

By: Goodman

H.B. No. 307

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. Sections 107.002(b), (c), and (e), Family Code,
6 are amended to read as follows:

7 (b) A guardian ad litem appointed for the child under this
8 chapter shall:

9 (1) within a reasonable time after the appointment,
10 interview:

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

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

16 (C) the parties to the suit;

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

19 (3) consider the child's expressed objectives [~~of~~
20 ~~representation~~] without being bound by those objectives;

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

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

24 (c) A guardian ad litem appointed for the child under this

1 chapter [~~is not a party to the suit but~~] is entitled to:

2 (1) receive a copy of each pleading or other paper
3 filed with the court in the case in which the guardian ad litem is
4 appointed;

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

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

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

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

14 (6) explain the basis for the guardian ad litem's
15 opposition to the agreed order if the guardian ad litem does not
16 agree to the terms of a proposed order.

17 (e) Unless the guardian ad litem is an attorney who has been
18 appointed in the dual role and subject to the Texas Rules of
19 Evidence, the court shall ensure in a hearing or in a trial on the
20 merits that a guardian ad litem has an opportunity to testify
21 regarding, and is permitted to [ex] submit a report regarding, the
22 guardian ad litem's recommendations relating to [regarding]:

23 (1) the best interests of the child; and

24 (2) the bases for the guardian ad litem's
25 recommendations.

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

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

5 (1) shall:

6 (A) subject to Rules 4.02, 4.03, and ~~[Rule]~~ 4.04,
7 Texas Disciplinary Rules of Professional Conduct, and within a
8 reasonable time after the appointment, interview:

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

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

14 (iii) the parties to the suit;

15 (B) seek to elicit in a developmentally
16 appropriate manner the child's expressed objectives of
17 representation;

18 (C) consider the impact on the child in
19 formulating the attorney's presentation of the child's expressed
20 objectives of representation to the court;

21 (D) investigate the facts of the case to the
22 extent the attorney considers appropriate;

23 (E) ~~[(C)]~~ obtain and review copies of relevant
24 records relating to the child as provided by Section 107.006;

25 (F) ~~[(D)]~~ participate in the conduct of the
26 litigation to the same extent as an attorney for a party;

27 (G) ~~[(E)]~~ take any action consistent with the

1 child's interests that the attorney considers necessary to expedite
2 the proceedings; ~~and~~

3 (H) [~~F~~] encourage settlement and the use of
4 alternative forms of dispute resolution; and

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

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

10 (3) is entitled to:

11 (A) request clarification from the court if the
12 role of the attorney is ambiguous;

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

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

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

18 (E) [~~B~~] receive notice of each hearing in the
19 suit;

20 (F) [~~C~~] participate in any case staffing
21 concerning the child conducted by an authorized agency; and

22 (G) [~~D~~] attend all legal proceedings in the
23 suit.

24 SECTION 3. Section 107.004, Family Code, is amended to read
25 as follows:

26 Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR
27 CHILD. Except as otherwise provided by this chapter, the attorney

1 ad litem appointed for a child shall, in a developmentally
2 appropriate manner:

3 (1) [~~seek to elicit in a developmentally appropriate~~
4 ~~manner the child's expressed objectives of representation,~~

5 [~~2~~] advise the child;

6 (2) [~~3~~] provide guidance to the child,

7 [~~4~~] represent the child's expressed objectives of
8 representation and follow the child's expressed objectives of
9 representation during the course of litigation if the attorney ad
10 litem determines that the child is competent to understand the
11 nature of an attorney-client relationship and has formed that
12 relationship with the attorney ad litem;

13 [~~5~~ ~~consider the impact on the child in formulating~~
14 ~~the attorney ad litem's presentation of the child's expressed~~
15 ~~objectives of representation to the court,~~] and

16 (3) as appropriate, considering the nature of the
17 appointment, [~~6~~] become familiar with[+

18 [~~A~~] the American Bar Association's standards
19 of practice for attorneys who represent children in abuse and
20 neglect cases, [~~and~~

21 [~~B~~] the suggested amendments to those
22 standards adopted by the National Association of Counsel for
23 Children, and the American Bar Association's standards of practice
24 for attorneys who represent children in custody cases.

25 SECTION 4. Section 107.005(b), Family Code, is amended to
26 read as follows:

27 (b) An amicus attorney shall, in a developmentally

1 appropriate manner:

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

4 [~~(2)~~] with the consent of the child, ensure that the
5 child's expressed objectives of representation are made known to
6 the court;

7 (2) [~~(3)~~] ~~consider the impact on the child in~~
8 ~~formulating the amicus attorney's presentation of the child's~~
9 ~~expressed objectives of representation to the court;~~

10 [~~(4)~~] ~~review and sign, or decline to sign, an agreed~~
11 ~~order affecting the child;~~

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

15 [~~(6)~~] explain the role of the amicus attorney to the
16 child; [~~and~~]

17 (3) [~~(7)~~] inform the child that the amicus attorney
18 may use information that the child provides in providing assistance
19 to the court; and

20 (4) become familiar with the American Bar
21 Association's standards of practice for attorneys who represent
22 children in custody cases.

23 SECTION 5. Section 107.006, Family Code, is amended to read
24 as follows:

25 Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO
26 CHILD. (a) Except as provided by Subsection (c), in conjunction
27 with an appointment under this chapter, other than an appointment

1 of an attorney ad litem for an adult or a parent, the court shall
2 issue an order authorizing the attorney ad litem, guardian ad litem
3 for the child, or amicus attorney to have immediate access to [+]

4 [~~1~~] the child[+] and

5 [~~2~~] any [~~otherwise privileged or confidential~~]
6 information relating to the child.

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

15 (c) A medical, mental health, or drug or alcohol treatment
16 record of a child [~~at least 12 years of age~~] that is privileged or
17 confidential under other law may be released to a person appointed
18 under Subsection (a) only in accordance with the other law.

19 SECTION 6. Sections 107.008(b) and (c), Family Code, are
20 amended to read as follows:

21 (b) An [~~Except as provided by Subsection (c), an~~] attorney
22 ad litem or an attorney appointed in the dual role who determines
23 that the child cannot meaningfully formulate the child's expressed
24 objectives of representation [~~under Subsection (a)~~] may present to
25 the court a position that the attorney determines will serve the
26 best interests of the child.

27 (c) If a guardian ad litem has been appointed for the child

1 in a suit filed by a governmental entity requesting termination of
2 the parent-child relationship or appointment of the entity as
3 conservator of the child, an [An] attorney ad litem [~~or attorney~~
4 ~~appointed in the dual role]~~ who determines that the child cannot
5 meaningfully formulate the child's expressed objectives of
6 representation [~~under Subsection (a) shall, if a guardian ad litem~~
7 ~~has been appointed for the child]:~~

8 (1) shall consult with the guardian ad litem and,
9 without being bound by the guardian ad litem's opinion or
10 recommendation, ensure that the guardian ad litem's opinion and
11 basis for any recommendation regarding the best interests of the
12 child are presented to the court; and

13 (2) may present to the court a position that the
14 attorney determines will serve [~~present the child's objectives of~~
15 ~~representation to the court based on the guardian ad litem's~~
16 ~~opinion regarding]~~ the best interests of the child.

17 SECTION 7. Section 107.009, Family Code, is amended to read
18 as follows:

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

24 (b) Subsection (a) does not apply to an action taken, ~~[or]~~ a
25 recommendation made, or an opinion given:

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

1 (2) in bad faith or with malice; or

2 (3) that is grossly negligent or wilfully wrongful.

3 SECTION 8. Section 107.021, Family Code, is amended to read
4 as follows:

5 Sec. 107.021. DISCRETIONARY APPOINTMENTS. (a) In a suit in
6 which the best interests of a child are at issue, other than a suit
7 filed by a governmental entity requesting termination of the
8 parent-child relationship or appointment of the entity as
9 conservator of the child, the court may appoint one of the
10 following:

11 (1) an amicus attorney;

12 (2) an attorney ad litem; or

13 (3) a guardian ad litem.

14 (a-1) In a suit requesting termination of the parent-child
15 relationship that is not filed by a governmental entity, the court
16 shall, unless the court finds that the interests of the child will
17 be represented adequately by a party to the suit whose interests are
18 not in conflict with the child's interests, appoint one of the
19 following:

20 (1) an amicus attorney; or

21 (2) an attorney ad litem.

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

24 (1) shall:

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

27 (B) balance the child's interests against the

1 cost to the parties that would result from an appointment by taking
2 into consideration the cost of available alternatives for resolving
3 issues without making an appointment;

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

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

11 SECTION 9. Section 107.022, Family Code, is amended to read
12 as follows:

13 Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit
14 other than a suit filed by a governmental entity requesting
15 termination of the parent-child relationship or appointment of the
16 entity as conservator of the child, the court may not appoint:

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

18 (2) a volunteer advocate to serve as guardian ad litem
19 for a child unless the training of the volunteer advocate is
20 designed for participation in suits other than suits filed by a
21 governmental entity requesting termination of the parent-child
22 relationship or appointment of the entity as conservator of the
23 child.

24 SECTION 10. Section 107.023, Family Code, is amended by
25 amending Subsection (a) and adding Subsection (d) to read as
26 follows:

27 (a) In a suit other than a suit filed by a governmental

1 entity requesting termination of the parent-child relationship or
2 appointment of the entity as conservator of the child, in addition
3 to the attorney's fees that may be awarded under Chapter 106, the
4 following persons are entitled to reasonable fees and expenses in
5 an amount set by the court and ordered to be paid by one or more
6 parties to the suit:

7 (1) an attorney appointed as an amicus attorney or as
8 an attorney ad litem for the child; and

9 (2) a professional who holds a relevant professional
10 license and who is appointed as guardian ad litem for the child,
11 other than a volunteer advocate.

12 (d) The court may determine that fees awarded under this
13 subchapter to an amicus attorney, an attorney ad litem for the
14 child, or a guardian ad litem for the child are necessities for the
15 benefit of the child.

16 SECTION 11. Section 107.031, Family Code, is amended to
17 read as follows:

18 Sec. 107.031. VOLUNTEER ADVOCATES. (a) In a suit filed by
19 a governmental entity requesting termination of the parent-child
20 relationship or appointment of the entity as conservator of the
21 child, the court may appoint a charitable organization composed of
22 volunteer advocates whose charter mandates the provision of
23 services to allegedly abused and neglected children or an
24 individual who has received the court's approved training regarding
25 abused and neglected children and who has been certified by the
26 court to appear at court hearings as a guardian ad litem for the
27 child or as a volunteer advocate for the child.

1 (b) In a suit other than a suit filed by a governmental
2 entity requesting termination of the parent-child relationship or
3 appointment of the entity as conservator of the child, the court may
4 appoint a charitable organization composed of volunteer advocates
5 whose training provides for the provision of services in private
6 custody disputes or a person who has received the court's approved
7 training regarding the subject matter of the suit and who has been
8 certified by the court to appear at court hearings as a guardian ad
9 litem for the child or as a volunteer advocate for the child. A
10 person appointed under this subsection is not entitled to fees
11 under Section 107.023.

12 (c) A court-certified volunteer advocate appointed under
13 this section may be assigned to act as a surrogate parent for the
14 child, as provided by 20 U.S.C. Section 1415(b), if:

15 (1) the child is in the conservatorship of the
16 Department of Family and Protective Services;

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

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

21 SECTION 12. Section 2.103(e), Family Code, is amended to
22 read as follows:

23 (e) The court shall appoint an amicus attorney or an
24 attorney [~~a guardian~~] ad litem to represent the minor in the
25 proceeding [~~and to speak for or against the petition in the manner~~
26 ~~the guardian ad litem believes to be in the best interest of the~~
27 ~~minor~~]. The court shall specify a fee to be paid by the minor for

1 the services of the amicus attorney or attorney [~~guardian~~] ad
2 litem. The fee shall be collected in the same manner as other costs
3 of the proceeding.

4 SECTION 13. The heading to Section 31.002, Family Code, is
5 amended to read as follows:

6 Sec. 31.002. REQUISITES OF PETITION; NOTICE
7 [~~VERIFICATION~~].

8 SECTION 14. Section 31.002(b), Family Code, is amended to
9 read as follows:

10 (b) Notice of the filing of the petition must be provided to
11 a [A] parent of the petitioner or, [must verify the petition, except
12 ~~that~~ if a managing conservator or guardian of the person has been
13 appointed, to the managing conservator or guardian [the petition
14 ~~must be verified by that person]. Notice is not required to be
15 provided if [If] the person entitled to notice under this
16 subsection [who is to verify the petition] is unavailable or that
17 person's whereabouts are unknown[, the guardian ad litem shall
18 ~~verify the petition].~~~~

19 SECTION 15. Section 31.004, Family Code, is amended to read
20 as follows:

21 Sec. 31.004. REPRESENTATION OF PETITIONER [~~GUARDIAN AD~~
22 ~~LITEM~~]. The court shall appoint an amicus attorney or attorney [a
23 ~~guardian~~] ad litem to represent the interest of the petitioner at
24 the hearing.

25 SECTION 16. Chapter 101, Family Code, is amended by adding
26 Sections 101.0017, 101.0018, and 101.0145 to read as follows:

27 Sec. 101.0017. AMICUS ATTORNEY. "Amicus attorney" has the

1 meaning assigned by Section 107.001.

2 Sec. 101.0018. ATTORNEY AD LITEM. "Attorney ad litem" has
3 the meaning assigned by Section 107.001.

4 Sec. 101.0145. GUARDIAN AD LITEM. "Guardian ad litem" has
5 the meaning assigned by Section 107.001.

6 SECTION 17. Section 105.004, Family Code, is amended to
7 read as follows:

8 Sec. 105.004. PREFERENTIAL SETTING. After a hearing, the
9 court may:

10 (1) grant a motion filed by a party or by the amicus
11 attorney or attorney [~~or guardian~~] ad litem for the child for a
12 preferential setting for a trial on the merits; and

13 (2) give precedence to that hearing over other civil
14 cases if the court finds that the delay created by ordinary
15 scheduling practices will unreasonably affect the best interest of
16 the child.

17 SECTION 18. Section 160.608(c), Family Code, is amended to
18 read as follows:

19 (c) In a proceeding involving the application of this
20 section, a child who is a minor or is incapacitated must be
21 represented by an amicus attorney or attorney [~~a guardian~~] ad
22 litem.

23 SECTION 19. Section 160.612(b), Family Code, is amended to
24 read as follows:

25 (b) The court shall appoint an amicus attorney or attorney
26 ad litem to represent a child who is a minor or is incapacitated if
27 the child is a party or the court finds that the interests of the

1 child are not adequately represented.

2 SECTION 20. Section 161.202, Family Code, is amended to
3 read as follows:

4 Sec. 161.202. PREFERENTIAL SETTING. In a termination suit,
5 after a hearing, the court shall grant a motion for a preferential
6 setting for a final hearing on the merits filed by a party to the
7 suit or by the amicus attorney or attorney [~~or guardian~~] ad litem
8 for the child and shall give precedence to that hearing over other
9 civil cases if:

10 (1) termination would make the child eligible for
11 adoption; and

12 (2) discovery has been completed or sufficient time
13 has elapsed since the filing of the suit for the completion of all
14 necessary and reasonable discovery if diligently pursued.

15 SECTION 21. Section 203.004(a), Family Code, is amended to
16 read as follows:

17 (a) A domestic relations office may:

18 (1) collect and disburse child support payments that
19 are ordered by a court to be paid through a domestic relations
20 registry;

21 (2) maintain records of payments and disbursements
22 made under Subdivision (1);

23 (3) file a suit, including a suit to:

24 (A) establish paternity;

25 (B) enforce a court order for child support or
26 for possession of and access to a child; and

27 (C) modify or clarify an existing child support

1 order;

2 (4) provide an informal forum in which:

3 (A) mediation is used to resolve disputes in an
4 action under Subdivision (3); or

5 (B) an agreed repayment schedule for delinquent
6 child support is negotiated as an alternative to filing a suit to
7 enforce a court order for child support under Subdivision (3);

8 (5) prepare a court-ordered social study;

9 (6) represent a child as an amicus attorney or
10 attorney [~~guardian~~] ad litem in a suit in which:

11 (A) termination of the parent-child relationship
12 is sought; or

13 (B) conservatorship of or access to a child is
14 contested;

15 (7) serve as a friend of the court;

16 (8) provide predivorce counseling ordered by a court;

17 (9) provide community supervision services under
18 Chapter 157;

19 (10) provide information to assist a party in
20 understanding, complying with, or enforcing the party's duties and
21 obligations under Subdivision (3); and

22 (11) provide, directly or through a contract,
23 visitation services, including supervision of court-ordered
24 visitation, visitation exchange, or other similar services.

25 SECTION 22. Section 231.109(e), Family Code, is amended to
26 read as follows:

27 (e) An attorney employed by the Title IV-D agency or as

1 otherwise provided by this chapter may not be appointed or act as an
2 amicus attorney [~~a guardian ad litem~~] or attorney ad litem for a
3 child or another party.

4 SECTION 23. Section 235.001(b), Family Code, is amended to
5 read as follows:

6 (b) The state case registry shall provide to a custodial
7 parent under Subsection (a) who makes a request for information or,
8 to the extent provided by federal law, to an amicus attorney,
9 attorney ad litem, friend of the court, guardian ad litem, or
10 domestic relations office designated by the parent any information
11 in the registry required by 42 U.S.C. Section 654a(e) concerning
12 the parent's case.

13 SECTION 24. Section 235.002, Family Code, is amended to
14 read as follows:

15 Sec. 235.002. REQUEST TO INCLUDE CASE IN REGISTRY. The case
16 of a custodial parent whose case would otherwise not be included in
17 the state case registry under 42 U.S.C. Section 654a may be included
18 in the state case registry by making a written request to the
19 registry either directly or through an amicus attorney, attorney ad
20 litem, friend of the court, guardian ad litem, or domestic
21 relations office designated by the custodial parent. The request
22 must be accompanied by a certified copy of the court order requiring
23 the payment of child support.

24 SECTION 25. Section 263.303(a), Family Code, is amended to
25 read as follows:

26 (a) Not later than the 10th day before the date set for each
27 permanency hearing other than the first permanency hearing, the

1 department or other authorized agency shall file with the court and
2 provide to each party, the child's attorney ad litem, the child's
3 guardian ad litem, and the child's volunteer advocate a permanency
4 progress report unless the court orders a different period for
5 providing the report.

6 SECTION 26. The changes in law made by this Act to Chapter
7 107, Family Code, apply only to a suit affecting the parent-child
8 relationship filed on or after the effective date of this Act. A
9 suit filed before the effective date of this Act is governed by the
10 law in effect on the date the suit was filed, and the former law is
11 continued in effect for that purpose.

12 SECTION 27. The changes in law made by this Act to Section
13 2.103, Family Code, apply only to a suit under that section filed on
14 or after the effective date of this Act. A suit filed before the
15 effective date of this Act is governed by the law in effect on the
16 date the suit was filed, and the former law is continued in effect
17 for that purpose.

18 SECTION 28. The changes in law made by this Act to Sections
19 31.002 and 31.004, Family Code, apply only to a suit under Chapter
20 31, Family Code, filed on or after the effective date of this Act. A
21 suit filed before the effective date of this Act is governed by the
22 law in effect on the date the suit was filed, and the former law is
23 continued in effect for that purpose.

24 SECTION 29. The changes in law made by this Act to Sections
25 160.608 and 160.612, Family Code, apply only to a proceeding under
26 Subchapter G, Chapter 160, Family Code, filed on or after the
27 effective date of this Act. A proceeding filed before the effective

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1 date of this Act is governed by the law in effect on the date the
2 proceeding was filed, and the former law is continued in effect for
3 that purpose.

4 SECTION 30. This Act takes effect September 1, 2005.