

By: Raymond

H.B. No. 2347

A BILL TO BE ENTITLED

AN ACT

relating to guardians ad litem.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. GUARDIAN AD LITEM

Sec. 135.001. DEFINITIONS. In this chapter:

(1) "Incapacitated person" means:

(A) a minor;

(B) an adult individual who, because of a physical or mental condition, is substantially unable to:

(i) provide the person's own food, clothing, or shelter;

(ii) care for the person's own physical health; or

(iii) manage the person's own financial affairs;

(C) a person who is mentally, physically, or legally incompetent or has been judicially declared incompetent; or

(D) a person who must have a guardian appointed to receive funds due the person from any governmental source.

(2) "Minor" has the meaning assigned by Section 601, Texas Probate Code.

Sec. 135.002. APPOINTMENT OF GUARDIAN AD LITEM. (a) The

1 court shall appoint a guardian ad litem for an incapacitated person
2 if the incapacitated person is:

3 (1) a defendant to a suit and has no guardian within
4 this state; or

5 (2) a party to a suit as a plaintiff, defendant, or
6 intervenor represented by a next friend or a guardian and:

7 (A) the next friend or guardian appears to the
8 court to have an interest adverse to the incapacitated person; or

9 (B) the parties agree.

10 (b) The court shall appoint the same guardian ad litem for
11 similarly situated parties unless the court finds that the
12 appointment of different guardians ad litem is necessary.

13 (c) This chapter does not apply to an appointment of a
14 guardian ad litem that is governed by another statute or rule.

15 Sec. 135.003. PROCEEDING TO APPOINT GUARDIAN AD LITEM. (a)
16 The court may appoint a guardian ad litem on the motion of any party
17 or on the court's own initiative.

18 (b) An appointment under this chapter must be made by
19 written order.

20 (c) Any party may object to the appointment of a guardian ad
21 litem.

22 Sec. 135.004. ROLE OF GUARDIAN AD LITEM. (a) A guardian ad
23 litem appointed under this chapter is an officer and advisor to the
24 court. A guardian ad litem shall determine and advise the court
25 whether a party's next friend or guardian has an interest that is
26 adverse to the party.

27 (b) When an offer has been made to settle the claim of a

1 party represented by a next friend or guardian, a guardian ad
2 litem's duty is limited to determining and advising the court
3 whether the settlement is in the party's best interest.

4 (c) A guardian ad litem:

5 (1) shall participate in any proceeding before the
6 court whose purpose is to determine whether:

7 (A) a party's next friend or guardian has an
8 interest adverse to the party; or

9 (B) a settlement of the party's claim is in the
10 party's best interest;

11 (2) may participate in mediation or a similar
12 proceeding to attempt to reach a settlement; and

13 (3) may not participate in discovery, trial, or any
14 other part of the litigation unless:

15 (A) further participation is necessary to
16 protect the party's interest that is adverse to the next friend's or
17 guardian's interest; and

18 (B) the participation is directed by the court in
19 a written order stating sufficient reasons.

20 Sec. 135.005. PRIVILEGED COMMUNICATIONS. Communications
21 between the guardian ad litem and the party, the party's next friend
22 or guardian, or the next friend's or guardian's attorney are
23 privileged as if the guardian ad litem is an attorney for the party.

24 Sec. 135.006. COMPENSATION. (a) A guardian ad litem who
25 files an application for compensation at the conclusion of an
26 appointment under this chapter may be:

27 (1) reimbursed for reasonable and necessary expenses

1 incurred; and

2 (2) paid a reasonable hourly fee for necessary
3 services performed.

4 (b) An application for compensation filed under this
5 section must be verified and must detail the basis for the
6 compensation requested. Unless all parties agree to the
7 application, the court shall conduct an evidentiary hearing to
8 determine the total amount of fees and expenses that are reasonable
9 and necessary. In making this determination, the court may not
10 consider the guardian ad litem's compensation as a percentage of
11 any judgment or settlement.

12 (c) The court may tax a guardian ad litem's compensation as
13 costs of court.

14 (d) Except as provided by this section, a guardian ad litem
15 may not receive, directly or indirectly, anything of value in
16 consideration of an appointment under this chapter.

17 Sec. 135.007. REVIEW. (a) Any party may seek mandamus
18 review of an order appointing a guardian ad litem or directing a
19 guardian ad litem's participation in the litigation. A guardian ad
20 litem or any party may appeal an order awarding the guardian ad
21 litem compensation.

22 (b) On motion of the guardian ad litem or any party, the
23 court shall sever any order awarding a guardian ad litem
24 compensation to create a final, appealable order.

25 (c) An appellate proceeding to review an order pertaining to
26 a guardian ad litem does not affect the finality of a settlement or
27 judgment.

1 SECTION 2. This Act applies only to a court appointment of a
2 guardian ad litem in connection with an action filed on or after the
3 effective date of this Act. A court appointment of a guardian ad
4 litem in connection with an action filed before the effective date
5 of this Act is governed by the law in effect at the time the
6 appointment was made, and that law is continued in effect for that
7 purpose.

8 SECTION 3. This Act takes effect September 1, 2005.