

Supreme Court Rule 110A

STANDARDS FOR GUARDIANS *AD LITEM*

Overview

Generally, unless the appointing judge authorizes departure from these standards for good cause, these standards apply when the judge appoints a guardian *ad litem* for a child in a case under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 *et seq.*; the Revised Kansas Juvenile Justice Code, K.S.A. 38-2301 *et seq.*; and the Kansas Family Law Code, K.S.A. Chapter 23.

What is required of the judge?

- issue an order appointing the guardian *ad litem* on a form substantially in compliance with the judicial council form; and

- ensure compliance with this rule.

Prerequisite and Continuing Education

- Requirements:
 - **Number of Hours; Timeframe.**
 - As a prerequisite to appointment, a guardian *ad litem* must complete at least six hours of education, including one hour of professional responsibility.
 - An appointed guardian *ad litem* also must participate in continuing education consisting of at least six hours per year.

Areas of Education

Areas of education should include, **but are not limited to:**

- dynamics of abuse and neglect;
- roles and responsibilities;
- cultural awareness;
- communication skills, including communication with children;
- information gathering and investigatory techniques;
- advocacy skills;

Areas of Education (cont.)

- child development;
- mental health issues;
- permanency and the law;
- community resources;
- professional responsibility;
- special education law;
- substance abuse issues;
- school law;
- and the revised Code for Care of Children.

Waiver of Prerequisite

- The appointing judge may waive the prerequisite education when necessary to make an emergency temporary appointment. The educational requirements must be completed **within six months after appointment.**

Continuing Education Requirements and Judicial Approval

- If approved by the Continuing Legal Education Commission, the education hours required by paragraph (1) also can be counted to satisfy Supreme Court Rule 803's continuing legal education requirements. These standards do not modify the minimum total hours annually required under that rule. The appointing judge may approve prerequisite education and continuing education hours not otherwise approved by the Continuing Legal Education Commission.

Recordkeeping

- Each **guardian *ad litem*** must maintain a record of the guardian's participation in prerequisite and continuing education programs. Upon request of the appointing judge, the guardian must provide evidence of compliance with this subsection.

Duties and Responsibilities

- A guardian *ad litem* must comply with the following standards:
 - **Conducting an Independent Investigation.** A guardian *ad litem* must conduct an independent investigation and **review all relevant documents and records**, including those of social service agencies, police, courts, physicians, mental health practitioners, and schools.
 - **Interviews — either in person or by telephone —** of 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.**

Duties and Responsibilities (cont.)

- **Determining the Best Interests of the Child.** A guardian *ad litem* must determine the best interests of the child by considering such factors as:
 - the child's age and sense of time;
 - the child's level of maturity;
 - The child's culture and ethnicity;
 - degree of the child's attachment to family members, including siblings;
 - continuity;
 - consistency;
 - permanency;
 - the child's sense of belonging and identity;
 - and results of the investigation.

Duties and Responsibilities (cont.)

- **Representing in Court.** A guardian *ad litem* must:
 - **file appropriate pleadings** and other papers on the child's behalf;
 - **represent** the best interests of the child at all hearings;
 - **present** all relevant facts, including the child's position;
 - **submit** the results of the guardian's independent investigation and the guardian's recommendations regarding the child's best interests; and

Duties and Responsibilities (cont.)

- **vigorously** advocate for the child's best interests 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.
- **Explaining to the Child.** A guardian *ad litem* must explain the court proceedings and the guardian's role in terms the child can understand.
- **Making Recommendations for Services.** A guardian *ad litem* must recommend appropriate services for the child and the child's family.
- **Monitoring.** A guardian *ad litem* must monitor implementation of service plans and court orders.

When Recommendation Conflicts With Child's Wishes

- If the child disagrees with the guardian *ad litem's* recommendation, **the guardian must inform the court of the disagreement.** The court may, for good cause, 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 to communicate with one another but may require the communications to occur in the attorney's presence.

Participation Limited by Rules of Professional Conduct

- An attorney in a proceeding in which the attorney serves as *guardian ad litem* may submit reports and recommendations to the court and testify only as permitted by Kansas Rule of Professional Conduct 3.7(a).

3.7 Advocate: Lawyer as Witness

- A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:
 - the testimony relates to an uncontested issue;
 - the testimony relates to the nature and value of legal services rendered in the case; or
 - disqualification of the lawyer would work substantial hardship on the client.