

## **BILL ANALYSIS**

C.S.H.B. 1815  
By: Goodman  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since the enactment of the Family Code in 1973, courts have had discretionary authority to appoint a guardian ad litem in any suit affecting the parent-child relationship (“SAPCR”). Additionally, Texas courts have been required to appoint an attorney ad litem to represent a child in a suit filed by the Department of Protective and Regulatory Services seeking either conservatorship or termination of parental rights on the basis of child abuse or neglect. Since 1997 the court must also appoint a guardian ad litem as well as an attorney ad litem for allegedly abused or neglected children; an attorney may be appointed to serve both roles, or an attorney may be appointed to serve as attorney ad litem, and a volunteer advocate may be appointed as the guardian ad litem.

The possibility of multiple appointments of individuals to a case, or alternatively appointment of either a lawyer or a layperson with the same title of guardian ad litem, has caused considerable confusion for lawyers and judges. Although the roles of the attorney ad litem and layperson guardian ad litem in abuse and neglect cases have been well-defined since 1997, major confusion remains in the nature and duties of a lawyer (or a nonlawyer) appointed to serve as guardian ad litem in a private custody case.

C.S.H.B.1815 clears up this confusion by providing definitions of the three roles of amicus ad litem, attorney ad litem and guardian ad litem, and of some of the unique terminology used in the appointments, and describing the powers and duties of both an attorney ad litem and the newly-created role denominated amicus attorney.

### **RULEMAKING AUTHORITY**

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **SECTION BY SECTION ANALYSIS**

**SECTION 1.** Amends Subchapters A, B, and C, Chapter 107 , Family Code, as follows:

Section 107.001 provides definitions of the three roles of amicus ad litem, attorney ad litem and guardian ad litem, and of some of the unique terminology used in the appointments. Section 107.002 continues the description of the powers and duties of a guardian ad litem in current law. These appointments are specifically limited to non-attorneys or to attorneys serving in the dual role of both guardian ad litem and attorney ad litem. Additional detail is supplied for the actions to be taken by a guardian ad litem in jury and non-jury trials.

Section 107.003 describes the powers and duties of both an attorney ad litem and the newly-created role denominated amicus attorney. The attorney ad litem is appointed to represent the child in an attorney-client relationship, while an amicus attorney is appointed to represent the best interests of the child. Both are authorized to perform the full range of lawyer functions. Sections 107.004 and 107.005 explain the distinctions between the two types of attorney. The first

section describes the duties of the attorney ad litem who has an attorney-client relationship with the child. Section 107.005 distinguishes the duties of an amicus attorney who is not bound by the child's expressed objectives of representation, but rather provides lawyering services to assist the court in determining the best interests of the child.

Section 107.006 provides that the attorneys and the guardian ad litem shall have access to information regarding the child, including all relevant records. A limitation is placed on access to the mental health record of a child at least 12 years of age insofar as it's privileged or confidential under other law. Section 107.007 states that both an amicus attorney and the attorney ad litem or an attorney serving in a dual role function as attorneys and may not testify, provide written reports to the court, or be compelled to produce work product.

Section 107.008 provides that an attorney ad litem or an attorney appointed in a dual role may sometimes be required to provide substituted judgment for a child if the child, because of young age or disability, is unable to formulate his or her own objectives of representation. Section 107.009 provides immunity from civil damages to guardians ad litem, attorneys ad litem, and amicus attorneys, except in situations in which actions were taken with conscious indifference, deliberate bad faith, or were grossly negligent. Section 107.010 provides that the court may appoint an attorney ad litem to represent an incapacitated person. This continues present law.

Section 107.011 provides for the mandatory appointment of a guardian ad litem in a suit brought by a government entity in a suit involving allegations of child abuse or neglect. This section also provides detailed instructions to the guardian ad litem regarding the duties and function of the guardian ad litem in suits brought by a governmental entity. Section 107.0125 describes the functions in a suit by a governmental entity by an attorney who is appointed in the dual role of both an attorney ad litem and a guardian ad litem. Section 107.013 is current law unchanged with regard to the functions of an attorney ad litem in a suit by a governmental entity.

Section 107.015 makes conforming amendments. Section 107.016 continues current law with regard to continued representation after a final order is rendered by a guardian ad litem or an attorney ad litem in a suit filed by a governmental entity. Section 107.017 prohibits the appointment of an amicus attorney in a suit filed by a governmental entity.

Section 107.021 is new law providing the discretionary appointment of an amicus attorney ad litem or guardian ad litem in a private law suit involving conservatorship of a child other than a suit filed by a governmental entity. The section also instructs the court to consider costs to the parties and the child's interest prior to making a discretionary appointment in a private conservatorship dispute. Section 107.022 prohibits the appointment of an attorney in a dual role or a volunteer advocate trained for abuse and neglect cases in a private dispute over conservatorship of a child.

Section 107.023 provides that attorneys fees shall be paid by the parties. In addition, if a professional other than attorney is appointed as guardian ad litem for the child, that person is entitled to a customary fee for that profession. Section 107.031 distinguishes between volunteer advocates who are appointed in cases involving alleged abuse and neglect and the potential appointment of a volunteer advocate whose training is to facilitate appointment as guardian ad litem in a

private conservatorship suit.

**SECTION 2.** This Act applies only to suits affecting the parent-child relationship filed on or after the effective date of the Act. Suits filed before the effective date are governed by the law in effect at the time of filing.

**SECTION 3.** This Act takes effect September 1, 2003.

**EFFECTIVE DATE**

September 1, 2003.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B.1815 modifies the original by amending Section 107.005(b) by adding new subsection (b)(6) and changing (b)(6) and (b)(7) in the original to (b)(7) and (b)(8) in the substitute. C.S.H.B.1815 amends Section 107.008(b) by allowing an attorney ad litem, or an attorney appointed in the dual role, who determines that a child cannot meaningfully formulate the child's expressed objectives of representation, to present a position that the attorney determines that will serve the best interests of the child. C.S.H.B.1815 modifies the original by deleting from Section 107.015(b) the provision allowing an order entered under this section to be enforced as child support against the parent of the child.