

By: Zaffirini

S.B. No. 43

A BILL TO BE ENTITLED

AN ACT

relating to special appointments in suits affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 107.001(1), Family Code, is amended to read as follows:

(1) "Amicus attorney" means an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child, including by acting as a witness or making recommendations to the court.

SECTION 2. The heading to Section 107.003, Family Code, is amended to read as follows:

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD [~~AND AMICUS ATTORNEY~~].

SECTION 3. Section 107.003(a), Family Code, is amended to read as follows:

(a) An attorney ad litem appointed to represent a child [~~or an amicus attorney appointed to assist the court~~]:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

- 1 (i) the child in a developmentally
2 appropriate manner, if the child is four years of age or older;
- 3 (ii) each person who has significant
4 knowledge of the child's history and condition, including any
5 foster parent of the child; and
- 6 (iii) the parties to the suit;
- 7 (B) seek to elicit in a developmentally
8 appropriate manner the child's expressed objectives of
9 representation;
- 10 (C) consider the impact on the child in
11 formulating the attorney's presentation of the child's expressed
12 objectives of representation to the court;
- 13 (D) investigate the facts of the case to the
14 extent the attorney considers appropriate;
- 15 (E) obtain and review copies of relevant records
16 relating to the child as provided by Section [107.006](#);
- 17 (F) participate in the conduct of the litigation
18 to the same extent as an attorney for a party;
- 19 (G) take any action consistent with the child's
20 interests that the attorney considers necessary to expedite the
21 proceedings;
- 22 (H) encourage settlement and the use of
23 alternative forms of dispute resolution; and
- 24 (I) review and sign, or decline to sign, a
25 proposed or agreed order affecting the child;
- 26 (2) must be trained in child advocacy or have
27 experience determined by the court to be equivalent to that

1 training; and

2 (3) is entitled to:

3 (A) request clarification from the court if the
4 role of the attorney is ambiguous;

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

6 (C) consent or refuse to consent to an interview
7 of the child by another attorney;

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

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

11 (F) participate in any case staffing concerning
12 the child conducted by the Department of Family and Protective
13 Services; and

14 (G) attend all legal proceedings in the suit.

15 SECTION 4. Section 107.007(a), Family Code, is amended to
16 read as follows:

17 (a) An attorney ad litem or [7] an attorney serving in the
18 dual role [~~or an amicus attorney~~] may not:

19 (1) be compelled to produce attorney work product
20 developed during the appointment as an attorney;

21 (2) be required to disclose the source of any
22 information;

23 (3) submit a report into evidence; or

24 (4) testify in court except as authorized by Rule
25 3.08, Texas Disciplinary Rules of Professional Conduct.

26 SECTION 5. Section 107.009, Family Code, is amended to read
27 as follows:

1 Sec. 107.009. IMMUNITY. (a) A guardian ad litem, [~~an~~
2 ~~attorney ad litem,~~] a child custody evaluator, or an adoption
3 evaluator [~~amicus attorney~~] appointed under this chapter is not
4 liable for civil damages arising from an action taken, a
5 recommendation made, or an opinion given in the capacity of
6 guardian ad litem, [~~attorney ad litem,~~] child custody evaluator, or
7 adoption evaluator [~~amicus attorney~~].

8 (a-1) An attorney ad litem or amicus attorney appointed
9 under this chapter is not liable for civil damages arising from an
10 action taken in the capacity of attorney ad litem or amicus
11 attorney.

12 (b) Subsections [~~Subsection~~] (a) and (a-1) do [~~does~~] not
13 apply to an action taken, a recommendation made, or an opinion
14 given:

15 (1) with conscious indifference or reckless disregard
16 to the safety of another;

17 (2) in bad faith or with malice; or

18 (3) that is grossly negligent or wilfully wrongful.

19 SECTION 6. Sections 107.021(a) and (a-1), Family Code, are
20 amended to read as follows:

21 (a) In a suit in which the best interests of a child are at
22 issue, other than a suit filed by a governmental entity requesting
23 termination of the parent-child relationship or appointment of the
24 entity as conservator of the child, the court may appoint [~~one of~~
25 ~~the following:~~

26 [~~(1) an amicus attorney,~~

27 [~~(2)~~] an attorney ad litem[~~+~~] or

1 ~~[(3)]~~a] guardian ad litem.

2 (a-1) In a suit requesting termination of the parent-child
3 relationship that is not filed by a governmental entity, the court
4 shall, unless the court finds that the interests of the child will
5 be represented adequately by a party to the suit whose interests are
6 not in conflict with the child's interests, appoint ~~[one of the~~
7 ~~following:~~

8 ~~[(1)]~~ an amicus attorney, or

9 ~~[(2)]~~ an attorney ad litem.

10 SECTION 7. Part 2, Subchapter B, Chapter 107, Family Code,
11 is amended by adding Sections 107.024, 107.0245, 107.025, 107.0255,
12 107.026, 107.0265, 107.027, and 107.0275 to read as follows:

13 Sec. 107.024. APPOINTMENT OF AMICUS ATTORNEY. (a) The
14 court, after notice and hearing or on agreement of the parties, may
15 appoint an amicus attorney in a suit.

16 (b) In determining whether to make an appointment under this
17 section, the court:

18 (1) shall:

19 (A) give due consideration to the ability of the
20 parties to pay reasonable fees to the amicus attorney; and

21 (B) balance the child's interests against the
22 cost to the parties that would result from an appointment by taking
23 into consideration the cost of available alternatives for resolving
24 issues without making an appointment;

25 (2) may make an appointment only if the court finds
26 that the appointment is necessary to ensure the determination of
27 the best interests of the child, unless the appointment is

1 otherwise required by this code; and

2 (3) may not require an amicus attorney appointed under
3 this section to serve without reasonable compensation for the
4 services rendered by the amicus attorney.

5 (c) An amicus attorney appointed under this section must be
6 qualified under Section 107.0245 or 107.025.

7 (d) An order appointing an amicus attorney under this
8 section must include:

9 (1) the name, bar number, address, telephone number,
10 and e-mail address of the appointed amicus attorney;

11 (2) the scope of the amicus attorney's role;

12 (3) a list of the duties of an amicus attorney,
13 including duties under Section 107.0265(c)(1);

14 (4) any other specific tasks requested by the court;

15 and

16 (5) specific provisions for payment of the amicus
17 attorney, including a retainer or cost deposit.

18 (e) If a party to or child subject to a suit does not speak
19 English as the party's or child's primary language, the court shall
20 ensure that the amicus attorney:

21 (1) is able to effectively communicate in the party's
22 or child's primary language; or

23 (2) will be assisted by a licensed or certified
24 interpreter.

25 (f) A licensed or certified interpreter assisting an amicus
26 attorney under Subsection (e)(2) may accompany the amicus attorney
27 in person or assist through use of audio or video conferencing

1 technology.

2 (g) The court may require the parties to pay any costs
3 associated with obtaining assistance from a licensed or certified
4 interpreter under Subsection (e)(2).

5 Sec. 107.0245. AMICUS ATTORNEY; MINIMUM QUALIFICATIONS.

6 (a) To be qualified to serve as an amicus attorney, an individual
7 must:

8 (1) be an attorney:

9 (A) who:

10 (i) is licensed to practice law in this
11 state and in good standing with the State Bar of Texas;

12 (ii) has practiced law for at least two
13 years; and

14 (iii) is trained in child advocacy or found
15 by the court to have experience equivalent to training in child
16 advocacy; or

17 (B) who is certified by the Texas Board of Legal
18 Specialization in family law or child welfare law;

19 (2) in the four years preceding the appointment, have
20 completed not less than a total of four hours of continuing legal
21 education from one or more of the following subject areas:

22 (A) domestic violence;

23 (B) techniques for interviewing a child in a
24 developmentally appropriate manner; or

25 (C) alternative dispute resolution; and

26 (3) if appropriate due to the nature of the
27 appointment, be familiar with the American Bar Association's

1 standards of practice for attorneys who represent children in
2 custody cases.

3 (b) The court shall determine whether a prospective amicus
4 attorney meets the qualifications of this section.

5 (c) On the request of the court, a prospective amicus
6 attorney must demonstrate appropriate knowledge and competence
7 consistent with professional models, standards, and guidelines.

8 Sec. 107.025. EXCEPTION TO QUALIFICATIONS REQUIRED TO SERVE
9 AS AMICUS ATTORNEY IN CERTAIN COUNTIES. (a) This section applies
10 only to a county with a population of less than 500,000.

11 (b) If a court finds that an individual qualified to serve
12 as an amicus attorney under Section 107.0245 is not available in the
13 county to serve as an amicus attorney, the court may, after notice
14 and hearing or on agreement of the parties, appoint an amicus
15 attorney the court determines to be otherwise qualified to serve.

16 Sec. 107.0255. AMICUS ATTORNEY; CONFLICTS OF INTEREST AND
17 BIAS. (a) Before a person accepts appointment as an amicus
18 attorney in a suit, the person must disclose to the court, each
19 attorney for a party to the suit, and any party to the suit who does
20 not have an attorney:

21 (1) any conflict of interest that the person believes
22 the person has with the court, any party to the suit, or a child who
23 is the subject of the suit;

24 (2) any previous knowledge that the person has of a
25 party to the suit or a child who is the subject of the suit, other
26 than knowledge obtained in a court-ordered evaluation;

27 (3) any pecuniary relationship that the person

1 believes the person has with an attorney in the suit or the court;
2 (4) any fiduciary relationship that the person
3 believes the person has with an attorney in the suit or the court;
4 (5) any conflict of interest that the person believes
5 the person has with another person participating or expected to
6 participate in the suit in a professional capacity; and
7 (6) any other information relating to the person's
8 relationship with an attorney in the suit or the court that a
9 reasonable, prudent person would believe would affect the ability
10 of the person to act impartially as an amicus attorney.
11 (b) The court may not appoint a person as an amicus attorney
12 in a suit if the person makes any of the disclosures in Subsection
13 (a) unless:
14 (1) the court finds, after notice and a hearing, that:
15 (A) the person has no conflict of interest with a
16 party to the suit, the court, or a child who is the subject of the
17 suit;
18 (B) the person's previous knowledge of a party to
19 the suit, the court, or a child who is the subject of the suit is not
20 relevant;
21 (C) the person does not have a pecuniary
22 relationship with an attorney in the suit or the court; and
23 (D) the person does not have a fiduciary
24 relationship with an attorney in the suit or the court; or
25 (2) the parties agree in writing to the person's
26 appointment as an amicus attorney.
27 (c) After being appointed as an amicus attorney in a suit, a

1 person shall immediately disclose to the court, each attorney for a
2 party to the suit, and any party to the suit who does not have an
3 attorney any discovery of the following unless previously
4 disclosed:

5 (1) a conflict of interest that the person believes
6 the person has with a party to the suit, the court, or a child who is
7 the subject of the suit;

8 (2) previous knowledge the person has of a party to the
9 suit, the court, or a child who is the subject of the suit, other
10 than knowledge obtained in a court-ordered evaluation;

11 (3) a relationship that the person has with an
12 attorney in the suit who was hired or appointed after the person's
13 appointment as amicus attorney that would have been subject to
14 disclosure under Subsection (a); and

15 (4) any conflict of interest that the person believes
16 the person has with another person who participates in the suit in a
17 professional capacity.

18 (d) The court shall remove a person as amicus attorney in a
19 suit if the person makes any of the disclosures in Subsection (c)
20 unless:

21 (1) the court finds, after notice and a hearing, that,
22 as applicable:

23 (A) the person has no conflict of interest with a
24 party to the suit, the court, or a child who is the subject of the
25 suit;

26 (B) the person's previous knowledge of a party to
27 the suit, the court, or a child who is the subject of the suit is not

1 relevant;

2 (C) the person has no pecuniary or fiduciary
3 relationship with an attorney in the suit who was hired or appointed
4 after the person's appointment as amicus attorney; or

5 (D) the person has no conflict of interest with
6 another person who participates in the suit in a professional
7 capacity; or

8 (2) the parties agree in writing to the person's
9 continued appointment as an amicus attorney.

10 (e) A person who has a preexisting relationship with an
11 attorney for a party to the suit or a professional participating in
12 the suit is not disqualified from being an amicus attorney if the
13 relationship was formed in a professional setting such as service
14 to the community or a bar association.

15 Sec. 107.026. AMICUS ATTORNEY STANDARD OF CARE. (a) Except
16 as provided by this title, an amicus attorney is subject to the
17 professional standards of care and ethical standards necessary to
18 remain in good standing with the State Bar of Texas.

19 (b) A court may impose requirements or adopt local rules
20 applicable to an amicus attorney that do not conflict with this
21 subchapter.

22 Sec. 107.0265. POWERS AND DUTIES OF AMICUS ATTORNEY. (a)
23 Subject to specific limitations given in an order of appointment
24 under Section 107.024, an amicus attorney's primary duty is to:

25 (1) review the facts and circumstances of the case;
26 and

27 (2) advocate the best interests of a child who is the

1 subject of the suit.

2 (b) In performing the duties under Subsection (a), an amicus
3 attorney is not bound by the expressed objectives of a child who is
4 the subject of the suit.

5 (c) An amicus attorney appointed to assist the court:

6 (1) shall:

7 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
8 Disciplinary Rules of Professional Conduct, and within a reasonable
9 time after the appointment, interview:

10 (i) the child in a developmentally
11 appropriate manner, if the child is four years of age or older;

12 (ii) each person who has significant
13 knowledge of the child's history and condition, including any
14 foster parent of the child; and

15 (iii) the parties to the suit;

16 (B) seek to elicit and assess the child's view in
17 a developmentally appropriate manner;

18 (C) consider the impact on the child in
19 formulating the attorney's presentation of the child's expressed
20 objectives of representation to the court;

21 (D) investigate the facts of the case to the
22 extent the attorney considers appropriate;

23 (E) obtain and review copies of relevant records
24 relating to the child as provided by Section 107.006;

25 (F) participate in the conduct of the litigation
26 to the same extent as an attorney for a party;

27 (G) take any action consistent with the child's

1 interests that the attorney considers necessary to expedite the
2 proceedings;

3 (H) encourage settlement and the use of
4 alternative forms of dispute resolution;

5 (I) review and sign, or decline to sign, a
6 proposed or agreed order affecting the child;

7 (J) on the request of any party, disclose the
8 name, address, and phone number of each person interviewed or
9 consulted; and

10 (K) on the request of any party, make available
11 documents obtained by the amicus attorney for copying;

12 (2) may be required by the court to perform additional
13 tasks, including:

14 (A) conducting additional interviews with each
15 child who is the subject of the suit to:

16 (i) ensure balanced and impartial
17 representation by the amicus attorney; and

18 (ii) observe each child while in the care of
19 each party to the suit;

20 (B) interviewing other individuals, including,
21 at the discretion of the amicus attorney, a child who:

22 (i) is not less than four years of age; and

23 (ii) resides part-time or full-time in a
24 residence where a child who is the subject of the suit resides
25 part-time or full-time;

26 (C) visiting the residence of each party seeking
27 conservatorship or possession of or access to a child who is the

1 subject of the suit; or

2 (D) reviewing any information the court
3 determines is relevant; and

4 (3) is entitled to:

5 (A) request clarification from the court if the
6 role of the amicus attorney is ambiguous;

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

8 (C) consent or refuse to consent to an interview
9 of the child by another attorney;

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

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

13 (F) participate in any case staffing concerning
14 the child conducted by the Department of Family and Protective
15 Services;

16 (G) attend all legal proceedings in the suit; and

17 (H) make arguments during legal proceedings,
18 including:

19 (i) summarizing evidence; and

20 (ii) suggesting reasonable inferences and
21 deductions drawn from the evidence.

22 (d) In preparing for and conducting an interview with a
23 child, an amicus attorney shall:

24 (1) explain the role of an amicus attorney to the child
25 in a developmentally appropriate manner;

26 (2) inform the child in a developmentally appropriate
27 manner that the amicus attorney may use information the child

1 provides in assisting the court; and

2 (3) become familiar with the American Bar
3 Association's standards of practice for attorneys who represent
4 children in custody cases.

5 (e) The disclosure required by Subsections (c)(1)(J) and
6 (K):

7 (1) shall not be construed to require disclosure of an
8 amicus attorney's notes or attorney work product; and

9 (2) is subject to supplementation under Rule 193.5,
10 Texas Rules of Civil Procedure.

11 Sec. 107.027. LIMITATIONS ON AMICUS ATTORNEY POWERS. (a)
12 An amicus attorney may not:

13 (1) offer an opinion regarding conservatorship or
14 possession of or access to a child subject to a suit;

15 (2) engage in ex parte communications with the court;

16 (3) be compelled to produce attorney work product
17 developed during the appointment as an amicus attorney;

18 (4) except as required under Section
19 107.0265(c)(1)(J) or (K), be required to disclose the source of any
20 information;

21 (5) submit a report into evidence; or

22 (6) testify in court, except:

23 (A) as authorized under Rule 3.08, Texas
24 Disciplinary Rules of Professional Conduct; or

25 (B) as necessary for the court to make a
26 determination relating to the qualifications, conflicts of
27 interest, bias, or removal of the amicus attorney.

1 (b) Subsection (a) does not apply to the duty of an attorney
2 to report child abuse or neglect under Section 261.101.

3 Sec. 107.0275. REMOVAL OF AMICUS ATTORNEY. The court:

4 (1) may remove an amicus attorney if the parties agree
5 to the removal; and

6 (2) shall remove an amicus attorney if, after notice
7 and hearing, the court finds that the amicus attorney:

8 (A) does not have the minimum qualifications to
9 serve as an amicus attorney under Section 107.0245 or 107.025;

10 (B) has a conflict of interest or bias under
11 Section 107.0255(a) that is not exempted under that section;

12 (C) fails to perform duties under Section
13 107.0265 or ordered by the court;

14 (D) violates a standard of care under Section
15 107.026; or

16 (E) requests to be removed because a party to the
17 suit has prevented the amicus attorney from fulfilling the duties
18 of the amicus attorney.

19 SECTION 8. Section 107.005, Family Code, is repealed.

20 SECTION 9. The changes in law made by this Act apply only to
21 a suit affecting the parent-child relationship that is filed on or
22 after the effective date of this Act. A suit affecting the
23 parent-child relationship filed before the effective date of this
24 Act is governed by the law in effect on the date the suit was filed,
25 and the former law is continued in effect for that purpose.

26 SECTION 10. This Act takes effect on the 91st day after the
27 last day of the legislative session.