

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1369

By: Zaffirini

State Affairs

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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Attorneys and guardians generally are appointed by a court to represent or act on behalf of those most vulnerable in our society and those less likely to identify and report abuse, namely children, elderly persons, and persons with disabilities. The use of discretion in these appointments sometimes results in abuse and, many times, in the unintentional appearance of abuse, of the appointment system for personal profit or as a way to reward campaign contributors and friends. Even the appearance of abuse in these appointments simply is unacceptable and undermines the public's confidence in the entire judicial system.

Current law provides for inadequate and insufficient collection of information regarding court appointments. Under an existing Texas Supreme Court order, appointees' compensation data already should be reported, but in practice are not, hampering transparency and underlining the need for this legislation. Whether courts have either been emboldened not to comply or simply feel the burden of the reporting requirements justifies their noncompliance, full transparency requires timely, complete, and accurate information regarding ad litem appointments.

C.S.S.B. 1369 requires courts appointing attorneys, guardians ad litem, guardians, mediators, and competency evaluators to submit compensation information, including compensation under \$500, to the Office of Court Administration (OCA). OCA would develop a standardized and automated format for Courts to submit annually: the name of each attorney appointed by the court; the name of the judge and the date of the order approving the compensation for each ad litem, guardian, competency evaluator, and mediator who was appointed that year; the case number and style for each appointment; if available, the reporting of hours worked on the case and hourly rate, or the flat fee compensation or pro bono; the number of cases for each person appointed, and the total amount of compensation to each person. This report would be made available both online and physically at the courthouse. Courts would submit reports simply indicating no activity when there was no appointment activity in that year, and they would be ineligible for grant money awarded by the state or a state agency for the next biennium if they fail to report these data. The Texas Judicial Council would promulgate rules related to the implementation of this bill, and the reporting requirement would be delayed from 2015 until 2016 with the first report due in 2017, to facilitate this implementation. What's more, OCA would conduct an interim study regarding an attorney billing system that would increase efficiency and facilitate reporting. C.S.S.B. 1369 also exempts from the annual reporting requirements under this bill the appointment of certain non-profit volunteers, governmental employees, and attorneys representing minors in proceedings that are confidential under current statutes. These changes to current law would enhance transparency regarding compensation of court appointees and increase public trust in the judicial system's integrity.

C.S.S.B. 1369 amends current law relating to reports on attorney ad litem, guardian ad litem, guardian, mediator, and competency evaluator appointments made by courts in this state and an interim study on a billing system for those appointments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 2, Government Code, by adding Chapter 36, as follows:

CHAPTER 36. JUDICIAL REPORTS

Sec. 36.001. DEFINITIONS. Defines "competency evaluator" and "guardian."

Sec. 36.002. APPLICABILITY; CONFLICT OF LAW. (a) Provides that this chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.

(b) Provides that, to the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

Sec. 36.003. EXEMPTION. Provides that the reporting requirements of Section 36.004 do not apply to:

- (1) a mediator appointed under Chapter 152 (Alternative Dispute Resolutions System Established by Counties), Civil Practices and Remedies Code;
- (2) an appointment made under Chapter 33 (Notice of Abortion), Family Code;
- (3) a guardian ad litem or other person appointed under Section 107.031 (Volunteer Advocates), Family Code; or
- (4) an attorney ad litem, guardian ad litem, or mediator appointed to represent a child as authorized under Chapter 203 (Domestic Relations Offices), Family Code.

Sec. 36.004. REPORT ON APPOINTMENTS. (a) Requires each court in this state to prepare a report on court appointments for each state fiscal year, in addition to a report required by other state law or rule. Requires a court that does not make an appointment in the preceding state fiscal year to file a report indicating that no appointment was made in that year. Requires a court that appoints an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding state fiscal year to include in the report:

- (1) the name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that year;
- (2) the name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that year;
- (3) the number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that year;
- (4) the number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that year;
- (5) if available, the number of hours and the hourly rate, flat fee, or pro bono hours of credit for each person who served as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for an appointed case in that year; and

(6) the total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that year and the source of the compensation.

(b) Requires a court to, not later than November 1 of each year, prepare the report required under Subsection (a), submit a copy of the report to the Office of Court Administration of the Texas Judicial System (OCA), and post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

(c) Requires OCA to prescribe the format that court must use to report the information required by this section and to post the information collected under Subsection (b) on the office's Internet website.

Sec. 36.005. FAILURE TO REPORT. Provides that, if a court in this state fails to submit a report required by Section 36.004, the court is ineligible for any grant money awarded by this state for a state agency for the next state fiscal biennium.

Sec. 36.006. TEXAS JUDICIAL COUNCIL RULES. Requires the Texas Judicial Council, as the council considers appropriate, to adopt rules to implement this chapter.

SECTION 2. (a) Requires OCA to conduct a study on the feasibility of establishing a statewide uniform attorney ad litem billing system that would allow attorneys appointed by courts in this state to serve as attorneys ad litem in cases before the courts to enter on a standardized form information regarding the appointment type and duration, case information and activities, numbers of hours served under the appointment, and hourly rate or flat fee paid for the appointment.

(b) Requires that the study conducted under this section examine:

(1) the possible benefits to this state and to counties in this state of establishing a statewide uniform attorney ad litem billing system;

(2) the number of attorneys in this state providing legal representation in court-appointed matters;

(3) the number of hours spent in client representation activities by attorneys serving as attorneys ad litem;

(4) the qualifications of attorneys serving as attorneys ad litem, including training and specialization;

(5) whether using a standardized billing voucher would provide uniformity in the types of vouchers attorneys are currently required to submit to courts for payment; and

(6) the amount of money spent on court-appointed legal representation by year, court, county, and person served, such as parent, child, or other.

(c) Requires OCA to submit an electronic copy of the study conducted under this section to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31, 2016.

(d) Provides that this section expires September 1, 2017.

SECTION 3. Provides that Chapter 36, Government Code, as added by this Act, applies beginning with the state fiscal year that begins September 1, 2016.

SECTION 4. Effective date: September 1, 2015.