

Kansas	Legal Authority
	<b>GENERAL DUTIES AND ACTIVITIES OF THE CHILD’S LEGAL REPRESENTATIVE</b>
<p><b>1. General Duties:</b>  <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child’s interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>- <i>Right to counsel; guardian ad litem.</i> (a) <i>Appointment of guardian ad litem and attorney for child; duties.</i> Upon the filing of a petition, the court shall appoint an attorney to serve as guardian <i>ad litem</i> for a child who is the subject of proceedings under this code. The guardian <i>ad litem</i> shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child. When the child's position is not consistent with the determination of the guardian <i>ad litem</i> as to the child's best interests, the guardian <i>ad litem</i> shall inform the court of the disagreement. The guardian <i>ad litem</i> or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian <i>ad litem</i> to communicate with one another but may require such communications to occur in the attorney's presence. <a href="#">K.S.A. 38-2205(a).</a></p> <p>- <i>Appointment of special advocate.</i> (a) The court at any stage of a proceeding pursuant to this code may appoint a special advocate for the child who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the child and assist the child in obtaining a permanent, safe and homelike placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court. <a href="#">K.S.A. 38-2206.</a></p> <p>- "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2010 Supp. <a href="#">38-2206</a>, and amendments thereto, in a proceeding pursuant to this code. <a href="#">K.S.A. 38-2202(g).</a></p>
<p><b>2. Out of Court - Actions to be Taken:</b> <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>- A guardian ad litem should: 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. <a href="#">KS Sup. Ct. Admin. Order 100(1).</a></p> <p>- A guardian ad litem should: 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. <a href="#">KS Sup. Ct. Admin. Order 100(2).</a></p>

- A guardian ad litem should: 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. [KS Sup. Ct. Admin. Order 100\(3\)](#).

- *Access to the official file.* The following persons or entities shall have access to the official file of a child in need of care proceeding pursuant to this code:

- (2) The parties to the proceedings and their attorneys. . . .
- (3) The guardian *ad litem* for a child who is the subject of the proceeding.
- (4) A court appointed special advocate for a child who is the subject of the proceeding or a paid staff member of a court appointed special advocate program.

. . . . [K.S.A. 38-2211\(a\)](#).

- *Access to the social file.* The following persons or entities shall have access to the social file of a child in need of care proceeding pursuant to this code:

. . . .

- (2) The attorney for a party to the proceeding or the person or persons designated by an Indian tribe that is a party.
- (3) The guardian *ad litem* for a child who is the subject of the proceeding.
- (4) A court appointed special advocate for a child who is the subject of the proceeding or a paid staff member of a court appointed special advocate program.

. . . . [K.S.A. 33-2211\(b\)](#).

- *Necessary access.* The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

- (1) A child named in the report or records, a guardian *ad litem* appointed for the child and the child's attorney.
- (2) A parent or other person responsible for the welfare of a child, or such person's legal representative.
- (3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court....

	<p><a href="#">K.S.A. 38-2212(c).</a></p> <p>- A guardian ad litem should: Make recommendations for specific appropriate services for the child and the child's family. <a href="#">KS Sup. Ct. Admin. Order 100(6).</a></p> <p>- Court-appointed special advocate (CASA) volunteer programs shall embrace the following: (a)  primary duty of a court-appointed special advocate to personally investigate and become acquainted with the facts, conditions, and circumstances affecting the welfare of the child for whom appointed, to advocate the best interests of the child and assist the court in obtaining for the child the most permanent, safe, and homelike placement possible. A CASA volunteer, additionally, should:</p> <ol style="list-style-type: none"> <li>(1) Visit the child as often as necessary to monitor the child's safety and observe whether the child's essential needs are being met;</li> <li>(2) Attend court hearings pertaining to the child or, if not excused by the judge, arrange for attendance of a qualified substitute approved by the judge;</li> <li>(3) Participate in staffings and, to the extent possible, other meetings pertaining to the child's welfare;</li> <li>(4) Participate in the development of the written plan for reintegration and/or modification of a plan already in place;</li> <li>(5) Submit a written report to the court prior to each regularly scheduled court hearing involving the child; and</li> <li>(6) Do all such other things on behalf of the child as are directed by the program director and the standards relating to CASA volunteer programs. <a href="#">KS R. Dist. Ct. Rule 110(a).</a></li> </ol>
<p><b>3. In Court - Active Participation in Hearings:</b> <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>- A guardian ad litem should: 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. <a href="#">KS Sup. Ct. Admin. Order 100(3).</a></p> <p>- A guardian ad litem should: 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 <a href="#">Kansas Rules of Professional Conduct 3.7(a)</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</p>

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. [KS Sup. Ct. Admin. Order 100\(4\)](#).

- A guardian ad litem should: Explain the court proceedings and the role of the guardian ad litem in terms the child can understand. [KS Sup. Ct. Admin. Order 100\(5\)](#).

- *Adjudication*. Proceedings prior to and including adjudication under this code shall be open to attendance by any person unless the court determines that closed proceedings or the exclusion of that person would be in the best interests of the child or is necessary to protect the privacy rights of the parents.

(1) The court may not exclude the guardian ad litem, parties and interested parties.

. . . . [K.S.A. 38-2247\(a\)](#).

- *Disposition*. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to all persons except the parties, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate and the custodian.... [K.S.A. 38-2247\(b\)](#).

- Court-appointed special advocate (CASA) is not an “interested party” required to be present in child in need of care proceedings. *In Interest of D.D.P.*, 1991, 249 Kan. 529, 819 P.2d 1212.

- *Discovery*. (a) After a hearing and a finding that discovery procedures, as described in [K.S.A. 60-226 through 60-237](#), and amendments thereto, will expedite the proceedings, the judge may allow discovery subject to limitations.

(b) Upon request of any party or interested party, any other party or interested party shall disclose the names of all potential witnesses. [K.S.A. 38-2245](#).

- *Rules of evidence*. . . .

(d) On motion of any party to a proceeding pursuant to the code in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the parties and interested parties to the proceeding if:

(A) The recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator of the equipment is

	<p>competent and the recording is accurate and has not been altered;</p> <p>(C) every voice on the recording is identified; and</p> <p>(D) each party and interested party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.</p> <p>(e) At the taking of testimony under subsection (d):</p> <p>(1) Only an attorney for each party, interested party, the guardian <i>ad litem</i> for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;</p> <p>(2) only the attorneys for the parties may question the child; and</p> <p>(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits such person to see and hear the child during the child's testimony, but does not permit the child to see or hear such person.</p> <p>. <a href="#">K.S.A. 38-2249.</a></p> <p>- <i>Placement; testimony of certain children.</i> At any hearing under the code, the court, if requested by the child, shall hear the testimony of the child as to the desires of the child concerning the child's placement, if the child is 10 years of age and of sound intellect. <a href="#">K.S.A. 38-2262.</a></p>
<p>4. <b>Post-Hearing:</b> Review courts order, communicate order to child, and monitor implementation of orders.</p>	<p>- A guardian ad litem should: Monitor implementation of service plans and court orders. <a href="#">KS Sup. Ct. Admin. Order 100(7).</a></p> <p>- <i>Change of placement; notice; opportunity for hearing; removal from home of parent, findings by court.</i> (a) Except as provided in <a href="#">K.S.A. 2010 Supp. 38-2255(d)(2)</a> [concerning discharges to the parents] and <a href="#">38-2259</a> [concerning emergencies], and amendments thereto, if a child has been in the same foster home or shelter facility for six months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) the petitioner; (3) the attorney for the parents, if any; (4) each parent whose address is available; (5) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (6) the child, if 12 or more years of age; (7) the child's guardian ad litem; (8) any other party or interested party; and (9) the child's court appointed special advocate.</p> <p>...</p> <p>(c) Within 10 days after receipt of the notice, any person enumerated in subsection (a)(2) through (8) receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been</p>

	<p>received, the court shall schedule a hearing and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a)(2) through (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.... <a href="#">K.S.A. 38-2258(a), (c).</a></p>
<p><b>5. Appellate Advocacy:</b>  <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>- <i>Appeals; procedure; verification; continuing jurisdiction.</i> (a) An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.</p> <p>(b) An appeal from an order entered by a district magistrate judge shall be to a district judge. The appeal shall be heard on the basis of the record within 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo.</p> <p>(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.</p> <p>(d) Notwithstanding any other provision of law to the contrary, appeals under this section shall have priority over all other cases.</p> <p>(e) Every notice of appeal, docketing statement and brief shall be verified by the appellant if the appellant has been personally served at any time during the proceedings. Failure to have the required verification shall result in the dismissal of the appeal.</p> <p>(f) While a case is on appeal from the district court, the district court or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings. <a href="#">K.S.A. 38-2273.</a></p> <p>- <i>Rehearing.</i> After the entry of any dispositional order, the court may rehear the matter on its own motion or the motion of a party or interested party. Upon notice, pursuant to <a href="#">K.S.A. 2010 Supp. 38-2254</a>, and amendments thereto, and after the rehearing, the court may enter any dispositional order authorized by this code, except that a child support order which has been registered under <a href="#">K.S.A. 2010 Supp. 38-2279</a>, and amendments thereto, may only be modified pursuant to <a href="#">K.S.A. 2010 Supp. 38-2279</a>, and amendments thereto. <a href="#">K.S.A. 38-2256.</a></p>
<p><b>6. Cessation of Representation:</b>  <i>Contacts post representation, if any.</i></p>	<p>- <i>Continuation of representation.</i> A guardian <i>ad litem</i> appointed to represent the best interests of a child or a second attorney appointed for a child as provided in subsection (a), or an attorney appointed for a parent or custodian shall continue to represent the client at all subsequent hearings in proceedings under this code, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue. <a href="#">K.S.A. 38-</a></p>



	<a href="#">2205(d).</a>
	<b>Organizational and Administrative Supports for the Child Representative</b>
<p><b>7. General Representation Rules:</b>  <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>- 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:</p> <p>1) guardian ad litem on a form substantially as attached, and  <a href="#">KS Sup. Ct. Admin. Order 100.</a></p> <p>- A CASA volunteer shall:</p> <ol style="list-style-type: none"> <li>(1) Be at least 18 years of age;</li> <li>(2) Submit a completed written application to the local program; and</li> <li>(3) Successfully complete screening procedures and a review by local program staff.</li> </ol> <p>(c) Standards relating to CASA volunteer programs shall be promulgated by the Judicial Administrator and followed by CASA volunteer programs. The standards shall include requirements pertaining to certification of local CASA volunteer programs by the Judicial Administrator and certification and training of CASA volunteers by the local program.</p> <p>(d) District courts utilizing privately administered CASA programs shall have a written agreement with the person or group sponsoring the program. The written agreement shall be in force for not longer than two years from the effective date of the agreement. The agreement shall govern operation of the privately administered CASA program and shall:</p> <ol style="list-style-type: none"> <li>(1) Require the program to meet the standards relating to CASA volunteer programs promulgated by the Judicial Administrator;</li> <li>(2) Set forth the responsibilities of the court to the CASA program and of the CASA program to the court including a requirement that CASA volunteers be certified by the local program;</li> <li>(3) Specify the procedures for assignment of the program to cases and for the removal of the program from cases;</li> <li>(4) Establish procedures for resolution of grievances and conflicts for both CASA programs and individual CASA volunteers; and</li> <li>(5) Set forth the requirements the program must meet to be eligible for renewal of the agreement upon expiration.</li> </ol>

	<p>(e) District courts shall promulgate local court rules governing operation of CASA programs which are administered by the court. The rules shall include the items specified in (1) through (4) of the preceding paragraph.</p> <p>(f) A CASA volunteer shall be given notice of all court hearings involving the child and shall have access to any district court records within the state pertaining to the child for whom appointed.</p> <p>(g) The district court or the privately administered CASA program, as applicable, shall provide such statistical and other information about its CASA program as the Judicial Administrator may require. <a href="#">KS R. Dist. Ct. Rule 110(b)-(g).</a></p> <p>- CASA programs are not-for-profit organizations governed by local Boards of Directors. Additionally, local programs must meet certain standards which are established by the Kansas Supreme Court. Programs are reviewed annually to insure compliance with the Supreme Court standards. Only programs meeting these standards are eligible to assign CASA volunteers to cases. Twenty-three of 31 judicial districts have certified CASA programs. <a href="#">Kansas CASA Program, What is CASA?</a></p>
<p><b>8. <i>Lawyer Training:</i></b> <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- A guardian ad litem should: 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 April 19, 1995. <a href="#">KS Sup. Ct. Admin. Order 100(8).</a></p>



	<p>The <a href="#">Children’s Advocacy Resource Center of Kansas Legal Services</a> offers support to GALs, including four free CLE programs per year.</p> <p>- (b) A CASA volunteer shall:</p> <ol style="list-style-type: none"> <li>(1) Be at least 18 years of age;</li> <li>(2) Submit a completed written application to the local program; and</li> <li>(3) Successfully complete screening procedures and a review by local program staff.</li> </ol> <p>(c) Standards relating to CASA volunteer programs shall be promulgated by the Judicial Administrator and followed by CASA volunteer programs. The standards shall include requirements pertaining to certification of local CASA volunteer programs by the Judicial Administrator and certification and training of CASA volunteers by the local program. <a href="#">KS R. Dist. Ct. Rule 110(b) &amp; (c).</a></p> <p>- A potential volunteer must complete the following screening procedure:  complete a written application providing information which includes educational background, employment history, and personal experience with child abuse neglect, provide three written references from person unrelated to the applicant,  participate in a personal interview,  pass a records check through state child abuse registries and the Kansas Bureau of Investigation and national criminal data bases, and  complete no less than 15 hours of specialized training.  Individuals successfully passing the screening process are certified as CASA volunteers. Once certified, a volunteer is eligible to be assigned a case. <a href="#">Kansas CASA Program, How do you qualify to be a CASA?</a></p>
<p><b>9. Lawyer Compensation:</b>  Adequate and timely compensation, reimbursement provided expenses.</p>	<p>- <i>Fees for counsel.</i> An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in <a href="#">K.S.A. 2010 Supp. 38-2215</a>, and amendments thereto. <a href="#">K.S.A. 38-2205(e).</a></p> <p>- <i>Expenses.</i> The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county. <a href="#">K.S.A. 38-2215(b).</a></p> <p>- <i>Fees and expenses.</i> (a) When an appeal is taken pursuant to this code, fees of the guardian <i>ad litem</i> or of an attorney appointed to represent a parent shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees</p>

	<p>and expenses against a party or interested party or order that they be paid from the general fund of the county.</p> <p>(b) When the court orders the fees and expenses assessed against a party or interested party, such fees shall be paid from the county general fund, subject to reimbursement by the party or interested party against whom the fees were assessed. The county may enforce the order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution. <a href="#">K.S.A. 38-2275.</a></p>
<p><b>10. Caseload Levels:</b>  <i>Caseloads are of a manageable size.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>