

BILL ANALYSIS

Senate Research Center
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S.B. 1876
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not ensure a fair, efficient, and equitable system for the appointment of attorneys ad litem under the Family Code, Health and Safety Code, Human Resources Code, Estates Code, and Texas Trust Code. These codes provide for the appointment of attorneys and guardians ad litem who care for and represent the best interests of those most vulnerable in our society and those less likely to identify and report abuse, namely children, elderly persons, and persons with disabilities. Unfortunately, in appointments under these codes, judges enjoy unrestrained discretion, which sometimes results in abuse and, many times, in the unintentional appearance of abuse, of the appointment system for personal profit or as a way to reward campaign contributors and friends. The occurrence, possibility, or even the appearance of some attorneys and judges conspiring to profit from these appointments simply is unacceptable and undermines the public's confidence in the entire judicial system and impedes the courts' ability to function efficiently.

S.B. 1876 requires the use of a rotation list for ad litem appointees under the Family, Health and Safety, Human Resources, Estates, or Trust codes. This bill also requires the judge to adhere to a sequential appointment order, but would maintain judges' discretion to appoint a particular attorney to a case that requires specialized knowledge. What's more, this bill maintains the parties' ability to agree on ad litem appointments outside of the list. Finally, this bill expands the rotation requirement to mediators and certain guardians ad litem.

These changes would result in a more fair, efficient, and equitable system for appointing attorneys, guardians, and mediators, especially ad litem representing children, elderly persons, and persons with disabilities.

As proposed, S.B. 1876 amends current law relating to the appointment of attorneys ad litem, guardians ad litem, and mediators.

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 Subtitle B, Title 2, Government Code, by adding Chapter 37, as follows:

CHAPTER 37. APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, AND MEDIATORS

Sec. 37.001. **APPLICABILITY; CONFLICT OF LAW.** (a) Provides that this chapter applies to a judge of any court in this state created by the Texas Constitution, by statute, or as authorized by statute.

(b) Provides that, to the extent of a conflict between this chapter and a specific provision relating to a judge or court, this chapter controls.

Sec. 37.002. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, AND MEDIATORS. (a) Requires the judge of each court in this state, in addition to a list required by other state law or rule, to establish and maintain the following lists:

- (1) a list of all attorneys qualified to serve as an attorney ad litem;
- (2) a list of all attorneys and other persons qualified to serve as a guardian ad litem; and
- (3) a list of all attorneys and other persons qualified to serve as a mediator.

(b) Requires that a list maintained under Subsection (a) contain the names of all attorneys and other persons who:

- (1) meet any statutory or other requirements to serve as an attorney ad litem, guardian ad litem, or mediator, as applicable for each list; and
- (2) have registered to serve as attorney ad litem, guardian ad litem, or mediator with the court.

Sec. 37.003. APPOINTMENT OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, AND MEDIATORS; MAINTENANCE OF LISTS. (a) Requires a court, except as provided by Subsections (b) and (c), in each case in which the appointment of an attorney ad litem, guardian ad litem, or mediator is necessary, to appoint the attorney or other person whose name appears first on the applicable list maintained by the judge of the court as required by Section 37.002.

(b) Authorizes the court to appoint an attorney or other person included on the applicable list whose name does not appear first on the list, or an attorney or other person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that attorney or person as attorney ad litem, guardian ad litem, or mediator is agreed on by the parties and approved by the court.

(c) Authorizes the court to appoint from the applicable list the first qualified attorney or other person included on the list, or for a case in which a qualified attorney or other person is not included on the list, an attorney or other person who meets statutory or other requirements to serve on the case, if the appointment of that attorney or person as attorney ad litem, guardian ad litem, or mediator is required on a complex matter because the attorney or other person possesses relevant specialized education, training, certification, or skill.

(d) Requires the judge, after an attorney or other person has been appointed as an attorney ad litem, guardian ad litem, or mediator from the applicable list, to place that attorney's or person's name at the end of the list.

SECTION 2. Provides that Chapter 37, Government Code, as added by this Act, applies only to the appointment of an attorney ad litem, guardian ad litem, or mediator made on or after the effective date of this Act. Provides that an appointment made before the effective date of this Act is governed by the law in effect on the date the appointment was made, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2015.