

By: Uresti

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 107.013(a), Family Code, is amended to  
7 read as follows:

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

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

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

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

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

23 SECTION 2. Section 107.0131, Family Code, is amended to  
24 read as follows:

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

4                   (1) shall:

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

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

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

12                                   (iii) the parties to the suit;

13                           (B) investigate the facts of the case;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 [~~(3)~~] is entitled to:

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

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

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

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

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

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

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

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

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

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

1        (c) An attorney who is on the list maintained under Section  
2 74.092, Government Code, as being qualified for appointment as an  
3 attorney ad litem for a parent in a child protection case shall  
4 complete at least three hours of continuing legal education each  
5 year before the anniversary date of the attorney's listing relating  
6 to the representation of a parent in a suit filed by a governmental  
7 entity requesting managing conservatorship of a child or  
8 termination of the parent-child relationship.

9        SECTION 3. Sections 107.0132(a) and (d), Family Code, are  
10 amended to read as follows:

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

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

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

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

24        (d) If the attorney ad litem is unable to identify or locate  
25 the alleged father, the attorney ad litem shall submit to the court  
26 a written summary of the attorney ad litem's efforts to identify or  
27 locate the alleged father with a statement that the attorney ad

1 litem was unable to identify or locate the alleged father. On  
2 receipt of the summary required by this subsection, the court shall  
3 discharge the attorney from the appointment.

4 SECTION 4. Subchapter B, Chapter 107, Family Code, is  
5 amended by adding Section 107.014 to read as follows:

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

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

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

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

19 (b) If the attorney ad litem identifies and locates the  
20 parent, the attorney ad litem shall:

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

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

26 (B) the parent has been a victim of family  
27 violence; and

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

3           (c) If the court makes a finding described by Subsection  
4 (b)(1)(A) or (B), the court may:

- 5                   (1) order that the information not be disclosed; or  
6                   (2) render any other order the court considers  
7 necessary.

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

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

18           SECTION 5. Section 262.1015(d), Family Code, is amended to  
19 read as follows:

20           (d) A temporary restraining order under this section  
21 expires not later than the 14th day after the date the order was  
22 rendered, unless the court grants an extension under Section  
23 262.201(a-3).

24           SECTION 6. Section 262.102, Family Code, is amended by  
25 adding Subsection (d) to read as follows:

26           (d) The temporary restraining order or attachment of a child  
27 rendered by the court must contain the following statement

1 prominently displayed in boldface type, capital letters, or  
2 underlined:

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

12 SECTION 7. Section 262.103, Family Code, is amended to read  
13 as follows:

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

19 SECTION 8. Section 262.201, Family Code, is amended by  
20 amending Subsection (a) and adding Subsections (a-1), (a-2), and  
21 (a-3) to read as follows:

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



1 an extension under Subsection (a-3).

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

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

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

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

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

23 SECTION 9. Subchapter A, Chapter 263, Family Code, is  
24 amended by adding Section 263.0061 to read as follows:

25 Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL. (a)  
26 At the status hearing under Subchapter C and at each permanency  
27 hearing under Subchapter D held after the date the court renders a

1 temporary order appointing the department as temporary managing  
2 conservator of a child, the court shall inform each parent not  
3 represented by an attorney of:

- 4           (1) the right to be represented by an attorney; and  
5           (2) if a parent is indigent and appears in opposition  
6 to the suit, the right to a court-appointed attorney.

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

14           SECTION 10. Section 107.013(c), Family Code, is repealed.

15           SECTION 11. The changes in law made by this Act apply only  
16 to a suit affecting the parent-child relationship filed on or after  
17 the effective date of this Act. A suit affecting the parent-child  
18 relationship filed before that date is governed by the law in effect  
19 on the date the suit was filed, and that law is continued in effect  
20 for that purpose.

21           SECTION 12. This Act takes effect September 1, 2013.