

BILL ANALYSIS

Senate Research Center
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H.B. 307
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Jurisprudence
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Until the enactment of H.B. 1815, 78th Legislature, Regular Session, 2003, the possibility of multiple appointments of individuals to a case, or alternatively, appointment of either a lawyer or a layperson with the same title of "guardian ad litem," caused considerable confusion for lawyers and judges. Although the roles of the attorney ad litem and layperson guardian ad litem in abuse or neglect cases were well-defined after comprehensive legislation enacted in 1997, confusion remained regarding the nature and duties of a lawyer or a nonlawyer appointed to serve as a guardian ad litem in a private custody case. That confusion was reduced in 2001 when a new category, "amicus attorney," was created in Chapter 107, Family Code. The amicus attorney is directed to provide legal expertise in private custody disputes in order to assist the court in determining the best interest of the child involved in the litigation. H.B. 1815 more clearly defined the three roles of amicus attorney, attorney ad litem, and guardian ad litem. The term "guardian ad litem" was restricted to nonlawyers.

H.B. 307 further clarifies the laws regarding the appointment of an attorney ad litem, guardian ad litem, and amicus attorney in family law cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 107.002(b), (c), and (e), Family Code, as follows:

- (b) Requires a guardian ad litem to seek to elicit and consider the child's expressed objectives, rather than the child's expressed objectives of representation. Makes a conforming change.
- (c) Deletes existing text providing that a guardian ad litem is not a party to the suit.
- (e) Requires the court to ensure in a hearing or a trial that the guardian ad litem both has an opportunity to testify and is permitted to submit a report regarding the guardian ad litem's recommendations, rather than requiring the court to ensure that the guardian ad litem has the opportunity either to testify or submit a report regarding the recommendations. Makes nonsubstantive changes.

SECTION 2. Amends Section 107.003, Family Code, to require an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court to interview certain persons, subject to Rules 4.02, 4.03, and 4.04, rather than just Rule 4.04, Texas Disciplinary Rules of Professional Conduct. Requires the attorney ad litem or amicus attorney to seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation, consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court, and review and sign, or decline to sign, a proposed or agreed order affecting the child. Entitles an attorney ad litem or amicus attorney to request clarification from the court if the role of the attorney is ambiguous, request a hearing or trial on the merits, and consent or refuse to consent to an interview of the child by another attorney. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 107.004, Family Code, to require the attorney ad litem to treat the child and the child's wishes in a developmentally appropriate manner. Requires the attorney ad litem to become familiar with certain standards and practices, including the American Bar Association's standards of practice for attorneys who represent children in custody cases, as appropriate, considering the nature of the appointment. Deletes existing text requiring the attorney ad litem to seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation, provide guidance to the child, and consider the impact on the child in formulating the attorney ad litem's presentation of the child's expressed objectives of representation to the court. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 107.005, Family Code, to require the amicus attorney to interact with the child in a developmentally appropriate manner. Requires the amicus attorney to become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases. Deletes existing text requiring the amicus attorney to seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation; consider the impact of the child in formulating the presentation of the child's expressed objectives of representation to the court; review and sign, or decline to sign, an agreed order affecting the child; and explain the basis for the amicus attorney's opposition to the agreed order if the amicus attorney does not agree to the terms of the proposed order. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 107.006, Family Code, as follows:

(a) Requires the court to issue an order authorizing the attorney ad litem, guardian ad litem, or amicus attorney to have immediate access to any information relating to the child, rather than any otherwise privileged or confidential information relating to the child.

(b) Deletes drug and alcohol treatment records or medical or mental health evaluation or treatment records of the child from the list of records that a custodian of records is required to provide to a person authorized to access the records under Subsection (a).

(c) Authorizes a medical, mental health, or drug or alcohol treatment record, rather than a mental health record, of a child that is privileged or confidential under other law to be released to a person appointed under Subsection (a) only in accordance with other law. Deletes existing text requiring the child to whom the records pertain to be at least 12 years of age.

SECTION 6. Amends Sections 107.008(b) and (c), Family Code, as follows:

(b) Deletes the exception, as provided by Subsection (c), to the provision that an attorney ad litem or an attorney appointed in a dual role may present to the court a position that will serve the best interests of the child if the attorney determines that the child cannot meaningfully formulate the child's expressed objectives of representation. Makes nonsubstantive changes.

(c) Requires an attorney ad litem, if the attorney has been appointed for the child in a suit filed by a governmental entity requesting termination of the parent-child relationship or an appointment of the entity as conservator of the child, who determines that the child cannot meaningfully formulate the child's expressed objectives of representation, to consult with the guardian ad litem and, without being bound by the guardian ad litem's opinion or recommendation, ensure that the guardian ad litem's opinion and basis for any recommendation regarding the best interest of the child are presented to the court, and authorizes the attorney ad litem to present to the court a position that the attorney determines will serve the best interests of the child. Deletes existing text requiring the attorney ad litem to present the child's objectives of representation to the court based on the guardian ad litem's opinion regarding the best interests of the child. Deletes existing text referring to an attorney in a dual role. Makes nonsubstantive changes.

SECTION 7. Amends Section 107.009, Family Code, to make conforming and nonsubstantive changes.

SECTION 8. Amends Section 107.021, Family Code, as follows:

(a) Authorizes the court to appoint an amicus attorney, an attorney ad litem, or a guardian ad litem in a suit in which the best interests of the child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, rather than a suit filed by a governmental entity. Makes a nonsubstantive change.

(a-1) Requires the court, in a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, to appoint either an attorney ad litem or an amicus attorney.

(b) Authorizes the court, in determining whether to make an appointment under this section, to make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code.

SECTION 9. Amends Section 107.022, Family Code, to make conforming changes.

SECTION 10. Amends Section 107.023, Family Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Makes a conforming change.

(d) Authorizes the court to determine that fees awarded under this subchapter to an amicus attorney, an attorney ad litem for the child, or a guardian ad litem for the child are necessities for the benefit of the child.

SECTION 11. Amends Section 107.031, Family Code, to authorize a court-certified volunteer advocate appointed under this section to be assigned to act as surrogate parent for the child under certain circumstances. Makes conforming changes.

SECTION 12. Amends Section 2.103(e), Family Code, to require the court to appoint an amicus attorney or an attorney ad litem, rather than a guardian ad litem, to represent the minor in the proceeding (for a minor to obtain court permission to marry). Deletes existing text requiring the guardian ad litem to speak for or against the petition in the manner the guardian ad litem believes to be in the best interest of the minor. Makes a conforming change.

SECTION 13. Amends Section 31.002(b), Family Code, to require an amicus attorney or an attorney ad litem, rather than a guardian ad litem, to verify the petition (for removal of disabilities of minority) if certain other persons are unavailable.

SECTION 14. Amends Section 31.004, Family Code, as follows:

Sec. 31.004. New heading: REPRESENTATION OF PETITIONER. Requires the court to appoint an amicus attorney or attorney ad litem, rather than a guardian ad litem, to represent the interest of the petitioner at the hearing (regarding the petition for removal of disabilities of minority).

SECTION 15. Amends Chapter 101, Family Code, by adding Sections 101.0017, 101.0018, and 101.0145, as follows:

Sec. 101.0017. AMICUS ATTORNEY. Defines "amicus attorney."

Sec. 101.0018. ATTORNEY AD LITEM. Defines "attorney ad litem."

Sec. 101.0145. GUARDIAN AD LITEM. Defines "guardian ad litem."

SECTION 16. Amends Section 105.004, Family Code, to authorize the court, after a hearing, to grant a motion filed by the amicus attorney or attorney ad litem, rather than by the attorney or guardian ad litem, for the child for a preferential setting for a trial on the merits.

SECTION 17. Amends Section 160.608(c), Family Code, to require a child who is a minor or incapacitated, in a proceeding involving the application of this section (Authority to Deny Motion for Genetic Testing) to be represented by an amicus attorney or attorney ad litem, rather than by a guardian ad litem.

SECTION 18. Amends Section 160.612(b), Family Code, to require the court to appoint an amicus attorney or attorney ad litem, rather than just an attorney ad litem, to represent a child who is a minor or incapacitated if the child is a party (to the proceeding to adjudicate parentage) or the court finds that the best interests of the child are not adequately represented.

SECTION 19. Amends Section 161.202, Family Code, to provide that an amicus attorney or an attorney ad litem, rather than a guardian ad litem, files a motion for a preferential setting in the final hearing on the merits in a suit for termination of parental rights.

SECTION 20. Amends Section 203.004(a), Family Code, to authorize a domestic relations office to represent a child as an amicus attorney, an attorney ad litem, or a guardian ad litem, rather than as just a guardian ad litem.

SECTION 21. Amends Section 231.109(e), Family Code, to prohibit an attorney employed by a Title IV-D agency or as otherwise provided by this chapter from being appointed as an amicus attorney or an attorney ad litem, rather than as a guardian ad litem or an attorney ad litem, for a child or another party.

SECTION 22. Amends Section 235.001(b), Family Code, to require the state case registry to make certain information available to an amicus attorney or an attorney ad litem, rather than to an attorney.

SECTION 23. Amends Section 235.002, Family Code, to make a conforming change.

SECTION 24. Amends Section 263.303(a), Family Code, to require the Department of Protective and Regulatory Services or other authorized agency to file with the court and provide to certain persons, including the child's guardian ad litem, a permanency progress report. [While the statutory reference in this section is to the Department of Protective and Regulatory Services, this amendment affects the Department of Family and Protective Services, as the successor agency to the Department of Protective and Regulatory Services.]

SECTION 25. Makes application of Chapter 107, Family Code, as amended by this Act, prospective to a suit affecting the parent-child relationship filed on or after the effective date of this Act.

SECTION 26. Makes application of Section 2.103, Family Code, as amended by this Act, prospective to a suit filed on or after the effective date of this Act.

SECTION 27. Makes application of Sections 31.002 and 31.004, Family Code, as amended by this Act, prospective to a suit filed on or after the effective date of this Act.

SECTION 28. Makes application of Sections 160.608 and 160.612, as amended by this Act, prospective to a proceeding under Subchapter G (Proceeding to Adjudicate Parentage), Chapter 160, Family Code, filed on or after the effective date of this Act.

SECTION 29. Effective date: September 1, 2005.