

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1026
By: Harris
Jurisprudence
4/13/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Sections 107.003 (Powers and Duties of Attorney Ad Litem for Child and Amicus Attorney) and 107.004 (Additional Duties of Attorney Ad Litem for Child), Family Code, provide powers and duties of an attorney ad litem appointed for a child in suits affecting the parent-child relationship. Those powers and duties also relate to cases in which a child is removed from his or her home because of allegations of abuse or neglect. In those cases, an attorney may be appointed to represent an indigent parent of the child. However, there are no provisions regarding the powers and duties of an attorney representing a parent.

C.S.S.B. 1026 amends current law relating to the powers and duties of an attorney ad litem appointed for a parent or an alleged father in certain suits affecting the parent-child relationship

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 Part 1, Subchapter B, Chapter 107, Family Code, by adding Sections 107.0131, 107.0132, and 107.0133, as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT.
(a) Provides that an attorney ad litem appointed under Section 107.013 (Mandatory Appointment of Attorney Ad Litem for Parent) to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02 (Communications with One Represented by Counsel), 4.03 (Dealing with Unrepresented Persons), and 4.04 (Respect with Rights of Third Persons), Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview the parent, unless the parent's location is unknown, each person who has significant knowledge of the case, and the parties to the suit;

(B) investigate the facts of the case;

(C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits, obtain and review copies of relevant records and all court files in the suit during the attorney ad litem's course of representation, and when the attorney ad litem considers necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E) encourage settlement and the use of alternative forms of dispute resolution;

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible, or on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases;

(I) complete at least three hours of continuing legal education relating to child protection law as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(J) abide by the parent's objectives of representation;

(2) must be trained in child protection law or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services (DFPS) in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that DFPS determines would be appropriate for the parent to attend, but excluding any internal DFPS staffing or staffing between DFPS and DFPS's legal representative; and

(G) attend all legal proceedings in the suit.

(b) Requires that the continuing legal education required by Subsection (a)(1)(I):

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) or 263 (Review of Placement of Children under Care of Department of Protective and Regulatory Services).

Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR ALLEGED FATHER. (a) Requires an attorney ad litem appointed under Section 107.103 to represent the interests of an alleged father to:

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160 (Uniform Parentage Act);

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) Requires the attorney ad litem, if the attorney ad litem identifies and locates the alleged father, to:

(1) provide to each party and the court the alleged father's name, address, and any other locating information; and

(2) if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) Authorizes the court, if the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, to appoint the attorney ad litem to continue to represent the father's interests as a parent under Section 107.013(a)(1) (relating to an indigent parent of the child who responds in opposition to the termination) or (c) (relating to appointing an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit).

(d) Requires the attorney ad litem, if the attorney ad litem is unable to identify or locate the alleged father, to submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT. Provides that an attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E (Discipline), Chapter 81 (State Bar), Government Code.

SECTION 2. Makes application of Sections 107.0131, 107.0132, and 107.0133, Family Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2011.