

Kellie E. Hogan
District Court Judge
Division 16



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DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
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February 16, 2023

Good afternoon, my name is Kellie E. Hogan. I am a District Court Judge in Sedgwick County. I also serve as a member of the Kansas Supreme Court Task Force on Permanency Planning.

Prior to taking the bench almost 3 years ago, I worked in child in need of care courts across the state. The bulk of my 23 years of experience is as a guardian ad litem, the attorney who, under the current law, represents the best interest of the child. As a Judge, it is my job to follow the law as written. Judges determine the facts of the case and apply the law to the facts. I'm not here to say what the law should be, that is the legislature's job. I am here to provide information about how a change in the law would impact the court.

HB 2381, if passed, would result in a significant change to child in need of care proceedings across the state as it directs the court to appoint an attorney for the child. Currently, the court appoints an attorney for the child who acts as a guardian ad litem. A guardian ad litem is an attorney who conducts an independent investigation, makes recommendations to the Court regarding the best interest of the child, and is obligated to inform the judge of all information that the judge needs to determine best interests. Under the current rules, the guardian ad litem is required to determine the child's desires and present those desires to the court. The court has the authority to appoint an attorney to represent the child in addition to the guardian ad litem if the court finds the positions of the guardian ad litem and the child are widely divergent. In child in need of care court, the judge must make decisions which the judge finds are in the child's best interests. Judges rely on the child's guardian ad litem to independently investigate and make recommendations so the judge can then make decisions based on the child's best interests.

Each child in need of care case currently has attorneys representing the State, each parent, and possibly grandparents or other interested parties. Those attorneys must consult with their clients and argue for the client's position regardless of whether the attorney feels that the position is in the client's best interest. Like any other attorney client relationship, the client or, in child in need of care cases, the child, would direct the attorney's representation. Many involve infants or young children who are not able to articulate the objectives of representation to an attorney. HB2381 does state that a court-appointed special advocate (CASA) may make a recommendation regarding the best interest of the child. This occurs under current law. However, not every district has a CASA program and many times CASA programs do not have enough volunteers to serve every child. If the court delays proceedings in order to wait for a CASA to be appointed, this could delay permanency for a child.

Additionally, attorneys acting as guardians ad litem have different ethical obligations in carrying out client representation. A guardian ad litem makes recommendations as to the child's best interests. In contrast, an attorney has an absolute duty of confidentiality. That attorney may only disclose information to the Court that the client authorizes the attorney to disclose. Even if the lawyer knows the judge would want to know the information, the ethical rules do not allow the attorney to disclose information without the child's permission. For example, under the current law, if a child tells his or her guardian ad litem that he or she is using illegal drugs, the guardian ad litem will inform the court so that the child can be assessed for drug treatment. If the child was represented by an attorney instead of a guardian ad litem, that attorney would not be able to provide that information to anyone unless the child agreed to the disclosure. Additionally, if an attorney is representing an infant, the attorney is left guessing what the infant prefers.

I also have attorney resource concerns about HB2381. Under the current law, judges appoint one guardian ad litem for each family. In cases with siblings, a judge may appoint an additional guardian ad litem if a circumstance arises where siblings best interests are in conflict; however, those situations are rare. If the Judge appoints an attorney for the child, the attorney's ethical obligation will not allow that attorney to represent more than one sibling in any family. There is already a statewide shortage of attorneys practicing in child in need of care court. If a

judge must appoint an attorney for each sibling, many counties will not have enough local attorneys to represent parents and siblings.

I am happy to stand for questions. Thank you.

A handwritten signature in black ink that reads "Kellie E. Hogan". The signature is written in a cursive style with a large, stylized "K" and "H".

Kellie E. Hogan
Judge, Division 16