

BILL ANALYSIS

C.S.H.B. 307
By: Goodman
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since the enactment of the Family Code in 1973, Texas courts have had discretionary authority to appoint a guardian ad litem in any suit affecting the parent-child relationship. Additionally, since 1979 courts have been required to appoint an attorney ad litem to represent a child in a suit filed by the Department of Family and Protective Services seeking either conservatorship or termination of parental rights on the basis of child abuse or neglect. Since 1997 in DFPS cases the courts must also appoint a guardian ad litem or an attorney serving in both roles. The guardian ad litem role is often filled by a volunteer advocate. In private custody cases, discretionary appointment of attorneys with the title of “guardian ad litem” was reasonably commonplace. The exact requirements of the appointment were admittedly ambiguous.

Until the enactment of C.S.H.B. 1815 in the 78th Session, 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, 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 were well-defined after comprehensive legislation enacted in 1997, major confusion remained regarding the nature and duties of a lawyer (or a nonlawyer) appointed to serve as guardian ad litem in a private custody case. That confusion was greatly reduced as of September 1, 2001, when a new category, “amicus attorney,” was created in Chapter 107 of the Family Code. The amicus attorney is directed to provide legal expertise in private custody disputes in order to assist the court in determining the best interest of the child involved in the litigation.

C.S.H.B. 1815 more clearly defined the three roles of amicus attorney, attorney ad litem and guardian ad litem; moreover, the term “guardian ad litem” was restricted to nonlawyers. C.S.H.B. 307 adds further clarification to this complex issue.

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.

ANALYSIS

SECTION 1. Clarifies that the guardian ad litem does not “represent” the child, eliminates a redundant clause, and makes grammatical corrections.

SECTION 2. Further delineates the powers and duties of an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court, including recodification of certain duties currently set forth in Section 107.004, Family Code.

SECTION 3. Deletes certain provisions that would be recodified by this bill, and further defines the duties and standards to be followed by an attorney ad litem appointed for a child.

SECTION 4. Deletes certain provisions that would be recodified by this bill and other provisions, and further defines the duties and standards to be followed by an amicus attorney.

SECTION 5. Amends provisions relating to access to information relating to a child by an attorney ad litem, guardian ad litem, or amicus attorney.

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SECTION 6. Clarifies the relationship between, and responsibilities of, an attorney ad litem and the guardian ad litem.

SECTION 7. Clarifies provisions relating to liability for civil damages for a guardian ad litem, an attorney ad litem, or an amicus attorney.

SECTION 8. Clarifies and adds provisions relating discretionary appointments by the court.

SECTION 9. Further defines provisions relating to certain prohibited appointments.

SECTION 10. Amends provisions relating to fees that may be awarded.

SECTION 11. Amends provisions relating to volunteer advocates.

SECTIONS 12-23. Amend numerous sections of the Family Code to add definitions, make conforming amendments, and clarify the services to be performed by an amicus attorney, an attorney ad litem, and a guardian ad litem.

SECTION 24. Adds a requirement that child's guardian ad litem is to be provided with permanency progress reports.

SECTION 25-28. Indicate the provisions of the Act that apply prospectively.

SECTION 29. Effective date.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the provisions in the original bill relating to the requisites of a petition.

The original bill struck a provision currently in Section 203.004(a), Family Code, relating to the power of a domestic relations office to represent a child as a guardian ad litem. The substitute restores that provision.