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S.B. No. 1759

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the procedures for the appointment of and the duties of
3 attorneys ad litem in certain suits affecting the parent-child
4 relationship.

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

6 SECTION 1. Section 107.004, Family Code, is amended by
7 amending Subsections (b) and (c) and adding Subsection (b-1) to
8 read as follows:

9 (b) An attorney ad litem appointed for a child in a
10 proceeding under Subtitle E [~~Chapter 262 or 263~~] shall complete at
11 least three hours of continuing legal education relating to
12 representing children in child protection cases [~~advocacy~~] as
13 described by Subsection (c) as soon as practicable after the
14 attorney ad litem is appointed [~~litem's appointment~~]. An attorney
15 ad litem is not required to comply with this subsection if the court
16 finds that the attorney ad litem has experience equivalent to the
17 required education.

18 (b-1) An attorney who is on the list maintained by the court
19 as being qualified for appointment as an attorney ad litem for a
20 child in a child protection case must complete at least three hours
21 of continuing legal education relating to the representation of a
22 child in a proceeding under Subtitle E each year before the
23 anniversary date of the attorney's listing.

24 (c) The continuing legal education required by Subsections

1 ~~[Subsection]~~ (b) and (b-1) must:

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

5 (2) focus on the duties of an attorney ad litem in, and
6 the procedures of and best practices for, representing a child in a
7 proceeding under Subtitle E ~~[Chapter 262 or 263]~~.

8 SECTION 2. Subsection (a), Section 107.013, Family Code, is
9 amended to read as follows:

10 (a) In a suit filed by a governmental entity under Subtitle
11 E in which termination of the parent-child relationship or the
12 appointment of a conservator for a child is requested, the court
13 shall appoint an attorney ad litem to represent the interests of:

14 (1) an indigent parent of the child who responds in
15 opposition to the termination or appointment;

16 (2) a parent served by citation by publication;

17 (3) an alleged father who failed to register with the
18 registry under Chapter 160 and whose identity or location is
19 unknown; and

20 (4) an alleged father who registered with the
21 paternity registry under Chapter 160, but the petitioner's attempt
22 to personally serve citation at the address provided to the
23 registry and at any other address for the alleged father known by
24 the petitioner has been unsuccessful.

25 SECTION 3. Section 107.0131, Family Code, is amended to
26 read as follows:

27 Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR

1 PARENT. (a) An attorney ad litem appointed under Section 107.013
2 to represent the interests of a parent:

3 (1) shall:

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

7 (i) the parent, unless the parent's
8 location is unknown;

9 (ii) each person who has significant
10 knowledge of the case; and

11 (iii) the parties to the suit;

12 (B) investigate the facts of the case;

13 (C) to ensure competent representation at
14 hearings, mediations, pretrial matters, and the trial on the
15 merits:

16 (i) obtain and review copies of all court
17 files in the suit during the attorney ad litem's course of
18 representation; and

19 (ii) when necessary, conduct formal
20 discovery under the Texas Rules of Civil Procedure or the discovery
21 control plan;

22 (D) take any action consistent with the parent's
23 interests that the attorney ad litem considers necessary to
24 expedite the proceedings;

25 (E) encourage settlement and the use of
26 alternative forms of dispute resolution;

27 (F) review and sign, or decline to sign, a

1 proposed or agreed order affecting the parent;

2 (G) meet before each court hearing with the
3 parent, unless the court:

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

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

10 (H) abide by the parent's objectives for
11 representation;

12 (I) become familiar with the American Bar
13 Association's standards of practice for attorneys who represent
14 parents in abuse and neglect cases; and

15 (J) ~~(I)~~ complete at least three hours of
16 continuing legal education relating to representing parents in
17 child protection cases ~~[law]~~ as described by Subsection (b) as soon
18 as practicable after the attorney ad litem is appointed, unless the
19 court finds that the attorney ad litem has experience equivalent to
20 that education; and

21 ~~[(J) abide by the parent's objectives of~~
22 ~~representation,]~~

23 (2) ~~[must be trained in child protection law or have~~
24 ~~experience determined by the court to be equivalent to that~~
25 ~~training; and~~

26 ~~(3)~~ is entitled to:

27 (A) request clarification from the court if the

1 role of the attorney ad litem is ambiguous;

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

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

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

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

8 (F) participate in any case staffing conducted by
9 the Department of Family and Protective Services in which the
10 parent is invited to participate, including, as appropriate, a case
11 staffing to develop a family plan of service, a family group
12 conference, a permanency conference, a mediation, a case staffing
13 to plan for the discharge and return of the child to the parent, and
14 any other case staffing that the department determines would be
15 appropriate for the parent to attend, but excluding any internal
16 department staffing or staffing between the department and the
17 department's legal representative; and

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

19 (b) The continuing legal education required by Subsection
20 (a)(1)(J) [~~(a)(1)(I)~~] must:

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

24 (2) focus on the duties of an attorney ad litem in, and
25 the procedures of and best practices for, representing a parent in a
26 proceeding under Subtitle E [~~Chapter 262 or 263~~].

27 (c) An attorney who is on the list maintained by the court as

1 being qualified for appointment as an attorney ad litem for a parent
2 in a child protection case must complete at least three hours of
3 continuing legal education relating to the representation of a
4 parent in a proceeding under Subtitle E each year before the
5 anniversary date of the attorney's listing.

6 SECTION 4. Subsections (a) and (d), Section 107.0132,
7 Family Code, are amended to read as follows:

8 (a) Except as provided by Subsections (b) and (d), an [An]
9 attorney ad litem appointed under Section 107.013 to represent the
10 interests of an alleged father is only required to [shall]:

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

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

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

21 (d) If the attorney ad litem is unable to identify or locate
22 the alleged father, the attorney ad litem shall submit to the court
23 a written summary of the attorney ad litem's efforts to identify or
24 locate the alleged father with a statement that the attorney ad
25 litem was unable to identify or locate the alleged father. On
26 receipt of the summary required by this subsection, the court shall
27 discharge the attorney from the appointment.

1 SECTION 5. Part 1, Subchapter B, Chapter 107, Family Code,
2 is amended by adding Section 107.014 to read as follows:

3 Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
4 CERTAIN PARENTS. (a) Except as provided by Subsections (b) and
5 (e), an attorney ad litem appointed under Section 107.013 to
6 represent the interests of a parent whose identity or location is
7 unknown or who has been served by citation by publication is only
8 required to:

9 (1) conduct an investigation regarding the
10 petitioner's due diligence in locating the parent;

11 (2) interview any party or other person who has
12 significant knowledge of the case who may have information relating
13 to the identity or location of the parent; and

14 (3) conduct an independent investigation to identify
15 or locate the parent, as applicable.

16 (b) If the attorney ad litem identifies and locates the
17 parent, the attorney ad litem shall:

18 (1) provide to each party and the court the parent's
19 name and address and any other available locating information
20 unless the court finds that:

21 (A) disclosure of a parent's address is likely to
22 cause that parent harassment, serious harm, or injury; or

23 (B) the parent has been a victim of family
24 violence; and

25 (2) if appropriate, assist the parent in making a
26 claim of indigence for the appointment of an attorney.

27 (c) If the court makes a finding described by Subsection

1 (b)(1)(A) or (B), the court may:

2 (1) order that the information not be disclosed; or

3 (2) render any other order the court considers
4 necessary.

5 (d) If the court determines the parent is indigent, the
6 court may appoint the attorney ad litem to continue to represent the
7 parent under Section 107.013(a)(1).

8 (e) If the attorney ad litem is unable to identify or locate
9 the parent, the attorney ad litem shall submit to the court a
10 written summary of the attorney ad litem's efforts to identify or
11 locate the parent with a statement that the attorney ad litem was
12 unable to identify or locate the parent. On receipt of the summary
13 required by this subsection, the court shall discharge the attorney
14 from the appointment.

15 SECTION 6. Subsection (d), Section 262.1015, Family Code,
16 is amended to read as follows:

17 (d) A temporary restraining order under this section
18 expires not later than the 14th day after the date the order was
19 rendered, unless the court grants an extension under Section
20 262.201(a-3).

21 SECTION 7. Section 262.102, Family Code, is amended by
22 adding Subsection (d) to read as follows:

23 (d) The temporary restraining order or attachment of a child
24 rendered by the court must contain the following statement
25 prominently displayed in boldface type, capital letters, or
26 underlined:

27 "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU

1 ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO
2 REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT
3 [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE
4 SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY,
5 THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE
6 COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE
7 COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF
8 AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

9 SECTION 8. Section 262.103, Family Code, is amended to read
10 as follows:

11 Sec. 262.103. DURATION OF TEMPORARY RESTRAINING ORDER AND
12 ATTACHMENT. A temporary restraining order or attachment of the
13 child issued under this chapter expires not later than 14 days after
14 the date it is issued unless it is extended as provided by the Texas
15 Rules of Civil Procedure or Section 262.201(a-3).

16 SECTION 9. Section 262.201, Family Code, is amended by
17 amending Subsection (a) and adding Subsections (a-1), (a-2), and
18 (a-3) to read as follows:

19 (a) Unless the child has already been returned to the
20 parent, managing conservator, possessory conservator, guardian,
21 caretaker, or custodian entitled to possession and the temporary
22 order, if any, has been dissolved, a full adversary hearing shall be
23 held not later than the 14th day after the date the child was taken
24 into possession by the governmental entity, unless the court grants
25 an extension under Subsection (a-3).

26 (a-1) Before commencement of the full adversary hearing,
27 the court must inform each parent not represented by an attorney of:

1 (1) the right to be represented by an attorney; and

2 (2) if a parent is indigent and appears in opposition
3 to the suit, the right to a court-appointed attorney.

4 (a-2) If a parent claims indigence and requests the
5 appointment of an attorney before the full adversary hearing, the
6 court shall require the parent to complete and file with the court
7 an affidavit of indigence. The court may hear evidence to determine
8 whether the parent is indigent. If the court determines the parent
9 is indigent, the court shall appoint an attorney to represent the
10 parent.

11 (a-3) The court may, for good cause shown, postpone the full
12 adversary hearing for not more than seven days from the date of the
13 attorney's appointment to provide the attorney time to respond to
14 the petition and prepare for the hearing. The court may shorten or
15 lengthen the extension granted under this subsection if the parent
16 and the appointed attorney agree in writing. If the court postpones
17 the full adversary hearing, the court shall extend a temporary
18 restraining order issued by the court for the protection of the
19 child until the date of the rescheduled full adversary hearing.

20 SECTION 10. Subchapter A, Chapter 263, Family Code, is
21 amended by adding Section 263.0061 to read as follows:

22 Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL.

23 (a) At the status hearing under Subchapter C and at each
24 permanency hearing under Subchapter D held after the date the court
25 renders a temporary order appointing the department as temporary
26 managing conservator of a child, the court shall inform each parent
27 not represented by an attorney of:

1 (1) the right to be represented by an attorney; and

2 (2) if a parent is indigent and appears in opposition
3 to the suit, the right to a court-appointed attorney.

4 (b) If a parent claims indigence and requests the
5 appointment of an attorney in a proceeding described by Subsection
6 (a), the court shall require the parent to complete and file with
7 the court an affidavit of indigence. The court may hear evidence to
8 determine whether the parent is indigent. If the court determines
9 the parent is indigent, the court shall appoint an attorney to
10 represent the parent.

11 SECTION 11. Subsection (c), Section 107.013, Family Code,
12 is repealed.

13 SECTION 12. The changes in law made by this Act apply only
14 to a suit affecting the parent-child relationship filed on or after
15 the effective date of this Act. A suit affecting the parent-child
16 relationship filed before that date is governed by the law in effect
17 on the date the suit was filed, and that law is continued in effect
18 for that purpose.

19 SECTION 13. This Act takes effect September 1, 2013.