

1-1 By: Zaffirini S.B. No. 2277
1-2 (In the Senate - Filed March 10, 2023; March 22, 2023, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 24, 2023, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 24, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to special appointments in suits affecting the
1-16 parent-child relationship.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Section 107.001(1), Family Code, is amended to
1-19 read as follows:

1-20 (1) "Amicus attorney" means an attorney appointed by
1-21 the court in a suit, other than a suit filed by a governmental
1-22 entity, whose role is to provide legal services necessary to assist
1-23 the court in protecting a child's best interests rather than to
1-24 provide legal services to the child, including by acting as a
1-25 witness or making recommendations to the court.

1-26 SECTION 2. The heading to Section 107.003, Family Code, is
1-27 amended to read as follows:

1-28 Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
1-29 CHILD [~~AND AMICUS ATTORNEY~~].

1-30 SECTION 3. Section 107.003(a), Family Code, is amended to
1-31 read as follows:

1-32 (a) An attorney ad litem appointed to represent a child [~~or~~
1-33 ~~an amicus attorney appointed to assist the court~~]:

1-34 (1) shall:

1-35 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
1-36 Disciplinary Rules of Professional Conduct, and within a reasonable
1-37 time after the appointment, interview:

1-38 (i) the child in a developmentally
1-39 appropriate manner, if the child is four years of age or older;

1-40 (ii) each person who has significant
1-41 knowledge of the child's history and condition, including any
1-42 foster parent of the child; and

1-43 (iii) the parties to the suit;

1-44 (B) seek to elicit in a developmentally
1-45 appropriate manner the child's expressed objectives of
1-46 representation;

1-47 (C) consider the impact on the child in
1-48 formulating the attorney's presentation of the child's expressed
1-49 objectives of representation to the court;

1-50 (D) investigate the facts of the case to the
1-51 extent the attorney considers appropriate;

1-52 (E) obtain and review copies of relevant records
1-53 relating to the child as provided by Section 107.006;

1-54 (F) participate in the conduct of the litigation
1-55 to the same extent as an attorney for a party;

1-56 (G) take any action consistent with the child's
1-57 interests that the attorney considers necessary to expedite the
1-58 proceedings;

1-59 (H) encourage settlement and the use of
1-60 alternative forms of dispute resolution; and

1-61 (I) review and sign, or decline to sign, a

2-1 proposed or agreed order affecting the child;
 2-2 (2) must be trained in child advocacy or have
 2-3 experience determined by the court to be equivalent to that
 2-4 training; and
 2-5 (3) is entitled to:
 2-6 (A) request clarification from the court if the
 2-7 role of the attorney is ambiguous;
 2-8 (B) request a hearing or trial on the merits;
 2-9 (C) consent or refuse to consent to an interview
 2-10 of the child by another attorney;
 2-11 (D) receive a copy of each pleading or other
 2-12 paper filed with the court;
 2-13 (E) receive notice of each hearing in the suit;
 2-14 (F) participate in any case staffing concerning
 2-15 the child conducted by the Department of Family and Protective
 2-16 Services; and
 2-17 (G) attend all legal proceedings in the suit.

2-18 SECTION 4. Section 107.007(a), Family Code, is amended to
 2-19 read as follows:

2-20 (a) An attorney ad litem or ~~[7]~~ an attorney serving in the
 2-21 dual role ~~[7, or an amicus attorney]~~ may not:

- 2-22 (1) be compelled to produce attorney work product
- 2-23 developed during the appointment as an attorney;
- 2-24 (2) be required to disclose the source of any
- 2-25 information;
- 2-26 (3) submit a report into evidence; or
- 2-27 (4) testify in court except as authorized by Rule
- 2-28 3.08, Texas Disciplinary Rules of Professional Conduct.

2-29 SECTION 5. Section 107.009, Family Code, is amended to read
 2-30 as follows:

2-31 Sec. 107.009. IMMUNITY. (a) A guardian ad litem, ~~[an~~
 2-32 ~~attorney ad litem,~~ a child custody evaluator, or an adoption
 2-33 evaluator ~~[amicus attorney]~~ appointed under this chapter is not
 2-34 liable for civil damages arising from an action taken, a
 2-35 recommendation made, or an opinion given in the capacity of
 2-36 guardian ad litem, ~~[attorney ad litem,~~ child custody evaluator, or
 2-37 adoption evaluator ~~[amicus attorney]~~.

2-38 (a-1) An attorney ad litem or amicus attorney appointed
 2-39 under this chapter is not liable for civil damages arising from an
 2-40 action taken in the capacity of attorney ad litem or amicus
 2-41 attorney.

2-42 (b) Subsections ~~[Subsection]~~ (a) and (a-1) do ~~[does]~~ not
 2-43 apply to an action taken, a recommendation made, or an opinion
 2-44 given:

- 2-45 (1) with conscious indifference or reckless disregard
- 2-46 to the safety of another;
- 2-47 (2) in bad faith or with malice; or
- 2-48 (3) that is grossly negligent or wilfully wrongful.

2-49 SECTION 6. Sections 107.021(a) and (a-1), Family Code, are
 2-50 amended to read as follows:

2-51 (a) In a suit in which the best interests of a child are at
 2-52 issue, other than a suit filed by a governmental entity requesting
 2-53 termination of the parent-child relationship or appointment of the
 2-54 entity as conservator of the child, the court may appoint ~~[one of~~
 2-55 ~~the following:~~

- 2-56 ~~[(1) an amicus attorney,~~
- 2-57 ~~[(2)] an attorney ad litem~~[7]~~ or~~
- 2-58 ~~[(3) a] guardian ad litem.~~

2-59 (a-1) In a suit requesting termination of the parent-child
 2-60 relationship that is not filed by a governmental entity, the court
 2-61 shall, unless the court finds that the interests of the child will
 2-62 be represented adequately by a party to the suit whose interests are
 2-63 not in conflict with the child's interests, appoint ~~[one of the~~
 2-64 ~~following:~~

- 2-65 ~~[(1) an amicus attorney, or~~
- 2-66 ~~[(2)] an attorney ad litem.~~

2-67 SECTION 7. Part 2, Subchapter B, Chapter 107, Family Code,
 2-68 is amended by adding Sections 107.024, 107.0245, 107.025, 107.0255,
 2-69 107.026, 107.0265, 107.027, and 107.0275 to read as follows:

3-1 Sec. 107.024. APPOINTMENT OF AMICUS ATTORNEY. (a) The
3-2 court, after notice and hearing or on agreement of the parties, may
3-3 appoint an amicus attorney in a suit.

3-4 (b) In determining whether to make an appointment under this
3-5 section, the court:

3-6 (1) shall:
3-7 (A) give due consideration to the ability of the
3-8 parties to pay reasonable fees to the amicus attorney; and

3-9 (B) balance the child's interests against the
3-10 cost to the parties that would result from an appointment by taking
3-11 into consideration the cost of available alternatives for resolving
3-12 issues without making an appointment;

3-13 (2) may make an appointment only if the court finds
3-14 that the appointment is necessary to ensure the determination of
3-15 the best interests of the child, unless the appointment is
3-16 otherwise required by this code; and

3-17 (3) may not require an amicus attorney appointed under
3-18 this section to serve without reasonable compensation for the
3-19 services rendered by the amicus attorney.

3-20 (c) An amicus attorney appointed under this section must be
3-21 qualified under Section 107.0245 or 107.025.

3-22 (d) An order appointing an amicus attorney under this
3-23 section must include:

3-24 (1) the name, bar number, address, telephone number,
3-25 and e-mail address of the appointed amicus attorney;

3-26 (2) the scope of the amicus attorney's role;

3-27 (3) a list of the duties of an amicus attorney,
3-28 including duties under Section 107.0265(c)(1);

3-29 (4) any other specific tasks requested by the court;
3-30 and

3-31 (5) specific provisions for payment of the amicus
3-32 attorney, including a retainer or cost deposit.

3-33 (e) If a party to or child subject to a suit does not speak
3-34 English as the party's or child's primary language, the court shall
3-35 ensure that the amicus attorney:

3-36 (1) is able to effectively communicate in the party's
3-37 or child's primary language; or

3-38 (2) will be assisted by a licensed or certified
3-39 interpreter.

3-40 (f) A licensed or certified interpreter assisting an amicus
3-41 attorney under Subsection (e)(2) may accompany the amicus attorney
3-42 in person or assist through use of audio or video conferencing
3-43 technology.

3-44 (g) The court may require the parties to pay any costs
3-45 associated with obtaining assistance from a licensed or certified
3-46 interpreter under Subsection (e)(2).

3-47 Sec. 107.0245. AMICUS ATTORNEY; MINIMUM QUALIFICATIONS.
3-48 (a) To be qualified to serve as an amicus attorney, an individual
3-49 must:

3-50 (1) be an attorney:
3-51 (A) who:
3-52 (i) is licensed to practice law in this
3-53 state and in good standing with the State Bar of Texas;

3-54 (ii) has practiced law for at least two
3-55 years; and

3-56 (iii) is trained in child advocacy or found
3-57 by the court to have experience equivalent to training in child
3-58 advocacy; or

3-59 (B) who is certified by the Texas Board of Legal
3-60 Specialization in family law or child welfare law;

3-61 (2) in the four years preceding the appointment, have
3-62 completed not less than a total of four hours of continuing legal
3-63 education from one or more of the following subject areas:

3-64 (A) domestic violence;

3-65 (B) techniques for interviewing a child in a
3-66 developmentally appropriate manner; or

3-67 (C) alternative dispute resolution; and

3-68 (3) if appropriate due to the nature of the
3-69 appointment, be familiar with the American Bar Association's

4-1 standards of practice for attorneys who represent children in
4-2 custody cases.

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

4-5 (c) On the request of the court, a prospective amicus
4-6 attorney must demonstrate appropriate knowledge and competence
4-7 consistent with professional models, standards, and guidelines.

4-8 Sec. 107.025. EXCEPTION TO QUALIFICATIONS REQUIRED TO SERVE
4-9 AS AMICUS ATTORNEY IN CERTAIN COUNTIES. (a) This section applies
4-10 only to a county with a population of less than 500,000.

4-11 (b) If a court finds that an individual qualified to serve
4-12 as an amicus attorney under Section 107.0245 is not available in the
4-13 county to serve as an amicus attorney, the court may, after notice
4-14 and hearing or on agreement of the parties, appoint an amicus
4-15 attorney the court determines to be otherwise qualified to serve.

4-16 Sec. 107.0255. AMICUS ATTORNEY; CONFLICTS OF INTEREST AND
4-17 BIAS. (a) Before a person accepts appointment as an amicus
4-18 attorney in a suit, the person must disclose to the court, each
4-19 attorney for a party to the suit, and any party to the suit who does
4-20 not have an attorney:

4-21 (1) any conflict of interest that the person believes
4-22 the person has with the court, any party to the suit, or a child who
4-23 is the subject of the suit;

4-24 (2) any previous knowledge that the person has of a
4-25 party to the suit or a child who is the subject of the suit, other
4-26 than knowledge obtained in a court-ordered evaluation;

4-27 (3) any pecuniary relationship that the person
4-28 believes the person has with an attorney in the suit or the court;

4-29 (4) any fiduciary relationship that the person
4-30 believes the person has with an attorney in the suit or the court;

4-31 (5) any conflict of interest that the person believes
4-32 the person has with another person participating or expected to
4-33 participate in the suit in a professional capacity; and

4-34 (6) any other information relating to the person's
4-35 relationship with an attorney in the suit or the court that a
4-36 reasonable, prudent person would believe would affect the ability
4-37 of the person to act impartially as an amicus attorney.

4-38 (b) The court may not appoint a person as an amicus attorney
4-39 in a suit if the person makes any of the disclosures in Subsection
4-40 (a) unless:

4-41 (1) the court finds, after notice and a hearing, that:

4-42 (A) the person has no conflict of interest with a
4-43 party to the suit, the court, or a child who is the subject of the
4-44 suit;

4-45 (B) the person's previous knowledge of a party to
4-46 the suit, the court, or a child who is the subject of the suit is not
4-47 relevant;

4-48 (C) the person does not have a pecuniary
4-49 relationship with an attorney in the suit or the court; and

4-50 (D) the person does not have a fiduciary
4-51 relationship with an attorney in the suit or the court; or

4-52 (2) the parties agree in writing to the person's
4-53 appointment as an amicus attorney.

4-54 (c) After being appointed as an amicus attorney in a suit, a
4-55 person shall immediately disclose to the court, each attorney for a
4-56 party to the suit, and any party to the suit who does not have an
4-57 attorney any discovery of the following unless previously
4-58 disclosed:

4-59 (1) a conflict of interest that the person believes
4-60 the person has with a party to the suit, the court, or a child who is
4-61 the subject of the suit;

4-62 (2) previous knowledge the person has of a party to the
4-63 suit, the court, or a child who is the subject of the suit, other
4-64 than knowledge obtained in a court-ordered evaluation;

4-65 (3) a relationship that the person has with an
4-66 attorney in the suit who was hired or appointed after the person's
4-67 appointment as amicus attorney that would have been subject to
4-68 disclosure under Subsection (a); and

4-69 (4) any conflict of interest that the person believes

5-1 the person has with another person who participates in the suit in a
5-2 professional capacity.

5-3 (d) The court shall remove a person as amicus attorney in a
5-4 suit if the person makes any of the disclosures in Subsection (c)
5-5 unless:

5-6 (1) the court finds, after notice and a hearing, that,
5-7 as applicable:

5-8 (A) the person has no conflict of interest with a
5-9 party to the suit, the court, or a child who is the subject of the
5-10 suit;

5-11 (B) the person's previous knowledge of a party to
5-12 the suit, the court, or a child who is the subject of the suit is not
5-13 relevant;

5-14 (C) the person has no pecuniary or fiduciary
5-15 relationship with an attorney in the suit who was hired or appointed
5-16 after the person's appointment as amicus attorney; or

5-17 (D) the person has no conflict of interest with
5-18 another person who participates in the suit in a professional
5-19 capacity; or

5-20 (2) the parties agree in writing to the person's
5-21 continued appointment as an amicus attorney.

5-22 (e) A person who has a preexisting relationship with an
5-23 attorney for a party to the suit or a professional participating in
5-24 the suit is not disqualified from being an amicus attorney if the
5-25 relationship was formed in a professional setting such as service
5-26 to the community or a bar association.

5-27 Sec. 107.026. AMICUS ATTORNEY STANDARD OF CARE. (a) Except
5-28 as provided by this title, an amicus attorney is subject to the
5-29 professional standards of care and ethical standards necessary to
5-30 remain in good standing with the State Bar of Texas.

5-31 (b) A court may impose requirements or adopt local rules
5-32 applicable to an amicus attorney that do not conflict with this
5-33 subchapter.

5-34 Sec. 107.0265. POWERS AND DUTIES OF AMICUS ATTORNEY. (a)
5-35 Subject to specific limitations given in an order of appointment
5-36 under Section 107.024, an amicus attorney's primary duty is to:

5-37 (1) review the facts and circumstances of the case;
5-38 and

5-39 (2) advocate the best interests of a child who is the
5-40 subject of the suit.

5-41 (b) In performing the duties under Subsection (a), an amicus
5-42 attorney is not bound by the expressed objectives of a child who is
5-43 the subject of the suit.

5-44 (c) An amicus attorney appointed to assist the court:

5-45 (1) shall:

5-46 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
5-47 Disciplinary Rules of Professional Conduct, and within a reasonable
5-48 time after the appointment, interview:

5-49 (i) the child in a developmentally
5-50 appropriate manner, if the child is four years of age or older;

5-51 (ii) each person who has significant
5-52 knowledge of the child's history and condition, including any
5-53 foster parent of the child; and

5-54 (iii) the parties to the suit;

5-55 (B) seek to elicit and assess the child's view in
5-56 a developmentally appropriate manner;

5-57 (C) consider the impact on the child in
5-58 formulating the attorney's presentation of the child's expressed
5-59 objectives of representation to the court;

5-60 (D) investigate the facts of the case to the
5-61 extent the attorney considers appropriate;

5-62 (E) obtain and review copies of relevant records
5-63 relating to the child as provided by Section 107.006;

5-64 (F) participate in the conduct of the litigation
5-65 to the same extent as an attorney for a party;

5-66 (G) take any action consistent with the child's
5-67 interests that the attorney considers necessary to expedite the
5-68 proceedings;

5-69 (H) encourage settlement and the use of

6-1 alternative forms of dispute resolution;
6-2 (I) review and sign, or decline to sign, a
6-3 proposed or agreed order affecting the child;
6-4 (J) on the request of any party, disclose the
6-5 name, address, and phone number of each person interviewed or
6-6 consulted; and
6-7 (K) on the request of any party, make available
6-8 documents obtained by the amicus attorney for copying;
6-9 (2) may be required by the court to perform additional
6-10 tasks, including:
6-11 (A) conducting additional interviews with each
6-12 child who is the subject of the suit to:
6-13 (i) ensure balanced and impartial
6-14 representation by the amicus attorney; and
6-15 (ii) observe each child while in the care of
6-16 each party to the suit;
6-17 (B) interviewing other individuals, including,
6-18 at the discretion of the amicus attorney, a child who:
6-19 (i) is not less than four years of age; and
6-20 (ii) resides part-time or full-time in a
6-21 residence where a child who is the subject of the suit resides
6-22 part-time or full-time;
6-23 (C) visiting the residence of each party seeking
6-24 conservatorship or possession of or access to a child who is the
6-25 subject of the suit; or
6-26 (D) reviewing any information the court
6-27 determines is relevant; and
6-28 (3) is entitled to:
6-29 (A) request clarification from the court if the
6-30 role of the amicus attorney is ambiguous;
6-31 (B) request a hearing or trial on the merits;
6-32 (C) consent or refuse to consent to an interview
6-33 of the child by another attorney;
6-34 (D) receive a copy of each pleading or other
6-35 paper filed with the court;
6-36 (E) receive notice of each hearing in the suit;
6-37 (F) participate in any case staffing concerning
6-38 the child conducted by the Department of Family and Protective
6-39 Services;
6-40 (G) attend all legal proceedings in the suit; and
6-41 (H) make arguments during legal proceedings,
6-42 including:
6-43 (i) summarizing evidence; and
6-44 (ii) suggesting reasonable inferences and
6-45 deductions drawn from the evidence.
6-46 (d) In preparing for and conducting an interview with a
6-47 child, an amicus attorney shall:
6-48 (1) explain the role of an amicus attorney to the child
6-49 in a developmentally appropriate manner;
6-50 (2) inform the child in a developmentally appropriate
6-51 manner that the amicus attorney may use information the child
6-52 provides in assisting the court; and
6-53 (3) become familiar with the American Bar
6-54 Association's standards of practice for attorneys who represent
6-55 children in custody cases.
6-56 (e) The disclosure required by Subsections (c)(1)(J) and
6-57 (K):
6-58 (1) shall not be construed to require disclosure of an
6-59 amicus attorney's notes or attorney work product; and
6-60 (2) is subject to supplementation under Rule 193.5,
6-61 Texas Rules of Civil Procedure.
6-62 Sec. 107.027. LIMITATIONS ON AMICUS ATTORNEY POWERS. (a)
6-63 An amicus attorney may not:
6-64 (1) offer an opinion regarding conservatorship or
6-65 possession of or access to a child subject to a suit;
6-66 (2) engage in ex parte communications with the court;
6-67 (3) be compelled to produce attorney work product
6-68 developed during the appointment as an amicus attorney;
6-69 (4) except as required under Section

7-1 107.0265(c)(1)(J) or (K), be required to disclose the source of any
7-2 information;
7-3 (5) submit a report into evidence; or
7-4 (6) testify in court, except:
7-5 (A) as authorized under Rule 3.08, Texas
7-6 Disciplinary Rules of Professional Conduct; or
7-7 (B) as necessary for the court to make a
7-8 determination relating to the qualifications, conflicts of
7-9 interest, bias, or removal of the amicus attorney.
7-10 (b) Subsection (a) does not apply to the duty of an attorney
7-11 to report child abuse or neglect under Section 261.101.
7-12 Sec. 107.0275. REMOVAL OF AMICUS ATTORNEY. The court:
7-13 (1) may remove an amicus attorney if the parties agree
7-14 to the removal; and
7-15 (2) shall remove an amicus attorney if, after notice
7-16 and hearing, the court finds that the amicus attorney:
7-17 (A) does not have the minimum qualifications to
7-18 serve as an amicus attorney under Section 107.0245 or 107.025;
7-19 (B) has a conflict of interest or bias under
7-20 Section 107.0255(a) that is not exempted under that section;
7-21 (C) fails to perform duties under Section
7-22 107.0265 or ordered by the court;
7-23 (D) violates a standard of care under Section
7-24 107.026; or
7-25 (E) requests to be removed because a party to the
7-26 suit has prevented the amicus attorney from fulfilling the duties
7-27 of the amicus attorney.
7-28 SECTION 8. Section 107.005, Family Code, is repealed.
7-29 SECTION 9. The changes in law made by this Act apply only to
7-30 a suit affecting the parent-child relationship that is filed on or
7-31 after the effective date of this Act. A suit affecting the
7-32 parent-child relationship filed before the effective date of this
7-33 Act is governed by the law in effect on the date the suit was filed,
7-34 and the former law is continued in effect for that purpose.
7-35 SECTION 10. This Act takes effect September 1, 2023.

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