professional Conduct 3.7. Several courts have recognized that it is unethical and inappropriate for GALs to be both advocates and witnesses in the same proceeding. *K.C. Clark v. Alexander*, 953 P.2d 145 (Wyo. 1998), *In re Marriage of Hollister*, 496 N.W.2d 642 (Wis. 1992), and *S.S. v. D.M., R.M., and J.S.*, 597 A.2d 870 (D.C. App. 1991). In addition, Michigan and Tennessee have recognized the problem and dealt with it by rule.