

# Iowa Standards of Practice for Lawyers Representing Children in Custody Cases

## I. Introduction

Children deserve to have custody proceedings conducted in the manner least harmful to them and most likely to provide judges with the facts needed to decide the case. The Iowa Standards of Practice for Lawyers Representing Children in Custody Cases (Standards) are a model for good practice and consistency in the appointment and performance of lawyers representing children in Iowa custody cases.

These Standards distinguish two distinct types of lawyers for children: (1) The Child’s Attorney, who provides independent legal representation in a traditional attorney-client relationship, giving the child a strong voice in the proceedings; and (2) The Guardian ad Litem, who independently investigates, assesses, and advocates the child’s best interests as a lawyer. While some courts in the past have appointed a lawyer, often called a guardian ad litem, to report or testify on the child’s best interests and related information, this is not a lawyer’s role under these Standards.

These Standards seek to keep the best interests of children at the center of the court’s attention, and to build public confidence in a just and fair court system that works to promote the best interests of children. These Standards promote quality control, professionalism, clarity, uniformity, and predictability. They require that: (1) all participants in a case know the duties, powers and limitations of the appointed role; and (2) lawyers have sufficient training, qualifications, compensation, time, and authority to do their jobs properly with the support and cooperation of the courts and other institutions.

These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to attorneys representing children in custody cases for practicing in compliance with the rules. In the event of any conflict between these standards and a Rule of Professional Conduct, the requirements of the rule take precedence.

## II. Scope and definitions

### A. Scope

**These Standards apply to the appointment and performance of lawyers**

1 **serving as advocates for children or their interests in any case where**  
2 **temporary or permanent legal custody, physical custody, parenting**  
3 **plans, parenting time, access, or visitation are adjudicated, including**  
4 **but not limited to divorce, custody, domestic violence, contested**  
5 **adoptions, and contested private guardianship cases.**

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7  
8 **B. Definitions**  
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- 10 **1. “Child’s Attorney”:** A lawyer who provides independent legal  
11 **counsel for a child, and who owes the same duties of undivided**  
12 **loyalty, confidentiality, and competent representation as are**  
13 **due an adult client.**
- 14  
15 **2. “Guardian ad Litem”:** A lawyer who provides independent legal  
16 **services for the purpose of protecting a child’s best interests**  
17 **without being bound by the child’s directives or objectives.**  
18

19 *Commentary*  
20

21 A lawyer should be either a Child’s Attorney or a Guardian ad Litem, not  
22 both. The duties common to both roles are found in Part III of these  
23 Standards. The unique duties of each are described separately in Parts IV and  
24 V. The essential distinction between the two lawyer roles is that the Guardian  
25 ad Litem investigates and advocates the best interests of the child as a lawyer  
26 in the litigation, while the Child’s Attorney is a lawyer who represents the  
27 child as a client. Neither kind of lawyer is a witness. Form should follow  
28 function in deciding which kind of lawyer to appoint. The role and duties of  
29 the lawyer should be tailored to the reasons for the appointment and the  
30 needs of the child.

31 The role of “guardian ad litem” has become muddled through different  
32 usages in different states, with varying connotations. It is a venerable legal  
33 concept that has often been stretched beyond recognition to serve  
34 fundamentally new functions, such as parenting coordinator, referee,  
35 facilitator, arbitrator, evaluator, mediator, and advocate. Asking one guardian  
36 ad litem to perform several roles at once, to be all things to all people, is a  
37 messy, ineffective expedient. A court seeking expert or lay opinion testimony,  
38 written reports, or other nontraditional services should appoint an individual  
39 for that purpose, such as a Child and Family Reporter (CFR), and make clear  
40 that that person is not serving as a lawyer and is not a party. This person can  
41 be either a nonlawyer or a lawyer who chooses to serve in a volunteer  
42 nonlawyer capacity.

43

1  
2 **III. Duties of all lawyers for children**

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4 **In addition to their general ethical duties as lawyers and the specific**  
5 **duties set out in Parts IV and V, Child’s Attorneys and Guardians ad**  
6 **Litem also have the duties outlined in this section.**

7  
8 **A. Accepting appointment**

9  
10 **The lawyer should accept an appointment only with a full understanding**  
11 **of the issues and functions to be performed. If the appointed lawyer**  
12 **considers parts of the appointment order confusing or incompatible with**  
13 **his or her ethical duties, the lawyer should (1) decline the appointment,**  
14 **or (2) inform the court of the conflict and ask the court to clarify or**  
15 **change the terms of the order, or (3) both.**

16  
17 **B. Lawyer’s roles**

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19 **A lawyer appointed as a Child’s Attorney or Guardian ad Litem should not**  
20 **play any other role in the case and should not testify, file a report, or make**  
21 **recommendations except as ordered by the court when appointed in cases**  
22 **under Iowa Code chapters 600, 600A, or both.**

23  
24 *Commentary*

25  
26 Neither a Child’s Attorney nor a Guardian ad Litem should be a witness,  
27 which means that the lawyer should not be cross-examined, and more  
28 importantly should not testify or make a written or oral report or  
29 recommendation to the court but instead should offer traditional  
30 evidence-based legal arguments such as other lawyers make. However,  
31 explaining what result a client wants, or proffering what one hopes to prove, is  
32 not testifying; those are things all lawyers do.

33 If these Standards are properly applied, it will not be possible for courts to  
34 make a dual appointment, but there may be cases in which such an  
35 appointment was made before these Standards were adopted. The Child’s  
36 Attorney role involves a confidential relationship with privileged  
37 communications. Because the child has a right to confidentiality and  
38 advocacy of his or her position, the Child’s Attorney can never abandon this  
39 role while remaining involved in the case in any way. Once a lawyer has an  
40 attorney-client relationship with a minor, the lawyer cannot and should not  
41 assume any other role for the child, especially as Guardian ad Litem or  
42 witness or Child and Family Reporter who investigates and makes a report.

43

1       **C. Independence**

2  
3       **The lawyer should be independent from the court and other participants**  
4       **in the litigation and unprejudiced and uncompromised in the lawyer’s**  
5       **independent action. The lawyer has the right and the responsibility to**  
6       **exercise independent professional judgment in carrying out the duties**  
7       **the court assigns and to participate in the case as fully and freely as a**  
8       **lawyer for a party.**

9  
10      *Commentary*

11  
12      The lawyer should not prejudge the case. A lawyer may receive payment  
13      from a court, a government entity, or even from a parent, relative, or other  
14      adult so long as the lawyer retains the full authority for independent action.

15  
16       **D. Limited appointments**

17  
18       **The court may limit a lawyer’s appointment to a specific issue and direct**  
19       **the lawyer accordingly.**

20  
21       **E. Initial tasks**

22  
23       **Immediately after being appointed, the lawyer should review the file.**  
24       **The lawyer should inform other parties or counsel of the appointment**  
25       **and that as counsel of record he or she should receive copies of**  
26       **pleadings, discovery exchanges, and reasonable notification of hearings**  
27       **and of major changes of circumstances affecting the child.**

28  
29       **F. Meeting with the child**

30  
31       **The lawyer should meet with the child, adapting all communications to**  
32       **the child’s age, level of education, cognitive development, cultural**  
33       **background, and degree of language acquisition, using an interpreter if**  
34       **necessary. The lawyer should inform the child about the court system,**  
35       **the proceedings, and the lawyer’s responsibilities. The lawyer should**  
36       **elicit and assess the child’s views.**

37  
38      *Commentary*

39  
40      Establishing and maintaining a relationship with a child is the foundation  
41      of representation. Competent representation requires a child-centered  
42      approach and developmentally appropriate communication. All appointed  
43      lawyers should meet with the child and focus on the needs and circumstances  
44      of the individual child. Even nonverbal children can reveal much about their

1 needs and interests through their behaviors and developmental levels.  
2 Meeting with the child also allows the lawyer to assess the child's  
3 circumstances, often leading to a greater understanding of the case, which  
4 may lead to creative solutions in the child's interest.

5 The nature of the legal proceeding or issue should be explained to the  
6 child in a developmentally appropriate manner. The lawyer must speak  
7 clearly, precisely, and in terms the child can understand. A child may not  
8 understand legal terminology. Also, because of a particular child's  
9 developmental limitations, the lawyer may not completely understand what  
10 the child says. Therefore, the lawyer must learn how to ask developmentally  
11 appropriate, nonsuggestive questions and how to interpret the child's  
12 responses. The lawyer may work with social workers or other professionals to  
13 assess a child's developmental abilities and to facilitate communication.

14 While the lawyer should always take the child's point of view into account,  
15 caution should be used because the child's stated views and desires may vary  
16 over time or may be the result of fear, intimidation, and manipulation.  
17 Lawyers may need to collaborate with other professionals to gain a full  
18 understanding of the child's needs and wishes.

19

## 20 **G. Pretrial responsibilities**

21

### 22 **The lawyer should:**

23

24 **1. Conduct thorough, continuing, and independent discovery and**  
25 **investigations.**

26

27 **2. Develop a theory and strategy of the case to implement at**  
28 **hearings, including presentation of factual and legal issues.**

29

30 **3. Stay apprised of other court proceedings affecting the child, the**  
31 **parties, and other household members.**

32

33 **4. Attend meetings involving issues within the scope of the**  
34 **appointment.**

35

36 **5. Take any necessary and appropriate action to expedite the**  
37 **proceedings.**

38

39 **6. Participate in, and when appropriate, initiate negotiations and**  
40 **mediation. The lawyer should clarify, when necessary, that the**  
41 **lawyer is not acting as a mediator. A lawyer who participates in**  
42 **a mediation should be bound by the confidentiality and**

1           **privilege rules governing the mediation.**

2  
3           **7. Participate in depositions, pretrial conferences, and hearings.**

4  
5           **8. File or make petitions, motions, responses, or objections when**  
6           **necessary.**

7  
8           **9. Where appropriate, within a lawyer's area of competency and**  
9           **not prohibited by law, request authority from the court to**  
10           **pursue issues on behalf of the child, administratively or**  
11           **judicially, even if those issues do not specifically arise from the**  
12           **court appointment.**

13  
14 *Commentary*

15  
16           The lawyer should investigate the facts of the case to get a sense of the  
17           people involved and the real issues in the case, just as any other lawyer  
18           would. Guardians ad Litem have additional investigation duties described in  
19           Standard V.D.

20           By attending relevant meetings, the lawyer can present the child's  
21           perspective, gather information, and sometimes help negotiate a full or partial  
22           settlement. The lawyer may not need to attend if another person involved in  
23           the case, such as a social worker, can obtain information or present the  
24           child's perspective, or when the meeting will not be materially relevant to any  
25           issues in the case.

26           The lawyer is in a pivotal position in negotiations. The lawyer should  
27           attempt to resolve the case in the least adversarial manner possible,  
28           considering whether therapeutic intervention, parenting or co-parenting  
29           education, mediation, or other dispute resolution methods are appropriate.  
30           The lawyer may effectively assist negotiations of the parties and their lawyers  
31           by focusing on the needs of the child, including where appropriate the impact  
32           of domestic violence. Settlement frequently obtains at least short-term relief  
33           for all parties involved and is often the best way to resolve a case. The lawyer's  
34           role is to advocate the child's interests and point of view in the negotiation  
35           process. If a party is legally represented, it is unethical for a lawyer to  
36           negotiate with the party directly without the consent of the party's lawyer.

37           The lawyer should file any appropriate pleadings on behalf of the child,  
38           including responses to the pleadings of other parties, to ensure that  
39           appropriate issues are properly before the court and expedite the court's  
40           consideration of issues important to the child's interests. Where available  
41           under state law or court rules or by permission of the court, relief requested  
42           may include, but is not limited to: (1) A mental or physical examination of a

1 party or the child; (2) A parenting, custody or visitation evaluation; (3) An  
2 increase, decrease, or termination of parenting time; (4) Services for the child  
3 or family; (5) Contempt for noncompliance with a court order; (6) A protective  
4 order concerning the child's privileged communications; and (7) Dismissal of  
5 petitions or motions.

6 The child's interests may be served through proceedings not connected  
7 with the case in which the lawyer is participating. For example, issues to be  
8 addressed may include: (1) Child support; (2) Delinquency or status offender  
9 matters; (3) SSI and other public benefits access; (4) Mental health  
10 proceedings; (5) Visitation, access, or parenting time with parents, siblings, or  
11 third parties; (6) Paternity; (7) Personal injury actions; (8) School or education  
12 issues, especially for a child with disabilities; (9) Guardianship; (10)  
13 Termination of parental rights; (11) Adoption; and (12) A protective order  
14 concerning the child's tangible or intangible property.

15

## 16 **H. Hearings**

17

18 **The lawyer should participate actively in all hearings and conferences**  
19 **with the court on issues within the scope of the appointment.**  
20 **Specifically, the lawyer should:**

21

22 **1. Introduce herself or himself to the court as the Child's Attorney**  
23 **or Guardian ad Litem at the beginning of any hearing.**

24

25 **2. Make appropriate motions, including motions in limine and**  
26 **evidentiary objections, file briefs, and preserve issues for**  
27 **appeal, as appropriate.**

28

29 **3. Present and cross-examine witnesses and offer exhibits as**  
30 **necessary.**

31

32 **4. If a child is to meet with the judge or testify, prepare the child,**  
33 **familiarizing the child with the places, people, procedures, and**  
34 **questioning that the child will be exposed to, and seek to**  
35 **minimize any harm to the child from the process.**

36

37 **5. Seek to ensure that questions to the child are phrased in a**  
38 **syntactically and linguistically appropriate manner and that**  
39 **testimony is presented in a manner that is admissible.**

40

41 **6. Where appropriate, introduce evidence and make arguments on**  
42 **the child's competency to testify, or the reliability of the child's**  
43 **testimony or out-of-court statements. The lawyer should be**

1           **familiar with the current law and empirical knowledge about**  
2           **children’s competency, memory, and suggestibility.**

3  
4           **7. Make a closing argument, proposing specific findings of fact and**  
5           **conclusions of law.**

6  
7           **8. Ensure that a written order is made and that it conforms to the**  
8           **court’s oral rulings and statutorily required findings and**  
9           **notices.**

10  
11        *Commentary*

12  
13        Although the lawyer’s position may overlap with the position of one or  
14 more parties, the lawyer should be prepared to participate fully in any  
15 proceedings and not merely defer to the other parties. The lawyer should  
16 address the child’s interests, describe the issues from the child’s perspective,  
17 keep the case focused on the child’s needs, discuss the effect of various  
18 dispositions on the child, and, when appropriate, present creative alternative  
19 solutions to the court.

20        A brief formal introduction should not be omitted, because in order to  
21 make an informed decision on the merits, the court must be mindful of the  
22 lawyer’s exact role, with its specific duties and constraints. Even though the  
23 appointment order states the nature of the appointment, judges should be  
24 reminded, at each hearing, which role the lawyer is playing.

25        The lawyer’s preparation of the child should include attention to the  
26 child’s developmental needs and abilities. The lawyer should also prepare the  
27 child for the possibility that the judge may render a decision against the  
28 child’s wishes, explaining that such a result would not be the child’s fault.

29        If the child does not wish to testify or would be harmed by testifying, the  
30 lawyer should seek a stipulation of the parties not to call the child as a  
31 witness or seek a protective order from the court. The lawyer should seek to  
32 minimize adverse consequences by seeking any appropriate accommodations  
33 permitted by law so that the child’s views are presented to the court in the  
34 manner least harmful to the child, such as having the testimony taken  
35 informally, in chambers, without the parents present. The lawyer should seek  
36 any necessary assistance from the court, including location of the testimony,  
37 determination of who will be present, and restrictions on the manner and  
38 phrasing of questions posed to the child. The child should be told beforehand  
39 whether in-chambers testimony will be shared with others, such as parents  
40 who might be excluded from chambers.

41        Questions to the child should be phrased consistently with the law and



1 research regarding children’s testimony, memory, and suggestibility. The  
2 information a child gives is often misleading, especially if adults have not  
3 understood how to ask children developmentally appropriate questions and  
4 how to interpret their answers properly. The lawyer must become skilled at  
5 recognizing the child’s developmental limitations. It may be appropriate to  
6 present expert testimony on the issue or have an expert present when a young  
7 child is directly involved in the litigation to point out any developmentally  
8 inappropriate phrasing of questions.

9 The competency issue may arise in the unusual circumstance of the child  
10 being called as a live witness, as well as when the child’s input is sought by  
11 other means such as in-chambers meetings, closed-circuit television  
12 testimony, etc. Iowa has no presumptive ages of competency; rather, courts  
13 engage in more flexible, case-by-case analyses. Competency to testify involves  
14 the abilities to perceive and relate. If necessary and appropriate, the lawyer  
15 should present expert testimony to establish competency or reliability or to  
16 rehabilitate any impeachment of the child on those bases.

17  
18 **I. Appeals**  
19

- 20 **1. If an appeal on behalf of the child is permitted by state law, and**  
21 **if it has been decided pursuant to Standard IV.D or V.F that**  
22 **such an appeal is necessary, the lawyer should take all steps**  
23 **necessary to perfect the appeal and seek appropriate temporary**  
24 **orders or extraordinary writs necessary to protect the interests**  
25 **of the child during the pendency of the appeal. See Iowa Rule of**  
26 **Appellate Procedure 6.109(4).**  
27  
28 **2. The lawyer should participate in any appeal filed by another**  
29 **party concerning issues relevant to the child and within the**  
30 **scope of the appointment, unless discharged.**  
31  
32 **3. When the appeals court’s decision is received, the lawyer should**  
33 **explain it to the child.**

34  
35 *Commentary*  
36

37 The lawyer should take a position in any appeal filed by a party,  
38 consistent with the other provisions in these standards. If the child’s interests  
39 are affected by the issues raised in the appeal, the lawyer should seek an  
40 appointment on appeal or seek appointment of appellate counsel.

41 As with other court decisions, the lawyer should explain in terms the child  
42 can understand the nature and consequences of the appeals court’s decision,

1 whether there are further appellate remedies, and what more, if anything, will  
2 be done in the trial court following the decision.

3  
4 **J. Enforcement**

5  
6 **The lawyer should monitor the implementation of the court’s orders and**  
7 **address any noncompliance.**

8  
9 **K. End of representation**

10  
11 **When the representation ends, the lawyer should inform the child in a**  
12 **developmentally appropriate manner.**

13  
14  
15 **IV. Child’s Attorneys**

16  
17 **A. Ethics and confidentiality**

18  
19 **1. Child’s Attorneys are bound by Iowa’s ethics rules in all**  
20 **matters.**

21  
22 **2. A Child’s Attorney appointed to represent two or more children**  
23 **should remain alert to the possibility of a conflict that could**  
24 **require the lawyer to decline representation or withdraw from**  
25 **representing all of the children.**

26  
27 *Commentary*

28  
29 The child is an individual with independent views. To ensure that the  
30 child’s independent voice is heard, the Child’s Attorney should advocate the  
31 child’s articulated position, and owes traditional duties to the child as client,  
32 subject to Iowa Rules of Professional Conduct 32:1.2(a) and 32:1.14.

33 Iowa Rules of Professional Conduct impose a broad duty of confidentiality  
34 concerning all “information relating to the representation of a client,” but they  
35 also modify the traditional exceptions to confidentiality. Under Rule 32:1.6, a  
36 lawyer may reveal information without the client’s informed consent “to the  
37 extent the lawyer reasonably believes necessary . . . to prevent reasonably  
38 certain death or substantial bodily harm,” or “to comply with other law or a  
39 court order,” or when “the disclosure is impliedly authorized in order to carry  
40 out the representation.” Also, according to Rule 32:1.14(c), “the lawyer is  
41 impliedly authorized under rule 32:1.6 to reveal information about the client,  
42 but only to the extent reasonably necessary to protect the client’s interests”  
43 when acting under Rule 32:1.14 to protect a client with “diminished capacity”

1 who “is at risk of substantial physical, financial, or other harm.”

2 Rule 32:1.7 provides that “a lawyer shall not represent a client if . . . the  
3 representation of one client will be directly adverse to another client . . . .”  
4 Some diversity between siblings’ views and priorities does not pose a direct  
5 conflict. But when two siblings aim to achieve fundamentally incompatible  
6 outcomes in the case as a whole, they are “directly adverse.” Comment [8] to  
7 Rule 32:1.7 states that “a conflict of interest exists if there is a significant risk  
8 that a lawyer’s ability to consider, recommend, or carry out an appropriate  
9 course of action for the client will be materially limited . . . . [A] lawyer asked to  
10 represent several individuals . . . is likely to be materially limited in the  
11 lawyer’s ability to recommend or advocate all possible positions that each  
12 might take because of the lawyer’s duty of loyalty to the others. . . . The critical  
13 questions are the likelihood that a difference in interests will eventuate and, if  
14 it does, whether it will materially interfere with the lawyer’s independent  
15 professional judgment in considering alternatives or foreclose courses of  
16 action that reasonably should be pursued on behalf of the client.”

17

18 **B. Informing and counseling the client**

19

20 **In a developmentally appropriate manner, the Child’s Attorney should:**

21

22 **1. Meet with the child upon appointment, before court hearings,**  
23 **when apprised of emergencies or significant events affecting**  
24 **the child, and at other times as needed to gain the child’s trust**  
25 **and establish a rapport with the child.**

26

27 **2. Explain to the child what is expected to happen before, during,**  
28 **and after each hearing.**

29

30 **3. Advise the child and provide guidance, communicating in a way**  
31 **that maximizes the child’s ability to direct the representation.**

32

33 **4. Discuss each substantive order and its consequences with the**  
34 **child.**

35

36 *Commentary*

37 Meeting with the child is important before court hearings and case  
38 reviews. Such in-person meetings allow the lawyer to explain to the child what  
39 is happening, what alternatives might be available, and what will happen  
40 next.

41 The Child’s Attorney has an obligation to explain clearly, precisely, and in

1 terms the client can understand, the meaning and consequences of the  
2 client's choices. A child may not understand the implications of a particular  
3 course of action. The lawyer has a duty to explain in a developmentally  
4 appropriate way such information as will assist the child in having maximum  
5 input in decision-making. The lawyer should inform the child of the relevant  
6 facts and applicable laws and the ramifications of taking various positions,  
7 which may include the impact of such decisions on other family members or  
8 on future legal proceedings. The lawyer may express an opinion concerning  
9 the likelihood of the court or other parties accepting particular positions. The  
10 lawyer may inform the child of an expert's recommendations germane to the  
11 issue.

12 As in any other attorney-client relationship, the lawyer may express the  
13 lawyer's assessment of the case, the best position for the child to take, and the  
14 reasons underlying such recommendation, and the lawyer may counsel  
15 against the pursuit of particular goals sought by the client. However, a child  
16 may agree with the lawyer for inappropriate reasons. A lawyer must remain  
17 aware of the power dynamics inherent in adult-child relationships, recognize  
18 that the child may be more susceptible to intimidation and manipulation than  
19 some adult clients, and strive to detect and neutralize those factors. The  
20 lawyer should carefully choose the best time to express the lawyer's  
21 assessment of the case. The lawyer needs to understand what the child knows  
22 and what factors are influencing the child's decision. The lawyer should  
23 attempt to determine from the child's opinion and reasoning what factors  
24 have been most influential or have been confusing or glided over by the child.

25 The Child's Attorney has dual fiduciary duties to the child that must be  
26 balanced. On the one hand, the lawyer has a duty to ensure that the client is  
27 given the information necessary to make an informed decision, including  
28 advice and guidance. On the other hand, the lawyer has a duty not to  
29 overbear the will of the client. While the lawyer may attempt to persuade the  
30 child to accept a particular position, the lawyer may not advocate a position  
31 contrary to the child's expressed position except as provided by the applicable  
32 ethical standards.

33 Consistent with the rules of confidentiality and with sensitivity to the  
34 child's privacy, the lawyer should consult with the child's therapist and other  
35 experts and obtain appropriate records. For example, a child's therapist may  
36 help the child to understand why an expressed position is dangerous, foolish,  
37 or not in the child's best interests. The therapist might also assist the lawyer  
38 in understanding the child's perspective, priorities, and individual needs.  
39 Similarly, significant persons in the child's life may educate the lawyer about  
40 the child's needs, priorities, and previous experiences.

1 As developmentally appropriate, the Child’s Attorney should consult the  
2 child prior to any settlement becoming binding.

3 The child is entitled to understand what the court has done and what that  
4 means to the child, at least with respect to those portions of the order that  
5 directly affect the child. Children sometimes assume that orders are final and  
6 not subject to change. Therefore, the lawyer should explain whether the order  
7 may be modified at another hearing, or whether the actions of the parties may  
8 affect how the order is carried out.

9  
10 **C. Client decisions**

11  
12 **The Child’s Attorney should abide by the client’s decisions about the**  
13 **objectives of the representation with respect to each issue on which the**  
14 **child is competent to direct the lawyer and does so. The Child’s Attorney**  
15 **should pursue the child’s expressed objectives unless the child requests**  
16 **otherwise and follow the child’s direction throughout the case.**

17  
18 *Commentary*

19  
20 The child is entitled to determine the overall objectives to be pursued. The  
21 Child’s Attorney may make certain decisions about the manner of achieving  
22 those objectives, particularly on procedural matters, as any adult’s lawyer  
23 would. These Standards do not require the lawyer to consult with the child on  
24 matters that would not require consultation with an adult client, or to discuss  
25 with the child issues for which the child’s developmental limitations make it  
26 not feasible to obtain the child’s direction, as with an infant or preverbal child.

- 27  
28 **1. The Child’s Attorney should make a separate determination**  
29 **whether the child has “diminished capacity” pursuant to rule**  
30 **32:1.14 with respect to each issue for which the child is called**  
31 **upon to direct the representation.**

32  
33 *Commentary*

34  
35 These Standards do not presume that children of certain ages are  
36 “impaired,” “disabled,” “incompetent,” or lack capacity to determine their  
37 position in litigation. Disability is contextual, incremental, and may be  
38 intermittent. The child’s ability to contribute to a determination of his or her  
39 position is functional, depending upon the particular position and the  
40 circumstances prevailing at the time the position must be determined.  
41 Therefore, a child may be able to determine some positions in the case but not  
42 others. Similarly, a child may be able to direct the lawyer with respect to a

1 particular issue at one time but not at another.

2  
3 **2. If the child does not express objectives of representation, the**  
4 **Child’s Attorney should make a good faith effort to determine**  
5 **the child’s wishes and advocate according to those wishes if**  
6 **they are expressed. If a child does not or will not express**  
7 **objectives regarding a particular issue or issues, the Child’s**  
8 **Attorney should determine and advocate the child’s legal**  
9 **interests or request the appointment of a Guardian ad Litem.**

10  
11 *Commentary*

12 There are circumstances in which a child is unable to express any  
13 positions, as in the case of a preverbal child. Under such circumstances, the  
14 Child’s Attorney should represent the child’s legal interests or request  
15 appointment of a Guardian ad Litem. “Legal interests” are distinct from “best  
16 interests” and from the child’s objectives. Legal interests are interests of the  
17 child that are specifically recognized in law and that can be protected through  
18 the courts. A child’s legal interests could include, for example, depending on  
19 the nature of the case: a special needs child’s right to appropriate  
20 educational, medical, or mental health services; helping assure that children  
21 needing residential placement are placed in the least restrictive setting  
22 consistent with their needs; a child’s child support, governmental, and other  
23 financial benefits; visitation with siblings, family members, or others the child  
24 wishes to maintain contact with; and a child’s due process or other  
25 procedural rights.

26 The child’s failure to express a position is different from being unable to  
27 do so and from directing the lawyer not to take a position on certain issues.  
28 The child may have no opinion with respect to a particular issue or may  
29 delegate the decision-making authority. The child may not want to assume  
30 the responsibility of expressing a position because of loyalty conflicts or the  
31 desire not to hurt one of the parties. In that case, the lawyer is free to pursue  
32 the objective that appears to be in the client’s legal interests based on  
33 information the lawyer has and positions the child has already expressed. A  
34 position chosen by the lawyer should not contradict or undermine other  
35 issues about which the child has expressed a viewpoint. However, before  
36 reaching that point the lawyer should clarify with the child whether the child  
37 wants the lawyer to take a position, remain silent with respect to that issue, or  
38 express a point of view only if the party is out of the room. The lawyer is then  
39 bound by the child’s directive.

40  
41 **3. If the Child’s Attorney determines that pursuing the child’s**

1           **expressed objective would put the child at risk of substantial**  
2           **physical, financial, or other harm, and is not merely contrary to**  
3           **the lawyer’s opinion of the child’s interests, the lawyer may**  
4           **request appointment of a separate Guardian ad Litem and**  
5           **continue to represent the child’s expressed position, unless the**  
6           **child’s position is prohibited by law or without any factual**  
7           **foundation. The Child’s Attorney should not reveal the reason**  
8           **for the request for a Guardian ad Litem, which would**  
9           **compromise the child’s position, unless such disclosure is**  
10           **authorized by the applicable ethics rule on confidentiality.**

11  
12 *Commentary*

13  
14           One of the most difficult ethical issues for lawyers representing children  
15 occurs when the child is able to express a position and does so, but the lawyer  
16 believes that the position chosen is wholly inappropriate or could result in  
17 serious injury to the child. This is particularly likely to happen with respect to  
18 an abused child whose home is unsafe, but who desires to remain or return  
19 home. A child may desire to live in a dangerous situation because it is all the  
20 child knows, because of a feeling of blame or of responsibility to take care of a  
21 parent, or because of threats or other reasons to fear the parent. The child  
22 may choose to deal with a known situation rather than risk the unknown.

23           It should be remembered in this context that the lawyer is bound to  
24 pursue the client’s objectives only through means permitted by law and  
25 ethical rules. The lawyer may be subject personally to sanctions for taking  
26 positions that are not well grounded in fact and warranted by existing law or a  
27 good faith argument for the extension, modification, or reversal of existing  
28 law.

29           In most cases the ethical conflict involved in asserting a position that  
30 would seriously endanger the child, especially by disclosure of privileged  
31 information, can be resolved through the lawyer’s counseling function, if the  
32 lawyer has taken the time to establish rapport with the child and gain that  
33 child’s trust. While the lawyer should be careful not to apply undue pressure  
34 to a child, the lawyer’s advice and guidance can often persuade the child to  
35 change a dangerous or imprudent position or at least identify alternative  
36 choices in case the court denies the child’s first choice.

37           If the child cannot be persuaded, the lawyer has a duty to safeguard the  
38 child’s interests by requesting appointment of a Guardian ad Litem. As a  
39 practical matter, this may not adequately protect the child if the danger to the  
40 child was revealed only in a confidential disclosure to the lawyer, because the  
41 Guardian ad Litem may never learn of the disclosed danger.

1 Rule 32:1.14 provides that “when the lawyer reasonably believes that the  
2 client has diminished capacity, is at risk of substantial physical, financial, or  
3 other harm unless action is taken, and cannot adequately act in the client’s  
4 own interest, the lawyer may take reasonably necessary protective action”  
5 and “the lawyer is impliedly authorized under rule 32:1.6 to reveal  
6 information about the client, but only to the extent reasonably necessary to  
7 protect the client’s interests.”

8 If there is a substantial danger of serious injury or death, the lawyer must  
9 take the minimum steps necessary to ensure the child’s safety, respecting  
10 and following the child’s direction to the greatest extent possible consistent  
11 with the child’s safety and ethical rules.

12  
13 **4. The Child’s Attorney should discuss with the child whether to**  
14 **ask the judge to meet with the child and whether to call the**  
15 **child as a witness. The decision should include consideration of**  
16 **the child’s needs and desires to do either of these, any potential**  
17 **repercussions of such a decision or harm to the child from**  
18 **testifying or being involved in case, the necessity of the child’s**  
19 **direct testimony, the availability of other evidence or hearsay**  
20 **exceptions that may substitute for direct testimony by the**  
21 **child, and the child’s developmental ability to provide direct**  
22 **testimony and withstand cross-examination. Ultimately, the**  
23 **Child’s Attorney is bound by the child’s direction concerning**  
24 **testifying.**

25  
26 *Commentary*  
27

28 Decisions about the child’s testifying should be made individually based  
29 on the circumstances. If the child has a therapist, the attorney should consult  
30 the therapist about the decision and for help in preparing the child. In the  
31 absence of compelling reasons, a child who has a strong desire to testify  
32 should be called to do so.

33  
34 **D. Appeals**  
35

36 **If an appeal on behalf of the child is permitted, the Child’s Attorney**  
37 **should consider and discuss with the child, as developmentally**  
38 **appropriate, the possibility of an appeal. If the child, after consultation,**  
39 **wishes to appeal the order, and the appeal has merit, the Child’s**  
40 **Attorney should appeal. If the Child’s Attorney determines that an**  
41 **appeal would be frivolous or that the Child’s Attorney lacks the expertise**  
42 **necessary to handle the appeal, the Child’s Attorney should notify the**  
43 **court and seek to be discharged or replaced.**



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*Commentary*

The lawyer should explain not only any legal possibility of an appeal, but also the ramifications of filing an appeal, including delaying conclusion of the case, and what will happen pending a final decision.

**E. Obligations after initial disposition**

**The Child’s Attorney should perform, or when discharged, seek to ensure, continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child’s placement or services, so long as the court maintains its jurisdiction.**

*Commentary*

Representing a child continually presents new tasks and challenges due to the passage of time and the changing needs of the child. The Child’s Attorney should stay in touch with the child, with the parties or their counsel, and any other caretakers, case workers, and service providers throughout the term of appointment to attempt to ensure that the child’s needs are met and that the case moves quickly to an appropriate resolution.

**F. End of representation**

**The Child’s Attorney should discuss the end of the legal representation with the child, what contacts, if any, the Child’s Attorney and the child will continue to have, and how the child can obtain assistance in the future if necessary.**

**V. Guardians ad Litem**

**A. Ethics**

**Guardians ad Litem are bound by Iowa’s ethics rules in all matters except as dictated by the absence of a traditional attorney-client relationship with the child and the particular requirements of their appointed tasks. Even outside of an attorney-client relationship, all lawyers have certain ethical duties toward the court, parties in a case, the justice system, and the public.**

*Commentary*

1  
2 Siblings with conflicting views do not pose a conflict of interest for a  
3 Guardian ad Litem, because such a lawyer is not bound to advocate a client's  
4 objective. A Guardian ad Litem in such a case should report the relevant  
5 views of all the children in accordance with Standard V.E.3, and advocate the  
6 children's best interests in accordance with Standard V.E.1.

7  
8 **B. Confidentiality**

9  
10 **A child's communications with the Guardian ad Litem are subject to**  
11 **Iowa's ethics rules on attorney-client confidentiality, except that the**  
12 **lawyer may also use the child's confidences for the purposes of the**  
13 **representation without disclosing them.**

14  
15 *Commentary*

16  
17 Iowa rule 32:1.6(a) bars any release of information except for disclosures  
18 that are "impliedly authorized in order to carry out the representation." Under  
19 rule 32:1.6, a lawyer may reveal confidences "to prevent reasonably certain  
20 death or substantial bodily harm," "to comply with other law or a court order,"  
21 or for other named reasons. As for communications that are not subject to  
22 disclosure under these or other applicable ethics rules, a Guardian ad Litem  
23 may use them to further the child's best interests without disclosing them. An  
24 example of this distinction is if a child tells the lawyer that a parent takes  
25 drugs: the lawyer may seek and present other evidence of the drug use, but  
26 may not reveal that the initial information came from the child. For more  
27 discussion of exceptions to confidentiality, see the Commentary to Standard  
28 IV.A.

29  
30 **C. Explaining role to the child**

31  
32 **In a developmentally appropriate manner, the Guardian ad Litem should**  
33 **explain to the child that the Guardian ad Litem will (1) investigate and**  
34 **advocate the child's best interests, (2) will investigate the child's views**  
35 **relating to the case and will report them to the court unless the child**  
36 **requests that they not be reported, and (3) will use information from the**  
37 **child for those purposes, but (4) will not necessarily advocate what the**  
38 **child wants as a lawyer for a client would.**

39  
40  
41 **D. Investigations**

42  
43 **The Guardian ad Litem should conduct thorough, continuing, and**

1 **independent investigations, including:**

- 2  
3 **1. Reviewing any court files of the child and of siblings who are**  
4 **minors or are still in the home, potentially relevant court files**  
5 **of parties and other household members, and case-related**  
6 **records of any social service agency and other service**  
7 **providers.**  
8  
9 **2. Reviewing child’s social services records, if any, mental health**  
10 **records (except as otherwise provided in Standard VI.A.3), drug**  
11 **and alcohol-related records, medical records, law enforcement**  
12 **records, school records, and other records relevant to the case.**  
13  
14 **3. Contacting lawyers for the parties, and nonlawyer**  
15 **representatives or court-appointed special advocates (CASAs).**  
16  
17 **4. Contacting and meeting with the parties with permission of**  
18 **their lawyers.**  
19  
20 **5. Interviewing individuals significantly involved with the child,**  
21 **who may in the Guardian ad Litem’s discretion include, if**  
22 **appropriate, case workers, caretakers, neighbors, relatives,**  
23 **school personnel, coaches, clergy, mental health professionals,**  
24 **physicians, law enforcement officers, and other potential**  
25 **witnesses.**  
26  
27 **6. Reviewing the relevant evidence personally, rather than relying**  
28 **on other parties’ or counsel’s descriptions and**  
29 **characterizations of it.**  
30  
31 **7. Staying apprised of other court proceedings affecting the child,**  
32 **the parties, and other household members.**  
33

34 *Commentary*

35  
36 Relevant files to review include those concerning child protective services,  
37 developmental disabilities, juvenile delinquency, mental health, and  
38 educational agencies. These records can provide a more complete context for  
39 the current problems of the child and family. Information in the files may  
40 suggest additional professionals and lay witnesses who should be contacted.

41 Though courts should order automatic access to records, the Guardian ad  
42 Litem may still need to use subpoenas or other discovery or motion  
43 procedures to obtain the relevant records, especially those pertaining to the  
44 parties.

1 Meetings with the children and all parties are among the most important  
2 elements of a competent investigation. However, there may be a few cases  
3 where a party's lawyer will not allow the Guardian ad Litem to communicate  
4 with the party. Rule 32:4.2 prohibits such contact without consent of the  
5 party's lawyer. In some such cases, the Guardian ad Litem may be able to  
6 obtain permission for a meeting with the party's lawyer present. When the  
7 party has no lawyer, rule 32:4.3 allows contact but requires reasonable efforts  
8 to correct any apparent misunderstanding of the Guardian ad Litem's role.

9 The parties' lawyers may have information not included in any of the  
10 available records. They can provide information on their clients' perspectives.

11  
12 **E. Advocating the child's best interests**

- 13  
14 **1. Any assessment of, or argument on, the child's best interests**  
15 **should be based on objective criteria as set forth in the law**  
16 **related to the purposes of the proceedings.**  
17  
18 **2. Guardians ad Litem should bring to the attention of the court**  
19 **any facts that when considered in context seriously call into**  
20 **question the advisability of any agreed settlement.**  
21  
22 **3. At hearings on custody or parenting time, Guardians ad Litem**  
23 **should present the child's expressed desires (if any) to the**  
24 **court, except for those that the child expressly does not want**  
25 **presented.**

26  
27 *Commentary*

28  
29 Determining a child's best interests is a matter of gathering and weighing  
30 evidence, reaching factual conclusions, and then applying legal standards to  
31 them. Factors in determining a child's interests are generally stated in Iowa's  
32 statutes and case law, and Guardians ad Litem must be familiar with them  
33 and how courts apply them. A child's desires are usually one of many factors  
34 in deciding custody and parenting time, and the weight given them varies with  
35 age and circumstances.

36 A Guardian ad Litem is functioning in a nontraditional role by  
37 determining the position to be advocated independently of the client. The  
38 Guardian ad Litem should base this determination on objective criteria  
39 concerning the child's needs and interests and not merely on the lawyer's  
40 personal values, philosophies, and experiences. A best-interests case should  
41 be based on Iowa's governing statute and case law, or a good faith argument  
42 for modification of case law. The Guardian ad Litem should not use any other

1 theory, doctrine, model, technique, ideology, or personal rule without  
2 explicitly arguing for it in terms of governing law on the best interests of the  
3 child. The trier of fact needs to understand any such theory in order to make  
4 an informed decision in the case.

5 The Guardian ad Litem must consider the child's individual needs. The  
6 child's various needs and interests may be in conflict and must be weighed  
7 against each other. The child's developmental level, including the child's  
8 sense of time, is relevant to an assessment of needs. The lawyer may seek the  
9 advice and consultation of experts and other knowledgeable people in  
10 determining and weighing such needs and interests.

11 As a general rule Guardians ad Litem should encourage, not undermine,  
12 settlements. However, in unusual cases where the Guardian ad Litem  
13 reasonably believes the settlement would endanger the child and the court  
14 would not approve the settlement were it aware of certain facts, the Guardian  
15 ad Litem should bring those facts to the court's attention. This should not be  
16 done by ex parte communication. The Guardian ad Litem should ordinarily  
17 discuss her or his concerns with the parties and counsel in an attempt to  
18 change the settlement before involving the judge.

19

## 20 **F. Appeals**

21

22 **If an appeal on behalf of the child is permitted, the Guardian ad Litem**  
23 **should appeal when he or she believes that (1) the trial court's decision**  
24 **is significantly detrimental to the child's welfare, (2) an appeal could be**  
25 **successful considering the law, the standard of review, and the evidence**  
26 **that can be presented to the appellate court, and (3) the probability and**  
27 **degree of benefit to the child outweighs the probability and degree of**  
28 **detriment to the child from extending the litigation and expense that**  
29 **the parties will undergo. See Rule 6.109(4).**

30

31

## 32 **VI. Training**

33

34 **A. Training for lawyers representing children in custody cases should**  
35 **cover:**

36

37 **1. Relevant state and federal laws, agency regulations, court**  
38 **decisions, and court rules.**

39

40 **2. The legal standards applicable in each kind of case in which the**  
41 **lawyer may be appointed, including child custody and visitation**  
42 **law.**

- 1
- 2 **3. Applicable representation guidelines and standards.**
- 3
- 4 **4. The court process and key personnel in child-related litigation,**
- 5 **including custody evaluations and mediation.**
- 6
- 7 **5. Children’s development, needs, and abilities at different ages.**
- 8
- 9 **6. Communicating with children.**
- 10
- 11 **7. Preparing and presenting a child’s viewpoints, including child**
- 12 **testimony and alternatives to direct testimony.**
- 13
- 14 **8. Recognizing, evaluating, and understanding evidence of child**
- 15 **abuse and neglect.**
- 16
- 17 **9. Family dynamics and dysfunction, domestic violence, and**
- 18 **substance abuse.**
- 19
- 20 **10. The multidisciplinary input required in child-related cases,**
- 21 **including information on local experts who can provide**
- 22 **evaluation, consultation, and testimony.**
- 23
- 24 **11. Available services for child welfare, family preservation,**
- 25 **medical, mental health, educational, and special needs,**
- 26 **including placement, evaluation and diagnostic, and treatment**
- 27 **services, and provisions and constraints related to agency**
- 28 **payment for services.**
- 29
- 30 **12. Basic information about state and federal laws and treaties on**
- 31 **child custody jurisdiction, enforcement, and child abduction.**
- 32

33 *Commentary*

34

35 Courts, bar associations, and other organizations should sponsor, fund,

36 and participate in training. They should also offer advanced and

37 new-developments training and provide mentors for lawyers who are new to

38 child representation. Training in custody law is especially important because

39 not everyone seeking to represent children will have a family law background.

40 Lawyers must be trained to distinguish between the different kinds of cases in

41 which they may be appointed and the different legal standards to be applied.

42 Training should address the impact of spousal or domestic partner

43 violence on custody and parenting time and any statutes or case law

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1 regarding how allegations or findings of domestic violence should affect  
2 custody or parenting time determinations. Training should also sensitize  
3 lawyers to the dangers that domestic violence victims and their children face  
4 in attempting to flee abusive situations and how that may affect custody  
5 awards to victims.

6  
7