By: Goodman H.B. No. 1815

A BILL TO BE ENTITLED

AN ACT

relating to court-ordered representation in suits affecting the parent-child relationship.

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

SECTION 1. Subchapters A, B, and C, Chapter 107, Family Code, are amended to read as follows:

SUBCHAPTER A. COURT-ORDERED [~~GUARDIAN AD LITEM~~] REPRESENTATION IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

Sec. 107.001. DEFINITIONS. In this chapter:

(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.

(2) "Attorney ad litem" means an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.

(3) "Developmentally appropriate" means structured to account for a child's age, level of education, cultural background, and degree of language acquisition.

(4) "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental

entity.

(5) "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:

(A) a volunteer advocate appointed under Subchapter C;

(B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;

(C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(D) an attorney ad litem appointed to serve in the dual role. [~~APPOINTMENT OF GUARDIAN AD LITEM. (a) In a suit in which termination of the parent-child relationship is requested, the court or an associate judge shall appoint a guardian ad litem to represent the interests of the child immediately after the filing of the petition but before the full adversary hearing to ensure adequate representation of the child, unless:~~

[~~(1) the child is a petitioner;~~

[~~(2) an attorney ad litem has been appointed for the child; or~~

[~~(3) the court or an associate judge finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party.~~

[~~(b) In a suit filed by a governmental entity in which the entity requests the termination of the parent-child relationship or to be named conservator of a child, the court or an associate judge~~

~~shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing to ensure adequate representation of the child.~~

[~~(c) In any other suit, the court or an associate judge may appoint a guardian ad litem.~~

[~~(d) A guardian ad litem appointed under this section may be an attorney, a volunteer advocate appointed under Section 107.031, or another adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child.~~

[~~(e) The managing conservator may be appointed guardian ad litem if the managing conservator:~~

[~~(1) is not a parent of the child or a person petitioning for adoption of the child; and~~

[~~(2) has no personal interest in the suit.~~

[~~(f) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.~~]

Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD. (a) A guardian ad litem appointed for a child under this chapter [~~subchapter~~] is not a party to the suit but may:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best

interests [~~interest~~] of the child [~~for whom the guardian is appointed~~]; and

(2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 107.006.

(b) A guardian ad litem appointed for the child under this chapter [~~subchapter~~] shall:

(1) [~~,~~] within a reasonable time after the appointment, interview:

(A) [~~(1)~~] the child in a developmentally appropriate manner, if the child is four years of age or older; [~~and~~]

(B) [~~(2)~~] each person who has [~~individual that the guardian ad litem considers likely to have~~] significant knowledge of the child's history and condition, including any foster parent of the child; and

(C) the parties to the suit;

(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

(3) consider the child's expressed objectives of representation without being bound by those objectives;

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

(5) perform any specific task directed by the court.

(c) A guardian ad litem appointed for the child under this chapter [~~subchapter~~] is not a party to the suit but is entitled to:

(1) receive a copy of each pleading or other paper

filed with the court in the case in which the guardian ad litem is appointed;

(2) receive notice of each hearing in the case;

(3) participate in case staffings by an authorized agency concerning the child;

(4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;

(5) review and sign, or decline to sign, an [~~any~~] agreed order affecting the child; and

(6) explain the basis [~~testify in court, except as provided by Subsection (d), regarding the recommendations concerning the actions that the guardian ad litem considers to be in the best interest of the child, including giving reasons~~] for the guardian ad litem's opposition to the agreed order if the guardian ad litem does not agree to the terms of a proposed order.

(d) The court may compel the guardian ad litem to attend a trial or hearing and to testify as necessary for the proper disposition of the suit. [~~An attorney who is appointed as attorney ad litem and guardian ad litem for a child may not testify under Subsection (c)(6).~~]

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify or submit a report regarding the guardian ad litem's recommendations

regarding:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations. [~~An attorney who is appointed as attorney ad litem and guardian ad litem for a child shall:~~

[~~(1) become familiar with the American Bar Association's standards of practice for lawyers who represent children in abuse and neglect cases; and~~

[~~(2) comply with the requirements of the Texas Disciplinary Rules of Professional Conduct.~~]

(f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative [~~An attorney who is appointed as attorney ad litem and guardian ad litem for a child and who determines that a conflict exists by performing both roles shall:~~

[~~(1) withdraw as the child's guardian ad litem;~~

[~~(2) continue to serve as the child's attorney ad litem; and~~

[~~(3) request appointment of a new guardian ad litem for the child without revealing the reason a new appointment is required~~].

(g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the

earlier of:

(1) the date required by the scheduling order; or

(2) the 10th day before the date of the commencement of the trial.

(h) Disclosure to the jury of the contents of a guardian ad litem's report to the court is subject to the Texas Rules of Evidence.

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY. An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1) shall:

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

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

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

(iii) the parties to the suit;

(B) investigate the facts of the case to the extent the attorney considers appropriate;

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

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

(E) take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings; and

(F) encourage settlement and the use of alternative forms of dispute resolution;

(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

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

(B) receive notice of each hearing in the suit;

(C) participate in any case staffing concerning the child conducted by an authorized agency; and

(D) attend all legal proceedings in the suit

[~~IMMUNITY. (a) A guardian ad litem appointed under this subchapter is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.~~

[~~(b) Subsection (a) does not apply to a recommendation or opinion that is:~~

[~~(1) wilfully wrongful;~~

[~~(2) given with conscious indifference or reckless disregard to the safety of another;~~

[~~(3) given in bad faith or with malice; or~~

[~~(4) grossly negligent~~].

Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR

CHILD. Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall:

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

(2) advise the child;

(3) provide guidance to the child;

(4) represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem;

(5) consider the impact on the child in formulating the attorney ad litem's presentation of the child's expressed objectives of representation to the court; and

(6) become familiar with:

(A) the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases; and

(B) the suggested amendments to those standards adopted by the National Association of Counsel for Children.

Sec. 107.005. ADDITIONAL DUTIES OF AMICUS ATTORNEY. (a) Subject to any specific limitation in the order of appointment, an amicus attorney shall advocate the best interests of the child after reviewing the facts and circumstances of the case. Notwithstanding Subsection (b), in determining the best interests of the child, an amicus attorney is not bound by the child's

expressed objectives of representation.

(b) An amicus attorney shall:

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

(2) with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(3) consider the impact on the child in formulating the amicus attorney's presentation of the child's expressed objectives of representation to the court;

(4) review and sign, or decline to sign, an agreed order affecting the child;

(5) explain the basis for the amicus attorney's opposition to the agreed order if the amicus attorney does not agree to the terms of a proposed order;

(6) explain the role of the amicus attorney to the child; and

(7) inform the child that the amicus attorney may use information that the child provides in providing assistance to the court.

Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD. (a) Except as provided by Subsection (c), in conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to:

(1) the child; and

(2) any otherwise privileged or confidential information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, drug and alcohol treatment, or medical or mental health evaluation or treatment of the child, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

(c) A mental health record of a child at least 12 years of age that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law [~~GUARDIAN AD LITEM AND ATTORNEY AD LITEM POOL; QUALIFICATIONS. (a) The local administrative district judge in each county in a Department of Protective and Regulatory Services region for child protective services that contains a county having a population of 2.8 million or more shall establish a pool from which guardians ad litem and attorneys ad litem are appointed for proceedings in the district courts of the county. A local administrative district judge in any other county may establish a pool from which guardians ad litem and attorneys ad litem are appointed for proceedings in the district courts of that county. To be eligible for a pool established under this subsection, a person must:~~

[~~(1) complete training approved by the State Bar of Texas in family law and the responsibilities of ad litems;~~

[~~(2) complete as part of the person's annual continuing legal education requirement not fewer than three hours in family law issues; and~~

[~~(3) meet other requirements established by the local administrative district judge.~~

[~~(b) Before appointment as a guardian ad litem or an attorney ad litem, the person must have read, acknowledged by signing, and filed with the local administrative judge a written statement prepared by the local administrative district judge that lists the responsibilities of an ad litem, some or all of which may be appropriate to the person's specific case. The court shall retain a copy of the acknowledgment for two years. To continue to receive appointments under this section, the person must execute a new statement at least every two years.~~

[~~(c) A party to a proceeding in which a person is appointed as a guardian ad litem or an attorney ad litem may object to appointment of the person at any time before the date of the trial of the proceeding. A party may object under this subsection by filing a written motion stating the grounds and facts on which the party believes that the person appointed lacks objectivity or is failing to fulfill the person's responsibilities as an ad litem as outlined in the written statement of ad litem responsibilities. The court shall promptly rule on an objection raised under this subsection and shall order the removal of the guardian ad litem or attorney ad litem if the court finds that the objection is justifiable.~~

[~~(d) A person appointed as a guardian ad litem or attorney~~

~~ad litem shall complete and submit to the court a voucher or claim for payment that includes the fees charged and hours worked by the ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.~~

[~~(c) The Bureau of Vital Statistics may compile information submitted under Subsection (d) for a county that maintains that information on an electronic database. On the request of the bureau, the county shall provide the information. Information compiled by the bureau under this section shall be made available to the Department of Protective and Regulatory Services~~].

Sec. 107.007. ATTORNEY WORK PRODUCT AND TESTIMONY. (a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not:

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

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

(3) submit a report into evidence; or

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

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

Sec. 107.008. SUBSTITUTED JUDGMENT OF ATTORNEY FOR CHILD. (a) An attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case because the child:

(1) lacks sufficient maturity to understand and form an attorney-client relationship with the attorney;

(2) despite appropriate legal counseling, continues to express objectives of representation that would be seriously injurious to the child; or

(3) for any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

(b) Except as provided by Subsection (c), an attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation under Subsection (a) may present the child's objectives of representation to the court based on the attorney's opinion regarding the best interests of the child.

(c) An attorney ad litem or attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation under Subsection (a) shall, if a guardian ad litem has been appointed for the child:

(1) consult with the guardian ad litem; and

(2) present the child's objectives of representation to the court based on the guardian ad litem's opinion regarding the best interests of the child.

Sec. 107.009. IMMUNITY. (a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.

(b) Subsection (a) does not apply to an action taken or a recommendation or opinion given:

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

(2) in bad faith or with malice; or

(3) that is grossly negligent or wilfully wrongful.

Sec. 107.010. DISCRETIONARY APPOINTMENT OF ATTORNEY AD LITEM FOR INCAPACITATED PERSON. The court may appoint an attorney to serve as an attorney ad litem for a person entitled to service of citation in a suit if the court finds that the person is incapacitated. The attorney ad litem shall follow the person's expressed objectives of representation and, if appropriate, refer the proceeding to the proper court for guardianship proceedings.

SUBCHAPTER B. APPOINTMENTS IN CERTAIN SUITS [~~ATTORNEY AD LITEM~~]

PART 1. APPOINTMENTS IN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.011. MANDATORY [~~DISCRETIONARY~~] APPOINTMENT OF GUARDIAN [~~ATTORNEY~~] AD LITEM. (a) Except as otherwise provided by this subchapter, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing. [~~An associate judge shall recommend the appointment of an attorney ad litem for any party in a case in which the associate judge deems representation necessary to protect the interests of the child who is the subject matter of the suit.~~]

(b) The guardian ad litem appointed for a child under this

section may be:

(1) a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C;

(2) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(3) an attorney appointed in the dual role [~~court shall appoint an attorney ad litem for any party in a case in which the court deems representation necessary to protect the interests of the child who is the subject matter of the suit~~].

(c) The court may not appoint a guardian ad litem in a suit filed by a governmental entity if an attorney is appointed in the dual role unless the court appoints another person to serve as guardian ad litem for the child and restricts the role of the attorney to acting as an attorney ad litem for the child.

(d) The court may appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. An attorney appointed solely as a guardian ad litem:

(1) may take only those actions that may be taken by a nonattorney guardian ad litem; and

(2) may not:

(A) perform legal services in the case; or

(B) take any action that is restricted to a licensed attorney, including engaging in discovery other than as a

witness, making opening and closing statements, or examining witnesses.

Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR CHILD. In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child.

Sec. 107.0125. APPOINTMENT OF ATTORNEY IN DUAL ROLE. (a) In order to comply with the mandatory appointment of a guardian ad litem under Section 107.011 and the mandatory appointment of an attorney ad litem under Section 107.012, the court may appoint an attorney to serve in the dual role.

(b) If the court appoints an attorney to serve in the dual role under this section, the court may at any time during the pendency of the suit appoint another person to serve as guardian ad litem for the child and restrict the attorney to acting as an attorney ad litem for the child.

(c) An attorney appointed to serve in the dual role may request the court to appoint another person to serve as guardian ad litem for the child. If the court grants the attorney's request, the attorney shall serve only as the attorney ad litem for the child.

(d) Unless the court appoints another person as guardian ad litem in a suit filed by a governmental entity, an appointment of an attorney to serve as an attorney ad litem in a suit filed by a

governmental entity is an appointment to serve in the dual role regardless of the terminology used in the appointing order.

Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT. (a) In a suit filed by a governmental entity in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an indigent parent of the child who responds in opposition to the termination;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict, the court may appoint an [~~a single~~] attorney ad litem to represent the interests of both parents.

[~~Sec. 107.0135. APPOINTMENT OF ATTORNEY AD LITEM NOT REQUIRED; CERTAIN CASES. A court is not required to appoint an attorney ad litem in a proceeding in which:~~

[~~(1) a suit for the dissolution of a marriage is~~

~~uncontested; or~~

[~~(2) the issues of possession of and access to a child are agreed to by both parents.~~

[~~Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD. (a) An attorney ad litem appointed under this subchapter to represent a child:~~

[~~(1) shall investigate to the extent the attorney ad litem considers appropriate to determine the facts of the case;~~

[~~(2) shall obtain and review copies of all of the child's relevant medical, psychological, and school records;~~

[~~(3) may call, examine, or cross-examine witnesses; and~~

[~~(4) shall become familiar with the American Bar Association's standards of practice for lawyers who represent children in abuse and neglect cases.~~

[~~(b) An attorney ad litem appointed to represent a child shall within a reasonable time after the appointment:~~

[~~(1) interview the child if the child is four years of age or older;~~

[~~(2) interview individuals with significant knowledge of the child's history and condition, including the child's foster parents; and~~

[~~(3) interview all parties to the suit.~~]

Sec. 107.015. ATTORNEY [~~AD LITEM~~] FEES. (a) An attorney appointed under this chapter to serve as an attorney ad litem for a child, an attorney in the dual role, [~~to represent a child~~] or an attorney ad litem for a parent [~~as authorized by this subchapter~~] is

entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

(b) If the court [~~or associate judge~~] determines that one or more of the parties are able to defray the [~~costs of an attorney ad litem's~~] fees and expenses of an attorney ad litem or guardian ad litem for the child as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court [~~or associate judge~~] may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the payee [~~attorney ad litem~~] on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties. An order entered under this section may be enforced as child support against a parent of the child.

(c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity in which termination of [~~to terminate~~] the parent-child relationship is requested shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.

(d) A person appointed as a guardian ad litem or attorney ad

litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

Sec. 107.016. CONTINUED REPRESENTATION. In a suit filed [~~brought~~] by a governmental entity in which [~~seeking~~] termination of the parent-child relationship or appointment of the entity as conservator of the child is requested, an order appointing the Department of Protective and Regulatory Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem [~~appointment~~] for the child for any period set by the court.

Sec. 107.017. APPOINTMENT OF AMICUS ATTORNEY PROHIBITED. The court may not appoint a person to serve as an amicus attorney in a suit filed by a governmental entity under this chapter.

PART 2. APPOINTMENTS IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.021. DISCRETIONARY APPOINTMENTS. (a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity, the court may appoint:

(1) an amicus attorney;

(2) an attorney ad litem; or

(3) a guardian ad litem.

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

(1) shall:

(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and

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

(2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child; and

(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.

Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit other than a suit filed by a governmental entity, the court may not appoint:

(1) an attorney to serve in the dual role; or

(2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity.

Sec. 107.023. FEES IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY. (a) In a suit other than a suit filed by a governmental entity, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

(1) an attorney appointed as an amicus attorney or as

an attorney ad litem for the child; and

(2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate or a person employed by a governmental entity.

(b) The court shall:

(1) determine the fees and expenses of an amicus attorney, an attorney ad litem, or a guardian ad litem by reference to the reasonable and customary fees for similar services in the county of jurisdiction;

(2) order a reasonable cost deposit to be made at the time the court makes the appointment; and

(3) before the final hearing, order an additional amount to be paid to the credit of a trust account for the use and benefit of the amicus attorney, attorney ad litem, or guardian ad litem.

(c) A court may not award costs, fees, or expenses to an amicus attorney, attorney ad litem, or guardian ad litem against the state, a state agency, or a political subdivision of the state under this part.

SUBCHAPTER C. APPOINTMENT OF VOLUNTEER ADVOCATES [~~OTHER COURT APPOINTMENTS~~]

Sec. 107.031. VOLUNTEER ADVOCATES. (a) In a suit filed by a governmental entity, the court may appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual [~~person~~] who has received the

court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for [~~on behalf of~~] the child.

(b) In a suit other than a suit filed by a governmental entity, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023 [~~addition, the court may appoint a group of court-certified volunteers to serve as an administrative review board to advise the court as to the conservatorship appointment and the placement of the child by the Department of Protective and Regulatory Services or authorized agency in substitute care~~].

[~~(c) A court-appointed volunteer, a board member or employee of a volunteer advocate charitable organization, or a member of an administrative review board is not liable for civil damages for a recommendation made or opinion rendered while serving or having served as a court-appointed volunteer, board member or employee of a volunteer advocate charitable organization, or member of an administrative review board under this section unless the act or failure to act is wilfully wrongful, committed with conscious indifference or reckless disregard for the safety of another,~~

~~committed in bad faith or with malice, or is grossly negligent.~~

[~~(d) This section does not prohibit the court from appointing as a guardian ad litem for a child under Section 107.001 a court-certified volunteer advocate appointed for the child under this section.~~

[~~(e) A court-certified volunteer advocate appointed under this section for a child with a disability may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, if:~~

[~~(1) the child is in the conservatorship of the Department of Protective and Regulatory Services;~~

[~~(2) the volunteer advocate is serving as guardian ad litem for the child; and~~

[~~(3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code.~~]

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

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