



INTERVIEWING AND MANAGING INTERVIEWS WITH MINOR CHILDREN

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2021 Guardian ad Litem and Family Law CLE

RULE 110A: STANDARDS FOR GUARDIANS *AD LITEM*

- A. 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 Juvenile Justice Code, K.S.A. 38-2201 et seq.; the Revised Kansas Code for Care of Children, K.S.A. 38-2301 et seq.; and the Kansas Family Law Code, K.S.A. Chapter 23. The judge must:
- 1) Issue an order appointing the guardian *ad litem* on a form substantially in compliance with the judicial council form; and
 - 2) Ensure compliance with this rule.
- B. Prerequisite and Continuing Education.**
- 1) **Requirements.**
 - a) **Number of Hours; Timeframe.** As a prerequisite to appointment, a guardian *ad litem* must complete at least 6 hours of education, including 1 hour of professional responsibility. An appointed guardian *ad litem* also must participate in continuing education consisting of at least 6 hours per year.
 - b) Areas of education should include, but are not limited to:
 - Roles and responsibilities;
 - Cultural awareness;
 - Communication skills, including communication with children;
 - Information gathering and investigatory techniques;
 - Advocacy skills;
 - 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
 - 2) **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 6 months after appointment.
 - 3) **Continuing Education Requirements; Judicial Approval.** If approved by the Continuing Legal Education Board, the education hours required by paragraph (1) also can be counted to satisfy Supreme Court Rule 804'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 Board.
 - 4) **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.

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c) **Guardian *Ad Litem* Duties and Responsibilities.** A guardian *ad litem* must comply with the following standards:

1) **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

2) **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.



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- 3) **Representing in Court.** A guardian *ad litem* must:
 - a) File appropriate pleadings and other papers on the child's behalf;
 - b) Represent the best interest of the child at all hearings;
 - c) Present all relevant facts, including the child's position;
 - d) Submit the results of the guardian's recommendations regarding the child's best interests; and
 - e) Vigorously advocate for the child's best interests by:
 - i. Calling, examining, and cross-examining witnesses;
 - ii. Submitting and responding to other evidence; and
 - iii. Making oral and written arguments based on the evidence that has been or is expected to be presented.
- 4) **Explaining to the child.** A guardian *ad litem* must explain the court proceedings and the guardian's role in terms the child can understand.
- 5) **Making Recommendations for services.** A guardian *ad litem* must recommend appropriate services for the child and the child's family.
- 6) **Monitoring.** A guardian *ad litem* must monitor implementation of service plans and court orders.
- d) **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.
- e) **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).

2017 Kansas Statutes

23-3203. Factors considered in determination of legal custody, residency and parenting time of a child. (a) In determining the issue of legal custody, residency and parenting time of a child, the court shall consider all relevant factors, including, but not limited to:

- (1) Each parent's role and involvement with the minor child before and after separation;
 - (2) the desires of the child's parents as to custody or residency;
 - (3) the desires of a child of sufficient age and maturity as to the child's custody or residency;
 - (4) the age of the child;
 - (5) the emotional and physical needs of the child;
 - (6) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;
 - (7) the child's adjustment to the child's home, school and community;
 - (8) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;
 - (9) evidence of domestic abuse, including, but not limited to:
 - (A) A pattern or history of physically or emotionally abusive behavior or threat thereof used by one person to gain or maintain domination and control over an intimate partner or household member; or
 - (B) an act of domestic violence, stalking or sexual assault;
 - (10) the ability of the parties to communicate, cooperate and manage parental duties;
 - (11) the school activity schedule of the child;
 - (12) the work schedule of the parties;
 - (13) the location of the parties' residences and places of employment;
 - (14) the location of the child's school;
 - (15) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;
 - (16) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2017 Supp. 21-5602, and amendments thereto;
 - (17) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and
 - (18) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2017 Supp. 21-5602, and amendments thereto.
- (b) To aid in determining the issue of legal custody, residency and parenting time of a child, the court may order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and may order such parent to follow all recommendations made by such program.

History: L. 2011, ch. 26, § 20; L. 2014, ch. 116, § 9; L. 2016, ch. 102, § 7; L. 2017, ch. 58, § 2; July 1.

Practice tips

1. When an initial child custody determination lies only between the parents as parties to the cause of action, the best interest of the child are the paramount consideration for the court.
2. Once the best interests of the child have been determined and residential custody with one parent established, the District Court may modify custody and residency when a material change of circumstances is shown. The nonresidential parent carries the burden to show that such a material change has occurred.
3. The District court is in the best position to make the necessary inquiries and determinations concerning material circumstances, custody, residency, visitation, and parenting time, so its judgment will not be disturbed on appeal unless there is an abuse of judicial discretion.



- K.S.A. 2020 Supp. 23-3201 et seq. outlines and directs a Trial Court's Discretionary determination of a child's custody residency, and parenting time according to the child's best interests.
- K.S.A. 2020 Supp. 23-3203 provides a non-exhaustive list of factors for the District Court to consider when determining the best interests of a child. When a custody dispute lies only between the parents, the child's welfare and best interests are the paramount consideration for the Court. Neither parent has a vested interest in custody or residency of the child, and there is no presumption that the mother should have custody, regardless of the age of the child.
- However, once the best interests of the child have been determined and custody with one parent established, the District Court may modify custody or residency only when a material change of circumstances is shown. K.S.A. 2020 Supp. 23-3218.
- There are three ways in which a District Court can abuse its discretion: "(1) when no reasonable person would take the view adopted by the District Court; (2) when a ruling is based on an error of law; or (3) when substantial competent evidence does not support a District Court's finding of fact on which the exercise of discretion is based." 301 Kan. At 128.
- "[T]he GAL is a critical tool in child custody determinations. '[T]he need for an independent guardian ad litem is particularly compelling in custody disputes. Often, parents are pitted against one another in an intensely personal and militant clash.' Elrod, Reforming the System to Protect Children in High Conflict Custody Cases, 28 Wm. Mitchell L. Rev. 495, 526 (2001) (quoting Short ex rel Oosterhous v. Short, 730 F. Supp. 1037, 1039 [D. Colo. 1990]). Thus, given the importance of a GAL, a court runs the risk of committing an error of fact by disregarding the GAL's recommendations." M.R.B. 2020 WL 6106463, at *15.



CHILD INTERVIEWS

PURPOSE OF INTERVIEW:

- Interviews with children have many purposes: to learn about the child's relationships with family members, to find out about specific incidents/events, and to determine the child's preference in an access dispute. Interviews with children do not follow the usual rules of conversation that are familiar to them. In ordinary conversation, the adult often knows the answer – “Tell grandma about your solo in the concert” – or provides multiple “leading” prompts – “You know, you sang that song from *Annie*.”



PURPOSE OF INTERVIEW

- Two communication styles are inappropriate when interviewing children
 - a) Talking as if they were adults and
 - b) Talking as if they were children.
- While this may seem puzzling at first, it is a reminder not to use language that children cannot understand, but also not to conduct an interview as we would in an ordinary conversation with our own children.



Establish a Protocol – General Techniques:

- From the very beginning, every aspect of the interview should have a purpose and not be merely small talk. Interviews generally consist of four stages that set the tone, but in a neutral, supportive way.
 - Introduction and instructions
 - Rapport building
 - Inquiry
 - Closure
- The introduction allows the interviewer to identify their name and role: “My name is Ann and I talk to kids about their families.” The interviewer must instruct the child not to guess and to correct the interviewer. Research has shown that children believe they must answer the questions of authority figures, even if that means guessing, and that they are reluctant to tell an unfamiliar adult when the adult has made a mistake. Discussion with the child should stress that the interviewer will not get mad if the child does not know the answer and that the interviewer wants to know if they makes a mistake.
- A sample instruction script would be: “My name is Ray and I talk to children/kids about their families. I’m going to be asking you a lot of questions today. Some will be easy and some will be hard. Some you’ll know the answers to and some you won’t. If you don’t know the answer, I don’t want you to guess. So, if I said ‘Where do I live?’ what would you say? I sometimes forget and say things that kids don’t understand. If I do that, I want you to tell me. So, if I said, ‘Do you feel garrulous today?’ what would you say? Sometimes I make mistakes. If I do, I want you to tell me. So if I called you (any name that is not the child’s), what would you say? Sometimes I ask the same question more than once. If I do that, it doesn’t mean you gave the wrong answer, it means I either forgot that I asked or I just need to ask two times. Let’s start with an easy question. How old are you? When the child says “I don’t know” or corrects the interviewer, it is important to say you are glad the child is not guessing and to thank them for helping you get it right.

Interview Phases

- **Introduction and Instructions**
 - Begin by asking the child, “Do you know why you’re here today? Tell me about that.” Using open-ended questions will allow the information to be provided from free-recall memory, the most reliable form. Questions such as “Tell me more about that – and then what happened?” and “You said he _____.” Tell me more about that.” All elicit narratives from the child rather than a few words. Specific questions that begin with “Did your mom” or “when did” do not encourage children to provide all of the information they can recall but serve to limit their reports to just what the interviewer has asked.
- **Building Rapport**
 - Any topic from sports to after school activities may be used to help the child settle in to the question and answer format the interviewer will use. “You’re wearing a Kansas City Chiefs T-Shirt. Tell me what you like about them.” Rapport-building should be only as long as it takes for the child to begin freely offering information. While this varies among children, most become comfortable quickly with an interviewer who is listening attentively.



Interview Phases

- **Inquire**
- Topics of interest will depend on the purpose of the interview but often include what the child knows about the case, what the child likes best and least about each parent, how parents discipline the child, the nature of relationships with siblings and others important to the child, rules in each home, conflict between the parents, how the child feels about the current and past living arrangements, and whether there have been specific problems such as violence or chemical abuse.
- Focused questions will direct the child's attention to specific topics. Examples of those questions are:
 - "Tell me what you like about _____ (mom's/dad's new partner)."
 - "Do you have a bedtime at mom's/dad's house? Tell me about that."
 - And "Sometimes when grown-ups drink, they act different. Tell me how your mom/dad acts different when she/he drinks."
 - "When you do something you're not supposed to, what does mom/dad do? What else does she/he do?"
- **Closure**
- When finishing the interview, it is important to ask if there is anything else the child wants to tell you, or anything you may have missed. This provides a chance to discuss something that the interviewer has not touched on. Interviewers may also want to allow the child to ask questions to tap into anything that has been on the child's mind and provide useful information about the child's worries. Always thank the child for helping you do your job, for being patient with all your questions, or for letting you get to know them.



DEVELOPMENTAL MILESTONES BY AGE

AS IDENTIFIED BY THE CENTERS OF DISEASE
CONTROL AND PREVENTION (CDC)

TODDLERS (2-3 YEARS OF AGE)

- Skills such as taking turns, playing make believe, and kicking a ball, are called developmental milestones. Developmental milestones are things most children can do by a certain age. Children reach milestones in how they play, learn, speak, behave, and move (like jumping, running, or balancing).
- Because of children's growing desire to be independent, this stage is often called the "terrible twos". However, this can be an exciting time for parents and toddlers. Toddlers will experience huge thinking, learning, social, and emotional changes that will help them to explore their new world, and make sense of it. During this stage, toddlers should be able to follow two-step or three-step directions, sort objects by shape and color, imitate the actions of adults and playmates, and express a wide range of emotions.



PRESCHOOLERS (3-5 YEARS OF AGE)

- Skills such as naming colors, showing affection, and hopping on one foot are called developmental milestones. Developmental milestones are things most children can do by a certain age. Children reach milestones in how they play, learn, speak, behave, and move (like crawling, walking or jumping).
- As children grow into early childhood, their world will begin to open up. They will become more independent and begin to focus more on adults and children outside the family. They will want to explore and ask about the things around them even more. Their interactions with family and those around them will help shape their personality and their own ways of thinking and moving. During this stage, children should be able to ride a tricycle, use safety scissors, notice a difference between girls and boys, help to dress and undress themselves, play with other children, recall part of a story, and sing a song.



MIDDLE CHILDHOOD (6-8 YEARS OF AGE)

- **Developmental Milestones**

- Middle childhood brings many changes in a child's life. By this time, children can dress themselves, catch a ball more easily using only their hands, and tie their shoes. Having independence from family becomes more important now. Events such as starting school bring children this age into regular contact with the larger world. Friendships become more and more important. Physical, social, and mental skills develop quickly during this time. This is a critical time for children to develop confidence in all areas of life, such as through friends, schoolwork and sports.

- **Middle Childhood (6-8 years of age) Emotional/Social Changes**

- Children in this age group might:
 - Show more independence from parents and family.
 - Start to think about the future.
 - Understand more about his or her place in the world.
 - Pay more attention to friendships and teamwork.
 - Want to be liked and accepted by friends.

- **Middle Childhood (6-8 years of age) Thinking and Learning**

- Children in this age group might:
 - Show rapid development of mental skills.
 - Learn better ways to describe experiences and talk about thoughts and feelings.
 - Have less focus on one's self and more concern for others.



MIDDLE CHILDHOOD (9-11 YEARS OF AGE)

- **Developmental Milestones**

- Your child's growing independence from the family and interest in friends might be obvious by now. Healthy friendships are very important to your child's development, but peer pressure can become strong during this time. Children who feel good about themselves are more able to resist negative peer pressure and make better choices for themselves. This is an important time for children to gain a sense of responsibility along with their growing independence. Also, physical changes of puberty might be showing by now, especially for girls. Another big change children need to prepare for during this time is starting middle or junior high school

- **Middle Childhood (9-11 years of age) Emotional/Social Changes**

- Children in this age group might:
 - Start to form stronger, more complex friendships and peer relationships. It becomes more emotionally important to have friends, especially of the same sex.
 - Experience more peer pressure.
 - Become more aware of his or her body as puberty approaches. Body image and eating problems sometimes start around this age.

- **Middle Childhood (9-11 years of age) Thinking and Learning**

- Children in this age group might:
 - Face more academic challenges at school.
 - Become more independent from the family.
 - Begin to see the point of view of others more clearly.
 - Have an increased attention span.



YOUNG TEENS (12-14 YEARS OF AGE)

- **Developmental Milestones**

This is a time of many physical, mental, emotional and social changes. Hormones change as puberty begins. Most boys grow facial and pubic hair and their voices deepen. Most girls grow pubic hair and breasts, and start their period. They might be worried about these changes and how they are looked at by others. This also will be a time when your teen might face peer pressure to use alcohol, tobacco products, and drugs, and to have sex. Other challenges can be eating disorders, depression, and family problems. At this age, teens make more of their own choices about friends, sports, studying, and school. They become more independent, with their own personality and interests, although parents are still very important.

- **Young Teens (12-14 years of age) Emotional/Social Changes**

- Children in this age group might:
 - Show more concern about body image, looks and clothes.
 - Focus on themselves; going back and forth between high expectations and lack of confidence.
 - Experience more moodiness.
 - Show more interest in and influence by peer group.
 - Express less affection toward parents; sometimes might seem rude or short-tempered.
 - Feel stress from more challenging school work.
 - Develop eating problems.
 - Feel a lot of sadness or depression, which can lead to poor grades at school, alcohol or drug use, unsafe sex, and other problems.

- **Young Teens (12-14 years of age) Thinking and Learning**

- Children in this age group might:
 - Have more ability for complex thought.
 - Be better able to express feelings through talking.
 - Develop a stronger sense of right and wrong.



TEENAGERS (15-17 YEARS OF AGE)

- Developmental Milestones

This is a time of changes for how teenagers think, feel, and interact with others, and how their bodies grow. Most girls will be physically mature by now, and most will have completed puberty. Boys might still be maturing physically during this time. Your teen might have concerns about body size, shape, or weight. Eating disorders also can be common, especially among girls. During this time, your teen is developing their unique personality and opinions. Relationships with friends are still important, yet your teen will have other interests as they develop a more clear sense of who they are. This is also an important time to prepare for more independence and responsibility; many teenagers start working, and many will be leaving home soon after high school.

- Teens (15-17 years of age) Emotional/Social Changes

- Children in this age group might:

- Have more interest in romantic relationships and sexuality.
- Go through less conflict with parents.
- Show more independence from parents.
- Have a deeper capacity for caring and sharing and for developing more intimate relationships.
- Spend less time with parents and more time with friends.
- Feel a lot of sadness or depression, which can lead to poor grades at school, alcohol or drug use, unsafe sex, and other problems.

- Teens (15-17 years of age) Thinking and Learning

- Children in this age group might:

- Learn more defined work habits.
- Show more concern about future school and work plans.
- Be better able to give reasons for their own choices, including about what is right or wrong.



THREE WISHES

- “If you had three wishes about your family, what would they be?”
- Common responses are:
 - “That Mom and Dad live together,”
 - “That they stop fighting,”
 - “Or that we all live in the same house.”



WHEN YOU KNOW BETTER, YOU DO BETTER.

-Maya Angelou



Appendix/Resources

- McIntosh's Child Interview Guidelines for Child Informed Family Law Dispute Resolution Jennifer McIntosh, Ph.D.
- Sample Guardian ad Litem Introductory Correspondence, Guardian ad Litem Information Sheet, Protective Order and Order Appointing Guardian ad Litem prepared by Serena Hawkins
- Guardian ad Litem Well-Being Checklist