

By: Zaffirini

S.B. No. 323

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. Part 2, Subchapter B, Chapter 107, Family Code,
20 is amended by adding Sections 107.024, 107.0245, 107.025, 107.0255,
21 107.026, 107.0265, 107.027, and 107.0275 to read as follows:

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

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

27 (1) shall:

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

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

7 (2) may make an appointment only if the court finds
8 that the appointment is necessary to ensure the determination of
9 the best interests of the child, unless the appointment is
10 otherwise required by this code; and

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

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

16 (d) An order appointing an amicus attorney under this
17 section must include:

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

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

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

23 (4) any other specific tasks requested by the court;
24 and

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

27 (e) If a party to or child subject to a suit does not speak

1 English as the party's or child's primary language, the court shall
2 ensure that the amicus attorney:

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

5 (2) will be assisted by a licensed or certified
6 interpreter.

7 (f) A licensed or certified interpreter assisting an amicus
8 attorney under Subsection (e)(2) may accompany the amicus attorney
9 in person or assist through use of audio or video conferencing
10 technology.

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

14 Sec. 107.0245. AMICUS ATTORNEY; MINIMUM QUALIFICATIONS.

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

17 (1) be an attorney:

18 (A) who:

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

21 (ii) has practiced law for at least two
22 years; and

23 (iii) is trained in child advocacy or found
24 by the court to have experience equivalent to training in child
25 advocacy; or

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

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

4 (A) domestic violence;

5 (B) techniques for interviewing a child in a
6 developmentally appropriate manner; or

7 (C) alternative dispute resolution; and

8 (3) if appropriate due to the nature of the
9 appointment, be familiar with the American Bar Association's
10 standards of practice for attorneys who represent children in
11 custody cases.

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

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

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

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

25 Sec. 107.0255. AMICUS ATTORNEY; CONFLICTS OF INTEREST AND
26 BIAS. (a) Before a person accepts appointment as an amicus
27 attorney in a suit, the person must disclose to the court, each

1 attorney for a party to the suit, and any party to the suit who does
2 not have an attorney:

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

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

9 (3) any pecuniary relationship that the person
10 believes the person has with an attorney in the suit or the court;

11 (4) any fiduciary relationship that the person
12 believes the person has with an attorney in the suit or the court;

13 (5) any conflict of interest that the person believes
14 the person has with another person participating or expected to
15 participate in the suit in a professional capacity; and

16 (6) any other information relating to the person's
17 relationship with an attorney in the suit or the court that a
18 reasonable, prudent person would believe would affect the ability
19 of the person to act impartially as an amicus attorney.

20 (b) The court may not appoint a person as an amicus attorney
21 in a suit if the person makes any of the disclosures in Subsection
22 (a) unless:

23 (1) the court finds, after notice and a hearing, that:

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

27 (B) the person's previous knowledge of a party to

1 the suit, the court, or a child who is the subject of the suit is not
2 relevant;

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

5 (D) the person does not have a fiduciary
6 relationship with an attorney in the suit or the court; or

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

9 (c) After being appointed as an amicus attorney in a suit, a
10 person shall immediately disclose to the court, each attorney for a
11 party to the suit, and any party to the suit who does not have an
12 attorney any discovery of the following unless previously
13 disclosed:

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

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

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

24 (4) any conflict of interest that the person believes
25 the person has with another person who participates in the suit in a
26 professional capacity.

27 (d) The court shall remove a person as an amicus attorney in

1 a suit if the person makes any of the disclosures in Subsection (c)
2 unless:

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

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

8 (B) the person's previous knowledge of a party to
9 the suit, the court, or a child who is the subject of the suit is not
10 relevant;

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

14 (D) the person has no conflict of interest with
15 another person who participates in the suit in a professional
16 capacity; or

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

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

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

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

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

7 (1) review the facts and circumstances of the case;
8 and

9 (2) advocate the best interests of a child who is the
10 subject of the suit.

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

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

15 (1) shall:

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

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

21 (ii) each person who has significant
22 knowledge of the child's history and condition, including any
23 foster parent of the child; and

24 (iii) the parties to the suit;

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

27 (C) consider the impact on the child in

1 formulating the attorney's presentation of the child's expressed
2 objectives of representation to the court;

3 (D) investigate the facts of the case to the
4 extent the attorney considers appropriate;

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

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

9 (G) take any action consistent with the child's
10 interests that the attorney considers necessary to expedite the
11 proceedings;

12 (H) encourage settlement and the use of
13 alternative forms of dispute resolution;

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

16 (J) on the request of any party, disclose the
17 name, address, and phone number of each person interviewed or
18 consulted; and

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

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

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

25 (i) ensure balanced and impartial
26 representation by the amicus attorney; and

27 (ii) observe each child while in the care of

1 each party to the suit;

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

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

5 (ii) resides part-time or full-time in a
6 residence where a child who is the subject of the suit resides
7 part-time or full-time;

8 (C) visiting the residence of each party seeking
9 conservatorship or possession of or access to a child who is the
10 subject of the suit; or

11 (D) reviewing any information the court
12 determines is relevant; and

13 (3) is entitled to:

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

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

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

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

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

22 (F) participate in any case staffing concerning
23 the child conducted by the Department of Family and Protective
24 Services;

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

26 (H) make arguments during legal proceedings,
27 including:

1 (i) summarizing evidence; and
2 (ii) suggesting reasonable inferences and
3 deductions drawn from the evidence.

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

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

8 (2) inform the child in a developmentally appropriate
9 manner that the amicus attorney may use information the child
10 provides in assisting the court; and

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

14 (e) The disclosure required by Subsections (c)(1)(J) and
15 (K):

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

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

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

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

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

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

27 (4) except as required under Section

1 107.0265(c)(1)(J) or (K), be required to disclose the source of any
2 information;

3 (5) submit a report into evidence; or

4 (6) testify in court, except:

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

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

10 (b) Subsection (a) does not apply to the duty of an attorney
11 to report child abuse or neglect under Section [261.101](#).

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

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

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

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

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

21 (C) fails to perform duties under Section
22 107.0265 or ordered by the court;

23 (D) violates a standard of care under Section
24 107.026; or

25 (E) requests to be removed because a party to the
26 suit has prevented the amicus attorney from fulfilling the duties
27 of the amicus attorney.

1 SECTION 7. Section [107.005](#), Family Code, is repealed.

2 SECTION 8. The changes in law made by this Act apply only to
3 a suit affecting the parent-child relationship that is filed on or
4 after the effective date of this Act. A suit affecting the
5 parent-child relationship filed before the effective date of this
6 Act is governed by the law in effect on the date the suit was filed,
7 and the former law is continued in effect for that purpose.

8 SECTION 9. This Act takes effect September 1, 2025.