

BILL ANALYSIS

C.S.S.B. 1026

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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A recent study conducted by the Permanent Judicial Commission for Children, Youth and Families to assess attorney appointments in child protective services (CPS) cases indicated that, although statute specifies the powers, duties, and training requirements of attorneys ad litem for children, statute does not adequately address these requirements for attorneys representing parents in such cases.

Interested parties contend that because these issues are not adequately addressed in statute, attorneys who are appointed to represent parents in CPS cases may not have sufficient training or experience in child-protection law to undertake these cases and, in some instances, may not be able to provide fair, quality representation. The parties further contend that effective legal representation can hasten a family's reunification or, when reunification is not a viable option, a child's placement in a permanent home.

C.S.S.B. 1026 seeks to address these issues by specifying the powers and duties of an attorney ad litem representing a parent or alleged father in certain suits affecting the parent-child relationship, including continuing education requirements, and making such an attorney ad litem subject to disciplinary action if the attorney fails to perform required duties.

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

C.S.S.B. 1026 amends the Family Code to require an attorney ad litem appointed to represent the interests of a parent in a suit affecting the parent-child relationship, subject to certain Texas Disciplinary Rules of Professional Conduct and within a reasonable time after the appointment, to interview the parent, unless the parent's location is unknown; each person who has significant knowledge of the case; and the parties to the suit. The bill requires such attorney ad litem to perform the following actions:

- investigate the facts of the case;
- to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits, obtain and review copies of all court files in the suit during the attorney ad litem's course of representation and, when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;
- take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;
- encourage settlement and the use of alternative forms of dispute resolution;
- review and sign, or decline to sign, a proposed or agreed order affecting the parent;

- meet before each court hearing with the parent, except under certain circumstances;
- become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases;
- complete at least three hours of continuing legal education relating to child protection law as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and
- abide by the parent's objectives of representation.

C.S.S.B. 1026 requires the attorney ad litem appointed to represent the interests of a parent in a suit affecting the parent-child relationship to be trained in child protection law or have experience determined by the court to be equivalent to that training. The bill entitles such an attorney ad litem to request clarification from the court if the role of the attorney ad litem is ambiguous; request a hearing or trial on the merits; consent or refuse to consent to an interview of the parent by another attorney; receive a copy of each pleading or other paper filed with the court; receive notice of each hearing in the suit; participate in any case staffing conducted by the Department of Family and Protective Services (DFPS) in which the parent is invited to participate, excluding any internal DFPS staffing or staffing between DFPS and the department's legal representative; and attend all legal proceedings in the suit.

C.S.S.B. 1026 requires the continuing legal education relating to child protection law required by the bill to be low-cost and available to persons throughout Texas, including on the Internet provided through the State Bar of Texas, and to focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding in a suit by a governmental entity to protect the health and safety of a child and a review of the placement of children under the care of DFPS.

C.S.S.B. 1026 requires an attorney ad litem appointed to represent the interests of an alleged father in a suit affecting the parent-child relationship to conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under the Uniform Parentage Act; interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and conduct an independent investigation to identify or locate the alleged father, as applicable. The bill requires such an attorney ad litem, if the attorney ad litem identifies and locates the alleged father, to provide to each party and the court the alleged father's name and address and any other locating information and, if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity. The bill authorizes the court to appoint the attorney ad litem to continue to represent the father's interests as a parent if the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent. The bill requires the attorney ad litem, if the attorney ad litem is unable to identify or locate the alleged father, to submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

C.S.S.B. 1026 makes an attorney ad litem appointed for a parent or an alleged father in a suit affecting the parent-child relationship who fails to perform the duties required by the bill subject to disciplinary action under the State Bar Act.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1026 differs from the original, in the bill provision establishing the actions required to be taken by an attorney ad litem appointed to represent the interests of a parent in a suit affecting the parent-child relationship in order to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits, by requiring the attorney ad litem to obtain and review copies of all court files in the suit during the attorney ad litem's course of representation and, when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan, whereas the original requires the attorney ad litem to obtain and review copies of relevant records and all court files in the suit during the attorney ad litem's course of representation and, when the attorney ad litem considers necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan.

C.S.S.B. 1026 differs from the original in nonsubstantive ways.