

By: Harris

S.B. No. 1026

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers and duties of an attorney ad litem appointed
3 for a parent or an alleged father in certain suits affecting the
4 parent-child relationship.

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

6 SECTION 1. Part 1, Subchapter B, Chapter 107, Family Code,
7 is amended by adding Sections 107.0131, 107.0132, and 107.0133 to
8 read as follows:

9 Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
10 PARENT. (a) An attorney ad litem appointed under Section 107.013
11 to represent the interests of a parent:

12 (1) shall:

13 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
14 Disciplinary Rules of Professional Conduct, and within a reasonable
15 time after the appointment, interview:

16 (i) the parent, unless the parent's
17 location is unknown;

18 (ii) each person who has significant
19 knowledge of the case; and

20 (iii) the parties to the suit;

21 (B) investigate the facts of the case;

22 (C) to ensure competent representation at
23 hearings, mediations, pretrial matters, and the trial on the
24 merits:

1 (i) obtain and review copies of relevant
2 records and all court files in the suit during the attorney ad
3 litem's course of representation; and

4 (ii) when the attorney ad litem considers
5 necessary, conduct formal discovery under the Texas Rules of Civil
6 Procedure or the discovery control plan;

7 (D) take any action consistent with the parent's
8 interests that the attorney ad litem considers necessary to
9 expedite the proceedings;

10 (E) encourage settlement and the use of
11 alternative forms of dispute resolution;

12 (F) review and sign, or decline to sign, a
13 proposed or agreed order affecting the parent;

14 (G) meet before each court hearing with the
15 parent, unless the court:

16 (i) finds at that hearing that the attorney
17 ad litem has shown good cause why the attorney ad litem's compliance
18 is not feasible; or

19 (ii) on a showing of good cause, authorizes
20 the attorney ad litem to comply by conferring with the parent, as
21 appropriate, by telephone or video conference;

22 (H) become familiar with the American Bar
23 Association's standards of practice for attorneys who represent
24 parents in abuse and neglect cases;

25 (I) complete at least three hours of continuing
26 legal education relating to child protection law as described by
27 Subsection (b) as soon as practicable after the attorney ad litem is

1 appointed, unless the court finds that the attorney ad litem has
2 experience equivalent to that education; and

3 (J) abide by the parent's objectives of
4 representation;

5 (2) must be trained in child protection law or have
6 experience determined by the court to be equivalent to that
7 training; and

8 (3) is entitled to:

9 (A) request clarification from the court if the
10 role of the attorney ad litem is ambiguous;

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

12 (C) consent or refuse to consent to an interview
13 of the parent by another attorney;

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

16 (E) receive notice of each hearing in the suit;

17 (F) participate in any case staffing conducted by
18 the Department of Family and Protective Services in which the
19 parent is invited to participate, including, as appropriate, a case
20 staffing to develop a family plan of service, a family group
21 conference, a permanency conference, a mediation, a case staffing
22 to plan for the discharge and return of the child to the parent, and
23 any other case staffing that the department determines would be
24 appropriate for the parent to attend, but excluding any internal
25 department staffing or staffing between the department and the
26 department's legal representative; and

27 (G) attend all legal proceedings in the suit.

1 (b) The continuing legal education required by Subsection
2 (a)(1)(I) must:

3 (1) be low-cost and available to persons throughout
4 this state, including on the Internet provided through the State
5 Bar of Texas; and

6 (2) focus on the duties of an attorney ad litem in, and
7 the procedures of and best practices for, a proceeding under
8 Chapter 262 or 263.

9 Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
10 ALLEGED FATHER. (a) An attorney ad litem appointed under Section
11 107.013 to represent the interests of an alleged father shall:

12 (1) conduct an investigation regarding the
13 petitioner's due diligence in locating the alleged father,
14 including by verifying that the petitioner has obtained a
15 certificate of the results of a search of the paternity registry
16 under Chapter 160;

17 (2) interview any party or other person who has
18 significant knowledge of the case who may have information relating
19 to the identity or location of the alleged father; and

20 (3) conduct an independent investigation to identify
21 or locate the alleged father, as applicable.

22 (b) If the attorney ad litem identifies and locates the
23 alleged father, the attorney ad litem shall:

24 (1) provide to each party and the court the alleged
25 father's name, address, and any other locating information; and

26 (2) if appropriate, request the court's approval for
27 the attorney ad litem to assist the alleged father in establishing

1 paternity.

2 (c) If the alleged father is adjudicated to be a parent of
3 the child and is determined by the court to be indigent, the court
4 may appoint the attorney ad litem to continue to represent the
5 father's interests as a parent under Section 107.013(a)(1) or (c).

6 (d) If the attorney ad litem is unable to identify or locate
7 the alleged father, the attorney ad litem shall submit to the court
8 a written summary of the attorney ad litem's efforts to identify or
9 locate the alleged father with a statement that the attorney ad
10 litem was unable to identify or locate the alleged father.

11 Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT
12 OR ALLEGED FATHER. An attorney ad litem appointed for a parent or
13 an alleged father who fails to perform the duties required by
14 Section 107.0131 or 107.0132, as applicable, is subject to
15 disciplinary action under Subchapter E, Chapter 81, Government
16 Code.

17 SECTION 2. Sections 107.0131, 107.0132, and 107.0133,
18 Family Code, as added by this Act, apply only to an attorney ad
19 litem in a suit affecting the parent-child relationship appointed
20 on or after the effective date of this Act. An attorney ad litem
21 appointed before that date is governed by the law in effect on the
22 date the attorney ad litem was appointed, and the former law is
23 continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2011.