By:  Cook H.B. No. 852

A BILL TO BE ENTITLED

AN ACT

relating to the powers, duties, and qualifications of an amicus attorney in a suit affecting the parent-child relationship.

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

SECTION 1.  The heading to Section 107.003, Family Code, is amended to read as follows:

Sec. 107.003.  POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD [~~AND AMICUS ATTORNEY~~].

SECTION 2.  Section 107.003(a), Family Code, is amended to read as follows:

(a)  An attorney ad litem appointed to represent a child [~~or an amicus attorney appointed to assist the court~~]:

(1)  shall:

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

(i)  the child in a developmentally appropriate manner, if the child is four years of age or older;

(ii)  each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii)  the parties to the suit;

(B)  seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

(C)  consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;

(D)  investigate the facts of the case to the extent the attorney considers appropriate;

(E)  obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F)  participate in the conduct of the litigation to the same extent as an attorney for a party;

(G)  take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;

(H)  encourage settlement and the use of alternative forms of dispute resolution; and

(I)  review and sign, or decline to sign, a proposed or agreed order affecting the child;

(2)  must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3)  is entitled to:

(A)  request clarification from the court if the role of the attorney is ambiguous;

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

(C)  consent or refuse to consent to an interview of the child by another attorney;

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

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

(F)  participate in any case staffing concerning the child conducted by the Department of Family and Protective Services; and

(G)  attend all legal proceedings in the suit.

SECTION 3.  Section 107.005, Family Code, is amended to read as follows:

Sec. 107.005.  POWERS AND [~~ADDITIONAL~~] DUTIES OF AMICUS ATTORNEY. (a) An attorney appointed as an amicus attorney:

(1)  shall:

(A)  perform the duties described by Sections 107.003(a)(1)(A) and (D)-(I);

(B)  conduct a home visit of:

(i)  any person who has the right of possession of or access to the child; and

(ii)  any party who is seeking possession of or access to the child;

(C)  on request by a party or the court:

(i)  provide a copy of the amicus attorney's entire case file to each party not later than the fifth business day after the date of the request; and

(ii)  prepare and file a written report certifying the amicus attorney's compliance with the order appointing the amicus attorney and this chapter not later than the fifth business day after the date of the request;

(2)  must certify to the court that the attorney:

(A)  has completed at least four hours of continuing legal education in the previous year specifically related to domestic violence, developmentally appropriate techniques to interview a child, and alternative dispute resolution; or

(B)  is certified in family law by the Texas Board of Legal Specialization; and

(3)  is entitled to perform the actions described by Sections 107.003(a)(3)(B)-(G).

(a-1)  Subject to any specific limitation in the order of appointment, an amicus attorney shall advocate the best interests of the child after reviewing the facts and circumstances of the case. Notwithstanding Subsection (b), in determining the best interests of the child, an amicus attorney is not bound by the child's expressed objectives of representation.

(b)  An amicus attorney shall, in a developmentally appropriate manner:

(1)  with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(2)  explain the role of the amicus attorney to the child; and

(3)  inform the child that the amicus attorney may use information that the child provides in providing assistance to the court[~~; and~~

[~~(4)  become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases~~].

(c)  The order appointing an [~~An~~] amicus attorney must include:

(1)  a list of any additional duties, other than the duties under this chapter, required by the court to be completed by the amicus attorney; and

(2)  specific orders regarding the payment of the fees and expenses of the amicus attorney.

(d)  An amicus attorney may not at any hearing or trial express an opinion or relate a recommendation to the court or to a jury regarding the conservatorship of or the possession of or access to the child who is the subject of the suit, or any issue regarding a geographic restriction applicable to the child.

(e)  Except as otherwise provided by Subsection (f), an amicus attorney is subject to discovery in accordance with the Texas Rules of Civil Procedure.

(f)  The provision of services by an amicus attorney under this chapter does not create an attorney-client relationship between the attorney and any other party, and the amicus attorney may be required to [~~not~~] disclose [~~confidential~~] communications between the amicus attorney and the child and any work product related to the case [~~unless the amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child~~].

SECTION 4.  Subchapter A, Chapter 107, Family Code, is amended by adding Section 107.0051 to read as follows:

Sec. 107.0051.  AMICUS ATTORNEY: CONFLICTS OF INTEREST AND BIAS. (a) Before a person accepts appointment as an amicus attorney in a suit, the person must disclose to the court, each attorney for a party to the suit, and any party to the suit who does not have an attorney:

(1)  any conflict of interest that the person believes the person has with the court, any party to the suit, or a child who is the subject of the suit;

(2)  any previous knowledge that the person has of a party to the suit or a child who is the subject of the suit, other than knowledge obtained in a court-ordered evaluation;

(3)  any pecuniary relationship that the person believes the person has with an attorney in the suit or the court;

(4)  any fiduciary relationship that the person believes the person has with an attorney in the suit or the court; and

(5)  any other information relating to the person's relationship with an attorney in the suit or the court that a reasonable, prudent person would believe would affect the ability of the person to act impartially as an amicus attorney.

(b)  The court may not appoint a person as an amicus attorney in a suit if the person makes any of the disclosures in Subsection (a) unless:

(1)  the court finds that:

(A)  the person has no conflict of interest with a party to the suit, the court, or a child who is the subject of the suit;

(B)  the person's previous knowledge of a party to the suit, the court, or a child who is the subject of the suit is not relevant;

(C)  the person does not have a pecuniary relationship with an attorney in the suit or the court; and

(D)  the person does not have a fiduciary relationship with an attorney in the suit or the court; or

(2)  the parties agree in writing to the person's appointment as an amicus attorney.

(c)  After being appointed as an amicus attorney in a suit, a person shall immediately disclose to the court, each attorney for a party to the suit, and any party to the suit who does not have an attorney any discovery of the following unless previously disclosed:

(1)  a conflict of interest that the person believes the person has with a party to the suit, the court, or a child who is the subject of the suit;

(2)  previous knowledge the person has of a party to the suit, the court, or a child who is the subject of the suit, other than knowledge obtained in a court-ordered evaluation; and

(3)  a relationship that the person has with an attorney in the suit who was hired or appointed after the person's appointment as amicus attorney that would have been subject to disclosure under Subsection (a).

(d)  The court shall remove a person as amicus attorney in a suit if the person makes any of the disclosures in Subsection (c) unless:

(1)  the court finds that:

(A)  the person has no conflict of interest with a party to the suit, the court, or a child who is the subject of the suit;

(B)  the person's previous knowledge of a party to the suit, the court, or a child who is the subject of the suit is not relevant; and

(C)  the person has no pecuniary or fiduciary relationship with an attorney in the suit who was hired or appointed after the person's appointment as amicus attorney; or

(2)  the parties agree in writing to the person's continued appointment as an amicus attorney.

(e)  A person who has a preexisting relationship with an attorney of a party to the suit is not disqualified from being an amicus attorney if the relationship was formed in a professional setting such as service to the community or a bar association, unless the relationship is prohibited under the Texas Rules of Professional Conduct.

SECTION 5.  Section 107.007(a), Family Code, is amended to read as follows:

(a)  An attorney ad litem or[~~,~~] an attorney serving in the dual role[~~, or an amicus attorney~~] may not:

(1)  be compelled to produce attorney work product developed during the appointment as an attorney;

(2)  be required to disclose the source of any information;

(3)  submit a report into evidence; or

(4)  testify in court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct.

SECTION 6.  The changes in law made by this Act apply only to an amicus attorney appointed in a suit that is filed on or after the effective date of this Act. An amicus attorney appointed in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 7.  This Act takes effect September 1, 2021.